

Counter Terrorism, Sanctions and Humanitarian Access in COVID-19

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This article will look at the impact of counterterrorism and sanctions measures on principled humanitarian action in the context of COVID-19 pandemic. It will also explore the daily operational challenges faced by humanitarian organizations as they carry out their work, as echoed in a growing body of research. This includes, though are not limited to, difficulties to the independent selection of beneficiaries, to carrying out bank transfers, to engagement with non-state armed groups and to the provision of healthcare to people in need in sanctioned jurisdictions.

The need to respond to the COVID-19 pandemic has brought new urgency to these issues as pre-existing constraints in parts of the world, despite joint efforts undertaken by donors, can hinder the response.

In addition to, it will discuss the need to reaffirm the fundamental importance of the humanitarian principles and to ensure that counter-terrorism measures and sanctions do not weaken adherence to them. It will seek to identify ways to ensure that such measures are consistent with Member State obligations under International Humanitarian Law, ensuring people-centered solutions and strengthening effectiveness.

Keywords: International Organizations Role in Countering Terrorism, Sanctions imposed on Counter Terrorism, Humanitarian Access during COVID-19, and the impact of COVID-19 on Counter Terrorism.

This study arises the following problematic: To what extent is the scope of application of counter terrorism sanctions during COVID-19, and the extent in which the humanitarian access was affected?

This study aims at searching the impact of COVID-19 on counter terrorism and how it limited the humanitarian access to people in need. It also acts as a starting point to understand the impact of COVID-19 on the terrorism and counter terrorism scene and identifying opportunities for States and international organizations to deal with the problem.

International Organizations Role in Countering Terrorism:

Terrorism has become a source of concern for the international community since 1937, when the League of Nations established the Convention for the Prevention and Suppression of Terrorism. In the 1960s, all Member States were able to participate in negotiating agreements related to combating terrorism and related protocols, which were drawn up under the supervision of the United Nations and its specialized agencies. Between 1963 and 1999, the international community prepared about 12 universal legal instruments to combat terrorist acts. The United Nations General Assembly has also ratified several international conventions to combat terrorism. These international legal rules, in addition to the ratification of the relevant protocols, constitute the

international counterterrorism regime, which is a basic framework for international cooperation against terrorism.

In addition, Security Council Resolutions 1267, 1373, 1526, 1536, 1540 and 1566 constitute a solid and comprehensive basis for combating terrorism on a global scale. These resolutions, which were ratified before and after the terrorist attacks of September 11, 2001, call on member states to implement them through national laws that respect treaty obligations.

The outcome of the World Summit on Counter-Terrorism in 2005 led to the adoption by the General Assembly, for the first time, on September 8, 2006, of the United Nations Joint Global Counter-Terrorism Strategy.¹ From its side, the European Union stressed the need for an integrated approach to address the causes of the phenomenon of terrorism.² The League of Arab States has also taken the necessary measures to confront the phenomenon of terrorism that threatens global stability.³

In light of the terrorist acts that the countries of the world are witnessing today, especially that lead to the commission of the most heinous crimes against humanity, does this not require ignoring the main reasons that impede the role of the international community in combating terrorism, the most important of which are the interests of major countries and their struggles to control the wealth of the world, not to mention the strategy of some developing countries in the Middle East that seek to have a regional influence at the expense of political and social human rights, and to take decisive and effective measures and measures to address this dangerous phenomenon in a comprehensive and radical manner by the international community.

Sanctions imposed on Counter Terrorism:

Sanctions are restrictive measures, namely, restrictions or prohibitions imposed pursuant to international public law. They are imposed by an international organization or a state and applicable against legal or natural persons or other identifiable subjects. They seek to restore peace and security in a region or prevent threat to international peace and security, and to bring about a change in the conduct of a state so as to ensure or restore peace, security and the rule of law in the state targeted by sanctions, or in relation to the above-mentioned other subjects, or a region as a whole. Consequently, the aim of sanctions is not to punish but to prevent a possible deterioration of the situation.⁴

As the COVID-19 pandemic continues, efforts by states and humanitarian actors to stop its spread and to treat the sick are being hindered by existing sanctions and counterterrorism measures.

¹ "UN Global Counter-Terrorism Strategy | Office of Counter-Terrorism" (Un.org2018)

<<https://www.un.org/counterterrorism/un-global-counter-terrorism-strategy>> accessed on May 10, 2021

² Voronova S, "BRIEFING EU Policies -Insight in This Briefing a Persistent Threat Public Opinion EU Legal and Policy Framework for Counter- Terrorism External Dimension of EU Counter- Terrorism Policy EU Financial Instruments to Combat Terrorism European Parliament's Role Way Forward" () [https://www.europarl.europa.eu/RegData/etudes/BRIE/2021/659446/EPRS_BRI\(2021\)659446_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2021/659446/EPRS_BRI(2021)659446_EN.pdf) accessed on June 7, 2021

³ Kkiernerm, "Counter-Terrorism Module 5 Key Issues: Middle East and Gulf Region"

(Unodc.org2020) <<https://www.unodc.org/e4j/en/terrorism/module-5/key-issues/middle-eastand-gulf-region.html>> accessed on June 7, 2021

⁴ Vitols Gibran's, "Sanctions" (Mfa.gov.lv2021)

<<https://www.mfa.gov.lv/en/policy/sanctions>> accessed on June 16, 2021

If sanctions imposed by the UN Security Council, the EU, or states unilaterally, are not sufficiently targeted, and do not include adequate safeguards for humanitarian action, they can adversely affect the very populations for whose well-being they were imposed in the first place. This is not a new concern, but one brought starkly to the fore by their impact on responses to COVID-19.

The detrimental impact of sanctions, which can prevent the supply of medical or personal protective equipment (PPE), or the provision of technical support or training to local health authorities is evident. Jan Egeland, a former U.N. aid chief who now heads the Norwegian Refugee Council (NRC), said that despite sanctions exemptions for medical and food supplies, aid groups still face hurdles to help vulnerable people during the health crisis. Sanctions can also affect remote learning if support cannot be provided to local education authorities, export licenses cannot be obtained for the necessary equipment and software, or if the companies providing reliable internet coverage are designated under the sanctions. For example, in Syria, sanctions had stopped the NRC from acquiring software for online children's education programs, Egeland said, complaining that procedures for humanitarian exemptions were often too slow and bureaucratic.⁵

A comparison of US and EU sanctions on Syria reveals key challenges, but also opportunities for improving current arrangements for the imposition and implementation of sanctions so as to minimize adverse consequences in Syria and more generally.

The US has imposed broad sanctions, such as restrictions on the provision of funds, goods or services – even charitable contributions – to the Syrian government, including the health and education ministries, now playing a central role in the COVID-19 response.⁶

UN agencies are exempted from these restrictions. A general license authorizes NGOs to conduct activities to meet basic needs, but it excludes those involving the government. So, NGOs wishing to provide medical devices, PPE, training or other support to ministry of health staff have to apply for a specific license.⁷

But procedures for applying for licenses are complicated and the approval process notoriously slow. No accommodation has been made to facilitate the COVID-19 response: no interpretative guidance – that would be valuable for all NGOs – has been issued, and no procedures established for reviewing applications more quickly. There is no statement of policy indicating the circumstances under which specific licenses might be granted.

Transactions with designated entities other than the government, such as internet providers whose services are necessary for remote learning, remain prohibited, and regulations expressly preclude applying for specific licenses.

US sanctions frequently have a broad scope, both in direct and indirect application. NGOs registered in the US, and staff who are US nationals, are directly bound by them, and grant agreements between the US government and non-US NGOs require the latter to comply with US sanctions.

⁵ "Lessons from COVID-19: A Catalyst for Improving Sanctions?" (Chathamhouse.org August 26, 2020) <<https://www.chathamhouse.org/2020/08/lessons-covid-19-catalyst-improvingsanctions>> accessed on June 15, 2021

⁶ Ibid

⁷ Ibid

This leaves the non-US NGOs in a Catch-22 situation – as they are not ‘US persons’ they cannot apply for specific licenses, but if they operate without such licenses, they may be violating grant requirements. This lack of clarity contributes to banks’ unwillingness to provide services, and may lead NGOs to curtail their activities. This situation is regrettable in Syria, where the US is the first donor to humanitarian action, and also arises in other contexts where the US has imposed similar sanctions.

The EU’s sanctions for Syria are far more targeted. Of relevance to the COVID-19 response, they do not include prohibitions on the provision of support to the government that could impede assistance in the medical field. There are, however, restrictions on the provision of certain types of PPE or substances used for disinfection, and also on transactions with designated telecommunications providers that affect continuity of education during lockdowns. Although not prohibited, these activities must be authorized by member states’ competent authorities. Similar concerns arise about the complexity and delays of the processes.

The EU sanctions framework is complex, so the recent European Commission Guidance Note on Syria providing official clarification of how it applies to humanitarian action is welcome. Although the note only explains the existing rules rather than amending them to facilitate the COVID-19 response, it does include a number of important elements relevant not just to Syria, but to the interplay between sanctions and humanitarian action more broadly.⁸

First, it notes that ‘in accordance with International Humanitarian Law where no other option is available, the provision of humanitarian aid should not be prevented by EU restrictive measures. This recognizes that humanitarian assistance takes priority over any inconsistent restrictions in sanctions, and it also applies both to UN sanctions and unilateral measures. It is a starting premise that is frequently overlooked in discussions of whether sanctions should include exceptions for humanitarian action. Its reaffirmation is timely, and it must guide states in drawing up future sanctions.

Second, the note states that sanctions do not require the screening of final beneficiaries of humanitarian programs. This means that once someone has been identified as an individual in need on the basis of humanitarian principles, no further screening is required. This is extremely important to COVID-19 responses as it reflects a foundational principle of IHL that, to the fullest extent practicable, everyone is entitled to the medical care required by their condition without distinction.

Third, while responsibility for the implementation of sanctions, including the granting of authorizations, lies with member states, the note nudges them to adopt a number of measures to expedite and streamline such processes. These include the suggestion that states could issue a single authorization for the provision of humanitarian aid in response to the pandemic.

The European Commission is to be commended for this initiative, which should be replicated for other contexts where the COVID-19 response may be undermined by sanctions. These include Gaza, where it would be important to highlight that the designation of Hamas under EU counterterrorism sanctions must not prevent the provision of assistance to relevant ministries.

⁸ “Lessons from COVID-19: A Catalyst for Improving Sanctions?” (Chathamhouse.org August 26, 2020)
<<https://www.chathamhouse.org/2020/08/lessons-covid-19-catalyst-improving-sanctions>> accessed on June 15, 2021

Failure to distinguish between the designated political party and the structures of civil administration risks transforming targeted financial sanctions into comprehensive sanctions-like measures.

The pandemic should serve as a catalyst for improving the system for the adoption and implementation of sanctions by the UN, the EU and individual states, including the UK as it elaborates its sanctions policy post-Brexit. The principles are clear: without prejudicing the aims for which sanctions have been imposed, humanitarian needs must always be prioritized, and met.

Humanitarian Access during COVID-19

Announcing COVID-19 in China and its widespread in other parts of the world, prompted countries to take strict measures to limit the spread of the virus. Those with more limited health infrastructures and resources were particularly encouraged to follow a stricter approach. International and local humanitarian organizations also put in place precautions to protect their own staff, reduce the risk of further spread, and maximize their ability to continue priority programming to vulnerable populations.

The pandemic created new access challenges:

- **Inadequate Occupational Health Infrastructure:** In the early months of the pandemic, many international staff were repatriated or returned to their organizations' headquarters. This was, in part, due to the fact that in the pre-pandemic period, the occupational health side of duty of care planning was reported as "somewhat neglected" compared to occupational security. As a result, when the pandemic hit, many UN country teams, for example, lacked capacities to plan for and mobilize resources to strengthen medical defenses so that international staff could stay and deliver. According to one interviewee at UN headquarters, "even months into the pandemic, UN Resident Coordinators (RCs) are often struggling with securing resources for this purpose." The result was that fewer hands were available in-country to assist with national and local response plans. Consequently, a larger burden of the crisis response fell to national and local actors.⁹
- **Reduced access to countries:** Apart from international staff who departed during the pandemic, other international staff found themselves caught outside the countries in question and unable, at least temporarily, to re-enter. Particularly during the first four to six months of the crisis, nearly all States adopted stricter border management measures in response to the pandemic, with some placing temporary blanket restrictions on foreign entry and/or quarantine requirements for 14 days or even longer. Therefore, humanitarian actors faced cancellation and/or significant reductions in incoming flights, sustained land border closures, and increased restrictions/delays in the issuance of visas. This caused a temporary decrease in the number of international humanitarian staff.¹⁰ As a result, local staff within INGOs and national/local organizations were left with a greater share of the humanitarian delivery responsibility than prior to the pandemic.
- **Restricted movement within countries:** International staff able to return "to duty" was often subject to quarantines, testing requirements, lockdowns, curfews, and prohibitions on travel across regions. In South

⁹ Brubaker R, Day A and Huvé S, "COVID-19 and Humanitarian Access How the Pandemic Should Provoke Systemic Change in the Global Humanitarian System" ()

http://collections.unu.edu/eserv/UNU:8033/UNU_COVIDandHumanitarianAccess_FINAL.pdf accessed on June 6, 2021

¹⁰ Ibid

Sudan, for example, a staff member returning to Juba from inter-State travel would need to quarantine for an initial 14 days, with an additional 14 days for every location visited outside of Juba. “By the time field staff reached a rural location,” one interviewee noted, “nearly a month would have gone by before they could go outside and meet anyone.”¹¹ Restrictions could be even harsher when positive cases occurred, including temporary suspensions of entire operations or large-scale organization wide quarantines. In other settings, external actors prevented access, such as a decision by some indigenous groups in Colombia to prevent any outsider from coming into their communities, or the Houthi prevention of incoming humanitarian flights to northern Yemen.

- Increased bureaucratic hurdles to the movement of people and goods: The bulk of government bureaucratic hurdles appear directly designed to reduce unnecessary movement and curtail the travel of staff for all but the most necessary of humanitarian tasks. Constraints have included additional layers to the standard approvals process for movement, including requiring testing to operate when no testing is available in-country; restricting the profile of humanitarian organizations that can operate in a country or a particular subnational region; introducing local authorities into the delivery chain who, in turn, diverted or blocked the disbursement of aid from its intended recipients; and suspending programming if one service provider tests positive. While most of these were acceptable in light of the pandemic, the requirement that aid be distributed by local government authorities raised serious concerns about humanitarian space and impartiality, especially in conflict-prone areas.
- Programming Restrictions leading to “Critical only” activities: Government authorities often required humanitarian organizations to limit themselves to lifesaving activities, frequently following definitions of “essential” set by the government without the broader humanitarian community’s input. Definitions of what was an essential activity varied across the five contexts analyzed, but generally encompassed food distribution, emergency health, basic shelter and the triumvirate of water, sanitation and hygiene or “WASH.”¹² Moreover, definitions of criticality often included food distribution but not nutrition activities, and they encompassed emergency health but not prenatal care. In parallel, a number of interlocutor’s highlighted temporary, self-imposed barriers to access that could have significant long-term effects. Given limited resources and staff on the one hand and a growing need within the wider populations served on the other, many organizations reorganized their programming, restricting activities to only those considered “essential,” “critical” or “life-saving.” Moreover, many organizations decided or were required to postpone both prevention and protection activities. In fact, most protection operations were suspended, drastically reduced or conducted remotely. This was despite the fact that many protection activities could also be considered “life-saving,” particularly in the realm of sexual and gender-based violence and legal protections.

¹¹ Ibid

¹² Brubaker R, Day A and Huvé S, “COVID-19 and Humanitarian Access How the Pandemic Should Provoke Systemic Change in the Global Humanitarian System” ()

http://collections.unu.edu/eserv/UNU:8033/UNU_COVIDandHumanitarianAccess_FINAL.pdf accessed on June 6, 2021

- Disinformation campaigns: In a few contexts, governmental authorities conducted campaigns in blatant contradiction with humanitarian organizations' awareness-raising and guidance campaigns regarding the pandemic, either denying the scale of the pandemic, or using it as a way to increase anti-foreigner sentiment. In some cases, humanitarian actors had to cease awareness-raising activities in order to avoid contradicting local authorities' positions and, thereby, putting themselves or the populations they were trying to serve at risk. In other cases, authorities started to reject project proposals with any mention of WASH, despite the pressing need. Finally, anti-humanitarian propaganda also increased. Some governments and armed groups alike blamed international humanitarian organizations for introducing the virus or for their inability to respond to the pandemic. These campaigns resulted in intimidation and verbal abuse against international workers, further impeding their ability to travel internally and reach populations in need. These discourses, however, did not translate into a significant increase in risks or security incidents.¹³
- Prohibitions on large gatherings: In many instances, national officials and humanitarian organizations mandated limits on large gatherings. This general restriction, even when used in good faith, led to the closure of public health facilities, a reduction in certain critical public health campaigns, and a reduction in the number of beneficiaries reached through generalized assistance distribution campaigns. Moreover, restrictions on large gatherings also led to a reduction in activities including WASH hygiene. By contrast, in a few cases, this prohibition was abused as a means of limiting (anti-government) protests and reducing social unrest.
- Self-imposed precautionary restrictions: Across all contexts, humanitarian organizations had to balance a duty of care towards their staff, a desire to limit their role in spreading the virus, and their mandate to continue delivering aid in a context of growing need. Most humanitarian actors incorporated a COVID-19 dimension into their operations, focusing both on the protection of staff and the protection of and access to beneficiaries. The new measures called for a drastic reduction in the number of staff allowed to conduct activities in person, a shift to remote work from compounds or from "home base," and the reorganization of programming to include only "critical" activities. The scope and level of these measures, however, varied and were reportedly much stricter within UN agencies than inside INGOs. These measures also often translated into a reduction in activities, the speed of delivery, and the size of the caseload served.
- The presence and ability to use humanitarian exemptions: Humanitarian actors' global and local advocacy efforts aimed at alleviating new government-imposed access challenges were generally successful. By the end of August 2020, many governments had either relaxed access constraints or adopted specific exemptions, such as exemptions for humanitarian flights into countries or exemptions to movement restrictions within countries. In Colombia, for example, the government issued a national decree, which explicitly allowed humanitarian organizations to continue activities related to the pandemic. In other cases, however, these exemptions were not evenly or consistently applied. In some instances, UN agencies and INGOs were more likely to receive exemptions, while in others local organizations, with a close relationship to governing authorities, were uniquely exempted. Finally, not all advocacy efforts were successful immediately. Some took months to yield

¹³ Brubaker R, Day A and Huvé S, "COVID-19 and Humanitarian Access How the Pandemic Should Provoke Systemic Change in the Global Humanitarian System" ()
http://collections.unu.edu/eserv/UNU:8033/UNU_COVIDandHumanitarianAccess_FINAL.pdf accessed on June 6, 2021

results, and other efforts, such as those of the majority of the international humanitarian community in Myanmar, failed.¹⁴

To conclude, COVID-19 restrictions have severely impacted the ability of humanitarian organizations to provide many of their normal and routine services. It is clear how important is the collaboration between all sectors and community engagement in order to support frontline humanitarian workers with context specific guidance since it is crucial in such challenging times as a pandemic.

The Impact of COVID-19 on Counter terrorism:

The global spread of COVID-19 is transforming politics, as are the wide-ranging responses from governments and communities worldwide. The implications will endure well after the pandemic is behind us. Both terrorism and counterterrorism are likely to change as well. The pandemic poses distinct challenges for the governments that seek to counter terrorism.

Budgets Shrink, Public Health Costs Swell

The pandemic has triggered the deepest global recession in eight decades and the global economy is expected to lose \$8.5 trillion in output over the next two years. The economic fallout will be especially devastating to countries in the developing world and those dependent on oil revenue characteristics of many Western counterterrorism partners in Africa, the Middle East, and South Asia. Developing economies are already saddled with fiscal deficits and high levels of public debt, while oil-producing states have suffered a collapse of oil demand and prices.¹⁵

Public health spending will almost certainly take up a larger portion of shrinking budgets among Western nations and regional counterterrorism partners. The direct medical costs of treating patients infected with COVID-19, as well as the costs associated with preventing its spread and distributing a vaccine, will probably reach hundreds of billions of dollars. Overall counterterrorism budgets may decline as a result, and drive a reduction in European and other allied assistance to local partners, many of whom are dependent on Western support for funds, training, and weapons to pursue terrorist groups operating inside their countries. Face-to-face military training is already declining as fears of COVID-19 limit interactions. A loss or drastic reduction in foreign support would erode those local allies' counterterrorism capabilities and could allow terrorists to expand their operations and influence.¹⁶

¹⁴ Brubaker R, Day A and Huvé S, "COVID-19 and Humanitarian Access How the Pandemic Should Provoke Systemic Change in the Global Humanitarian System" ()

http://collections.unu.edu/eserv/UNU:8033/UNU_COVIDandHumanitarianAccess_FINAL.pdf accessed on June 6, 2021

¹⁵ Byman DL and Amunson A, "Counterterrorism in a Time of COVID" (Brookings August 20, 2020) <<https://www.brookings.edu/blog/order-from-chaos/2020/08/20/counterterrorism-in-a-time-of-covid/>> accessed on June 9, 2021

¹⁶ Byman DL and Amunson A, "Counterterrorism in a Time of COVID" (Brookings August 20, 2020) <<https://www.brookings.edu/blog/order-from-chaos/2020/08/20/counterterrorism-in-a-time-of-covid/>> accessed on June 9, 2021

Policy Focus Shifts

The public health and economic crises will also likely reorder national security priorities. That may accelerate existing trends identified by the Department of

Defense away from jihadi-focused counterterrorism and quicken an overall desire to reduce commitments in the Middle East, South Asia, and Africa, where ISIS and al-Qaida and their affiliates have been traditionally most active. Along with reduced spending on foreign assistance, fewer demands and less attention from senior U.S. and Western leaders may mean partners in the developing world focus on other issues. The regionalization of many jihadi groups compounds this challenge. Reduced Western attention to managing counterterrorism coordination, compounded by reduced foreign aid, would greatly increase the need for local partners to manage regional multilateral cooperation, which has often been strained, if not absent, due to suspicion and regional rivalry.¹⁷

The terrorist threat is likely to morph in both the short and long term. Well before the pandemic, the jihadi terrorist threat was localizing, with the energy and much of the violence concentrated in the Middle East, East and West Africa, and other parts of the world where groups like ISIS and al-Qaida had local affiliates or otherwise focused on the immediate conflict rather than spectacular international terrorist attacks. COVID-19 is likely to make this localization more pronounced. Terrorists, like everyone else, face both overall restrictions on travel and greater border security in the United States and in other countries. This makes action at home relatively easier and accelerates the pre-existing trend toward homegrown attacks.¹⁸

Local Allies under Pressure

Making the threat more dangerous, at the local level at least, is that governments will be both over-stretched and discredited in many countries where terrorist groups are operating. In much of the Middle East and Africa, governments are weak and dysfunctional, and the pandemic has brought this to the fore. Many reports low numbers of cases simply because they are not collecting data at all, even as the virus runs amok. Government resources are likely to focus on the pandemic and on quelling any unrest that stems from the poor government response.¹⁹

Another risk, which is more insidious, is that government will use the threat of terrorism to increase their efforts to crack down on legitimate dissent. This has long been the case in China, where the government played up a real but small threat of Uighur terrorism, using it as justification for a crackdown on millions of Chinese Muslims, including comprehensive surveillance and detention camps.

China is trying to suppress the democratic movement in Hong Kong, using COVID19 as a pretext.²⁰

The challenges that COVID-19 poses for counterterrorism in the coming years are evident, if not entirely unique — yet some opportunities may also exist. For instance, information sharing and policy coordination among states on public health issues to help stem the pandemic may create more information, new means of

¹⁷ Ibid

¹⁸ Ibid

¹⁹ Byman DL and Amunson A, “Counterterrorism in a Time of COVID” (Brookings August 20, 2020) <<https://www.brookings.edu/blog/order-from-chaos/2020/08/20/counterterrorism-in-a-time-of-covid/>> accessed on June 9, 2021

²⁰ Ibid

sharing, and facilitate intra- and intergovernmental cooperation among regional and Western countries that could bolster counterterrorism efforts by improving travel monitoring and border control, for example. More broadly, the potential reduction in resources available for counterterrorism and shifting priorities will probably require reevaluating the efficacy and sustainability of various counterterrorism efforts, ranging from the use of military force to security-related foreign aid. Necessity may help drive regional cooperation and the development of sustainable, locally developed approaches to counterterrorism that are less dependent on the technical capabilities and sophisticated weapons systems provided by Western states.

Recommendations:

All UN bodies and entities involved in counter-terrorism should ensure greater transparency in all of their work by making their activities publicly available.

The United Nations secretary-general made public in 2021 his report on the Activities of the United Nations system in implementing the United Nations Global Counter-Terrorism Strategy.²¹ This marks the start of negotiations over an updated UN Global Counter-Terrorism Strategy (GCTS).

The new report, building on a previous one from February 2020, outlines the U.N.'s progress in implementing the current strategy. Its reflections on challenges, the impact of COVID-19, and recommendations for reform will help inform Member States' views on the new strategy. It is the first step toward a General Assembly resolution in June that will guide the U.N.'s counterterror efforts for the next two years.

Here is what the report says on some critical issues – and what this should mean for a new GCTS:

Protecting Civic space

In the context of unprecedented attacks on civic space around the world, the secretary-general's report speaks clearly on the protection of civic space as “intrinsic to the human rights-based approach provided by the United Nations Global Counter-Terrorism Strategy.” It also acknowledges the need for greater partnership with civil society in the U.N.'s counterterrorism efforts, noting the prominent role played by civil society in supporting victims of terrorism; and the vital contributions of civil society in preventing the conditions conducive to terror attacks. This is all welcome rhetoric and builds upon some positive U.N. system developments, such as the secretary-general's 2020 guidance note on protecting civic space. The report cites OCT's new civil society engagement strategy as evidence that an effort to partner with civil society has begun. Yet, this has not always been meaningful, nor has the OCT done nearly enough to prevent States from misusing counterterrorism measures to attack civic freedoms.

More deliberate and specific efforts to include civil society and push back on harms to civic space are needed. OCT needs to step up engagement – and, where appropriate, partnership — with civil society organizations, including with organizations that raise concerns over counterterrorism as currently practiced. Expanded attention to civic space should not stop there. The new GCTS should recognize the potential counterproductive

²¹“A/75/729 - E - A/75/729 -Desktop” (Undocs.org2021) <<https://undocs.org/A/75/729>> accessed on June 17, 2021

impacts of arbitrarily applied counterterrorism measures on civic space and should mandate the U.N. system to work proactively to mitigate these harms. This could follow the lead of the Financial Action Task Force, which recently opened a new work stream exploring where negative downstream harms were occurring so they could be rectified. This would move the U.N. system beyond rhetoric and toward needed action.

Meaningful integration of gender considerations

The aim must be to move the U.N. toward a more holistic and intersectional approach to addressing the relationship between gender equality, women's rights, peace, security, and counterterrorism – one that is fundamentally based on respect for women's human rights.

Enabling humanitarian access

The secretary-general makes multiple references to the unintended negative downstream effects of counterterrorism on conflict, development and humanitarian access. On principled humanitarian action in particular, paragraphs 37 and 38 lay the groundwork for stronger language in the 2021 GCTS to ensure that “effective delivery of principled humanitarian aid to [populations in need], in full respect of international law” is not prevented by counterterrorism efforts. The GCTS already includes strong language urging Member States to ensure that “counter-terrorism legislation and measures do not impede humanitarian and medical activities or engagement with all relevant actors.” The reality, however, is that counterterrorism measures are increasingly hindering humanitarian action. This was recognized in U.N. Security Council resolution 2462 (2019) for the first time with language included in a counterterrorism Chapter VII resolution calling for States to safeguard humanitarian action. However, this statement was much weaker than previously adopted language in the GCTS, as it only urged States to “take into account the potential effect of counterterrorism measures on exclusively humanitarian activities.” In recognition of continued barriers, the updated GCTS's should retain this previous language and go further to reaffirm Member States legal obligations to facilitate principled humanitarian action and mandate U.N. counterterrorism agencies to work with humanitarian actors, financial institutions, and States to find ways to help them fulfill their obligations.

Delivering human rights oversight

The final paragraph of the secretary-general's report calls for the new strategy to “ensure the allocation of adequate resources” for the U.N.'s counterterror system. While the report simultaneously calls for expanded attention, action, and additional resources for human rights — the “adequate resources” reference could be read as support for proposals to replace some of OCT's vast extrabudgetary resources with an allocation from the central U.N. budget. Budgetary decisions need to be thought through carefully – and with one eye on fixing the historic neglect of the GCTS' human rights pillar.

If Member States choose to strengthen OCT's financial footing, they should simultaneously endorse the resourcing and empowerment of an independent human rights oversight office for all U.N. counterterrorism programming. The secretary-general recognizes the need for such reform, with the proposition that human rights should guide the “development, implementation, oversight, monitoring and evaluation of policies and

measures to prevent and counterterrorism.” This can best be done by creating an independent human rights oversight office that sits outside of OCT structures. This oversight office should be resourced with dedicated staff and tasked with ensuring compliance with international law and human rights obligations in all U.N. counterterrorism programming. This will be the single most important change that Member States can make this year in the GCTS – and one that should be a central platform for all who wish to see the U.N. system live up to its commitments to protect human rights of all.

As for the UN Security Council, its sanctions should systematically include exemptions for humanitarian action.

The potential adverse impact of sanctions on humanitarian action should be routinely brought to the attention of the Security Council and all UN member states.

When it considers the imposition of sanctions the Security Council should, in consultation with humanitarian agencies and organizations, conduct an assessment of the possible adverse impact of the sanctions on humanitarian action. Once it has imposed sanctions, it should require panels of experts to conduct impact assessments on this issue and to report on them.

Ways should be explored to establish an ongoing dialogue between the Security Council and humanitarian organizations on the country-specific impact of sanctions on humanitarian action.

Arrangements should be established for sanctions committees and panels of experts to systematically consult humanitarian actors.

The Security Council should systematically request sanctions committee panels of experts to include in their report’s information on the adverse impact of sanctions on humanitarian action. If special representatives of the Secretary-General have been appointed for the contexts in which relevant sanctions have been imposed, the Security Council should also request them to provide such information in their periodic reports.

In addition, EU sanctions should include exemptions for humanitarian action.

Dialogue between the EU, its member states and humanitarian actors in relation to sanctions should be built on with a view to making such engagement systematic both before the adoption of sanctions, and throughout their implementation.

The approach adopted by the EU in relation to sanctions and counterterrorism measures should be the subject of further research and continued engagement by humanitarian actors.

Regarding the recommendations related to the humanitarian access by IO, the humanitarian community and donor States should engage in sustained and open policy dialogue on how to better reconcile counter-terrorism measures and humanitarian action. This should take place across all relevant sectors within government (security, justice, financial and humanitarian) as well as between States and the humanitarian community at both headquarters and field level.

Donors should be more responsive to requests from humanitarian organizations for guidance on the content, scope and application of counter-terrorism measures in specific contexts.

Donors and inter-governmental bodies should take steps to ensure that counterterrorism measures do not undermine the valuable role played by national and local humanitarian actors.

Counter-terrorism laws and measures adopted by States and inter-governmental organizations should include exceptions for humanitarian action which is undertaken at a level intended to meet the humanitarian needs of the person concerned.

Counter-terrorism laws and related measures adopted by governments and relevant intergovernmental bodies should exclude ancillary transactions and other arrangements necessary for humanitarian access, recognizing that humanitarian actors operate in areas under control of groups designated as terrorist.

Humanitarian organizations should work together to more effectively demonstrate and strengthen the implementation of the different policies, procedures and systems used to minimize aid diversion to armed actors, including those designated as terrorist, and better communicate how they weigh such efforts against program criticality and humanitarian need.

Donor States and inter-governmental bodies should avoid promulgating on-the ground policies that inhibit engagement and negotiation with armed groups, including those designated as terrorist, that control territory or access to the civilian population.

To maintain the foundational principles of IHL that protect impartial wartime medical care, the committee should encourage UN Member States to adopt the suggestion made by the International Committee of the Red Cross, stating that measures adopted by governments, whether internationally or nationally, aimed at criminally repressing acts of terrorism should be crafted so as to not impede humanitarian action;”

The Committee should go further, in regards to medical care, and issue specific guidance to ensure that the provision of impartial healthcare to all wounded and sick in situations of armed conflict is excluded from the scope of counterterrorism legislation as well as from any military interference. Notably the Committee should recommend that:

Counterterrorism legislation shall explicitly exclude medical activities from the scope of material support to terrorism;

Counterterrorism legislation entail no restriction on the right of healthcare personnel to provide impartial medical assistance to all wounded and sick whatever their presumed criminal status, in situations of armed conflict;

Counterterrorism regulations and domestic laws acknowledge the right and duties of healthcare personnel for providing medical care compatible with medical ethics to any wounded and sick, whatever the circumstance or criminal status of the persons benefiting from it and contain explicit provisions keeping healthcare personnel and humanitarian organizations immune from prosecution, sanction or punishment for the mere fact of doing so; and

Medical confidentiality and a patient’s best interest prevail in situations of armed conflict over any other domestic and counterterrorism regulations related to the duty to report to authorities on cases of violence-related injuries;

The Committee should also emphasize the fact that the respect of neutrality of healthcare facilities in situations of conflict should prevail and be prioritized over other counterterrorism imperatives. The Committee should reinforce that in situations of armed conflict, no counterterrorism or militarized law enforcement operations are allowed inside protected healthcare facilities; and

The Committee should also reiterate that the presence of a suspected “high value target” affiliated with a terrorist organization that is wounded or sick and being treated in a hospital, does not warrant the loss of protection of a facility and cannot justify military operations inside or against a facility to arrest or target, capture or kill.

Finally, the impacts that COVID-19 poses for counterterrorism in the coming years are evident, if not entirely unique — yet some opportunities may also exist. For instance, information sharing and policy coordination among states on public health issues to help stem the pandemic may create more information, new means of sharing, and facilitate intra- and intergovernmental cooperation among regional and Western countries that could bolster counterterrorism efforts by improving travel monitoring and border control, for example. More broadly, the potential reduction in resources available for counterterrorism and shifting priorities will probably require reevaluating the efficacy and sustainability of various counterterrorism efforts, ranging from the use of military force to security-related foreign aid. Necessity may help drive regional cooperation and the development of sustainable, locally developed approaches to counterterrorism that are less dependent on the technical capabilities and sophisticated weapons systems provided by Western states.

Although terrorism is a real threat to the society, counter terrorism cannot put aside. All what is need are some compromises to be made by all Member States and the whole UN system in order to benefit from a bold UN counter terrorism strategy that promotes civic space, avoids gender exploitation, ensures humanitarian access, and establishes oversight human rights and the extent of the international humanitarian law. It’s time to make it happen.