
EFFECT OF ANTI-TERRORISM LAWS ON HUMANITARIAN AID REMAIN A CONCERN

*By Nancy E. Claridge and Terrance S. Carter**

A. INTRODUCTION

The cost of terrorism has been felt virtually all over the world. In recent years, however, measures adopted to counter terrorism have themselves posed serious challenges to human rights and the rule of law. In particular, due to the global reach of Canadian charities in terms of both charitable activities and potential donors, this means that such organizations and their advisors must look beyond domestic anti-terror policies and consider the implications of initiatives of foreign jurisdictions. Charities working in foreign countries will have to be in compliance with both domestic and foreign laws. At the same time, those organizations may find themselves subject to increased donor scrutiny in order that the donors may satisfy themselves that they are in compliance with their own country's laws. In reality, it is not just charities in Canada that feel the effects of anti-terrorism legislation. Recently, international authorities have commented on the effects of anti-terrorism efforts.

B. OVERSEAS DEVELOPMENT INSTITUTE (UNITED KINGDOM)

The Overseas Development Institute (ODI) is Britain's leading independent think-tank on international development and humanitarian issues.¹ In October 2011, it published a Policy Brief entitled *Counter-*

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¹ Overseas Development Institute, <<http://www.odi.org.uk/default.asp>>.

terrorism and humanitarian action: Tensions, impact and ways forward,² which found that counter-terrorism measures implemented during the last decade are having a chilling effect on humanitarian efforts.

Firstly, counter-terrorism legislation has directly affected levels of humanitarian funding as many donors are becoming afraid of the possible consequences of indirectly funding designated entities or individuals. The report stated that, “[d]onors that in the past had quietly accepted the risk of some aid diversion as ‘the cost of doing business’ in volatile environments have profoundly lowered their levels of tolerance when it comes to designated groups, often without taking into consideration the level of need.”³ Therefore, donors who do not feel assured that the risk of misappropriated aid has been minimized will stop their funding altogether .

Secondly, there is an administrative burden which has affected the timeliness and efficiency of humanitarian aid, and can even deter aid actors from operating in high-risk areas. The report found that “[b]ank transactions are frequently stopped without explanation and organisations have to wait for up to three months while an investigation is carried out. They are often asked to bear the costs of these investigations, even if they are cleared of any wrongdoing.”⁴ In attempts to ensure compliance, many organizations have already implemented measures to minimize the diversion of aid, to check lists of both donors and partners, and to devote substantial staff time and financial resources to the collection and monitoring of their staff, the staff of partner organizations, and their partners’ partners as well.

Thirdly, inspection of partners and beneficiaries undermines relations between humanitarian organizations and local communities as such measures undermine the neutrality of humanitarian organizations and make local acceptance harder to achieve, thereby potentially compromising access to people in need.

Therefore, compliance with counter-terrorism measures has affected the ability of humanitarian organizations to provide assistance according to principles of neutrality and impartiality. While it is an important objective to prevent material support to terrorist acts, the steps that are being taken to achieve this objective are having an unnecessarily adverse impact on efforts to provide life-saving assistance to those in areas of conflict.

² Sara Pantuliano, Kate Mackintosh & Samir Elhawary, *Counter-terrorism and humanitarian action: Tensions, impact and ways forward* (London, United Kingdom: 2011), online: <<http://www.odi.org.uk/resources/download/6019.pdf>>.

³ *Ibid* at 7.

⁴ *Ibid*.

C. THE LONDON SCHOOL OF ECONOMICS AND POLITICAL SCIENCE (UNIVERSITY OF LONDON)

On October 24, 2011, the London School of Economics and Political Science posted a blog about increasing evidence that U.S. material support laws, which were upheld in the U.S. Supreme Court's decision in *Holder v. Humanitarian Law Project*,⁵ are having counterproductive impacts.⁶ Humanitarian aid groups are running into problems negotiating access to foreign civilians in territory controlled by terrorist groups without risking criminal prosecution at home. The blog refers to the broad effects of the enforcement of anti-terrorism legislation, which sweeps in legitimate activities aimed at reducing violence and relieving human suffering.

The blog queries whether the enforcement of U.S. material support of terrorism laws are the next "Don't Ask – Don't Tell" ("DADT") policy, like the one recently abandoned in relation to homosexuals in the military service. It was stated in the blog that the U.S. enforcement policy on the broad definition of material support is quickly evolving into a DADT approach. The Government, in failing to address concerns regarding the impact of anti-terrorism legislation on humanitarian efforts, has, almost by default, developed into a version of a DADT strategy. As an example, the blog referred to current humanitarian efforts by the United States Agency for International Development (USAID) in Somalia which were on hold until the Department of Treasury issued a limited license to allow projects to go forward. In the meantime, the blog reported that approximately 30,000 children under the age of five had died while waiting for aid to be released. Private charitable organizations are still excluded from the license protection.

The blog calls for a reform of the law that will allow civil society organizations to effectively promote peace and prosperity, and relieve suffering, without the uncertainty surrounding material support provisions.

D. UNITED NATIONS HUMAN RIGHTS EXPERT

Ben Emmerson, the newly appointed Special Rapporteur on Counter-Terrorism and Human Rights, announced at the UN General Assembly on October 20, 2011, that countering violent extremism must never be used as a pretext for abusing basic human rights. Emmerson reviews national legislation and definitions of terrorism to ensure that states do not abuse counter-terrorism rules as a means of suppressing and taking

⁵ See Nancy E. Claridge & Terrance S. Carter, *Patriot Act/Holder Decision: Continued Concerns for Canadian Charities*, Anti-Terrorism and Charity Law Alert No 25 (19 August 2011), online: <<http://www.carters.ca/pub/alert/ATCLA/ATCLA25.pdf>>.

⁶ Adam Brown, *U.S. Material Support Laws: The Next Don't Ask – Don't Tell?*, The London School of Economics and Political Science (24 October 2011) online: <<http://blogs.lse.ac.uk/waronterror/2011/10/24/u-s-material-support-laws-the-next-dont-ask-dont-tell/#more-1032>>.

action against those who disagree with the policies of the State. He commented that, “[w]hat we’ve seen in the past decade is many, many examples of States, including States with a proud record of adherence to principles of democracy and the rule of law, take and exercise measures which involve significant and systematic violation of basic and internationally agreed human rights standards.”⁷

The guiding philosophy behind the human rights expert’s mandate is that counter-terrorism policies that are abusive to human rights are far from solving the objective of preventing terrorism. It is Emmerson’s opinion that “perhaps the most important overarching principle is that the concept of terrorism should not be abused through an over-broad definition by States that wish to use national security provisions to silence opposition.”⁸

Emmerson called for governments around the world to respect human rights in their anti-terrorism measures, citing that by doing so, they are contributing to preventing violent extremism by addressing the conditions conducive to its development. Therefore, anti-terrorism measures that are compliant with human rights are not only legitimate, but are also effective prevention of terrorism and note the importance of respect for the rule of law.

A. CONCLUSION

The full impact of anti-terrorism legislation is only now beginning to be felt. While national and international anti-terrorism legislation may overburden legitimate charities, they will nonetheless need to become proactive in understanding the law and its impact on their operations.

⁷ United Nations News Centre, *Counter-terrorism must never be used as excuse to curb human rights – UN expert* (21 October 2011) online: <<http://www.un.org/apps/news/story.asp?NewsID=40153&Cr=terrorism&Cr1=>>.

⁸ *Ibid.*