

Discussion Series 3: “Preventing and Countering the Criminalization of Humanitarian Work and Preserving the Humanitarian Space” (19 May 2021) – Summary report

The EU, together with the missions of Norway, Niger, Mexico, Switzerland, Germany, and France in New York, is organizing a series of discussions on “[Ensuring the protection, safety, and security of humanitarian workers and medical personnel in armed conflicts](#)”. The Discussion series aims to identify main challenges and to bring forward practical solutions.

The third meeting of the Discussion Series, “Preventing and Countering the Criminalization of Humanitarian Work and Preserving the Humanitarian Space”, co-chaired by the EU, Switzerland, and Mexico, took place on 19 May 2021. The meeting welcomed over 120 participants, including representatives of 46 Member States and key humanitarian stakeholders. Participants reflected on the best practices in addressing the effects of counterterrorism (CT) measures and sanctions on humanitarian assistance, including the criminalization of humanitarian workers.

While participants recognized the crucial role of CT measures and sanctions in the upkeep of peace and security, they also agreed that these can have unintended negative effects on humanitarian action, which should be addressed through a number of mitigating measures, including the consistent application of clear humanitarian exemptions in CT and sanctions regimes as well as in domestic legislation; clearer guidance for humanitarian organizations and financial operators on the regulatory requirements to apply these exemptions; stronger partnerships with relevant actors, especially with the banking sector to avoid over compliance; and donor assistance in the delivery of humanitarian assistance in compliance with sanctions through guidance notes, comfort letters (to facilitate the transfer of humanitarian funds) and support with humanitarian derogations, particularly in the context of the COVID-19 pandemic.

The discussion ended with a collective call to strengthen legislation on humanitarian exemptions and to implement more systemic and intelligent approaches to facilitate the coexistence between security requirements and humanitarian imperatives.

This summary report acts as the third element of an outcome document, which will lay out avenues for concrete further action, stemming from recommendations compiled throughout the entire Discussion Series.

Current practices, challenges, and key areas for action:

CT measures and sanctions serve legitimate purposes. They are at times aimed to protect the safety and security of the same population that requires humanitarian assistance. Yet, in conflict settings where CT measures and sanctions are applied, humanitarian workers face criminalization and arrest. The push from some States to qualify any form of engagement with armed groups listed as “terrorists” not only negatively impacts the work of neutral and impartial organizations, by criminalizing them on the suspicion of linkages with terrorist groups, but also impacts the population living in areas controlled by such groups.

One challenge that many NGOs face is the lack of clear humanitarian exemptions in CT and sanctions regimes, and its impact on the organizations' ability to access financial services, such as to receive or transfer funds through banks. Many INGOs, as well as national and local NGOs are affected by the issue of bank de-risking, which in turns also impedes the delivery of humanitarian assistance to people in need. Another challenge is the possible request by donors to screen final beneficiaries of aid against sanction lists (for example due to the provisions of Anti-Money Laundering and Financing terrorism regulations) which can undermine access, acceptance and security of NGOs staff and the security of the beneficiaries themselves.

Asking NGOs to screen beneficiaries goes against humanitarian principles and international law (in particular IHL as applicable). Most NGOs have put in place strict risk management and due-diligence processes adapted to the different contexts, such as beneficiary selection processes, accountability measures, internal and external reporting, monitoring and control on the use of funds, awareness-raising on risk of terrorist financing, screening of partners and providers, internal audit, and investigations mechanisms.

The challenges to ensuring that principled humanitarian action can be carried out without undue restrictions are extremely relevant to counter-terrorism contexts. In this respect, Security Council resolutions [2462 \(2019\)](#) and [2482 \(2019\)](#) urge Member States to take into account the potential effect of counter-terrorism measures, including measures aimed at countering the financing of terrorism (CFT), on exclusively humanitarian activities, including medical activities, that are carried out by impartial humanitarian actors in a manner consistent with international humanitarian law.

The UN Security Council and General Assembly have insisted that CT measures must comply with States' obligation under IHL, who consequently must ensure that their domestic laws and policy are reflective of these obligations. Legal safeguards that exclude principled humanitarian action from the scope of CT measures and sanctions must be adopted to mitigate the residual risk from such operations, and to prevent the criminalization of legitimate humanitarian and medical activities and actors. Yet, many States lack an institutional framework to consider the effects of countering the financing of terrorism (CFT) measures on humanitarian activities and only a small number of States have implemented specific measures aimed at mitigating the impact of CFT measures on principled humanitarian action.

Best practices and practical recommendations to prevent the criminalization of humanitarian work in the context of CT and sanctions regimes:

The discussion culminated into an agreement that legal security and certainty through humanitarian exemption is key in addressing the de-risking practices of private sector entities as well as the risk of criminal prosecution. The following recommendations were listed as a way forward:

1. **Strengthening legislation on humanitarian exemptions:** through the consistent application of clear humanitarian exemptions in CT and sanctions regimes as well as,

including in domestic legislation. States should include language on humanitarian exemption in relevant instruments, following a case-by-case assessment and according to needs to implement appropriate humanitarian exceptions as the most effective way to shield humanitarian organizations from criminal liability. The humanitarian exception/exception and the correct implementation of those should help stop the practice of vetting beneficiaries by donors.

2. **Offering clearer guidance for humanitarian organizations and financial operators** on the regulatory requirements to apply these exemptions and ensure a better implementation of UNSCR 2462, which includes:
 - balanced risk-sharing and risk-management measures among donors and humanitarian partners.
 - comprehensive provisions for the safeguarding of humanitarian space in all relevant UN entities.
 - specific guidance for Member States to implement CT measures and sanctions in accordance with IHL and humanitarian principles.

3. **Strengthening partnerships with relevant actors** and multi-stakeholder engagement to exchange evidence-based best practices:
 - **with the banking sector:**
 - to avoid over compliance.
 - create a dedicated humanitarian banking channel to ensure the timely and unhindered flow of humanitarian funds.
 - establish an international forum for Member States, humanitarian organizations and financial institutions to identify and document the specific risks and challenges and to exchange good practices.
 - **with donors:**
 - donor assistance on the delivery of humanitarian assistance in compliance with sanctions through guidance notes, comfort letters (to facilitate the transfer of humanitarian funds) and support with requesting humanitarian derogations, including in the context of the COVID-19 pandemic.
 - donors should recognize that the processes implemented by principled NGOs have been strengthened to ensure that aid benefits the population in need and that the screening of final beneficiaries of aid is not an efficient tool to prevent financing of terrorism and it is not proportionate to the risks faced. To allow for an effective implementation of the humanitarian-development nexus, no vetting of final beneficiaries should be required when humanitarian aid projects are handed over to development actors.
 - Donor should not request vetting beneficiaries, and revise the practical guides on contract procedures in that direction.

- **with the private sector** to ensure timely and unhindered access to updated information.

4. Ensuring the respect for IHL and humanitarian principles in the context of CT and sanctions:

- IHL and humanitarian principles must be translated consistently in the Security Council practice and domestically.
- Training of donors and future UNSC Members on IHL and humanitarian principles in the context of CT and sanctions (see the Good Humanitarian Donorship Initiative and the Joint Best Practice Guide in the Annex)

The fourth meeting of the Discussions Series, co-chaired by the EU, France, and Germany, will take place on **16 June at 10 am** and will focus on the issue of strengthening accountability in the fight against impunity for attacks against humanitarian workers in armed conflict.

Annex: Resources

ACF and **NRC** have produced **two private papers** on the *impact of sanctions and de-risking in Syria* (June 2020; April 2021). Please reach out to H  l  ne Michou to receive these two private papers and/or any follow-up conversations at hmichou@accioncontraelhambre.org

Australia, Belgium, Canada, Germany, the Netherlands, and Sweden's [Joint Best Practice Guide](#) on the Implementation of Sanctions

ICVA [webinar](#) on *bank de-risking*

CTED's Technical Guide to the Implementation of Security Council resolution 1373 (2001)

CTED's joint report with the Analytical Support and Sanctions Monitoring Team on actions taken by Member States to disrupt terrorist financing that also explored domestic laws, policies or practical measures taken to ensure compliance with paragraph 24 of the resolution (S/2020/493; in particular, paras. 83-85).

NRC's [Toolkit for Principled Humanitarian Action](#)

The [Good Humanitarian Donorship Initiative](#)