6 Counter-Terrorism Legislation: a limiting factor in the gaining and implementing of acceptance

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Introduction

Acceptance as a security strategy relies on building relationships with stakeholders that could impact a humanitarian organisation's ability to remove or reduce threats. In environments characterised by a lack of state authority and rule of law, these stakeholders can include non-state armed groups (NSAGs), who often control territory and essentially govern local populations.

However, due to counter-terrorism legislation (CTL), engaging and building relationships with such groups can become particularly difficult when they are designated as 'terrorist' groups. This creates serious obstacles for humanitarian organisations' acceptance strategies. CTL is based on the UN Security Council Resolution 1373, which requires states to:

'Criminalise the wilful provision or collection, by any means, directly or indirectly, of funds by their nationals or in their territories with the intention that the funds should be used, or in the knowledge that they are to be used, in order to carry out terrorist acts'

United Nations Security Council, 2001, p. 2

While this legislation intends to combat terrorism, it can pose major challenges for humanitarians and their operations (Hilhorst & Desportes, 2019; Mackintosh & Duplat, 2013; Norwegian Refugee Council, 2018). The lack of an internationally accepted definition of 'terrorism', various interpretations of CTL, and different lists of 'terrorist'-designated groups can hinder the work of humanitarian organisations and even criminalise it, while also having implications for their acceptance.

When a group has been designated as 'terrorist', engagement with and material support for this group (such as the provision of training, expert advice or assistance, personnel, or transportation) can be sanctioned by governments. As a result of these barriers, some humanitarian agencies refrain from delivering aid in areas where terrorist-designated groups are active, despite the high needs of the population (Quack, 2018; Roepstorff, Faltas & Hövelmann, 2020). For example, in Somalia, the local population living in areas controlled by the 'terrorist' group Al-Shabab saw USAID reduce its funding by 88% between 2008 and 2010 and allocating the remaining funds to areas not under the control of Al-Shabaab (Jackson & Aynte, 2013). This is at odds with the humanitarian principle of 'impartiality', which calls for aid to be solely provided based on who needs it most. This compromise on humanitarian principles can affect an organisation's reputation and acceptance, as local stakeholders may end up perceiving the organisation as behaving in a way that is not equitable.

Some humanitarian agencies still decide to deliver aid in 'terrorist'-controlled areas where populations require assistance. When they adhere to an acceptance-based security strategy, they proactively need to build and maintain acceptance from 'terrorist'-designated groups to gain access to these populations and minimise security threats. Nevertheless, due to barriers imposed on direct engagement with 'terrorist' organisations through CTL, frontline humanitarian organisations and their staff often find themselves in a legal grey space. In this grey space, humanitarian organisations develop different strategies to continue engaging with groups and to enable their operations to carry on safely despite the sanctions. These strategies may include using a 'don't ask, don't tell' approach, transferring risks onto local NGO partners, or entering clandestine negotiations to build acceptance and gain access.
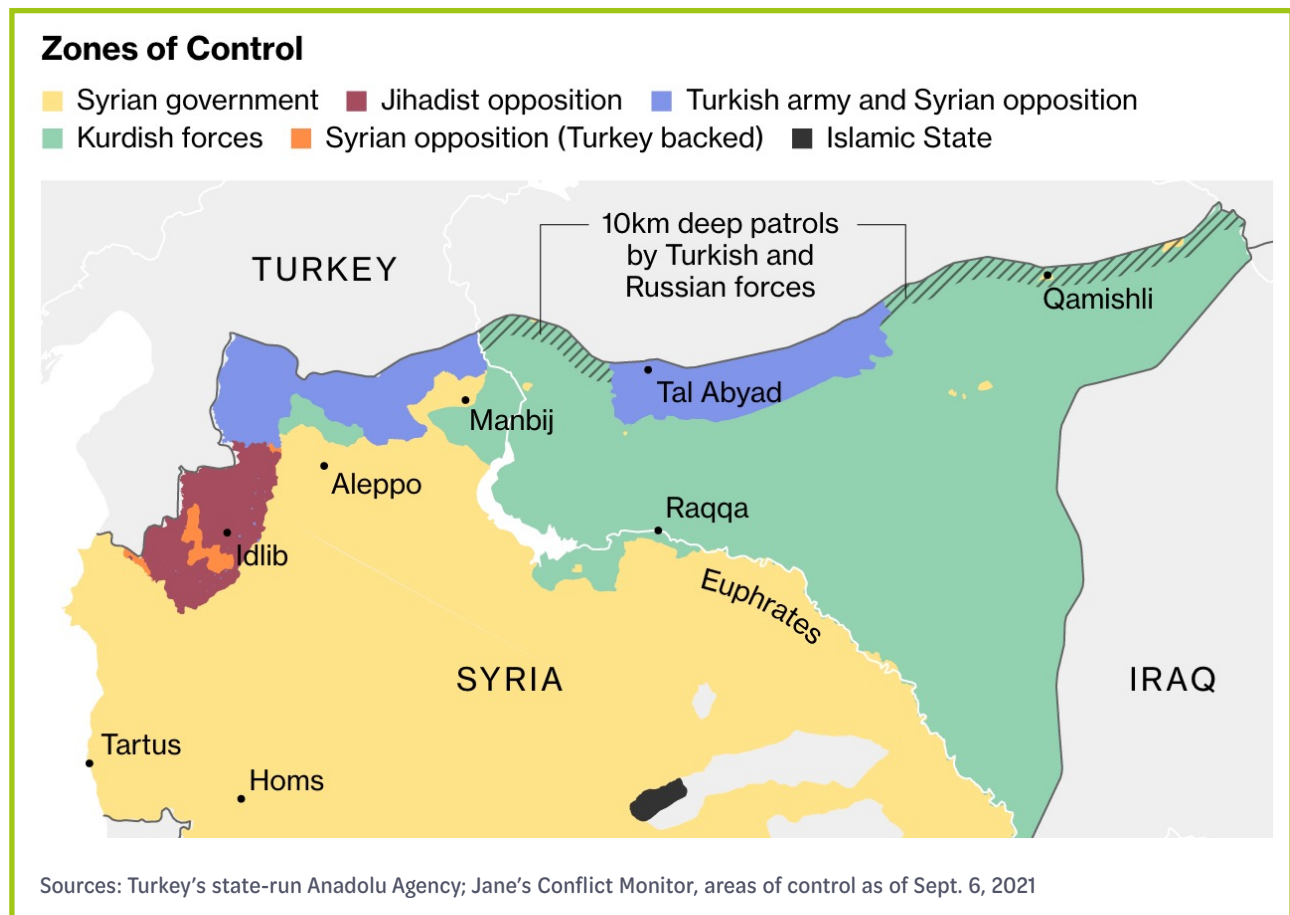
This article investigates the implications of CTL for an acceptance-based security strategy. It argues that CTL impacts the gaining and implementation of acceptance, increases the utilisation of 'don't ask, don't tell' approaches, and influences NGOs' relationships with communities. The analysis is based on a case study which looks at the situation in Idlib, north-western Syria where the 'terrorist'-designated group Hayat Tahrir al-Sham (HTS) and the Syrian Salvation Government (SSG) govern. After providing a brief overview of the context in north-western Syria and the methodology, this article will focus on the two main actors whose acceptance in Idlib is required to deliver programmes: HTS/SSG and the local population. The article will then discuss CTL's impact on NGOs' acceptance strategies and explain why CTL increases the utilisation of a 'don't ask, don't tell' approach and the risks this bears. Finally, the implications of CTL on the acceptance of Idlib's local population will be analysed, and this will also take institutional donors into account. Institutional donors play a significant role because they have different interpretations and instructions regarding CTL and can challenge the implementation of humanitarian assistance and an acceptance-based security strategy.

Case study: gaining and implementing acceptance to safely operate in Idlib, north-western Syria

The context of Idlib

As the Syrian conflict enters its eleventh year, 13.4 million people are in need of humanitarian assistance and protection. Long-term (political) solutions are not being actively pursued by all conflicting parties. On the contrary, quasi-state institutions that take over governmental and administrative duties have consolidated in parts of Syria that are not under the Government of Syria's control.

The NSAG Hayat Tahrir al-Sham controls most parts of Idlib. Since 2018, it has been designated as a 'terrorist' group by the United Nations and states like the US and Turkey, among others (United Nations, 2018 and CSIS, 2018). HTS was established by a merger in January 2017 and its roots lie within its main predecessor, Jabhat al-Nusra (Lister, 2015). Jabhat al-Nusra was proclaimed in early 2012 and

Zones of Control

Syrian government ▪ Jihadist opposition ▪ Turkish army and Syrian opposition
Kurdish forces ▪ Syrian opposition (Turkey backed) ▪ Islamic State

10km deep patrols by Turkish and Russian forces

TURKEY

Qamishli

Tal Abyad

Manbij

Aleppo

Raqqa

Idlib

Euphrates

SYRIA

IRAQ

Tartus

Homs

Sources: Turkey's state-run Anadolu Agency; Jane's Conflict Monitor, areas of control as of Sept. 6, 2021

is an offshoot of al-Qaeda's transnational jihadist movement. This group pursued an ideological agenda and intended to establish an Islamic state. In 2016, Jabhat al-Nusra rebranded and announced its separation from al-Qaeda (Jawad al-Tamimi, 2018).

Despite the merger and rebranding, HTS is perceived as being the extended arm of the 'terrorist' network al-Qaeda, and HTS' violence towards civilians is another reason that it has been designated as a 'terrorist' group (Center for Strategic and International Studies, 2018; Jawad al-Tamimi, 2018).

In November 2017, the Syrian Salvation Government was created, which is interwoven with HTS by sharing government responsibilities (e.g., there is no defence ministry within the SSG, since HTS is taking over these responsibilities). This emphasises HTS' government and state-building efforts (Crisis Group, 2019). Since both stakeholders are perceived by governments and institutional donors as one actor, mainly to protect themselves from any consequences under CTL, HTS leader, Mohammad al-Jolani, is increasing his advocacy towards Western governments to repeal HTS' designation and to achieve international legitimacy for the SSG (Al-Khateb, 2019; Boghani, 2021; Crisis Group, 2021).

Humanitarian organisations must include CTL considerations into their operations and strategies in north-western Syria, whilst fulfilling the humanitarian imperative and safeguarding humanitarian assistance (e.g., with vetting processes for staff and contractors to ensure that no financial payment is directly benefiting HTS). The complexity of the situation is aggravated by the population's high needs; of the 2.7 million people living in north-western Syria, 2.2 million need humanitarian assistance and protection, and 1.9 million are in extreme and catastrophic need. To address these needs, humanitarians need to find a solution to navigate CTL and deliver humanitarian assistance.

Methodology

This analysis of the impact of CTL on gaining and implementing acceptance is based on previous field research I conducted in Gaziantep, Turkey in July 2019, which focused on negotiations on humanitarian access with HTS in north-western Syria (Schellhammer, 2021). As part of the research, I interviewed project managers, security managers, and executive directors from local and international NGOs as well as from international organisations operating in north-western Syria. The interviewees

gave me insight into their engagement approaches and strategies for ensuring humanitarian access and implementing and gaining acceptance, and into the limitations posed by CTL.

Limitations and impacts in gaining and implementing acceptance

Acceptance strategies aim to build a safe environment for humanitarian operations; hence, many stakeholders need to be considered, including HTS, the SSG, and the local population. HTS is a key stakeholder due to its predominantly military control of parts of Idlib governorate. Rejection for humanitarian organisations and operations on the part of HTS can result in lack of access and violent behaviour towards humanitarians, for instance at checkpoints. The SSG, its subordinated Ministry for Development and Humanitarian Affairs, and the wide range of local councils are other key actors for outreach and communication activities to gain acceptance. As gatekeepers, they provide approvals, agreements, and support for humanitarian operations. Gaining acceptance by local communities is also crucial to build a safe operating environment and to receive their support in solving problems. Furthermore, institutional donors should also be taken into consideration when implementing acceptance-based security strategies. Institutional donor preferences regarding project location and activities not only challenge the application of the humanitarian principles, but also the implementation of acceptance-based strategies.

How did CTL impact NGOs' organisational acceptance strategies?

HTS/SSG are two challenging actors for gaining acceptance, because interacting, engaging, and negotiating with them can be framed as direct or indirect support to a designated 'terrorist' group under CTL. Humanitarian organisations choose different engagement strategies with HTS/SSG based on their individual interpretation of CTL, their resources and organisational background (e.g., being a local or international NGO), and their donor agreements (Schellhammer, 2021). For instance, one interviewee emphasised that although, in practice, negotiations with HTS/SSG are currently not forbidden *per se*, concrete coordination, sharing of information, and diversion of aid are totally forbidden. Another interviewee added that in some cases even 'donors know that communication with HTS takes place, but not officially'. They 'close their

eyes to some NGOs, some places, some projects'. However, in other cases, humanitarian actors 'cannot say that we are dealing with them [HTS/SSG]' at all. Hence, in these cases 'each NGO does negotiations on their own and tries to get [individual access] permission[s] [from HTS/SSG]' Schellhammer, 2021, p. 35).

Organisations' resources, staff and structures can influence to what extent humanitarian actors can engage with designated groups like HTS. For instance, since humanitarian assistance is mainly distributed by local NGOs, who have (in comparison to INGOs) a less established reporting and accountability system, there is an increased risk of being susceptible to compromise due to pressure on personal relationships (Schellhammer, 2021).

Acceptance is a dynamic process and NGOs are sometimes able to achieve acceptance from one local council, but not from another. This difficulty to achieve acceptance from all local councils contributes to the already competitive environment that is perceived by humanitarians – e.g., humanitarians compromise to achieve acceptance, to ensure and maintain access, and finally to receive funding for projects (Schellhammer, 2021). For instance, for some NGOs it is a reasonable compromise to hire a guard or waste worker who is affiliated with HTS/SSG, to ensure acceptance and access for humanitarian operations, while for other humanitarian organisations this compromise would be unacceptable. Having different engagement strategies to achieve acceptance and access from the SSG or local councils results in a lack of joint boundaries or 'red lines', and common engagement procedures under CTL. In the end, due to these differences HTS/SSG can play humanitarian organisations off against each other.

Once HTS/SSG perceives flexibility from its counterpart, requests such as taxation, registration fees, or involvement in recruitment processes in exchange for acceptance and access can increase. Various organisational acceptance strategies, including clandestine interactions and negotiations, impact the working environment of humanitarian organisations and their ability to achieve acceptance. If NGOs are not able to achieve and maintain acceptance by HTS/SSG, they might choose to adopt deterrence strategies and suspend humanitarian assistance as a last resort strategy. For example, in 2018, HTS demanded registration fees for cars and drivers delivering humanitarian assistance at the Bab al-Hawa border crossing

between Turkey and Syria and newspapers reported on the 'terror tax' (Ensor, 2018) and warned 'that sending aid to Syria's Idlib could be a 'terror offence'' (Hooper, 2018). To prevent direct and indirect support to HTS – and potentially being convicted for violating counter-terrorism legislation – the aid departments of the USA (USAID) and Great Britan (DFID, now FCDO) suspended their funding for three months (Schellhammer, 2021). While this strategy of aid suspension might be successful due to HTS/SSG government-building intentions, other NSAGs in different contexts might not be receptive to it. In any case, choosing aid suspension as a strategy to restore access on the ground can have huge impacts on the local communities and affect other NGOs' operations.

Indeed, despite the legal grey area around CTL:

'Engaging with non-state armed groups, regardless of whether or not they are DTGs [designated 'terrorist' groups], is a key element of gaining and maintaining secure access for people in need. Engagement also helps to establish consent and acceptance for humanitarian organisations' activities, which is vital to ensure staff safety.'
Norwegian Refugee Council, 2020, p. 3

Why does CTL increase the utilisation of 'don't ask, don't tell' approaches?

The impact of counter-terrorism legislation on NGOs' organisational acceptance strategies results in a dilemma that is creating a 'don't ask, don't tell' approach, leading to a general absence of open and transparent dialogues on engagement and outreach strategies among humanitarian actors and with institutional donors (Jackson, 2014).

Due to a lack of clear guidance by CTL itself, field staff and/or local humanitarian organisations feel unable to openly discuss dilemmas and risks. Thus, they interact and engage with relevant identified stakeholders inside Idlib without involving the senior management in the headquarters in Turkey, Jordan or elsewhere, and therefore bear most of the risk alone (Global Interagency Security Forum (GISF), 2020). Moreover, local staff might not have the same understanding of what kind of information is acceptable to share; sharing sensitive information about staff might be a red line in HQ, but local staff might see the SSG as the governmental institution with whom this information must be shared. Achieving acceptance by the SSG is often necessary to ensure access, and when NGOs are

rejected rather than accepted, access negotiations become more difficult, and eventually result in more compromises on the NGOs' part. The access and security department, sometimes only an individual focal point, chooses strategies based on their individual interpretation of CTL and organisational resources and structures to ensure a safe operating environment by implementing the acceptance-based security strategy. Due to bearing the responsibility and risk alone, it became clear during my research that the strategies that led to acceptance and access are not shared. Instead, only the result of achieving acceptance and solving access constraints is reported to the headquarters in Turkey or elsewhere.

The lack of instructions by institutional donors on how to implement CTL contributes to the 'don't ask, don't tell' approach. Acceptance strategies that are chosen by humanitarian organisations to safeguard operations in an area controlled by a designated 'terrorist' group are often influenced by donor preferences for sectors and areas as well as by (political) statements (Schellhammer, 2021). Should a humanitarian organisation that implements projects in Idlib governorate, and is funded by various donors that have different ways of interpreting and implementing CTL, build different acceptance approaches for each project? If humanitarian organisations adopt different acceptance strategies, could some strategies cancel out the others? For instance, if an NGO chooses to be more open to compromises to achieve acceptance by HTS/SSG for a specific project, it could be more difficult for the NGO to emphasise that it solely follows humanitarian principles when providing assistance on another project.

Different engagement strategies not only affect the organisation itself, but also the operating environment of other NGOs. Institutional donors play a crucial role by having different interpretations and instructions regarding CTL and can challenge the implementation of humanitarian assistance and create conditions that encourage 'don't ask, don't tell' approaches.

How does CTL impact NGOs' relationships to communities?

In north-western Syria, CTL not only impacts and limits the acceptance strategies vis-à-vis HTS/SSG, but also affects NGO's relationships with local communities.

Delivering humanitarian assistance in a territory that is controlled by a designated 'terrorist' group can lead to violations of humanitarian principles; targeted areas might not be chosen based on the highest needs, but on whether the NGO risks getting sanctioned for operating in an environment where HTS/SSG is active (Jackson & Aynte, 2013). This can result in local communities perceiving humanitarian organisations as partial, when they get the impression that humanitarian assistance is denied to them because they are living in an area that is controlled by HTS/SSG (Roepstorff et al., 2020). Therefore, an acceptance-based security strategy can be hampered, and NGOs may end up in a challenging situation where they must explain that the fact that they are unable to operate in the respective areas is not their choice but due to their donor's position. Because they follow their donors' positions, NGOs can be perceived as being less neutral and too politically affiliated.

NGOs' lack of acceptance from HTS/SSG can impact their acceptance by local communities and might end in reputational damage and increase the risk of attacks and protests. The culture of silence and individual strategies to achieve acceptance can also influence local communities to reject not only specific humanitarian organisations, but also the whole humanitarian environment.

Conclusion

When applying acceptance as one corner of the security risk management triangle, humanitarian organisations have to balance all stakeholders and their individual interests, motives and perceptions of NGOs. The acceptance approach builds on constant interaction and engagement with all stakeholders in the field of operation. In the case study highlighted here, adding CTL to this working environment is impacting the strategy of gaining and implementing acceptance by HTS/SSG and the local communities by creating 'don't ask, don't tell' approaches, which can jeopardise access and put staff safety at risk.

The article also illustrated the challenges of achieving acceptance by actors with very different interests and perspectives. Generally, the culture of silence on engagement strategies with a designated 'terrorist' group, whether to achieve acceptance or ensure access, jeopardises the humanitarian environment, challenges the adherence to the humanitarian principles, and complicates

guaranteeing staff safety. By entering into sustained dialogue around the implications of CTL and by the implementation of exemptions in CTL for principled humanitarian assistance and the decriminalisation of activities, the limitations on the acceptance-based security strategy could be eased.

Finally, developing a joint strategy and clear instructions on CTL, with both humanitarians working at the field level and institutional donors, would ensure that risks are being shared more equitably between all stakeholders. It is essential to advocate for fairer risk-sharing practices, especially for local partners, who often end up bearing most of the risks associated with operations. There is a need to create open communication channels about the limitations of CTL between local humanitarian organisations, INGOs, and institutional donors. Such channels should make it easier to discuss and agree joint red lines that guide engagement with bodies such as HTS/SSG, but also enable sustained dialogue around the implications of CTL. Ultimately, this would also enable humanitarian agencies to develop a stronger negotiating position.

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