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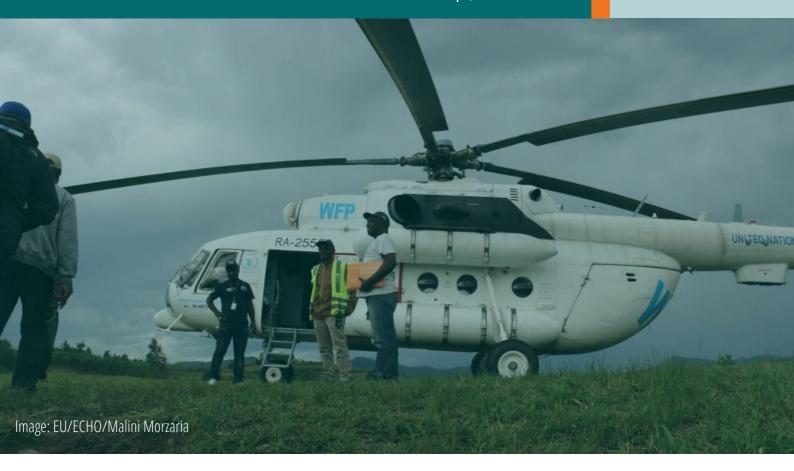
TACIT ENGAGEMENT AS A FORM OF REMOTE MANAGEMENT: RISK AVERSITY IN THE FACE OF SANCTIONS REGIMES

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The risk of violating sanctions regimes may cause humanitarian organisations to resort to remote management and a heavy reliance on local staff. This is reflected in negotiations at the frontlines, where organisations rely on speaking with all parties in order to secure their access and protection. This paper discuss what such remote management through 'tacit engagement', a form of informal and practically focused opaque engagement, might imply in the context of humanitarian negotiations.

INTRODUCTION

International and national sanctions have played a significant part in shaping the operational practices of humanitarian action. Imposition of such sanctions can have reasons varying from nuclear proliferation, terrorism, armed conflict, regime change to retaliatory trade measures. While talking to blacklisted/designated persons and otherwise controversial actors is not itself prohibited, the agreements reached through such talks may need to be kept informal or unofficial in order to avoid legal or political sanctioning. One form of ad hoc remote engagement that has emerged from this environment has been tacit local engagement which refers to a non-formalised, practical form of engagement that takes place at the local level with no official guidance or direction given from senior management. In Lena Schellhammer`s case study on Idlib and the designated non-state armed group Hayat Tahrir al-Sham, it was revealed that the access and security departments of NGOs, due to bearing the responsibility and risk alone, did not share the strategies that led to acceptance and access at an institutional level. Instead, only the result of achieving acceptance and access was reported to the headquarters.[1]

This form of engagement, which is kept purposefully opaque to avoid responsibility at the institutional level while maintaining presence on the ground, might have far-reaching implications for the humanitarian space. Some of these will be explored in this paper, drawing on recent literature on the implications of sanctions regimes on humanitarian action.

ENGAGING WITH DESIGNATED AND SANCTIONED ACTORS

Proliferation of post 9/11 global counterterrorism legislation and politicisation of humanitarian action are causing humanitarian actors to find themselves increasingly having to engage with listed actors under sanctions or counterterrorism frameworks that prohibit funds and other assets from benefiting such groups.[2] The perils of conducting humanitarian activities in complex high-risk environments have once again been demonstrated over the issue of engagement with the de facto Taliban government following the 2021 takeover. Many key members of the Taliban leadership such as the acting minister of interior and leader of the Haqqani Network, Sirajuddin Haqqani have been designated as terrorists and/or sanctioned under the UN Counterterrorism Framework in addition to various national counterterrorism frameworks. This tension between the need for engagement to provide "life-saving" humanitarian assistance and the looming threat of criminalisation has significantly hindered humanitarian actors` ability to continue their activities within Afghanistan.

The tension between humanitarian action and sanctions regimes, is by no means a novel issue and predates the recent Taliban takeover. For instance, the failed response to the 2011 Somalian famine has been in large part attributed to the fear of legal repercussion for undertaking humanitarian work in areas controlled by al Shabaab, which has been designated as a terrorist organisation under several domestic frameworks and the UN Security Council Resolution 1844. Significant concern has also been raised over the potential redesignation of Ansarallah, which controls approximately one-third of Yemen`s territory, as a terrorist organisation by the US. Humanitarian organisations have warned about the catastrophic consequences of such a redesignation which would impede humanitarian assistance to what is widely known as the "world`s worst humanitarian crisis."[3] Another recent case that demonstrated the consequences of criminalisation under such counterterrorism legislation is the settled federal lawsuit between Norwegian People`s Aid (NPA) and the US Government. The 2018 lawsuit was based on the allegation that NPA`s activities in Gaza and Iran were in violation of the terms of the 2012 USAID agreement and constituted "providing material support to terrorists." NPA was reported to have paid about $2 million as a part of the settlement.

RISK AVERSITY

The tension between adherence to sanctions and negotiating access and protection for populations in areas controlled by designated actors has resulted in risk aversity dominating humanitarian operation strategies[4]. Many humanitarians are unsure how to engage with designated and/or sanctioned actors, fuelled by a lack of transparency and clear institutional guidelines on the issue.

The uncertainty around the overlapping national and international sanctions regimes, institutional policies for engagement and the misunderstanding that engagement with designated groups is prohibited[5], are leading humanitarian organisations to self-regulate excessively to avoid legal and reputational consequences.[6] Consequently, remote management is gradually being seen and employed as a tool for mitigating various risk factors[7]. Although there is a myriad of reasons behind humanitarian organisations becoming increasingly risk averse, such as security threats to staff and donor pressures, this piece will focus on sanctions as a catalyst for the shift toward tacit engagement as a de facto form of remote management.

Whereas humanitarian organisations employ varying definitions of remote management, the United Nations Office for the Coordination of Humanitarian Affairs (OCHA) has described the notion as an adaptation to insecurity, the practice of withdrawing international staff while transferring increased programming responsibilities to local staff or local partner organisations.[8]

BENEFITS AND PITFALLS OF TACIT ENGAGEMENT

Tacit engagement, for the purpose of this piece, is different from the established modalities of remote management, such as remote support, and remote partnership, as it constitutes a deviation from regular structured program management and negotiations for the purpose of adapting to high-risk environments. In the case of tacit engagement, there is a purposeful avoidance of information sharing, and coordination, not just inter-institutional but intra-institutional as well, and a purposeful lack of internal transparency.

In the case of Afghanistan and the intensifying sanctions following 9/11, it has been pointed out that there are signs that local humanitarian staff are continuing to engage with the Taliban, albeit in the absence of explicit authorisation or support of their organisation.[9] It has been reported by international staff members of several humanitarian organisations that although the organisations officially have no contacts with the parties to the Afghan conflict at the field or provincial level, national staff continues to engage in the field with various stakeholders, irrespective of official policies.[10] Reportedly, international agencies in Syria, Afghanistan, Somalia and Iraq more often than not delegate access negotiations to national staff in field locations, although this is done in an "unaccountable and unclear" manner, where there were many occasions in which the local staff is not even explicitly and/or officially tasked by senior management.[11] This form of tacit engagement may prove effective in dealing with the restrictions arising from engaging with designated actors as it can partly alleviate the fear of organisational accountability over breach of counterterrorism policies and the concomitant risk averse, over-compliant approach to engagement with designated actors. Therefore, there is a possibility that humanitarian organisations may prefer to default to tacit engagement to counter the constraints and uncertainties arising from counterterrorism measures while enabling humanitarian actors to continue working in high-risk environments and minimising risk exposure at senior and institutional levels while doing so.

Undoubtedly, tacit engagement for many is a better alternative than withdrawing from the humanitarian space entirely, as we have seen from the example of the Somalian famine. It also allows agencies to actively engage with local communities where assistance is needed, thereby avoiding "bunkerization".

There are many instances, such as in the example of Afghanistan following the Taliban takeover, where there is no viable alternative to tacit engagement in the face of access and security deterioration and a more structured, transparent form of engagement is simply not feasible. However, the wide-spread and long-term adaptation of this form of engagement, particularly in situations of protracted conflict, can have potentially hazardous consequences that require action to be taken at the institutional level to mitigate.

Another issue that arises from covert engagement that takes place solely at the local level is the effectiveness and quality of the "services" provided by the local humanitarian staff. Local staff undoubtedly plays an integral role in the frontlines of humanitarian action particularly in negotiations around access to populations controlled by non-state armed groups and de facto governments. Local staff is easier to mobilise swiftly, has a better understanding of local cultural, religious, and social norms, can utilise personal local networks and is essential to the decolonisation of the humanitarian space. Yet, there have been consistent reports documenting the failure of international humanitarian organisations to provide support and guidance, hindering the capacity of many local staff to effectively engage and provide assistance.[12] A Humanitarian Policy Group (HPG) Working Paper on Somalia reported that insecurity and counterterrorism regulations led many aid agencies to decrease their presence in al-Shaabab controlled areas, causing them to be unable to accurately conduct assessments or thoroughly monitor activities and impact. This, in addition to increased funding and the concomitant pressure to deliver caused organisations to heavily rely on local staff, many of whom felt that they did not receive the support or resources they needed to ensure their own security and safety.[13]

This form of fragmented engagement at the local level with no clear policy or practical guidance, transparency, or supervision at the institutional level brings into question the ability to abide by the core humanitarian principles of humanity, impartiality, neutrality, and independence. A lack of accountability for the breach of these principles and other various violations and corruptions that may occur in high-risk conflict environments poses a significant threat to the integrity, reputation, and credibility of humanitarian negotiations and the negotiation space at large. In this regard, neutrality is one of the principles that is particularly in danger of being infringed upon. The unchecked, unsupervised autonomy that is employed in tacit engagement can have damning effects on the neutrality or the perception of neutrality of the negotiations by parties to the conflict. Ethnic identities, clan and sub-clan affiliations of the local staff can play a significant role in the field staff's ability to move safely and pushback against corruption, demands for kickbacks or bribes. In the case of Somalia, it was reported that some international organisations prioritised simply hiring staff who speak the language or belonged to the "right" ethnicity and failed to look closely enough to clan identity and affiliations and how the staff is perceived within the local context, hindering the neutrality and impartiality of the negotiation process.[14]

There is also the ethical issue of inappropriate transfer of security risks to the national staff. By placing the responsibility of high-risk humanitarian action on local staff`s shoulders and distancing themselves from the frontline negotiations taking place in the field, international organisations have no way of accurately identifying, assessing, and mitigating the operational and security risks faced by local staff in these insecure environments.

A 2021 CSIS case brief on humanitarian operations in Syria has pointed out that international aid workers avoid certain parts of Syria largely due to security concerns, leaving national staff to negotiate access and provide monitoring and evaluation with little to no safeguards. Donors require the local staff to report on impediments to aid, diversion, and other potentially negative feedback from projects without any protection in regime-controlled areas, which are heavily monitored.[15]

Furthermore, lack of structured and cohesive engagement at an organisational level can lead to varying practices among humanitarian actors in addition to discrepancies between policy and field level approaches. In the case of al-Shaabab, humanitarian workers on the ground were willing to openly, albeit anonymously, discuss agreeing to pay fees for access whereas senior representatives in Nairobi and elsewhere strongly rejected the claim that they were willing to pay material goods and money for access. It was stated that lack of visits by senior staff to, and monitoring of, agency operations in al-Shabaab territory further exasperated this disconnect where one agency official stated "'From Nairobi, it was easy to say no, and all of the pressure was on your staff…"[16] This form of fragmentation and unchecked autonomy can lead to what has been described as "anarchic free-for-all that will favour limited tactical engagement."[17] This type of autonomy has the potential of having long-term implications on adherence to the collective process in the humanitarian space and wider interests of the humanitarian community. Non-state armed groups may also attempt to leverage these fragmented practices among local staff by shopping around for more "malleable" partners for negotiation.

The varying practices also makes it difficult for the local negotiators to establish best practices, as evident by the case of Somalia where inconsistent practices around taxation made it exceedingly difficult for humanitarian actors to resist al Shabaab`s demands for tax/protection money. In a similar vein, the Syria director of an international NGO has commented on the issue of fragmentation by stating "We need UN OCHA to negotiate collectively on humanitarians' behalf. Armed groups would love it if we each had to come to a different agreement with them." [18]

Additionally, the ability of humanitarian actors to carry lessons forward is already greatly restricted by the confidential nature of negotiations and can be further hindered by tacit local engagement where the process of negotiation is almost entirely covert and lacking in transparency.

The negative impacts of sanctions regimes on humanitarian action clearly points toward a need for explicit, adequate safeguards for humanitarians, and general sectoral humanitarian exemptions in domestic and international frameworks. These standardised exemptions, unlike individual exemptions that are provided on a case-by-case basis and entail a great deal of bureaucracy, would enable humanitarian organisations to remain on the frontlines and provide life-saving assistance to affected populations.[19]

CONCLUSION

There are multiple reasons why leading international humanitarian organisations show an inclination towards tacit local engagement in high threat settings. Legal and reputational threats faced under counterterrorism measures and sanctions are one key reason among many. The blanket restrictions on engagement with non-state armed groups and actors are in direct contravention with humanitarian principles. As international humanitarian organisations become more and more risk averse and try to avoid engaging with designated actors in a structured manner, it is the local staff who inevitably picks up the burden and the risk that comes with the engagement.

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