

tions or donations of goods, must reside both with the donor agency and the implementing agency.

One benefit of the monitoring mission's work in Lebanon was that, in trying to establish INGOs' response to IYCF and their adherence to the Code and Ops Guidance, an opportunity was provided to look at the challenges of putting policy into practice in the field during an emergency. Moreover, while monitoring helped to raise the profile of IFE in the field, the findings also stimulated and informed policy guidelines. For example, the Lebanon findings have contributed to UNICEF's development of its Cluster response (and IFE responsibilities) and of the IFE component of the Nutrition Cluster toolkit and initial rapid assessment. Agencies in Lebanon have been reviewing their IFE policies, funding policies and programming responses. In addition, the Lebanon experience led to a further update of the Ops Guidance to deal with issues that arose in the field (updated Ops Guidance 2.1).

Emergencies can happen anywhere, and humanitarian response plans must be flexible, while still following guidelines. This is especially the case in IFE, where agencies need to react to the local context. Agencies must also be aware that IFE is important in all emergency settings, including middle-income countries, and has inter-sectoral implications. Emergencies by their nature happen fast and unexpectedly, which means that it is essential that NGOs and staff from all sectors ensure that IFE policies are in place, and that IFE is included in staff training and materials so that programming is of the highest standard, and infants are protected.

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Terrorist lists and humanitarian assistance

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'Terrorist lists have greatly impacted our ability to work in an increasing number of cases.' So said a senior official in a medium-sized humanitarian organisation in response to my question about how counter-terrorism measures, and terror listings in particular, had affected their work. Other humanitarians were more specific about the effect of lists, and outlined the problems as follows: staff members of particular nationalities can risk prosecution in their home countries; banking regulations in some donor countries make salary payments to staff abroad difficult; restrictive clauses in funding agreements constrain certain activities; demands on monitoring the end use of funds can be intrusive and hard to gauge.

Some humanitarian organisations have already thought hard about the operational and reputational implications of terrorist lists, and have developed policies to cope with them. Others are unsure of where they stand and what to do. There are no known cases where an organisation has been actively prevented from working as a result of terror lists or funding restrictions. But it is not possible to know whether any projects have been scrapped or not started because of a lack of funding. In short, it is hard to judge the deterrent effect on humanitarian programming of the laws as they stand.

Are the lists inhibiting humanitarian action? At the moment, the answer seems to be that the lists are a worry, rather than a deterrent. What comes through most strongly in conversations with agency and donor staff is the fear of not abiding by the law, and the frustration of not knowing what the legislation entails, or understanding its consequences. This fear and frustration is not just on the agency

side. Civil servants in donor governments are also worried about not fulfilling all aspects of national law as they issue grants and contracts. This may not necessarily have an impact on the willingness or ability of donors to process agreements, but it does risk slowing the process down.

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Working with lists

Last year's war in Lebanon focused the minds of humanitarians on the implications of terror lists. Hizbollah was listed as a terrorist organisation in the United States and Canada. Its external security organisation (labelled its 'terrorist wing') was also listed in the UK and Australia. Humanitarians on the ground handled the consequences of these listings in different ways. 'We were cautious, but in reality, not much changed', said one individual who worked for an intergovernmental organisation during the crisis. 'Our staff are more careful now', reported an NGO representative, adding that this means that the organisation's activities have slowed down as staff are wary of 'doing something wrong'.

These are not new problems: similar issues were raised in post-tsunami assistance in areas controlled by the Tamil

Box 1: What humanitarians fear

- Prosecution of staff members for contact with listed individuals or groups.
- Inclusion of a humanitarian organisation on terrorist lists due to contacts with those already listed.
- Adverse media coverage if the organisation is seen as terrorist-friendly.
- Damaged reputation following on adverse media campaign.
- Loss of humanitarian space.
- Reduced scope for advocacy work if the organisation is seen as terrorist-friendly.
- Reduced access to populations and information if the best local contacts are listed.
- More donors may include counter-terrorism clauses in funding agreements.
- More countries may use terrorism-related reasoning to constrain humanitarian work.

Tigers in Sri Lanka, and in the Palestinian territories after Hamas' election victory in January 2006. It remains to be seen whether the US designation of the Communist Party in Nepal will hamper the peace process there by discouraging humanitarian actors from working with it. It is also unclear how these issues will play out in Somalia, although early indications are that counter-terrorism measures will have an impact on the work of humanitarian agencies there as well.

What are the lists?

The practice of designating terrorist groups is by no means a new phenomenon, and was used in different forms in countries such as the UK and Germany well before 9/11. What globalised terrorism has introduced is the increased use of internationally agreed counter-terrorism measures, and an effort to strengthen existing laws or introduce new legislation to address new aspects of the threat.

Compared to other aspects of the fight against global terrorism, the designation of individuals or groups as terrorists to punish or monitor them has received comparatively little attention beyond human rights concerns. This is surprising because sanctions following from 'terror listings' not only affect the activities of targeted groups and individuals themselves, but also of anyone who engages with them. For the target, a designation can mean sanctions like travel restrictions or asset-freezing. For their part, third parties (like humanitarian agencies) have certain obligations not to provide financial services or funding to those on the lists. In some countries, the law also prohibits contacts or other association with listed subjects, as well as any activity which may be construed as 'material support' to them.

Beyond the specific lists identified in Box 2, many countries criminalise groups or their activities to such a degree that they are effectively designated. In some cases, this kind of criminal legislation may be more relevant to a

humanitarian organisation than any international or donor country listing. The detail of dealing with local authorities in these situations will be different in each case, and probably more complex as well.

Managing the consequences

Humanitarians point to a number of ways in which the impact of terror listings is felt. There is a general sense of increased bureaucracy and a reporting strain on organisations, which was not present before. There is now complex software to help monitor where funds go and cannot go, and there are increasingly frequent meetings to discuss requirements and conditions. This diversion of attention from the main humanitarian task at hand is causing unease.

Funding – especially from the US – is another concern. American legislation, like that of some other donors, imposes terrorism-related conditions on funding agreements to ensure that no funding goes to listed organisations or individuals. In simple terms, organisations with headquarters in such donor countries have no choice but to comply with these requirements. Other agencies have the option of either agreeing to the conditions and taking the funding, or turning it down. 'That would be brave', says one former funding officer. Turning down funding is not an option for every organisation. Nor is it in the interest of donors, as it risks potentially interrupting established partnerships, and disengaging the donor country from areas where it would normally work.

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Donor practice on including constraining clauses in agreements differs. This may in turn offer agencies some options for their own approaches. With regard to negotiating funding agreements, both donor and agency representatives advise that humanitarian organisations 'stick to their principles', explain them well and demonstrate clear operational plans in an effort to anticipate and alleviate any suspicions or doubts about their motives and ability on the ground.

Another option for donors and organisations alike may be to earmark funding specifically for projects or situations where no contact with listed individuals or groups will take place. This is not a long-term solution. Some donors are not keen on reversing the trend towards increased un-earmarked funding, and it is not necessarily a reasonable option for small organisations in particular.

Humanitarian actors generally contend that counter-terrorism measures hamper their access to populations in areas under the control of listed groups. 'It is unrealistic to think you won't have to give them something', says one. Many agree, frequently citing examples such as Colombia and – especially – the Palestinian territories. There is, however, also an opposing view, which argues

Box 2: Some lists and their consequences

Australia

Groups can be identified as ‘terrorist organisations’ either by a court following prosecution for terrorist offences, or following a listing. It is an offence to provide training to or make funds available to the organisation, or to provide support or resources to it. It is also an offence to intentionally associate with a member of a listed organisation if this helps the organisation to continue its existence or to expand. Currently, 19 organisations are listed, among them Egyptian Islamic Jihad, Hamas’ military wing, and several groups operating in South-East Asia.

Canada

Groups which have carried out or attempted to carry out terrorist activities, or which have acted on behalf of or in association with such groups, are included in the list. The property of listed organisations is frozen. It is an offence to knowingly contribute, indirectly or directly, to any activity of a listed group. Listed organisations include the Revolutionary Armed Forces of Colombia (FARC), Hamas and the Liberation Tigers of Tamil Eelam (LTTE).

UK

Under current counter-terrorism legislation, it is illegal for 44 international organisations to operate in the UK. It is an offence to be a member of such an organisation, as well as to invite support for it. Listed organisations include the Abu Sayyaf Group, LTTE, and Palestinian Islamic Jihad.

US

The US has several different lists with different target groups and consequences.

Foreign Terrorist Organisation (FTO) designation means that it is ‘unlawful for a person in the United States or subject to the jurisdiction of the United States to knowingly provide “material support or resources” to the listed organisation. ‘Material support’ can take the form of training, expert advice

or communications equipment, but not medicine. The 40 or so FTOs include the Continuity IRA, Hamas and the LTTE.

Terrorist Exclusion List (TEL) designation means that ‘individual aliens providing support to or associated’ with the concerned group ‘may be found “inadmissible” to the US’. Soliciting funds or other things of value for TEL-designated organisations, as well as committing acts which are known or should have been known to afford material support to the organisation may bar third parties who are not American citizens from entering the United States, or subject them to deportation. Listed groups include the Communist Party of Nepal and the Lord’s Resistance Army (LRA) in Uganda.

Executive Order 13224 listing explicitly aims to curtail funding for designated organisations and individuals. Designation criteria include providing financial, material or technological support to individuals or groups on the list. Designation leads to asset-freezing, and bans all US citizens or persons in the US from making or receiving any contribution of funds, goods or services to or for the benefit of individuals or entities on the list. Specific authorisations for such activities may be obtained by the Office of Foreign Assets Control (OFAC).

Lists are also maintained by the United Nations and the European Union. Government websites giving information on counter-terrorism legislation and listings include:

- <http://www.nationalsecurity.gov.au/agd/www/nationalsecurity.nsf/AllDocs/95FB057CA3DECF30CA256FAB001F7FBD?OpenDocument> (Australia).
- <http://www.psepc-sppcc.gc.ca/prg/ns/le/index-en.asp> and http://www.osfi-bsif.gc.ca/osfi/index_e.aspx?DetailD=525 (Canada).
- <http://www.homeoffice.gov.uk/security/terrorism-and-the-law> (UK).
- <http://www.state.gov/s/ct> and <http://www.treasury.gov/offices/enforcement/ofac/programs/terror/terror.pdf> (US).

that giving in to demands for funds or supplies will only make matters worse in the longer term. Negotiate is the operative advice in these situations. On the other hand, negotiating within the conditions imposed by the lists is also seen as a difficult task.

No matter how one approaches the access problem, working with and in local communities is what humanitarian actors do. Terror lists often include groups which are deeply embedded in society, and sometimes provide an alternative governance structure which may be more acceptable and certainly more accessible to the population than the ‘real’ government itself. In these circumstances, any additional parallel structures are unlikely to be quick, efficient or accepted by the local population, thus leaving no choice for outside organisations but to work with what is already in place. Some organisations see this as less of a problem than it may appear. ‘There is a distinction between contractual relationships and presence’, says one representative. ‘Who you partner with

determines whether you have a problem or not’, says another.

The nationality of staff members may also become a problem. Legal implications for contacts with listed individuals would be of particular concern to US citizens, but may also apply to others depending on their national legislation. Surprisingly, and contrary to expectations, some organisations indicate that the nationality issue has had no impact on their field staff or on their ability to work with local partners, despite listings. It would nevertheless seem wise to take legal advice, and if possible to assign staff in ways which do not put them in jeopardy.

Humanitarian options

Efforts are currently underway in some donor countries to address the balance between counter-terrorism efforts and humanitarian commitments. The vagueness of some of the legislation, and occasionally also the listing process as such, is being challenged in courts in Europe and in the United

Box 3: Options for dealing with lists

There appear to be several short-term options available to donors and organisations who feel the impact of terror listings on their work. Some examples would be:

- Increased use of earmarked funding.
- Avoiding sub-contracting or partnering with listed organisations or individuals.
- Assigning staff in ways which diminish any risk to them.

For organisations who are averse to accepting the logic of the listings, alternative short-term options might be:

- Sticking to the organisation's principles and insisting on them in negotiations with both donors and host countries.
- Turning down funding with counter-terrorism clauses attached.

In the long term, the options are fewer:

- Exemptions granted for humanitarian work.
- Exemptions granted for specific organisations.

States. In an effort to find solutions, agencies might also raise the lists question in a consultative manner, aiming for solutions which respect security requirements while also reaffirming humanitarian commitments and principles.

A longer-term solution may be for a general humanitarian exemption to be applied in relation to funding agreements. This already exists with regard to some sanctions regimes, and is also included in specific forms like the UN and EU listing mechanisms. Humanitarian exemption would also allow for more flexibility than exemptions provided for humanitarian organisations on a case-by-case basis. Fixed lists of individual organisations risk becoming static and outdated. They eventually spark controversy around organisations which were not included, or as obvious loopholes become apparent.

None of these options is likely to address the complexity of this issue in a satisfactory manner. One option to achieve this may be for governments to comprehensively address security concerns while reaffirming humanitarian commitments and principles.

Conclusion

Terror lists are only one part of the global move to combat terrorism. Many organisations notice the impact of the more general war on terror on their work. It is felt, for example, that counter-terrorism has become an excuse used by some governments to expel certain organisations, or to harass them in other ways. What agencies see as increasing attempts to involve humanitarian assistance in a political agenda is also perceived to have contributed to a decrease in staff safety. Humanitarian organisations find themselves viewed as part of a Western project, which makes them targets. This makes it difficult for some organisations to accept requirements which further associate them with their donors, such as security measures requiring them to stay in specific compounds or abide by evacuation rules.

Within the broader context, a more security-focused approach to aid has nevertheless emerged and is having an impact on humanitarian organisations. It may take time to come to terms with this new environment and to influence the requirements it places on humanitarian organisations. In the meantime, agencies have an obligation to be well informed and comply with existing rules. For their part, governments should recognise that the multitude of lists, with their different implications, is confusing and often found to be vague. Any dialogue on the subject needs to examine ways in which legitimate security concerns around international terrorism can be addressed, while reaffirming political commitments to humanitarian principles.

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Engaging with non-state armed groups in the context of the 'Global War on Terror': observations from Lebanon and Gaza

Max P. Glaser, independent consultant

The conflicts in Gaza and Lebanon in 2006 led to heated debates within and outside the humanitarian community. The major cause of debate was the grave abuse of civilians committed by all parties to the conflict. But an additional question was the fact that Hamas and Hizbollah were labelled terrorist organisations, and hence illegitimate and illegal in the terms of the 'Global War on Terror' (GWOT). At the same time, however, both groups represented the legal

authority. Engagement with non-state armed groups by non-governmental humanitarian agencies (NGHAs) is always problematic. Under the GWOT, however, it has become even more complex.

By virtue of its mandate, the humanitarian mission is not contingent on whether certain (non-state) groups are deemed legitimate or not, or whether they are considered