

HUMANITARIAN ALTERNATIVES

Humanitarians in the age of counter terrorism: rejected by rebels, co-opted by States

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Because rhetoric – and practice – of the fight against terrorism drives rebel movements to the edges of International Humanitarian Law, NGOs would be more and more under the influence of States. The analysis developed by Michiel Hofman is based on concrete examples permitting us to be quite often – so to speak – in the midst of humanitarian negotiations.

We should be able to come to an agreement; after all, we are both representing an NGO”, stated the chief negotiator for the Taliban to representative of MSF in Afghanistan in 2009. This is true, as both Non-Governmental Organizations (NGOs) and Non-State Armed Groups (NSAGs) are defined by a negative and in both cases, the only international legal legitimacy is offered through the International Humanitarian Law (IHL). Non-State Armed Groups are considered illegal under all other national and international legal frameworks, but indeed they are granted the right to medical treatment, and the right to receive humanitarian assistance for populations under their control, through IHL. Humanitarian Non-government organizations can demand access to rebel held zones and establish a legitimate dialogue under IHL. In a sense, NGOs and NSAGs are condemned to each other¹.

No wonder the humanitarian enterprise is obsessed with the concept of negotiated access and “dealing with non-state armed groups” now that the operational space to operate in the areas under their control appears to be shrinking. This is however, contrary to popular perception, not the result of an existing historical deficit of rebel groups lacking the will to comply with IHL, but actually a reversal of a traditionally better compliance by NSAGs to IHL as compared to States. In fact, the most recent and visible violations of IHL, the bombing of hospitals in Afghanistan, Syria and Yemen, are all perpetrated by States: rebel groups don’t have air forces. NSAGs have more incentive to comply, as IHL is the only international legal framework giving them any rights. Conversely, States have mostly things to lose under IHL as it obliges them to allow “the enemy” to maintain a flow of resources, and existentially as IHL puts limits on the sovereignty over their territory. As a consequence humanitarians have found it easier to negotiate with NSAGs than with sovereign States. This trend is in reverse since the end of the 1990s with more and more NSAGs joining the previously much shorter list of “non-negotiables” such as Lords Resistance Army [from Uganda, editor’s note] and Boko Haram. The “war on terror”, as it is a war on an abstract emotion is by nature a war for “hearts and minds”, has left many previously negotiable NSAGs weary to continue engagement with (Western) humanitarians. This reality of humanitarians and armed opposition groups growing apart under the spectre of the “war on terror” is most visible in the large, internationally sponsored conflicts like Afghanistan, Somalia or Syria but is neither new nor exclusive to these contexts.

¹ Michiel Hofman, “Non-state armed groups and aid organizations”, in Roger Mac Ginty and Jenny Peterson (eds.), *The Routledge Companion to Humanitarian Action*, Routledge, 2015, p. 324-336.

The red line of surrender to a cause: the case of the Maoist rebels in Nepal

It took MSF two years to secure a meeting in 2004 with the leadership of the Maoist rebel forces, in order to negotiate access to the rural areas around Jumla, Nepal which were controlled by this group. National legislation introduced in 2001 designated the Maoist rebel forces as “terrorists”, criminalizing any form of communication with the group. As a result, it took the use of unmarked cars, blindfolds and three changes of location before reaching the Maoist. The leader of the rebel forces had researched MSF on the Internet and found MSF worked with dedicated volunteer doctors who had a lot of experience. This, he explained, was the reason he had finally agreed to meet MSF. He had already prepared a “Memorandum of Understanding” (MOU) for MSF to sign. He expected we should come to an agreement quickly, as in his assessment MSF obviously shared the same values of volunteering services to the community. The proposed MOU required the surrender of three MSF doctors to the Maoist movement, to be delivered to the frontline just outside Jumla. In return the Maoists would commit to feed and shelter these doctors, and return them unharmed to MSF exactly two years later. MSF did not propose this arrangement to the pool of MSF volunteer doctors, although some may have seriously considered it.

Surrendering staffs to a political or military cause is a clear red line a humanitarian organization cannot cross without negating the principle of impartiality. Initially the biggest constraint in this negotiation – the criminalization of any engagement with armed opposition groups – is not what prevented a deal. The negotiations collapsed because of the service the Maoist rebels expected of a humanitarian agency. The expectation was that, once reached, reaching a deal with the Maoists would be easy. They were an organization with a clear and well-controlled hierarchy, native to Nepal with links to the communities and presenting themselves as a government in waiting. This expectation was proven wrong, as the Maoist movement had no interest to play by the international rules of conflict. The IHL was not their law, as they did not write it, did not sign it², and the government they opposed had just excluded them from it by designating them as a terrorist organization. So instead it took two years to get them to even speak to MSF, as traditional arguments like “needs of the population” and “the right of access for humanitarian organizations” did not have any resonance with the Maoist leadership.

They played by their own laws and underlying philosophy, which relies on the concept of service to the community, volunteering for public services and unconditional loyalty to the leadership. So it was the volunteer nature of MSF, as stated in the founding charter, which convinced them to talk. It took another two years before an agreement was reached, in the period when the war was nearing its end. Sensing a real possibility to end up in government, the Maoists decided to change their policies to be more compatible with international standards, including access for humanitarian organizations. As happens in many conflicts, the terrorist of yesterday became the government of tomorrow: in 2006 a peace agreement was reached, the King was ousted, and following elections the Maoists formed a coalition government and remain in a position of power today.

Dehumanized military narrative in Afghanistan blocks direct negotiated access

Following months of negotiations in 2009 with the lower level commanders of the two principal adversaries in the war in Afghanistan, the United States (US) and the Islamic Emirates of Afghanistan (IEA) – popularly known as the Taliban – the high command on both ends agreed

² Swiss Federal Department of Foreign Affairs, *Humanitarian access in situations of armed conflict*, Field manual version 1.0, p.17.

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to meet face to face with MSF. The first meeting was with members of the so-called Quetta-Shura, the high council of the IEA in an undisclosed location outside of Afghanistan (which is not Quetta). As is advisable in conflicts with a high intensity intelligence gathering capacity, full transparency is essential, so the meeting started by informing them a similar meeting was foreseen with the United States as well. Initially this announcement generated a long speech elaborating how the US did not respect the Geneva Conventions, so why would they respect any of it themselves. But at no stage was any objection voiced to the fact MSF was talking to the US, on the contrary, once understood the meeting with the high US command still had to take place, they asked to pass several messages (which MSF declined). The meeting was successful and the necessary agreements were secured, subject to the condition that the US army would agree as well: essentially to keep all their soldiers and military equipment away from the MSF hospital. On the way out the door, the Taliban commander turned around and said: “One last thing: make sure you never meet any of the US commanders inside Afghanistan. If our intelligence reports to us they have seen you entering a US army base, we will have to assume you are a spy and have no option than to kill you.”

Less than two weeks later the same group of MSF negotiators finds itself in Tampa, Florida, where the headquarters of USCENTCOM is based which covers all US military operations in the Middle East and Central Asia, including Afghanistan. The fact that MSF already met with the high command of the Taliban, was not seen as a problem and did not get anything more than a remarkably similar speech how the Taliban did not respect IHL, so why should the US, and curiously also a request at the end to pass messages from the US to the Taliban (which MSF also declined). Without too much difficulty the necessary guarantees to keep their military away from the hospital were obtained, and the meeting was concluded. “One last thing”, said the representative of the intelligence services as everyone got up to leave, “just make sure we don’t see you talking to any Taliban inside Afghanistan, because under the anti-terrorist laws I would have no choice but to arrest you.”

This is an example of how the narrative associated with anti-terrorism, rather than the actual legal restrictions it imposes, hampers straight forward humanitarian access. Although there was a clear understanding by the leadership of both warring parties in this example why it was necessary for MSF to talk to both sides, and even how it is in their own advantage that humanitarians are doing so, the final remarks made clear both sides were restricted by their own narrative towards their troops on the ground. In the United States, the anti-terrorist laws were only a by-product of a very strong public campaign framed as the “war on terror”. As “terror” is not a person, an army or an organization that can physically be attacked by military hardware, but an idea, an emotion, the principal strategy of such a war is to influence opinion. In Afghanistan this meant that both the general public in the US as well as their soldiers on the ground have been inundated with messages that the Taliban are a group of people with whom you cannot talk and cannot compromise. This left the US with no other choice than to act against anyone, including humanitarians, who openly speak or negotiate with this group. For the Taliban, a similar uncompromising narrative underpins their public messaging to the population and their troops on the ground; theirs not framed as anti-terrorist but more as anti-infidel and more general anti-foreigner ideology. This narrative presents any foreign presence inside Afghanistan as an attempt to subvert people from Islam, and grab their ancestral lands. So any dialogue or compromise is impossible until all foreigners are driven from the Afghan soil. All the ground troops, for US and Taliban alike, have been recruited under this similar, uncompromising narrative. Once the Taliban had reached the agreement with MSF, it was difficult for them to instruct their troops that all foreigners are bad and cannot be trusted, except this bunch of doctors. Hence they had no choice but to act on their own “legislation”, called “The Code of Conduct (Layha) for

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Mujahideen”³, which states that any foreigner colluding with the foreign troops, is considered a spy and may be executed without trial. In short, both sides wanted MSF to talk to the other, but if they saw MSF doing it, they would either be killed by one side or water boarded by the other.

Tribal warfare in Kasai redefined as an anti-terror operation

In 2011 in the territory of Dibaya, in the province of Kasai Central of the Democratic Republic of Congo (DRC), the customary power passed from the chief to his nephew who took on the name of his village “Kamuina Nsapu”. As required with such a succession, he applied for official state endorsement (“*Arrêté ministériel*”) of his new title which is denied. This denial is part of a policy by the central authorities, aimed at influencing the electoral roll in this opposition stronghold by replacing the customary chiefs in the region with candidates more favourable to the government.

In April 2016 the tensions between the State appointed chiefs and the traditional powers explode following an alleged raid on the home of the traditional chief by the Congolese army. The “Kamuina Nsapu” responds by forming an armed militia who attack the town of Tshimbulu and in September 2016 the provincial capital of Kananga. At this stage the conflict spreads throughout the Kasai region where similar contested customary chiefdoms exist. In January 2017 the new Minister for Interior, Ramazani Shadary, calls the situation a subversion and insurrection and promises customary, political and military response. The violent crackdown by the Congolese Army began in August 2016, sometimes designating whole villages as “militia” without distinction, leading to harassment, violence, including sexual violence and arbitrary killing. In March 2017 the central government sends military reinforcements, including commandos and Special Forces. These new troops are deployed first in Kananga to retake control over the city, most notably by door-to-door incursions. The anti-government militia respond in kind by demanding full loyalty to their cause of local population. When refused, the village chiefs are decapitated, their heads displayed in public and the village burned down. Since the deployment of the Special Forces, the Congolese Army is following a military logic similar to anti-terror strategies. On the 28th of March the vice-governor of Kasai Central issues a decree giving all militia a maximum of 15 days to hand in their weapons. Any person still in possession of a weapon after this date is considered an outlaw against whom force is allowed to be used. The government used the word “terrorist” in an SMS message sent to the whole population, a step up from the words “bandits” or “criminals” used in the official narrative so far. This narrative takes hold on capital level and from April onwards, the conflict in Kasai is painted as a “war on terror” and the Kamuina Nsapu compared to Boko Haram and AQIM⁴, with President Kabila himself using his speech to the United Nations General Assembly in September to make this point⁵. The effect is the same: there is officially no war, only outlaws against whom the State can use any level of force it likes. International Humanitarian Law does not apply, so the International Committee of the Red Cross – the guardians of IHL – are not allowed to go to Kasai until May 2017. This narrative further eroded the chance of any direct dialogue between MSF and the Kasai militia, a complication so far unknown in a country where up to that point humanitarians and non-State armed groups enjoyed direct dialogue without much interference of the State. By adopting a heavy handed, anti-terrorism inspired military response right from the start of this new conflict in DRC, the war on terror has now arrived in sub-Saharan Africa.

³ Muhammad Munir, “The Layha for the Mujahideen: an analysis of the code of conduct for the Taliban fighters under Islamic law”, *International Review of the Red Cross*, Volume 93 Number 881 March 2011, p.87.

⁴ “Violences meurtrières au Kasai: les FARDC appellent à la reddition des miliciens” [in French], RFI, 16 May 2017, <http://www.rfi.fr/afrique/20170516-violences-meurtrieres-kasai-fardc-appellent-reddition-miliciens>

⁵ www.voanews.com/a/congo-kabila-paints-violence-kasai-as-war-on-terror/4041591.html: DRC’s Kabila Paints Violence in Kasai as War on Terror

Humanitarians now catalysers of State power?

As a result, humanitarian assistance is becoming increasingly co-opted by political and military agendas of nation States. The United Nations, being a club of Nation States, has no choice in the matter and started this trend early during the war in Kosovo in 1998-1999 its donors insisted the aid effort was subordinate to the NATO military effort (including the infamous “humanitarian bombing” of Belgrade). This concept, in which all UN agencies – including its humanitarian wing – become enforcers of State interests, was consolidated in the paradigm of “integrated mission” since 2008⁶. Independent humanitarian agencies were able to maintain an equilibrium between providing aid into both State and non-State controlled areas a bit longer, but as the number of NSAGs refusing to engage with (western) humanitarians increased – groups usually designated as terrorists by the main humanitarian donors – more and more humanitarian organizations find themselves working exclusively on the government side. This is already common in highly charged international conflicts like Afghanistan, Iraq or Somalia, but now extending to other contexts like DRC and Mali. Syria is the odd one out, as the major humanitarian donor countries both in the West and the Middle East reject the legitimacy of the Syrian government, concentrating their funding cross-border against the wishes of the State to opposition held territories. This notion of humanitarians as catalysts for State power is taken to its logical conclusion in the latest conflicts against two of the most notorious “non-negotiable” NSAGs: Islamic State (IS) and Boko Haram. Aid agencies working during the offensive against IS controlled Mosul in Iraq, and Boko Haram in Borno, Nigeria, find themselves de-facto embedded in the military strategy when the US/Iraqi and Nigerian armies decide where and when to operate and which populations are allowed to receive assistance⁷. “Conflicts are more complex” is often offered as a justification, but anyone who has worked in places like Liberia, Bosnia or Chechnya in the early nineties will probably challenge that proposition. But conflicts are certainly presented as more binary – “with us or against us”. And it now includes humanitarian assistance.

Biography

Michiel Hofman • He worked for MSF in field missions between 1993 and 1998 as Emergency Co-ordinator and Head of Mission for MSF in Liberia, DRC, Bosnia, Burundi, Sri Lanka, Brazil, South Sudan and Kosovo, returning to his former career as freelance journalist in between missions. Between 1999 and 2001, Michiel co-founded *The Antares Foundation*, a Dutch non-profit organization which supports local NGOs in providing psycho-social support for staff working in high-stress environments. Michiel returned to MSF in 2001 working as Country Director in Russia, Director of Operations at MSF Amsterdam headquarters and as Country Representative for Afghanistan. Since 2011 Michiel Hofman works as senior humanitarian specialist for MSF based out of Belfast, concentrating on research, training and operational support as well as publications in the humanitarian field.

⁶ UN Secretary-General Decision No. 2008/24 – Integration

⁷ Jonathan Whittall, “Medics as force multipliers around Mosul – at the expense of medical ethics?”, *British Medical Journal Blogs*, June 2017, <http://blogs.bmj.com/bmj/2017/06/14/medics-as-force-multipliers-around-mosul-at-the-expense-of-medical-ethics/>

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