

EU'S SECURITIZED AID

– A case study of the EU's counterterrorism regulations' effects on aid delivery in Palestine

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Abstract

Following 9/11, an explosion of transnational counterterrorism regulations aimed at countering the financing of terrorism has been established. These have since had suffocating effects on aid delivery in areas where designated terrorist organizations are present, resulting in the denying of aid to the most vulnerable. Regardless, transnational regulations have only grown more assertive during the last few years with an intensification of implications as well. The need for a normative assessment of these regulations and the negative effects they cause is ever growing and is, therefore, at the center of this research. In doing so, this research makes use of theories of securitization to understand the development of the EU's core regulations on combating terrorism financing through a minor document analysis. The case study of Palestine is thereafter used to explore what implications aid delivery actors experience because of the EU regulations, drawing primarily on data collected through interviews with Palestinian NGOs. By developing theories on normative assessments of securitization processes, this study finally assesses the morality of the securitization and the following regulations. Findings show that the EU regulations are morally unjust and that they have resulted in a bolstering of Palestine's aid-dependency by undermining Palestinian aid development and by allowing an exploitation of the regulations.

Key words: Just Securitization Theory, counterterrorism regulations, aid delivery, Palestine, anti-terrorism clause

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2 INTRODUCTION

“Not only are development, security and human rights all imperative: they also reinforce each other... While poverty and denial of human rights may not be said to ‘cause’ civil war, terrorism or organized crime, they all greatly increase the risk of instability and violence... we will not enjoy development without security, we will not enjoy security without development”¹

Aid delivery is supposed to protect rights, build livelihoods, and to save the lives of millions of people worldwide. Yet, the securitization of terrorism and the following development of transnational counterterrorism regulations aimed to halt terrorism financing, has created an environment that prioritizes security at the expense of aid delivery. This prioritization undermines the principles of aid delivery and donors’ development commitments of ‘leaving no-one behind’, which is both morally corrupt from a humanistic perspective as well as a recipe for disaster from a security perspective.

The attacks on the World Trade Center kick-started an intense securitization process in which transnational Islamic terrorism was portrayed as the biggest threat to humanity requiring extraordinary measures to be fought. The amplification of extraordinary measures could soon be witnessed with the US-led invasion of Afghanistan. Simultaneously, the development of more long-term transnational and legislative measures to counter terrorism financing also began. Immediately after the attacks, the United Nations Security Council (UNSC) adopted resolution 1373(2001), which was the starting point and later also the core of the enormous web of counterterrorism regulations developed since. Resolution 1373 binds all member states to criminalize all financial assistance to terrorist individuals or groups by ambiguous stipulations, including phrases such as ‘for any purpose’, ‘by any means’, and regardless if the aid is provided ‘indirect or direct’.² The ambiguous stipulations have since been implemented and reinforced at the regional and domestic level. In the prolongation, government aid agencies have since been forced to implement the stipulations in their donor agreements with grant recipients as well; adding a layer of complexity to the issue.

The aim of the regulations, to stop all terrorism financing, is most likely not questioned by many. In practice, however, they do not only apply to money-laundering villains

¹ United Nations General Assembly 2005, Section 1B, Paragraph 16 and 17

² De Londras 2019: 5-6

and terrorist supporters wiring money – they regard *all* actors with financial flows into areas where designated terrorist organizations are present, regardless of intent. It is here the intersection between counterterrorism regulations and aid delivery is found; aid donors often have their largest financial flows to areas where designated terrorist organizations³ are present or in control (for example in Afghanistan, Syria, Somalia, and Palestine) since this is often where the greatest suffering is found and where aid is in greatest need. However, the ambiguous wording used in the counterterrorism stipulations generate questions of definition for aid delivery actors: is it considered as ‘indirect’ support to provide education to an individual supportive of Hamas in Gaza? Is it considered ‘for any purpose’ to provide rehabilitation and reintegration to former child soldiers of al-Shabaab in Somalia? Due to lack of clarification, aid organizations have for years been forced to limit their operations geographically, thematically and cooperation wise, to not risk falling under scrutiny, sanctions, or prosecution.⁴

Numerous events have exacerbated this climate of fear and uncertainty for the aid community. For example, during the hunger crisis in Somalia back in 2009, the US’s counterterrorism stipulations in donor agreements required aid organizations drilling wells, to monitor if any member of the designated terrorist organization al-Shabaab drank from the wells, which they would then have to report back on. With the requirement being impossible to implement, the organizations could not pursue the program despite millions of people being in desperate need of aid.⁵ Another example is that of Palestine, where implications are extra palpable as regulations have become a tool in the conflict to attack the legitimacy of the Palestinian aid community. During the last few years, this has manifested itself through defamation campaigns and the filing of multimillion-dollar lawsuits by pro-Israeli movements over alleged violations of counterterrorism stipulations in donor agreements. For example, the humanitarian organization Oxfam faced a \$160 million lawsuit in US court – until its dismissal at the end of 2019 due to false claims – for allegedly providing Hamas with material support through their agricultural project in Gaza, filed by a pro-Israeli activist⁶. These examples combined display only some of the many difficulties inherited in the securitization of aid yet what they all have in common are the suffocating and draining effects on aid delivery as it takes away both the time and the money otherwise spent on people in need.

³ Designated terrorist organizations are those officially listed as such by national governments and/or inter-governmental organizations. In this research, designated terrorist organizations will reflect those organizations designated as such on the EU’s official Sanctions List (see more here: www.sanctionsmap.eu). The designated terrorist organizations mentioned as such in this research do not reflect the opinion of the author.

⁴ See for example: Gillard 2017; Norwegian Refugee Council 2018; Pahlman 2015

⁵ Guinane et al. 2012: 56

⁶ Charity and Security Network 2019

The prioritization of counterterrorism and the pursuit of security at the expense of aid delivery also leads to questions of morality; can these consequences and collateral damage i.e. greater human suffering and denial of essential aid delivery, in the fight against terrorism, be legitimized? So far, many experts, researchers, and organizations have during the last decade started to criticize these types of regulations, by labelling the development as a criminalization of aid delivery⁷. Yet, irrespectively, the international community has for the last few years blindly taken on a more assertive role and the web of transnational counterterrorism regulations has merely grown larger. Correspondingly, so has the need to understand this dilemma and the morality of it more comprehensively since it currently risks creating tremendous humanitarian effects in already fragile environments. In doing so, it is fundamental to, as a first step, analyze and understand the securitization process leading up to the status quo and to explore the widths and depths of its effects to be able to assess the morality of the regulations.

As earlier mentioned, the effects of counterterrorism regulations on aid delivery are global in scope. However, to be able to analyze this issue in-depth, this research will use Palestine as a case study with a delimited focus on the EU's counterterrorism regulations. The study is guided by two questions with a heavier focus on the latter: *(1) how can we understand the development of the EU's counterterrorism regulations on terrorism financing through the lens of securitization? and (2) how has the EU's counterterrorism regulations on terrorism financing affected aid delivery actors in Palestine and can these effects be morally justified?*

The overarching aim of this study is to understand the securitization process leading up to the development of the EU's counterterrorism regulations on terrorism financing and to explore how they affect aid delivery actors in Palestine. In doing so, it makes use of theories of securitization and includes a minor document analysis of the EU's core regulations on terrorism financing, primarily providing answers to the first part of this study. Thereafter the study explores the implications experienced by aid delivery actors in Palestine because of the EU regulations, drawing on data collected through a questionnaire and interviews with Palestinian NGOs. By developing theories on normative assessments of securitization processes, it finally assesses the morality of the regulations in Palestine, providing answers to the second part of this study.

The contributions made by this study are twofold. Firstly, it contributes empirically by complementing previous research as this is the first study, to the author's

⁷ See for example: Human Rights Watch, 2019; De Londras, Fiona, 2019; UN Security Council, 2019; Margon, 2011; Pantuliano et al. 2011; Mackintosh & Macdonald 2013; Mackintosh, Duplat 2013

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knowledge, that moves beyond merely exploring effects on humanitarian aid delivery as it includes development and peacebuilding aid delivery actors whilst also serving to update the current evidence base on implications in Palestine. Secondly, this study brings an important contribution to the academic field of security studies as it expands normative theories on securitization in how to morally assess the consequences stemming from a securitization process from a humanistic perspective.

3 PREVIOUS RESEARCH

This chapter presents the context and arguments that this research will situate itself within and build upon. Firstly, section 3.1 presents and discusses previous research undertaken regarding the politicization and securitization of aid delivery and related questions of morality. Secondly, section 3.2 explores previous research on the implications on aid delivery stemming from counterterrorism regulations globally. Thirdly, section 3.3 summarizes the research gaps of which this study seeks to make an academic contribution to.

3.1 THE MORALITY OF POLITICIZING AND SECURITIZING AID DELIVERY

To many, aid delivery is the purest form of humanitarianism and to remain as such it should always be separated from political games. A stark advocate is David Rieff, who maintains that aid must always remain free from the constraints of donor governments, to be able to provide neutral and need-based aid. Rieff even argues that the politicization of the 1990s and the early 2000s killed the pure ideal of autonomous and independent humanitarianism.⁸ In direct contrast, Charlotte Dany argues that the politicization of aid is not a new groundbreaking trend nor inherently bad. Dany offers a pragmatic view by arguing that aid delivery is necessarily political and describes it as a ‘political project in a political world’.⁹ In comparison to Rieff’s more altruistic mindset, Dany displays how aid has never been apolitical. In the 1970s, aid organizations often supported oppressed groups in their political fight for their rights and independence, in the 1990s a more militarized approach was developed with ideas of humanitarian interventions, and in the post-9/11 era, aid has become both politicized and securitized in the fight against terrorism. Thus, instead of the politicization of aid happening hitherto as an immoral destructive force, Dany argues that it merely manifests itself differently.¹⁰

Indeed, it is possible to question humanitarianism controlled by politics, yet it is not a new trend. In fact, most funding provided by international donors to the civil society is politically conditioned; the funding to an aid organization is conditioned upon their commitment to specific objectives, to meet the donor’s political interests. Previously, however,

⁸ Rieff 2002

⁹ Dany 2015: 425

¹⁰ Ibid.

there has always been a common denominator present; aid has been politicized as a mean to inhibit or counter the societal issue that has been politicized (such as issues of large migration flows or extremism). Yet, following the securitization of terrorism after 9/11, a new trend can be distinguished, which both authors fail to recognize. Aid delivery is no longer merely a mean to counter a threat, instead aid delivery is seen as part of the security threat.

In a similar pragmatic vein as Dany, Hugo Slim denounces Rieff's belief that all politicization of aid is inherently negative. Instead, Slim argues that it should not be viewed as a contradiction since politics and ethics are not inherently opposites and we should instead differentiate between good politics and bad politics. We should shy away from focusing on if something is being politicized and instead ask questions of who is politicizing it, how are they doing it, to what end, and what are the consequences?¹¹ In doing so, opening up for a more normative perception of politicization and securitization inspired by consequentialism, that becomes more nuanced and fruitful than denouncing all politicizations as inherently bad. Rather, a politicization leading to increased human well-being should be eligible to be assessed as a morally rightful act since an action should not be immediately denounced if it serves more than one purpose at a time, as long as the outcomes are aligned. Still, there is a theoretical gap in this regard to develop these reflections further in finding ways to normatively differentiate between good and bad politicizations.

3.2 THE IMPLICATIONS OF COUNTERTERRORISM ON AID DELIVERY GLOBALLY

A broad spectrum of research has been undertaken on the implications stemming from the securitization of terrorism and its intersection with aid delivery globally. Unfortunately, researchers have exclusively focused on humanitarian aid and consistently excluded implications on development and peacebuilding aid. Nevertheless, a common overarching term used to describe various implications is *the chilling effect*, which can be described as the inhibition of the legitimate right of aid delivery resulting from an impending threat of criminal action. Whilst expressing itself in numerous ways, Kate Mackintosh and Patrick Duplat managed in their study to navigate amongst implications more easily. The authors found that the implications on humanitarian aid can be separated into three levels: operational, internal,

¹¹ Slim 2003

and structural.¹² It is further possible to categorize other scholar's work and findings under these categories as well.

On an operational level, implications primarily affect the programmatic decisions and executions of aid programs. In a study by Naz Modirzadeh, Dustin Lewis and Claude Bruderlin, they display how aid organizations are impeded to exercise self-censoring and go beyond the stipulations in donor agreements due to the broad language used ('by any means' and 'direct or indirect') to disarm any liability. Forcing organizations to 'opt out' of delivering aid in certain geographical areas, thematic fields or to certain target groups, as they cannot afford any legal action taken against them.¹³ Evidence further displays an over-representing chilling effect on aid implemented by Muslim organizations as they fall under much bigger scrutiny and legal actions are more often taken against them¹⁴. The self-censorship also affects financial transaction systems, as banks have been found to refuse the redistribution of funds to organizations in areas where designated terrorist organizations are present as they neither want to face legal implications¹⁵.

On a structural level, implications have been found to affect the core missions of organizations or core principles of aid delivery itself¹⁶. Principles might vary between organizations, but they commonly revolve around providing needs-based aid in line with international development commitments, international law, and human rights. With the regulations, organizations are no longer free to design programs solely based on need as they must follow the political decision of the donor. Thus, eroding the core principle of providing needs-based aid. The legitimacy of organizations further ends up being jeopardized as the population on the ground might not view them as providing needs-based aid yet rather serving a foreign political agenda.¹⁷ Some even argue that all these implications undermine the aim of counterterrorism regulations itself as they overall decrease aid delivery efforts of, for example, de-radicalization or democratization in conflict-ridden and fragile communities. By failing to allow organizations to provide positive change and peaceful options in areas affected or controlled by terrorist entities, counterterrorism regulations might even consolidate radicalism rather than reduce it.¹⁸

¹² Mackintosh, Duplat 2013: 71

¹³ Modirzadeh et al. 2011: 642, 645

¹⁴ Adelsberg et al. 2011 298-301

¹⁵ El-Taraboulsi-McCarthy 2018

¹⁶ Mackintosh, Duplat 2013: 71

¹⁷ Guinane et al. 2012: 15

¹⁸ Adelsberg et al. 2011: 298-301

On an internal level, implications are found to affect the functioning and coordination between actors¹⁹. A study from 2017, consisting of the responses of 500 individuals at humanitarian organizations in over 50 countries, displays that a total of 69 % indicates that counterterrorism measures have had a chilling effect or curtailed their work; 53 % of the respondents witness of their organization having to implement policies, procedures, and/or training regarding counterterrorism measures and on having to use various methods to comply with the laws, such as risk mitigation, increased oversight, screening, training and legal compliance, significantly increasing the workload, and; 60 % attest to spending substantial amounts of time towards compliance measures.²⁰ In addition, implications are found to affect the overall amount of funding made available, especially for the small, grassroots organization²¹. As a result, further undermining the establishment of community capacity; an essential ingredient for long-term change and development.

3.3 RESEARCH GAPS

Previous research has explored the morality of the politicization of aid delivery and extensively mapped out counterterrorism regulations' implications on humanitarian aid delivery. The excellent contributions made provides a foundation and numerous starting points for future research. Based on section 3.1, this study will situate itself within the pragmatic approach and not focus on if aid delivery is politicized yet rather fill the theoretical gap in exploring and expanding normative assessments of politicization. The study will further make use of the prominent findings found in section 3.2 as starting points in the discovery of various implications in the case of Palestine. However, there is an empirical gap in the current evidence base to cover the impact on peacebuilding and developmental aid delivery as well, which this study aims to cover.

¹⁹ Mackintosh, Duplat 2013: 71

²⁰ Burniske, Modirzadeh 2017: 6-7

²¹ Adelsberg et al. 2011: 293

4 THEORIES OF SECURITIZATION

In this chapter, theories of securitization are outlined which combined helps to describe the approach of this study. The first two sections, section 4.1 and 4.2, present the core assumptions of securitization. Continuingly, section 4.3 presents the theoretical framework of *collective securitization*, which in the analysis will help to understand the development of the EU's counterterrorism regulations. Lastly, under section 4.4 the theoretical framework of *Just Securitization Theory* is presented and developed further by the author. This framework will in the analysis help to answer the second part of this research by guiding how to assess the morality of the effects. However, the frameworks will not be used to test any hypothesis as this study is not of a deductive character. Instead, the theoretical ambition is to contribute to an increased understanding rather than explicitly explain the causal mechanisms.

4.1 THE COPENHAGEN SCHOOL

Researchers in security studies often take off their theoretical expositions in the arguments constituting the Copenhagen School (CS), and this study is of no exception. The CS is commonly referred to as the founder of modern theories of securitization and takes its roots in Barry Buzan's, Ole Waever's and Jaap de Wilde's book *Security: A New Framework of Analysis* (1998). The School is especially known for its constructivist approach when stating that no issue is inherently a security threat yet that it is constructed as such through the usage of discursive politics and through the power of language. The core of the school rests upon the speech act which is the tool used to initiate the process of securitization; by the mere utterance of the words it is believed that something magically turns into a security threat through a self-referential practice. To reach a full circle of securitization, the speech act must be accepted by an audience so that it gains enough support to legitimize emergency measures that would not have been possible if not the discourse of an existential threat had taken place.²²

In addition, Buzan et al. established a concrete framework for securitization and de-securitization by creating a spectrum along which issues can be classified, ranging from non-politicized through politicized to securitized matters. A non-politicized issue is recognized as

²² Buzan et al. 1998: 25

such when the state does not handle it as a political matter whilst politicized issues are handled within the political system. Securitized matters, on the other hand, can be viewed as the extreme version of politicization by moving politics beyond established rules of the game and constructing the issue as above politics. In the same way, de-securitization represents the reverse process by moving an issue from the emergency state back into the political sphere again or even into a non-politicized issue.²³

4.2 REFORMULATING THE SECURITIZATION THEORY

The CS laid the groundwork for how security studies are understood today yet it is not without its flaws. The two most essential shortcomings are the CS's obsession with the speech act and its neglect of influential external factors in the process. This critique is usually delivered by more sociological perspectives arguing that securitization is a pragmatic process that cannot be detached from its external factors such as contexts, interactions, and power relations²⁴. One of the most prominent scholars in this respect is Thierry Balzacq, contributing with necessary amendments. One of Balzacq's major arguments, which is also harmonized with that of Matt McDonald, is that the CS is too focused upon the 'performative role of the speech act rather than the conditions, in which securitization itself becomes possible'²⁵. In other words, the misconception that no objective security threat exists until it is constructed as such, without attesting to external conditions. However, as Balzacq and McDonald argue, the context is always relevant as no language can construct reality or change a phenomenon's essence, it can only at best shape our perception of it.²⁶ Therefore, as Balzacq puts forward, the words of the securitization actor must resonate with the audience's contextual circumstances.²⁷

In addition, Balzacq develops two basic principles that are fundamental for the securitization actor in reaching a successful securitization process: (1) the dynamics of social power, and (2) logical consistency. Firstly, the ability to bring about a shift largely depends on the authority of the actor articulating them. No sharp line can be found between those who can and those who cannot yet the actor is usually – as a result of the audience's asymmetric access

²³ Ibid. 23–24

²⁴ Does 2013: 11

²⁵ McDonald 2008: 572

²⁶ Balzacq 2011: 12-13; McDonald 2008: 572

²⁷ Balzacq 2011: 12-13

to information – a state official since they are perceived as having legitimacy to assert that an issue represents a threat to a state’s survival. Hence, the social power to persuade the audience rests on the principles that the actor knows what is going on in combination with cultural capital, trust, and the power position.²⁸ This is where the second principle of logical consistency comes in as the claims would still, generally, have to attend to clues coming from the ‘real world’. The acceptance of the security threat does not fully rely on the authority of the speaker yet also out of the claim itself – how logically believable is it that this issue is a security threat? Therefore, in the end, the securitization actor’s success relies on attending to both the logical consistency and the dynamics of social power.²⁹

4.3 COLLECTIVE SECURITIZATION

The emergence of new intangible and transnational security challenges (such as climate change, health pandemics, and terrorism) has led states to increasingly rely on intergovernmental constellations to counter them. It is within this context that the concept of collective securitization was born. James Sperling and Mark Webber describes it as following:

collective securitization requires that the actor in question acts on behalf of other empowered actors who themselves may have individual securitizing imperatives. It entails aggregating these multiple securitizations and giving them authoritative articulation, and so is most obviously undertaken by formal international organizations.³⁰

Sperling and Webber further differentiate between thin and thick collective securitization. The former is applicable within traditional notions of securitization and is when a state (or a small number of states) promotes their own security concern within an international constellation, obtains a sympathetic response from other state members, and consequently empowers the international constellation to give voice to the security issue. As a result, the constellation obtains a shallow actorness with things said and done in its name yet without any real autonomy.³¹ The thick version, on the other hand, and the one applicable for this study, reformulates some of the previously visited assumptions under section 4.1 and 4.2 about securitization and requires further clarification.

²⁸ Ibid. 25-26

²⁹ Ibid.

³⁰ Sperling, Webber 2019: 236

³¹ Ibid.

Firstly, the thick collective securitization consists of four components – the referent object, security, security actor, and policies – however, it is only the latter three that have differential features to the previously visited assumptions. In terms of the security component, it mainly rests upon the standard version of securitization previously explored yet inherits one fundamental addition which is the distinction between the politics of exception and the politics of routine. The former, politics of exception, is closest to traditional notions of securitization as it responds to existential threats that are absolute and overwhelming, in need of immediate action. The politics of routine, on the other hand, is a concept developed by Sperling and Webber and originally rests in theories of risk management. It is less concerned with first-order threats to survival or direct causes of harm and more with the management of conditions that might lead to harm; a shift from reactive to proactive and includes risk-mitigation measures of protection, prevention and resilience.³²

Secondly, moving on to the security actor, the new feature in collective securitization is that the authority is elevated to a higher level through delegation. Normally, a security actor is a state representative, yet within a collective securitization process, they delegate their authority to handle security threats or risks up to the international constellation. In difference to the thin version, the constellation is not just a unified front or a spokesperson for its members. Instead, it has been delegated the legal and political authority and is the one formulating and implementing collective policies in response to a collective security narrative.³³ In addition, the security actor's relationship with the audience is what distinguishes this component the most. Within the standard notion of securitization, it is asserted that the role of the audience is to ultimately decide whether the process is accepted or not. However, within collective securitization the formal audience is the very same component which constitutes the international constellation in the first place. Hence, the audience is viewed as more than simply a recipient of a securitization process as it empowers the move and may even initiate it. Sperling and Webber define this process as recursive interaction, which is understood as 'repeated bargaining procedures and substantive exchanges between a security actor (the organization) and its audience (the organization's constituent members) over the content and form of threats as well as the policy responses appropriate to mitigating them'³⁴. Hence, the audience is no longer merely an external factor to the securitizing actor since they constitute of it as well.

³² Ibid. 239

³³ Ibid. 241-242

³⁴ Ibid. 243

Thirdly, in terms of policies, the entangled relationship between the actor and the audience entails that they are both involved in the process of acceptance of the security threat and the need to take policy measures in response. Sperling and Webber take this component one step further as they suggest that a change through a policy action is the finalizing evidence as well as a necessity for a securitization process to be deemed as successful.³⁵

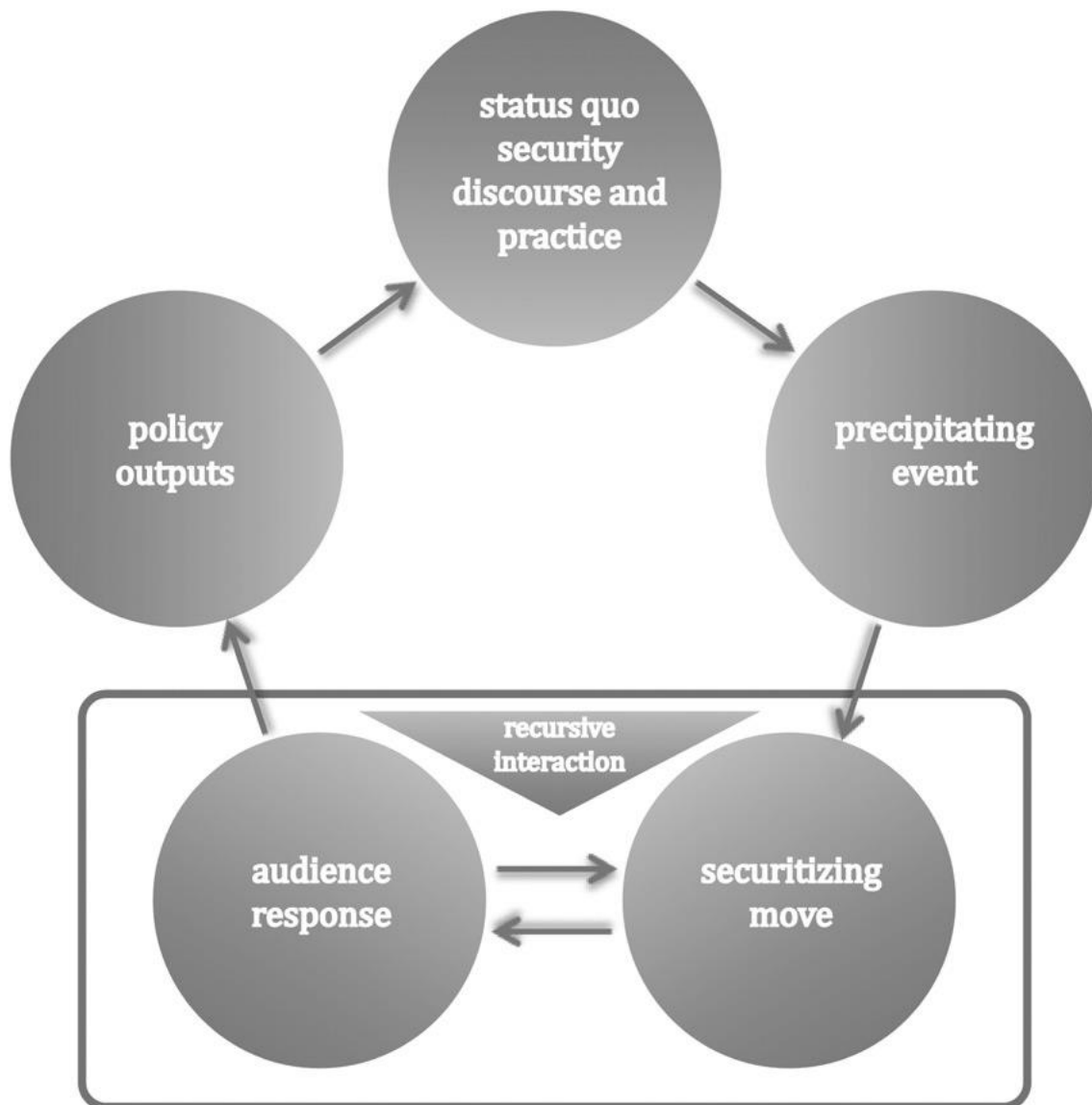
The above-mentioned assumptions within the thick version can further be presented through six chronological stages (see also Figure 1³⁶):

1. The first stage is the baseline, representing the status quo discourse with accompanied policies according to contemporary notions of a threat before any new securitization process has begun.
2. The second stage constitutes of a precipitating event, or set of events, sufficient to disrupt the status quo, making the securitizing actor and its audience perceive that the security environment has worsened.
3. At the third stage (which is intertwined with the fourth stage), the securitizing actor presents this development as a security threat leading to a securitizing move and an audience response. As previously displayed, these are co-dependent through the process of recursive interaction.
4. The fourth stage entails the audience's acceptance of the securitization move which entails acceptance of the definition of the threat, to whom or what it is threatened and the policies necessary to mitigate it. Once again, the co-dependence and the recursive interaction occurs.
5. The fifth stage constitutes of the formulation, adoption and execution of policies addressing the threat at the collective and domestic level.
6. The final stage is the routinization of the new vocabulary, agenda, and practice, which gives rise to a new status quo. This stage effectively becomes the initial condition of a future collective securitization process.³⁷

³⁵ Ibid. 244

³⁶ Figure 1 originally found in Sperling and Webber 2017: 30

³⁷ Sperling, Webber: 2019: 245-247

Figure 1. A model of collective securitization

The theoretical framework of collective securitization is very useful in capturing the different steps within a securitization process leading up to a policy action. Yet, a securitization is not always an innocent process and it can entail infringements on human rights due to the extraordinary measures legitimized to counter the threat. Missing is, therefore, a normative assessment of the collective securitization to answer questions of morality. In hindsight, can the securitization process be deemed ethically legitimate? Can the negative consequences and the collateral damage be morally justified? The next theoretical framework will complement the collective securitization framework with precisely this.

4.4 JUST SECURITIZATION THEORY

Just Securitization Theory (JST), developed by scholar Rita Floyd, is a normative theory that theorizes when a securitization process can be deemed just, i.e. morally legitimate. The theory is inspired by theories on securitization and Just War Theory (JWT). Similar to JWT's criteria for just warfare, JST consists of several universally applicable criteria that all need to be met for a securitization process to be considered morally permissible.³⁸ Floyd's view on securitization largely corresponds with that of the CS yet reaffirms Balzacq's revisions in that a threat must be rooted in the real world and follow a logical consistency to be eligible for a just securitization. Unlike the CS, Floyd argues that real threats exist yet that they can only become security threats if constructed as such, and therefore large parts of the CS's perception of security still applies.³⁹ The normative grounds of the theory are dependent on objective human well-being. There is, of course, disagreement on when this threshold is met yet Floyd holds that it is the satisfaction of basic human needs, physical health, and autonomy.⁴⁰

One of the most pertinent criticisms of JWT is that it moralizes war, making it easier to fight. A similar objection could be made against JST; it could be argued that such a theory moralizes the securitization, making it easier to legitimize the use of brute force, exclude and marginalize minorities and control populations in the fight against a threat. Indeed, securitization processes can be harmful and especially for already marginalized groups. However, Floyd rejects the black and white thinking of securitization processes always being harmful and instead argues that the morality of securitization is case-specific. For example, the Ebola epidemic in West Africa in 2014 shows that securitization can at times be morally required, since, in this case, the harm caused by failing to securitize would have been greater than the harm caused by securitization. As such, the theory is informed by the idea that securitizing actors are not only responsible for choosing to securitize yet they are also responsible for securitizing in an ethical manner.⁴¹ Thus, instead of the theory making it easier to securitize, it should be viewed as making it easier to hold securitization actors accountable either for when they fail to securitize or when an illegitimate securitization process took place.

³⁸ Floyd 2019: 79

³⁹ Ibid. 3

⁴⁰ Ibid. 18

⁴¹ Ibid. 77-80

Floyd sets out three criteria to determine the moral rightness of securitization that all need to be fulfilled at the same time:

1. The first requirement is that there must exist an *objective existential threat*; a threat that endangers the survival of an actor or an order regardless of whether anyone has realized this. Not all objective existential threats become security issues and the reverse also holds; not everything that is securitized necessarily refers to an objective existential threat as some are merely perceived threats.⁴²
2. The second requirement is that the referent object of security is morally legitimate, which is the case only when the *referent object is conducive to human well-being*. The referent object must be in relation to human well-being in need of protection from a threat. Objective well-being, in this case, consists of a person's level of freedom and capabilities to promote or achieve objectives they value and to be able to make autonomous decisions. It is, hence, possible to argue, for example, that none of the states experiencing the popular uprisings during the Arab Spring of 2011 qualifies as a legitimate referent object of security, precisely because those uprisings were based on demands for democracy, economic security and human rights.⁴³
3. The third requirement is that *the security response must be appropriate* to the threat in question. Firstly, this entails that the response must be measured in accordance with the capabilities of the aggressor and not even the existence of objective existential threats automatically justifies a response that is equal to the action of the aggressor in both means and degree. Secondly, it entails that the securitizing actor must be sincere in his or her intentions in addressing the threat which it can be assessed as if the response matches the securitizing move.⁴⁴

The three criteria cover the intention, the proportionality, and the planned consequences since the elimination of the threat is meant to assure human well-being. They are all fundamental components in pursuing a normative assessment of a securitization, yet a limitation is that they mainly regard the stated intentions as well as the initial action whilst not accounting for the de facto consequences of the securitization to the human well-being post-securitization. To be able to account for a complete normative assessment of a securitization

⁴² Floyd 2011: 431

⁴³ Ibid. 432

⁴⁴ Ibid. 433

and to hold security actors accountable, such component, inspired by consequentialism, must be included.

In cases following the more traditional securitization process of politics of exception – to use Sperling and Webber’s term – responses are often immediate and ad hoc in nature, not having enough time for a complete risk assessment on the response’s possible consequences. This is not to say that security actors should not be held accountable for wrongdoings, merely that politics of exception is just that – exceptional. However, as discussed under section 4.3, responses to today’s security challenges often consist of more long-term risk management measures – politics of routine – to eliminate the security threat. Long-term measures often build onto each other and are frequently open to amendments, creating opportunities to continuously minimize any negative consequences on human well-being. The accountability of the security actor, thus, becomes greater if these opportunities are not accounted for and the policies result in negative consequences anyway. Especially, since long-term measures also risk entailing long-term negative consequences as the affected group need to live accordingly for a longer period than just during a short exceptional period.

In addition, missing in JST is further an assessment of power imbalances, which could be integrated into the second criteria. To clarify what power imbalances here refers to: if positive consequences (increased human well-being) stemming from a securitization is reserved only for and/or falls only on certain groups (such as the population in the West) whilst the negative consequences (decreased human well-being) are reserved for and/or only falls on certain other groups (such as already marginalized groups), the structural power imbalance in the securitization renders its legitimacy. In other words, a securitization should never be morally permissible if security is achieved for some people or groups by depriving others of it or if it reproduces structural power relations and exclusionary practices.

In response to these limitations, a fourth complementing requirement is provided by the author:

4. For a securitization to be morally permissible it must have *proportional and power balanced consequences*. The requirement is twofold: (1) the security actor must ensure to minimize all negative consequences resulting from a policy action, and; (2) a securitization must not reproduce structural power imbalances and exclusionary practices with security achieved for some people or groups by depriving others of it.

In sum, theories presented on securitization will in chapter 6 be helpful in understanding and contextualizing the development of the EU's counterterrorism regulations. The theoretical framework of JST will further be helpful in normatively assessing the legitimacy of the effects, explored in chapter 7, of the EU's counterterrorism regulations. Since the aim is to assess the effects on aid delivery in Palestine, it is mainly, however, the fourth criterion that becomes applicable in doing so.

5 RESEARCH DESIGN

This chapter is divided into five sections which combined will present and discuss the chosen research design. Under section 5.1, the choice to answer the research question by a thick description through a case study is outlined, followed by section 5.2 covering the case selection of Palestine and the EU's counterterrorism regulations. Thereafter, section 5.3 discusses the use of various data collection methods; document analysis, questionnaire, and interviews. Lastly, section 5.4 outlines the ethical considerations of this study followed by section 5.5 on the limitations of the study. To be noted is that the original research approach primarily consisted of field research in Palestine which was cancelled last minute due to Covid-19, and the research design was therefore re-designed.

5.1 SINGLE-CASE STUDY AND THICK DESCRIPTION

The intersection between counterterrorism regulations and aid delivery is complex and whilst the issue is global in scope, and thus opening the possibility for generalization between different contexts, the implications will still differentiate between each context. In efforts to not risk the validity and reliability when studying this subject and to make this complex subject a bit more comprehensible, the choice to use a single case study approach by a thick description was made.

Admittedly, the conventional view on single case studies is that it is insufficient to contribute to scientific development or theory-building since it is not possible to generalize on the basis of individual cases.⁴⁵ However, generalization is not always the highest mission and generalization is at times overvalued as a source of scientific development whilst the 'force of example' is severely underestimated. In the words of Flyvbjerg, a case study actually 'produces the type of context-dependent knowledge which research on learning shows to be necessary to allow people to develop from rule-based beginners to virtuoso experts'⁴⁶. In this case, the issue could have been studied through multiple cases, yet it would not have been an academically wise choice as these contexts are so widely different it would lead to unfair simplifications in the search for generalizability. Instead, the strategy of a single-case study will

⁴⁵ Boussard 2003: 11

⁴⁶ Flyvbjerg 2006: 4

bring the research to the heart of the issue. Especially since the thick description constitutes of understanding the many layers of a social phenomenon and involves looking at the rich details of the case through the emphasis on, amongst others, contexts, thoughts, feelings and webs of relationships.⁴⁷ This approach will, in fact, also facilitate the opportunity to make important contributions to theory-building as the conclusions acquired from the in-depth understanding can be reformulated into theoretical propositions that eventually can be tested.

5.2 CASE SELECTION

As the primary mission of this study is not to achieve generalization, the selection of a truly random and statistically representative case was denounced. Instead, purposeful sampling was chosen as it rests on selecting information-rich cases that can provide an in-depth understanding of issues of central importance.⁴⁸

The first step in finding the most fitted and information-rich case began with a round of sampling based on two criteria – that both the independent and independent variable needed to be present in the context. Hence, the case firstly needed to be a context where designated terrorist organizations are present that would be covered by the stipulations in the later on chosen counterterrorism regulation (independent variable) at the same time as aid delivery (dependent variable) must play a role in the context. In the next step, a round of intensity sampling was applied. Intensity sampling consists of cases that manifest the phenomenon of interest intensely so as much information as possible can be collected yet without being at an extreme level. By doing so, lessons learned are still relevant for more typical conditions as well⁴⁹, which is also congruent with the single-case study and thick description approach. In these two rounds, Palestine stood out as an especially information-rich and intense case due to several reasons. Firstly, multiple designated terrorist organizations can be found in Palestine yet what makes the case more intense than other contexts is the unique situation with the government itself in Gaza being a designated terrorist organization by most international standards. Secondly, because of the half of century-long occupation, Palestine is the largest recipient of international aid per capita in the world⁵⁰, making it extra vulnerable to any

⁴⁷ Dawson 2010: 943

⁴⁸ Patton 1990: 116–117

⁴⁹ Ibid.

⁵⁰ Tew 2019

implications on aid delivery. Thirdly, what intensifies the Palestinian context even further in comparison to other contexts is the protracted yet still highly sensitive conflict dynamic which has resulted in counterterrorism legislations being used as tools in the conflict.

In addition, the selection of which counterterrorism framework to be of focus was also made with the rationale that the regulation with the most influential power over aid delivery in the chosen context should be selected. The counterterrorism regulations are connected to aid delivery through funding streams and the selection was, thus, based on the aid donors with the largest funding streams in the context. Up until recently, before the US withdrew all their funding to Palestine, they together with the EU (including EU member states) were for a long time the biggest aid donors. Yet, with their withdrawal, the EU has since been left as the largest aid donor to Palestine. The EU's most recently adopted and overarching counterterrorism regulation on terrorism financing – Directive 2017/541 of the European Parliament and of the Council on combating terrorism (hereafter EU Directive 2017/541 or the Directive) – which is to be implemented by all member states as well, was therefore selected as the core regulation. To be noted, is that the aim is still to study the EU's approach more holistically since none of the policies or regulations work independently from each other.

5.3 DATA COLLECTION

This research makes use of a mixture of primary data collection methods, consisting of both a minor document analysis, a questionnaire, and several semi-structured interviews. To support and contextualize the primary material collected, the analysis also draws to some extent on secondary data.

One of the major benefits for collecting different kinds of data of the same phenomenon is that it serves as a triangulation technique. The concept of triangulation can be described as 'the combination of methodologies in the study of the same phenomenon' and is often used to achieve a higher level of validity⁵¹, which is of course desirable. In this case, the approach was used both in a confirmatory and complementary way by performing sequential triangulation. Starting with the minor document analysis, it served to answer the first guiding question and to contextualize the research problem, which provided the basis for the next two data collection phases. The next part, the questionnaire, complemented with data to answer the

⁵¹ Johnson et al. 2007: 114

second guiding question, and assisted the next data collection phase, the interviews, by identifying important variables that served as the foundation for the interviews and its sampling process. The analysis of the interviews further served as confirmatory as it displayed the same results as the questionnaires and hence confirmed the results whilst also serving as complementary as they were able to tell the story behind and beyond the results from the questionnaires.

By using multiple data collection methods the reliability of the research was enhanced as ‘the bias inherent in any particular data source, investigators, and particularly method will be cancelled out when used in conjunction with other data sources, investigators, and methods’⁵². Firstly, the approach helped achieve the aim of the earlier choice of a thick description, since it helped retrieve as much knowledge about the issue as possible through the combination of different angles. Secondly, with Palestine being of a politically sensitive nature, it was extra important to provide as unbiased results as possible, which this approach facilitated. By conducting triangulation, it provided greater confidence in the results through its confirmatory ability at the same time as the complementary ability facilitated the compensation for the weaknesses of each method; the questionnaire helped to reduce as much of the author’s own biases as possible whilst the interviews were able to capture greater nuances that decreased any misconceptions.

5.3.1 Document analysis

The first data collection method in this study is a document analysis which was chosen due to its applicability when conducting case studies. Document analysis can serve a variety of purposes, ranging from providing data on the context within which research participants operate, provide background information, track changes and developments, uncover historical insights and help to contextualize data collected through other methods.⁵³ When conducting case studies, document analysis, therefore, becomes particularly applicable. In this study, the document analysis is used to provide answers to the first guiding question and understanding of the independent variable’s background and its relationship with the dependent variable. The analysis consists of a superficial examination of the EU Directive 2017/541 and the EU’s overall counterterrorism infrastructure on terrorism financing followed by an interpretation of

⁵² Johnson et al. 2007: 115

⁵³ Bowen 2009: 29-30

relevant text passages, which was done by ‘interviewing’ the document. By treating the document as a respondent, it provided answers to questions of who the author is, the targeted audience, circumstances of production, document type, whether it is a typical or exceptional example, political purpose, et cetera.⁵⁴

As with all other methods, document analysis has both advantages and limitations. The advantages specifically beneficial for this study is that documents are non-reactive and stable; they remain unaffected by the research process. Another advantage is the exactness of documents; the inclusion of exact names, references, and details of events. Thus, both these advantages further helped facilitate the removal of the author’s own biases. However, a limitation is that documents are usually not produced for the purpose of research, they most often do not provide sufficient detail to answer a research question. This especially regards this document as it does not only cover terrorism financing yet the combatting of terrorism as a whole and thus much of the document is on a more general level. However, as document analysis is not the primary method of this study and since it is mainly used to contextualize the topic, the limitations have a very small impact on the study.⁵⁵

5.3.2 Questionnaire

The second part of this study consisted of a digital questionnaire (see Appendix A) in which previous research served as entry points regarding which areas to cover. Consisting of 26 questions, the questionnaire focused on the participants’ relationship to the Directive and EU’s counterterrorism infrastructure, and their experiences and perceptions in relation to them. By using a digital questionnaire, it facilitated the exclusion of interviewer bias, as research has shown that the way questions are asked verbally might influence participants. This method also allowed for the respondents to take their time when answering the questions and not feel pressured or rushed, which was deemed as especially crucial since this case is politically sensitive and the participants may have to consider their responses carefully.⁵⁶ In relation to the politically sensitive nature of the topic, the questionnaire had an expanding approach and it started off with light informational questions followed by a section on the participant’s

⁵⁴ O’Leary 2004: 180

⁵⁵ Bowen 2009: 32

⁵⁶ Maruyama & Ryan 2014: 397

relationship and knowledge about the Directive before moving on to more sensitive questions. The following and more sensitive questions focused on the Directive's and EU's overall counterterrorism approach's implications experienced by the participants in relation to three areas: operational, financial and internal, and risks and security. Most of the questions were close-ended with a few open-ended questions for when additional details or other options were required. In addition, the questionnaire fills the purpose of yet another expanding approach; at the end of the questionnaire, a question was included asking if the participant is willing to participate in an interview on the topic. Hence, the questionnaire served as an introduction between the researcher and the participant.

The sampling process of which participants to send the questionnaire to was based on the study's aim to find answers to how the EU's counterterrorism regulations affect aid delivery. Therefore, the choice logically landed on organizations delivering aid in Palestine and in contrast to previous research, this study aimed to cover all three of humanitarian, developmental, and peacebuilding organizations. The questionnaire was answered by directors of 21 Palestinian non-governmental organizations, networks, and coalitions, active in both the West Bank and in Gaza. A majority of the respondents were active in the field of peacebuilding (including justice and human rights) and with a minority active in the development field or in a non-specified aid sector. The organizations varied in size and ranged from currently having a yearly budget of €50 000 up to €2m. Unfortunately, no organizations active in the humanitarian field replied yet as there already exists endless studies in this field, in comparison to peacebuilding and developmental, this was not considered an issue.

5.3.3 Semi-structured interviews

Originally, interviews were planned to be conducted during a two-month-long field research to also be able to attain knowledge of the community and its individuals. However, the field study became infeasible with the outbreak of Covid-19. Instead, all eight interviews were held digitally through Zoom with directors of aid delivery organizations between June 19th to July 9th and lasted for 1-1,5 hours. The sampling process was already established through the questionnaire and every organization that volunteered was interviewed until the material was saturated.

The interviews were semi-structured in nature; some themes and questions were predetermined whilst power was also given to the participant to discuss other components of the issue; contributing to more fruitful conversations.⁵⁷ This, to allow the respondent the opportunity to ‘delve more deeply, express their feelings, to reflect on events and beliefs, and to even expose their ambivalences’⁵⁸. The predetermined themes and questions can be found in the interview guide (see Appendix B) and were a product of the initial results from the questionnaire. Depending on each individual interview, some questions were formulated during the interview itself. An effort was made to use a similar expanding approach as in the questionnaire; starting off with more informational questions leading up to questions of more sensitive nature, to naturally build the trust between the participant and the interviewer.

All data was transcribed manually and analyzed following the strategy of thematic analysis. This strategy moves beyond counting explicit words or phrases and instead focus on identifying and describing both implicit and explicit ideas within the data, i.e. codes and themes, with the primary concern to present the experiences voiced by participants as accurately and comprehensively as possible⁵⁹. Thematic analysis can be both inductive and deductive, which stood out as a rewarding characteristic since the interviews both have confirmatory and complementary elements; they serve to both confirm previously established notions from the questionnaire and explore new undiscovered aspects. When analyzing the material, several rounds of coding was conducted together with comparisons of code frequencies and attempts to find correlations and relationships between codes. In the finalization, greater overarching themes were established under which subcategories and subthemes were included. To illustrate and support the development of these themes, relevant extracts have been taken from interviews and used in the analysis.

5.4 ETHICAL CONSIDERATIONS

All research ought to conform to certain ethical principles to not cause any harm. In this research, the main ethical consideration regarded taking up the time of already heavily burdened

⁵⁷ Halperin, Heath 2012: 262

⁵⁸ O’Reilly 2009: 126

⁵⁹ Guest et al. 2012: 12

organizations in Palestine. Nevertheless, and as was reaffirmed by many interviewees, the need for this research is very much necessary and the research was, thus, still deemed feasible.

Another consideration regarded the hostile and at times insecure environment for organizations within the aid community in Palestine. The assumption was made that organizations might be apprehensive to provide answers about themselves in a questionnaire from a stranger. The choice was, therefore, made to mainly distribute the questionnaire through an organization recommended by the Swedish General Consulate in Jerusalem. The recommended organization is a trusted and respected actor within the aid community in Palestine and was therefore expected to provide the participants with a level of confidence and reassurance. To assure that the questionnaire and the interviews were in line with ethical principles, they obliged to principles of voluntary participation, informed consent, and anonymity. These were all accounted for through written re-assurance at the beginning of the questionnaire as well as in an interview consent form (see Appendix C) which was sent out to the participants before interviews were held with the opportunity to either sign beforehand or provide verbal consent to at the beginning of the interview.

5.5 LIMITATIONS

A central limitation of this study is that the perspectives of donors is not included and neither those of humanitarian organizations nor international organizations. The former was a conscious decision adjusting to the limited scope and time of this project whilst the two latter became a matter of access since no humanitarian or international organization provided answers to the questionnaire. Even though Palestinian organizations would still have remained the main focus, interviews with donors and international organizations could have complemented and deepened the understanding of the issue. This limitation is, however, nothing that affects the relevance or reliability of the results nor the ability to achieve the aim of this research.

Another limitation is the fact that many of the findings proved to be in relation to extremely current events, such as the recent adoption of the anti-terrorism clause, which by nature constantly evolves. Therefore, there is not much context-specific research to be drawn on and some information might lose their relevance more easily. Yet, when reviewing what these findings might turn into in the near future, it becomes apparent how important it is to cover these issues early rather than later.

6 EU'S COUNTERTERRORISM INFRASTRUCTURE

This chapter focuses on the securitization process leading up to the EU's counterterrorism infrastructure on terrorism financing. The main focus covered under section 6.1.1 - 6.1.3, is on the development, adoption, and content of the EU's core policy on combating terrorism financing; EU Directive 2017/541. Thereafter, section 6.1.4 focuses on the implementation of the Directive through the launch of the new anti-terrorism clause in 2019.

6.1 EU DIRECTIVE 2017/541

6.1.1 Background and context

From the 1970s and forward, modern terrorism and its events affected numerous countries throughout Europe, ranging from the ethno-nationalist and separatist groups in Spain and in the UK, to the more left-wing terrorist groups in Italy and West Germany. Still, none of these terrorism branches or trends led to a collective securitization of terrorism by the EU or its predecessor.⁶⁰ It was not until the precipitating event of the terrorist attacks on 9/11 that EU cooperation on counterterrorism began and a collective security threat was constructed.⁶¹ The attacks were large in scale, almost 3000 people lost their lives, making them extremely visually memorable with millions of people around the world watching the broadcasting of the events, which helped facilitate the securitization of the threat. The growing perception amongst the audience in the West was that a new threat, namely that of transnational Islamist terrorism, had arisen. A threat far more deadly and evil yet also more unpredictable and borderless than the threat posed by country-specific political or separatist terrorist groups.⁶² Even though the attacks occurred away from Europe, the perception and growing discourse was that all Western governments were equally threatened. Especially so as the threatened referent object was not the US or the EU, it was 'the civilized world' (i.e. the West).⁶³ To be noted is that the securitization did not change the essence of transnational Islamist terrorism; it was just as much,

⁶⁰ Kaunert, Léonard 2019: 262–263

⁶¹ Argomaniz, 2011; Bures, 2011

⁶² Kaunert, Léonard 2013: 3

⁶³ Kaunert, Léonard 2019: 266

or as little, an objective threat before the securitization. Instead, the contextual circumstances had changed due to the attacks, making the audience more receptive to the securitization than they would have been prior to the attacks.

Immediately after the attacks, President Bush stated that ‘you are either for us or against us’ and under intense US pressure, the EU swiftly underlined its support. The wider international community also rallied and the UN’s Secretary-General, Kofi Annan, held that ‘[a]ll nations of the world must be united in their solidarity with the victims of terrorism, and in their determination to take action – both against the terrorists themselves and against all those who give them any kind of shelter, assistance or encouragement’⁶⁴, in which the first hint of a hardened and collective approach against terrorism financing is found. This statement quickly became action with the passing of UNSC Resolution 1373(2001); the starting point and foundation of the new transnational counterterrorism approach. With the adoption, the UN signaled a sense of urgency and exceptionalism by delegating all the authoritative power to the UNSC rather than the normal more democratic process of treaty-making amongst all member states on similar matters. The obligations in the resolution legally bind all member states to take specific actions to prevent and suppress the financing of terrorist acts all the way down to domestic criminal law, entailing adopting national laws that give effect to the freezing of assets and sanctions. The adoption of the resolution should further be seen as the key driver of the acceleration of the EU’s own hyperactive law and policymaking within the field.⁶⁵

Moving rapidly from statements of solidarity with the US, the EU instantly began the development of their own corpus of collective counterterrorism policies. In less than two weeks, the European Council launched an ambitious ‘Action Plan to Combat Terrorism’, involving close cooperation both between member states and with the US, and with terrorism financing being one out of the five areas of priority.⁶⁶ The EU soon also adopted its counterpart to the UNSC Resolution 1373, namely the Council Framework Decision 2002/475/JHA, which sought to harmonize member states’ legislative approaches to counterterrorism.⁶⁷ Similarly, the framework required member states to collectively introduce criminal provisions on terrorism and provided a list of terrorist offences. Since this initial framework, several international developments have resulted in the continued updating of the EU’s policies on terrorism financing (see table below). For example, the Islamist terrorist attacks in Madrid in 2004 and

⁶⁴ Cited in Kaunert, Léonard 2019: 267

⁶⁵ De Londras 2019: 211–212

⁶⁶ Kaunert, Léonard 2013: 4

⁶⁷ Kaunert, Léonard 2019: 270

in London in 2005, displayed a need for a more cohesive strategy with the security threat moving closer to home, and the EU Counter-Terrorism Strategy was drafted.⁶⁸ Later on, following the growing trend of Islamist foreign terrorist fighters, the UNSC resolution 2178 was adopted in 2014. The resolution imposed specific measures to be taken in respect to foreign terrorist fighters at the same time as it reinforced the general obligations regarding terrorism financing made in UNSC Resolution 1373. Following the obligations, the EU instantly began drafting an Additional Protocol to an earlier convention to implement the new criminal law provisions of Resolution 2178.⁶⁹

Table 1. Timeline of key dates and international instruments

2001	UNSCR 1373
2002	Framework Decision on Combating Terrorism 2002/475/JHA – Initial EU Policy on terrorism
2005	EU Counter-Terrorism Strategy drafted
2008	Framework Decision 2008/919/JHA – amends Framework Decision 2002/475/JHA to include new offences
2014	UNSCR 2178
2015	Additional Protocol to Council of Europe Convention on the Prevention of Terrorism – new offences of receiving training, travelling abroad, funding travelling abroad and organizing or facilitating travelling abroad
2015	Directive 2015/849 on preventing the use of financial system for money laundering or terrorist financing (4 th Anti-Money Laundering Directive)
2017	Directive 2017/541 on Combating Terrorism and replacing Council Framework Decision 2002/475/JHA and amending Council Decision 2005/671/JHA

The policies in the table are only a fraction of the EU’s much larger web of counterterrorism regulations. This web is complex, with strong relationships and a high level of dependence between policies and with new policies already being predetermined by what came before them. Whilst the EU’s counterterrorism infrastructure has both been reinforced and revised following new precipitating events to the system, what has remained constant is the security threat of transnational Islamist terrorism. It is possible, though, to distinguish a

⁶⁸ Hurley 2018: 9–10
⁶⁹ De Londras 2018: 123–124

discrepancy between the actual securitized threat of transnational Islamist terrorism and the threat written of in the regulations, namely that of terrorism in general. Yet, since any precipitating events resulting in the updating of new EU policies only stems from terrorist attacks by transnational Islamist terrorist groups, for example by ISIS, and never by groups of other branches of terrorism, it is apparent that the policies still circulate around the original threat of transnational Islamist terrorism rather than terrorism in general. Therefore, new policy actions should be viewed as additional building blocks to the already established securitization process that resulted in the initial policy actions directly following 9/11. These new additions belong to the final stage of the collective securitization process, which concerns the routinization and the emergence of a new status quo, rather than as independent policy actions within independent securitization processes. Thus, these can neither be understood in total separation from each other as they combined belong to the same process and combined compose of the EU's counterterrorism approach to terrorism financing.

6.1.2 The proposal and adoption

On December 2nd 2015, the European Commission proposed the new Directive on combating terrorism, which is the regulation at the center of this research. The Directive was to a large extent predetermined of the regulations that came and the political provenance to the policy was the reactions to the attacks on Paris in 2015 and the resurgence of foreign terrorist fighters. Similarly, as with many other policy actions on securitized issues, the adoption was fraught with urgency and exceptionalism. Normally, proposals of this type result from extensive consultations with all EU national parliaments, ex-ante impact assessments, reports by experts, international organizations, and civil society, with the purpose to ensure the highest possible quality.⁷⁰ However, the Directive was not subjected to this ordinary scrutiny. In fact, no ex-ante impact assessment or formal procedure was held to analyze any potential effects before adoption.

In the guidelines of the European Commission, the aim of impact assessments is stated to be to 'verify the existence of a problem, identifying who is affected, estimating the problem's scale, analyzing its causes and consequences, and assessing its likelihood to persist in the absence of (further) EU policy intervention'⁷¹. It is only under limited circumstances that

⁷⁰ De Londras 2018: 128

⁷¹ European Commission 1a 2020: 15.

it is permissible to skip impact assessments, such as with international agreements with no margin for variation. One might view the relationship between the Directive, Resolution 2178, and the Additional Protocol to justify the lack of impact assessment since most of the content of the Directive was already predetermined by these. However, the Explanatory Memorandum of the proposal stated other reasons: ‘[T]he urgent need to improve the EU framework to increase security in light of recent terrorist attacks including by incorporating international obligations and standards, [and therefore] this proposal is exceptionally presented without an impact assessment’⁷². Thus, the threat of terrorism was presented as so urgent that the legislation had to be adopted and implemented without the transparent and accountable features of ordinary lawmaking – resonating well with arguments across securitization and counterterrorism contexts. The skipping of the impact assessment led to the exclusion of the consultative role of experts or the civil society community and they were instead forced to try to penetrate the process from the outside regarding concerns about human rights implications.⁷³

On March 15th 2017, the Directive was finally adopted by the European Parliament and the Council of the EU with the full name of: *Directive 2017/541 on combating terrorism and replacing Council Framework Decision 2002/475/JHA and amending Council Decision 2005/671/JHA*.

6.1.3 What does the Directive say?

One of the main aims of the Directive is firstly to amend the Framework Decision 2002/475/JHA to implement new obligations taken by the EU since. These new obligations mainly concern those stipulated in the UNSCR 2178(2014), covering a range of measures to combat the foreign terrorist fighter phenomenon, the obligations regarding the Additional Protocol, as well as the relevant recommendations by the Financial Action Task Force (FATF)⁷⁴ on terrorist financing. As can be read in the Directive:

Taking account of the evolution of terrorist threats to and legal obligations on the Union and Member States under international law, the definition of terrorist offences, of offences related to a terrorist group and of offences related to terrorist activities should be further

⁷² European Commission 2015: 12

⁷³ See for example: Amnesty International et al. 2016

⁷⁴ The FAFT is an inter-governmental body with the mandate to set the standards and to promote effective implementation of legal, regulatory, and operational measures for combating terrorism financing. All UN member states are obligated to implement their recommendations. Read more here: www.fatf-gafi.org/recommendations.html

approximated in all Member States, so that it covers conduct related to, in particular, foreign terrorist fighters and terrorist financing more comprehensively.⁷⁵

Further explanations for this new legislation is ‘to tackle the evolving terrorist threat in a more effective way, thereby enhancing the security of the EU and the safety of its citizens’⁷⁶ since ‘[terrorism is] one of the most serious violations of the universal values of human dignity, freedom, equality and solidarity, and enjoyment of human rights and fundamental freedoms on which the Union is founded’⁷⁷. Presented is how the already well-established threat of (transnational Islamist) terrorism is evolving, and that stronger action is required to counter it, to ensure security within the EU and to protect its citizens.

The Directive is part of EU law and is binding on all member states, who are to comply with the 43 recitals and 31 articles of the Directive by September 8th 2018⁷⁸. The articles are separated into three categories: (1) subject matter and definitions; (2) terrorist offences and offences related to terrorist activities, and; (3) general provisions relating to terrorist offences, offences related to a terrorist group and offences related to terrorist activities. In short, these articles combined obligates member states to establish criminal offences to target terrorist organizations and terrorist individuals as well as those who assist them. All the general provisions clarify that, due to the seriousness of the threat, for any of the offences related to a terrorist group or terrorist activities, it is not necessary that a terrorist offence is actually committed. Thus, new to this Directive is the more preventative and risk-management approach in line with politics of routine; moving from only being reactionary when a terrorist act has occurred to also being proactive. Facilitating the possibility to suppress acts of terrorism before they occur and to facilitate the possibility for member states to criminalize any preparatory acts of terrorism. This new approach broadens the scope of the terrorism agenda, making it possible to move some criminal acts from being merely politicized to being securitized. As can be seen, the Directive expands terrorism financing to not only cover the financing of terrorist acts yet also the financing of terrorist groups to suppress the possibility of them conducting acts of terrorism.

The most important piece on terrorism financing in the Directive is Article 11, which stipulates the following:

⁷⁵ European Union 1a 2017: Recital 6, 88/7

⁷⁶ European Commission 1a 2020: 4

⁷⁷ European Union 1a 2017: Recital 1, 88/6

⁷⁸ Caiola 2017: 414

1. Member States shall take the necessary measures to ensure that providing or collecting funds, by any means, directly or indirectly, with the intention that they be used, or in the knowledge that they are to be used, in full or in part, to commit, or to contribute to the commission of, any of the offences referred to in Articles 3⁷⁹ to 10⁸⁰ is punishable as a criminal offence when committed intentionally.
2. Where the terrorist financing referred to in paragraph 1 of this Article concerns any of the offences laid down in Articles 3, 4⁸¹ and 9⁸², it shall not be necessary that the funds be in fact used, in full or in part, to commit, or to contribute to the commission of, any of those offences, nor shall it be required that the offender knows for which specific offence or offences the funds are to be used.⁸³

The language used in Article 11 is broad and ambiguous, creating uncertainties to what actions it intends to cover. The ambiguous wording of ‘by any means’, ‘directly or indirectly’ and ‘in full or in part’, creates a wide range of interpretation of how implicit and farfetched the connection between funds and a terrorist organization can be. This becomes even more troublesome in the second part when stipulating that it is not necessary that the financier is aware that the funds are to be used for terrorism purposes nor that the funds are used for such purposes. In practice, this broad language becomes problematic when intersected with aid delivery actors in areas where designated terrorist organizations are present.

As previously revealed in the introduction of this research, the ambiguous wording generates questions of definition. Yet, it also generates questions regarding which legal framework trumps when an individual is affiliated with a designated terrorist organization yet

⁷⁹ Article 3 consists a consolidated list of acts to be counted as terrorist offences. These acts consists of: attacks upon a person’s life which may cause death; attacks upon the physical integrity of a person; kidnapping or hostage-taking; causing extensive destruction to a government or public facility, a transport system, an infrastructure facility, including an information system, a fixed platform located on the continental shelf, a public place or private property likely to endanger human life or result in major economic loss; seizure of aircraft, ships or other means of public or goods transport; manufacture, possession, acquisition, transport, supply or use of explosives or weapons, including chemical, biological, radiological or nuclear weapons, as well as research into, and development of, chemical, biological, radiological or nuclear weapons; release of dangerous substances, or causing fires, floods or explosions, the effect of which is to endanger human life; interfering with or disrupting the supply of water, power or any other fundamental natural resource, the effect of which is to endanger human life; illegal system interference and illegal data interference.

⁸⁰ Article 10 consists of the obligation to ensure that any act of organization or facilitation that assists any person in travelling for the purpose of terrorism, is punishable as a criminal offence when committed intentionally.

⁸¹ Article 4 consists of the obligation to ensure that directing a terrorist group or participating in the activities of a terrorist group, including by supplying information or material resources, or by funding its activities in any way, are punishable as a criminal offence.

⁸² Article 9 consists of the obligation to ensure that travelling to a country other than that member State for the purpose of committing, or contribution, to the commission of a terrorist offence, is punishable as a criminal offence.

⁸³ European Union 1a 2017: Article 11, 88/15

also have the right, according to international law, to receive need-based aid. The Directive does, to some extent, acknowledge this clash with international law and its possible impact on rights and freedoms. In the final recitals, the Directive states that it ‘should not have the effect of altering the rights, obligations and responsibilities of the Member States under international law, including under international humanitarian law’⁸⁴ and that ‘the provision of humanitarian activities by impartial humanitarian organizations recognized by international law, including international humanitarian law, do not fall within the scope of this Directive’⁸⁵. The exemption of actors in the humanitarian field provides some reassurance, yet other aid delivery actors within the field of development and peacebuilding aid are not included in the exemption. However, it is still not possible to locate any explanation or analysis of how these rights are to be protected by the terms of the Directive. This, whilst detailed guidance is provided for the implementation of the counterterrorism obligations, and whilst compliances with both at the same time is nearly impossible. It is, hence, possible to conclude that the inclusion of such stipulation should merely be viewed as symbolic or tokenistic.

6.1.4 Updating EU’s general conditions

The Directive’s intersection with aid delivery and its new preventative approach became especially concrete during its implementation process. In July 2019, following the obligations in the Directive, the EU introduced a new anti-terrorism clause in its contracts with NGOs under “General conditions applicable to European Union-financed grant contracts for external actions” to make sure no EU funding is made available to designated terrorist organizations by aid delivery actors. The clause stipulates the following:

Grant beneficiaries and contractors must ensure that there is no detection of subcontractors, natural persons, including participants to workshops and/or trainings and recipients of financial support to third parties, in the lists of EU restrictive measures.⁸⁶

The clause refers to the restrictive measures of the EU, which maintains different lists of sanctioned individuals and entities that combined constitute the Consolidated Financial Sanctions List (hereafter ‘the EU Sanctions list’)⁸⁷. Accordingly, grant recipients must put into

⁸⁴ European Union 1a 2017: Recital 36, 88/11

⁸⁵ European Union 1a 2017: Recital 38, 88/11

⁸⁶ European Commission 1a 2019: Article 1.5

⁸⁷ Read more here: www.sanctionsmap.eu

effect screening and vetting processes both ‘at the initial distribution of funds’ and ‘down to the level of final beneficiary’ to make sure no person, for example, staff and board members, participants, subcontractors or beneficiaries, on the EU Sanctions list take part in any stage of a project⁸⁸. Since the launch, numerous member states and EU-based intermediary organizations have too updated their general conditions using similar wording, as obligated by the Directive.

The anti-terrorism clause is new in the EU’s general conditions, yet these types of conditions have long been established amongst other donors with more assertive counterterrorism approaches. The US, for example, immediately after 9/11 implemented their Anti-Terrorism Certification (ATC), which all their grant recipients are obliged to comply with by confirming that they ‘did not provide, within the previous three years, and will take all reasonable steps to ensure that it does not and will not knowingly provide, material support or resources to any individual or entity that commits, attempts to commit, advocates, facilitates, or participates in terrorist acts’⁸⁹. The EU’s new clause is a lookalike of this condition with the only difference being the exclusion of the retroactivity of three years. Further, as previously explored under section 3.2, the ATC has throughout the years proven to have severe consequences on aid delivery actors globally. Thus, with this evidence in their hands, it is extra troublesome that the EU is now following suit with a similar condition as the implications will most likely follow suit as well.

⁸⁸ European Commission 1b 2019

⁸⁹ US Agency for International Development 2020

7 CASE STUDY: PALESTINE

This chapter explores how the EU's counterterrorism regulations affect aid delivery in Palestine. Firstly, section 7.1 provides contextual background on Palestine and the role of aid. Secondly, section 7.2.1 presents initial findings extracted from the questionnaire. Thirdly, the findings from the interviews are presented in the following four sections; a separation is made between the implications experienced in relation to the Directive and the EU's overall counterterrorism approach, presented under section 7.2.2, and the implications experienced specifically in relation to the EU's new anti-terrorism clause, presented in sections 7.2.3 – 7.2.5. The separation is made since the clause has proven to represent a breaking point with additional implications than the 'ordinary' ones found in relation to the EU's overall approach. Lastly, section 7.3 discusses the morality of the EU's counterterrorism regulations effects.

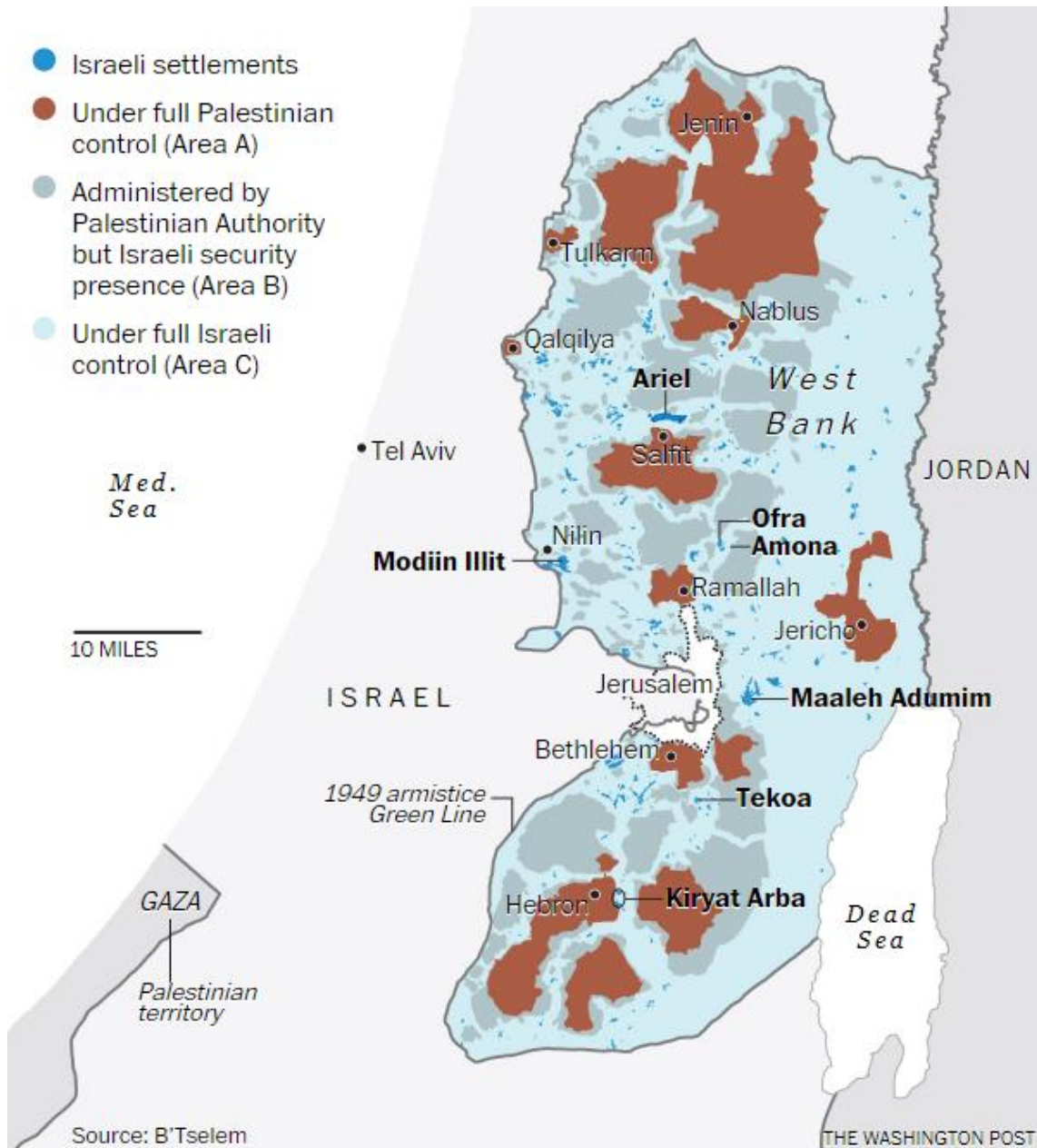
7.1 AID IN THE PALESTINIAN CONTEXT

Palestine⁹⁰ has been occupied by Israel for over half a century, resulting in a severe humanitarian situation. In the West Bank, the discriminatory and coercive practices of Israel has led to an environment in which it is impossible for many Palestinians to develop adequate housing and to access water, food, healthcare, education, and other basic services. The population is increasingly subjected to forced evictions and demolitions of houses because of Israeli settlement activities.⁹¹ Another major concern is the Access to Restricted Areas (ARA) system which was put in place in the early 1990s, requiring Palestinians to obtain permits to be able to move between the West Bank, Gaza, and East Jerusalem, or to travel abroad. Under the Oslo Accords, the West Bank was also divided into three administrative areas (A, B and C); Area A (17 %) is under full Palestinian control, Area B (22 %) is administered by the Palestinian Authority (PA) but under the military control of Israel, and Area C (61 %) is under full Israeli control. The latter is the only area that forms a contiguous territory, in contrast to Areas A and B that compromise of scattered islands of land (see the illustrative map of Palestine below)

⁹⁰ The descriptions used in this section to describe the Palestinian context and the Israeli occupation are used accordingly to the descriptions made available by the European Union. See for example: European Union 1b 2020

⁹¹ European Commission 1b 2020

separated by an extensive system of roadblocks, checkpoints and other obstacles to restrict travelling.⁹²



In Gaza, the land, air, and sea blockade implemented by Israel since 2007, combined with several wars, has resulted in an even worse humanitarian situation with damaged infrastructure, unemployment, a collapse of the healthcare system and key services. The

⁹² El Taraboulsi-McCharty 2018: 3

blockade and re-current hostilities have weakened the local economy to a point where at least 1.5 million people (around 80 % of Gaza's total population) is dependent on aid to survive.⁹³

As a result of the presented challenges, Palestine has become the largest recipient of international aid per capita in the world⁹⁴. Yet, despite substantial aid flows for decades, the continuing occupation, and the ongoing violations of international law by Israel, is holding Palestine in a deadlock and a state of aid-dependency as any social, political, or economic development is blocked or destroyed. The dependence on international aid has created an environment that is no stranger to conditional funding by donors in efforts to force Palestine in a certain political direction.⁹⁵ One of the biggest actors in this domain has been the US who in 2018 cut hundreds of millions of dollars of aid to Palestine, as a way to pressure them to restart peace talks with Israel ahead of the announcement of their so-called peace plan. Since, the US has also ended all bilateral aid to the PA and all their funding for the UN agency for Palestinian Refugees (UNWRA), who they previously been the largest donor to by giving more than \$360m in 2017⁹⁶. This has left Palestine with a large funding gap as the US previously, combined with the EU, was one of their largest donors. In 2018, the EU alone (not including EU member states nor EU-based intermediary organizations) provided development and cooperation aid of €328 million in support of the PA, UNWRA and for projects to support, amongst others, economic development, enhanced governance and improved access water and energy, combined with €46 million in humanitarian aid during the same period.⁹⁷

The implementation of aid in Palestine is normally fraught with difficulties as they neither are spared from Israeli attacks. Throughout 2019, the European Parliament witness of a 90 % increase of demolitions and destructions of EU projects by Israel compared to the previous year, now with a total damage of nearly half a million euros in 2019 alone⁹⁸. Actors also experience difficulties in passing both material and staff through the checkpoints in and out of the Gaza strip through the denial of permits and detention of staff.⁹⁹ A specific feature of aid delivery in Palestine is also attempts by pro-Israel movements or Israeli authorities to

⁹³ European Commission 1b 2020

⁹⁴ Tew 2019

⁹⁵ Wagner 2020

⁹⁶ Knell 2019

⁹⁷ European Commission 1c 2019

⁹⁸ European Parliament 2020

⁹⁹ El Taraboulsi-McCarthy 2018: 4

through accusations of terrorist affiliations, either by smear campaigns or by legal means, shrink the space for the Palestinian civil society.¹⁰⁰

7.2 IMPLICATIONS IN THE PALESTINIAN CONTEXT

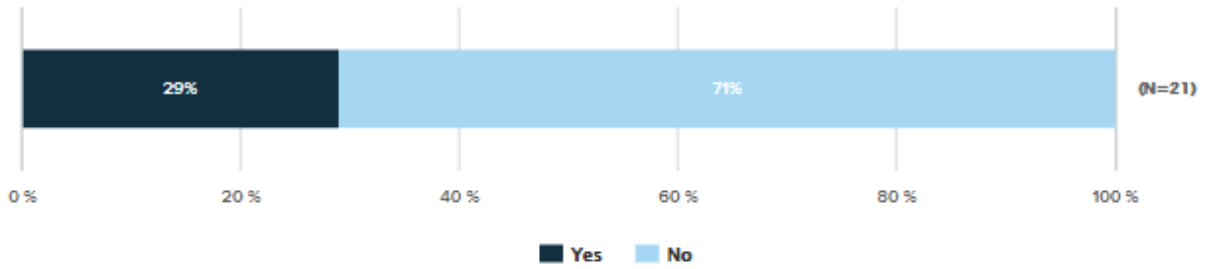
7.2.1 Initial findings

In line with the ambition to explore the implications of the EU's counterterrorism regulations on aid delivery in Palestine, the questionnaire¹⁰¹ provided some initial insights. The respondents indicated a high level of familiarity with the EU Directive 2017/541 and related counterterrorism policies and laws of the EU: 57 % stated to be 'very familiar' with them and 43 % to be 'extremely familiar'. As many as 81 % answered that the EU Directive 2017/541 and/or related EU anti-terrorism policies have affected the work of their organization at some point. Out of these, 86 % said that they had either to 'some extent' or to a 'large extent' been negatively affected by them, indicating that the EU's counterterrorism regulations have a widespread negative effect in the Palestinian aid community. To understand what these effects are, the questionnaire covered some of the most common implications previously found by other research, as was presented in section 3.2 of this research. The results display that the implications previously found on a global scale in the humanitarian sector, the operational, structural, and internal, are present in the field of peacebuilding and development field as well (at least in Palestine and in relation to the EU counterterrorism regulations):

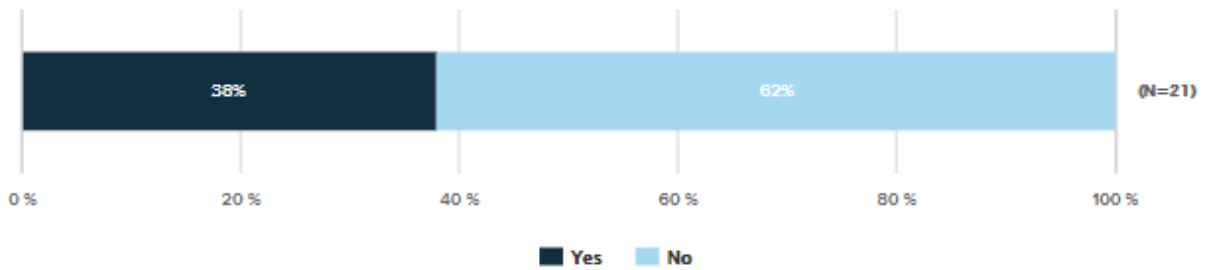
¹⁰⁰ Policy Working Group 2018: 9

¹⁰¹ Provided are a summary of selected findings from the questionnaire.

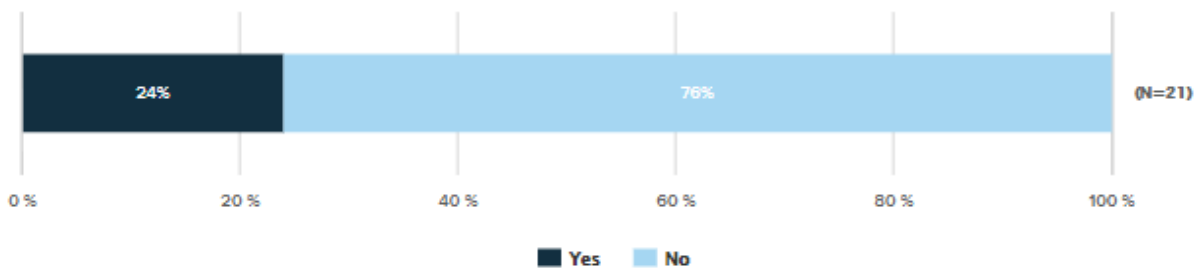
12. Has your organisation ever experienced limitations in what types of projects or activities to implement because of the EU Directive 2017/541 and/or other related EU anti-terrorism policies?



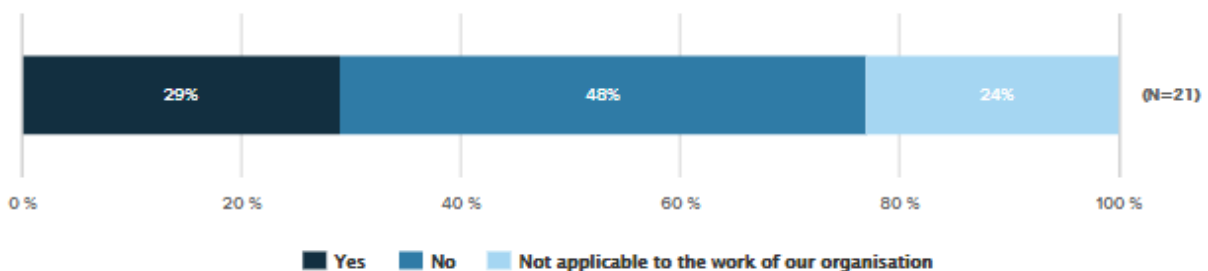
14. Has your organisation ever experienced limitations in which geographical areas to implement projects or activities because of the EU Directive 2017/541 and/or other related EU anti-terrorism policies?



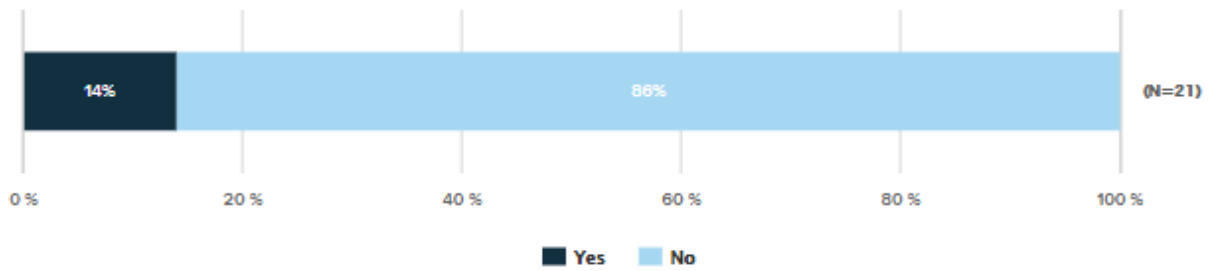
15. Has your organisation ever experienced limitations in the amount of beneficiaries reached through projects and activities because of the EU Directive 2017/541 and/or other related EU anti-terrorism policies?



16. Has your organisation ever experienced limitations in the ability to provide neutral, impartial and solely needs-based aid because of the EU Directive 2017/541 and/or other related EU anti-terrorism policies?



19. Has your organisation ever experienced an increase in administrative and operational costs because of the EU Directive 2017/541 and/or related EU anti-terrorism policies?

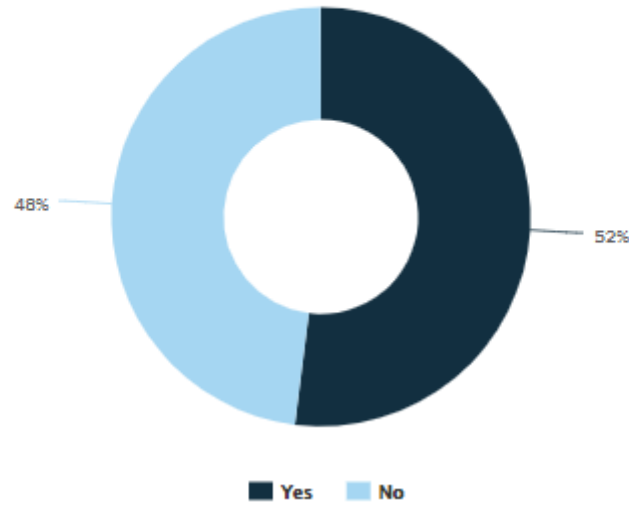


Out of all respondents, 29 % answered that they have experienced limitations in what types of projects or activities to implement. A total of 24 % have experienced limitations in the number of beneficiaries reached through projects and activities; 29 % have experienced limitations in the ability to provide neutral, impartial and solely needs-based aid, and; 14 % have experienced an increase in administrative and operational costs. One of the most troublesome implications in relation to the contextual circumstances is that as many as 38 % experience implications in which geographical areas to implement projects in. With the population already suffering from movement restrictions and a blockade, geographical limitations for aid delivery actors in reaching some of these areas become extra troublesome since it might risk denying aid to people in desperate need.

Furthermore, as many as 52 % answered that their organization and/or their staff have felt at risk to be faced with sanctions or other legal repercussions because of EU's anti-terrorism policies and 48 % answered that they had self-censored themselves and limited their operations at some point in efforts to minimize these types of risks. Providing indications of a widespread climate of fear, uncertainty, and silence amongst the aid community caused by the regulations, as previously found in the humanitarian field displayed in section 3.2.

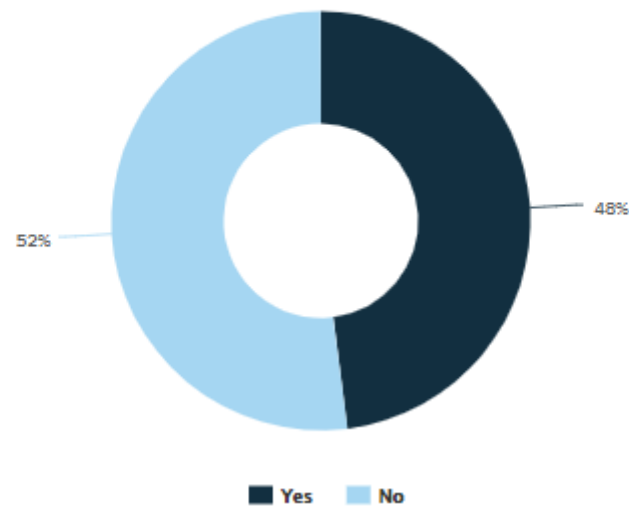
Has your organisation and/or your staff ever felt at risk, perceived or not, to be faced with sanctions or other legal repercussions because of the EU Directive 2017/541 and related EU anti-terrorism policies?

(N=21)



Has your organisation ever self-censored itself and limited its operations in efforts to minimize any legal risks because of the EU Directive 2017/541 and related EU anti-terrorism policies?

(N=21)



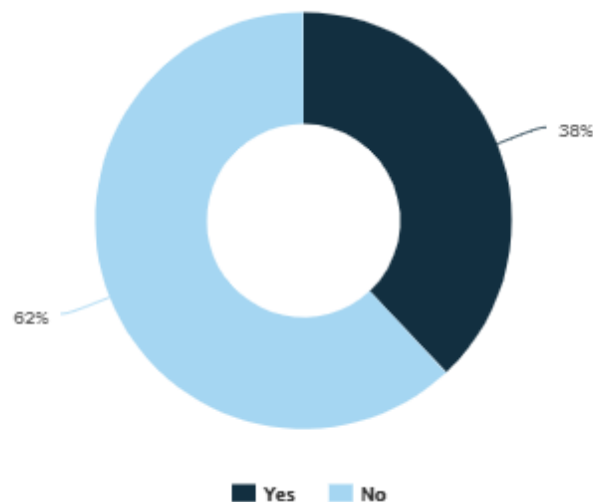
These types of results are, of course, very damaging to any civil society as they interfere with the organization’s core work and missions and will take away both time and money that they normally would use to pursue their normal work. The civil society is supposed to, amongst others, help people attain their human rights and hold authorities accountable to its people. With the censoring of the civil society, which is often one of few critical voices present, it can be extremely damaging to the democracy and legitimacy of a society. In Palestine, where

the civil society and its people constantly live under the threat and restrictions of the Israeli authorities, the EU counterterrorism approach and its regulations appear to have become yet another destructive obstacle.

The Directive and the overarching counterterrorism approach further appear to affect both organizations' cooperation with the EU and organizations' financial situation. A total of 56 % witness of their total amount of EU funding decreasing during the last three years because of the regulations. A total of 38 % also answered that they at some point have refrained from applying for funding from the EU or from an EU member state and 38 % witnessed of at some point refraining from accepting funding from EU donors. Thus, combined providing some initial evidence on how the EU's counterterrorism approach might be resulting in a defunding and shrinking of the civil society in Palestine. Even though the shrinking of civil society has become a global phenomenon during the last few years, it comes with extra dimensions in the Palestinian context since it ends up expanding space for the Israeli occupation and further expansions.

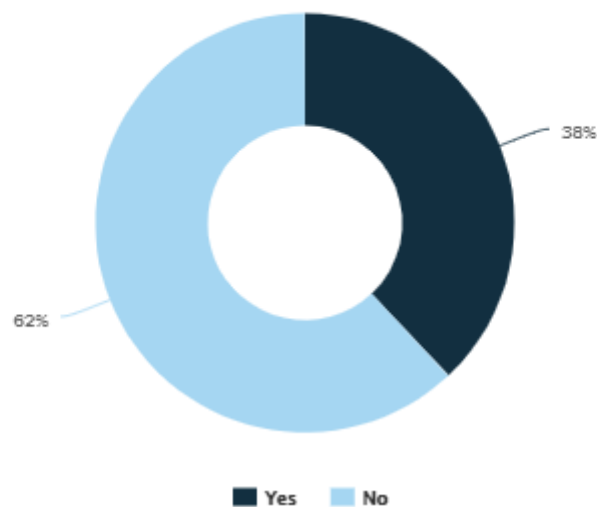
17. Has your organisations ever refrained from applying for funding from the EU or from an EU member state because of the EU Directive 2017/541 and/or related EU anti-terrorism policies?

(N=21)



18. Has your organisation ever refrained from accepting funding from the EU or from an EU member state because of the EU Directive 2017/541 and/or related EU anti-terrorism policies?

(N=21)



In sum, the results from the questionnaire have provided insights on some general implications for aid delivery actors in Palestine often found in relation to counterterrorism regulations. Apparent is that these general implications, some more than others, are widespread and tangible in the Palestinian civil society within the field of peacebuilding and development aid. Left to explore, however, is implications beyond these pre-determined ones as well as what the implications displayed entail in more detail and how they can be traced to the regulations.

7.2.2 The build-up and a double chilling effect

The politicization of aid by the EU, and other donors, is perceived by organizations as an almost inherent aspect of aid due to the hyper-politicized environment of Palestine and Israel, with donors using aid to achieve various political aspirations. Since 9/11, however, organizations witness of the EU's politicization, or rather securitization, focusing more intensively on aid delivery in relation to counterterrorism, with EU donors implementing a range of official and unofficial conditions for organizations to obey to be eligible for funding in this regard. Unofficial conditions refer to those created on a case to case basis and that are not implemented to all grant recipients of a donor whilst official conditions being those anchored in a legal

decision and an official clause to all donor agreements. Originally, it was mainly the US, Canada, Australia, and certain EU donors implementing the official restrictions (those with closer relations with Israel), and many organizations simply avoided applying for funding from these. Yet, with the intensification during the last few years of the EU's counterterrorism approach, organizations have experienced a normalization process taking place more extensively within the EU. Donors that organizations previously shared long relationships with, built on trust and transparency, progressively started to implement similar conditions, yet unofficially. As one organization shared, on experiencing limitations in which types of activities and projects to implement:

Three years ago, a historic EU donor of us, asked us to no longer use their money in any activity relevant to Palestinians right to return or on the Nakba. This is our core work?! So, we were forced to reject it and return the money. Last year, we lost another donor. They decided that they no longer liked our terminology because we use terms such as 'colonial', 'apartheid' and 'regime' when we talk about Israel. They did not want us to use this. So, once again, we had to reject and return that funding.¹⁰²

Amongst EU donors, it has been possible to locate certain very context-specific trends of limitations experienced by organizations with the three most reoccurring being: (1) limitations on projects working on the right of return of Palestinian refugees and internally displaced people; (2) censoring the terminology, particularly on the usage of Nakba, colonization, regime and apartheid; (3) limitations for organizations showing support or have any types of affiliations with the Boycott, Divestment, Sanctions (BDS) movement; a movement with the aim to end support for Israel's oppressive practices and to pressure Israel to comply with international law¹⁰³. These thematic fields often represent the core work of many organizations, forcing them to abruptly end the partnership and return all funding to not erode the core of the organization. Organizations are further faced with uncertainties to when or which donor will implement the next condition that might affect their financial situation or limit their operations.

The thematic nature of the most occurring trends ends up mainly affecting organizations working on the core issues behind the crisis and conflict in Palestine, such as human rights, accountability, justice, and international law. Many organizations witness of donors continuing to fund humanitarian organizations working on emergency issues, such as

¹⁰² Interviewee 7

¹⁰³ Read more here: www.bdsmovement.net

providing food, water, and shelter, whilst continuously defunding actors working on the core issues that cause and reinforce the humanitarian crisis. As one organization explained it:

Organizations working on core issues have been the most affected organizations whilst those organizations working on facilitating and providing humanitarian aid, they are rich here in Palestine. Donors keep giving humanitarian aid without building anything real ... They provide aid to humanitarian organizations or to organizations implementing activities that do not build anything real; activities that are just for show.¹⁰⁴

As such, these limitations appear to merely end up reinforcing the Palestinian aid-dependency and protract one of the already most protracted conflicts even longer by not allowing any progress on the issues holding the Palestinian society in a deadlock. In addition, by undermining the work of organizations working on core issues in Palestine, the regulations contribute to cementing the marginalization of the Palestinian cause even further and in turn benefit Israel as an occupier since these organizations will not be able to continue their work on, for example, monitoring and reporting Israel's various violations of international law, if they do not find alternative funding.

The thematic areas being limited have no clear or even ambiguous link to designated terrorist organizations, which has created doubt amongst organizations regarding the real intention behind them. In fact, as many organizations discussed, the limitations are even in direct contrast to international law and the EU's official approach regarding financial support to Palestine. For example, in the 'European Joint Strategy in Support of Palestine 2017-2020: Towards a Democratic and Accountable Palestinian State', they write that 'the support to Palestinian refugees across the Middle-East region is strongly reaffirmed [in their strategy]',¹⁰⁵ and that they are 'looking for a fair and just solution, in accordance with international law and UN resolutions, to be found'¹⁰⁶ on the issue of Palestinian refugees. Turning to international law, the right to return for Palestinians is enshrined in, for example, the Geneva Conventions, the Universal Declaration of Human Rights, and the International Covenant on Civil and Political Rights; laws that the EU supports. Thus, creating a contradictory and paradox situation when EU donors simultaneously defund projects working to achieve this goal. Further confusing is why EU donors even funds such projects or organizations in the first place, to later in the middle of a funding period change positions drastically, creating severe implications for these organizations. Yet, when understood against the backdrop of the EU counterterrorism

¹⁰⁴ Interviewee 7

¹⁰⁵ European Union 1b 2017: 11

¹⁰⁶ European Union 1b 2017: 14

approach's entangled relationship with Israel, the connection of these limitations to terrorism becomes a bit less confusing. However, still just as contradictory and paradox.

Israeli actors have, according to multiple organizations, under a long time put pressure on the EU to toughen their counterterrorism approach towards aid organizations in Palestine; the government through more political means and far-right movements by defamation campaigns. These defamation campaigns range from, as one organization shared, targeting one of their projects funded by the EU donor by accusing it of being beneficial to the BDS-movement, resulting in the donor shutting down the project despite lack of evidence or further investigation. Another organization, working on human rights and international law, witnesses of being subjected to an intense defamation campaign nonstop for three years, under which the Israeli movement targeted the organization's partners, banks, and audit company, asking them questions such as 'why are you working with a terrorist organization?', all in efforts to skew them. Many others witness of their organization being defamed and accused in media and in reports of having ties to certain political movements or designated terrorist organizations. Unfortunately, this appears to influence the limitations that EU donors install, as expressed by one organization:

Every time there is a new report from NGO monitor or from the Israeli Ministry of Strategic Affairs accusing the EU of supporting terrorism, it puts pressure on the EU and these new conditions are a result of that ... If anyone tries to criticize Israel or the occupation, they are labelled as anti-Semitic and in the end a terrorist. The EU does not want to be associated with this.¹⁰⁷

The organization mentioned in the above citation, NGO Monitor, claim themselves to be an independent organization with the declared goal to 'promote accountability of NGOs claiming human rights agendas, primarily in the context of the Arab-Israeli conflict'. Throughout the years, however, NGO Monitor has been commonly known to, through close cooperation with the Israeli government, be the leading the targeting of Palestinian human rights organizations that are against the occupation, through defamation and disinformation campaigns.¹⁰⁸

This trend is also reaffirmed by another organization:

When you talk about the right to return, it is called an anti-sematic approach or incitement or a call to 'eliminate Israel' – so they become crazy about this. Any organization advocating for the rights of refugees or BDS will get classified as a terrorist organization.

¹⁰⁷ Interviewee 4

¹⁰⁸ Policy Working Group 2018

EU donors do not want to support an organization that cause them a problem with Israel on this matter.¹⁰⁹

Further exemplified by a third organization:

For example, one Palestinian NGO, they have an accountant that is currently in Israeli jail because he is part of a political movement. The Israelis are now starting to blame the organization, that they are supporting this political party by giving him a salary. Tomorrow, they will blame the EU because the organization received funding from the EU. It is all part of the systematic blaming and shrinking of space for us Palestinians and NGOs.¹¹⁰

Whether EU donors believe in the accusations and the narratives of these far-right movements or not, they still act on them and give them life. Thus, creating a two-levelled chilling effect; the EU self-censor their own funding to limit any possibilities of being accused of providing funds to terrorist organizations according to the Israeli narrative and as a result also expose their partner organizations to a chilling effect. Organizations are forced to either censor and limit their work, geographically, thematically, or terminology-wise, or donors withdraw their funding. The EU ends up and empowering these Israeli movements to continue to use defamation campaigns as a tool to defund and shrink the Palestinian civil society under the cover of EU counterterrorism. By allowing the exploitation of the counterterrorism regulations for Israel's political purposes and allowing this narrative to influence their counterterrorism approach, EU donors ends up reinforcing the oppressive practices of Israel and, once again marginalize the already vulnerable.

Overall, the EU's counterterrorism approach has progressively expanded and intensified regarding limitations in conditions to the Palestinian aid community during the last few years. Directive 2017/541 is the overarching and core policy on terrorism financing, yet this policy action is itself a product of this progressive build-up. Thus, it is difficult to directly correlate these implications to merely the Directive since they existed to a certain extent before its adoption, even though organizations witness of an intensification of them since. The new preventative features of the Directive does, however, legitimize the more inclusive perception of what actions can be viewed as beneficial to terrorist activities and not since it makes it possible to criminalize actions that have not actually led to a terrorist action. Yet, it appears that these implications are rather a product of the EU's overall counterterrorism approach, including both the unofficial praxis amongst EU donors and the more official approach established in the Directive, combined with intense Israeli pressure.

¹⁰⁹ Interviewee 7

¹¹⁰ Interviewee 2

Nevertheless, the overall results of proposed implications above are so far still quite modest in relation to the 86 % (out of the 81 % saying they have experienced implications in relation to the Directive and related policies) of respondents saying it affected their work negatively. Thus, it appears that the general implications usually found are not sufficient to paint the full picture in the Palestinian context. As a matter of fact, the most severe implications found have proven not to be directly in relation to the adoption of the EU Directive 2017/541, or the unofficial praxis of EU donors. Rather, they are in relation to the implementation process of the Directive; the launching of the anti-terrorism clause in the EU's general conditions. The following three sections will, therefore, focus on the three most severe and overarching dilemmas, here referred to as: the *moral dilemma*, the *relationship dilemma*, and the *operational dilemma*. These three constitute of already present implications by the turbulence the clause has caused, and implications anticipated to arise because of it.

7.2.3 The moral dilemma: betray my people or aid my people?

The intensification and normalization of the EU's more assertive counterterrorism approach have, as displayed, been very palpable for the Palestinian aid community during the last few years. In July 2019, however, the EU introduced their new anti-terrorism clause in their general conditions. This time, the new official condition is one step beyond the maximal of what organizations are willing to compromise in efforts to uphold their relationship with EU donors. In fact, the inclusion of the clause has created a moral dilemma, resulting in a rejection of all EU funding by many Palestinian organizations.

Since the launch of the anti-terrorism clause, Palestinian civil society organizations have formed a national campaign calling upon all organizations to reject the EU's conditional funding as they view it as 'a criminalization of the Palestinian liberation struggle'¹¹¹. Over 230 organizations have signed the campaign, many with long historic ties to the EU, that are now refusing to accept funding from the EU as long as the clause remains intact. Their refusal is based on that by signing the contract, they would agree to label their own people, that are resisting occupation, as terrorists. This, since the clause does not refer to not providing any funds to terrorist organizations in general but to the designated terrorist

¹¹¹ Alsaafin 2020

organizations on the EU's Sanctions list, on which it is possible to locate several Palestinian political and/or resistance movements. Thus, by agreeing to the clause, they would acknowledge that the designated terrorist organizations on the list are de facto terrorists. As one organization describes it:

By signing the contract, it entails that we see some of the Palestinian parties as terrorists. For us, that is history. That is part of our existence. As Palestinians, to say about any political party that they are a terrorist is not justice for us. Because we are seeing our parties, even Hamas or anyone, that they are part of the freedom fighters against the occupation.¹¹²

To understand this strong sense of collective identity and solidarity to the Palestinian people, it is important to acknowledge its foundation. In brief, during the 1948 war between Palestine and Israel, over 700,000 Palestinians were uprooted from their homes and thousands were killed. This event is now referred to as the Nakba – Arabic for “catastrophe” – and it represents the collapse and disappearance of their entire society. The Nakba does not, however, only represent this specific event but the ongoing Nakba since most Palestinians till this day still either live in exile, as refugees, or living under Israeli occupation – or, at best, live as second-class citizens of Israel itself.¹¹³ Thus, as explained by the organizations, it is not only historical events that are at the core of the strong Palestinian identity, it is also the daily and lived experience of continued statelessness, grave violations of human rights and loss. Any resistance represents the fight against the occupation and the fight for justice for the Palestinian people. In this regard, there is also a legal aspect to the refusal emphasized by numerous organizations; the right to resist is established in international law when reaffirming the legitimacy of resisting ‘foreign occupation by all available means, including armed struggle’¹¹⁴.

Nevertheless, despite their resistance having bearing in international law – the legitimate right to resist by any means – it is most often, violent or not, not viewed as legitimate but rather yielded as terrorism by Israel and the West. The clause is, therefore, and especially in regard to the already long tradition of normalization attempts and politicization by the EU, viewed as yet another attempt to get Palestine's acquiescence to the Israeli and Western perspective of their people being terrorists and it is also viewed as a violation of international law. Organizations are, therefore, presented with a moral dilemma between either betraying their people by labelling the Palestinian fight for justice as terrorism or they lose the funding supposed to aid their own people in need. Organizations are forced to choose between shying

¹¹² Interviewee 2

¹¹³ Ibish 2018

¹¹⁴ United Nations General Assembly 1982: 2

away from their moral and core principles or lose the funding from one of the last larger donors they have left to be able to aid their people.

In efforts to avoid this dilemma and save the relationship with historic donors, many organizations have held long discussions with EU donors and EU representatives to find alternative wording or for the removal of the clause. In fact, organizations already abide by the clause on the ground since they are, according to Palestinian law, forbidden to provide any funds to political parties. As described by one organization:

I abide by these conditions on the ground since my own law already establishes that we have no right to work with political parties or to transfer any amount to political parties. So, I abide by the restrictions that they ask me. But, do not force me to sign that my political parties are terrorists. It is an ethical problem for us ... I proposed that I would sign a declaration saying that I would spend the money according to the proposal and that I will never use it to support any political parties, regardless of the Sanctions list or not. But they refused, they said that I needed to sign the contract as is.¹¹⁵

In other words, what the dilemma boils down to is not the restriction per se of not providing any funds to the designated terrorist organizations (or for them political organizations) as they already abide by this in practice. If the clause were just to speak in general terms about terrorist organizations or political organizations, most organizations would abide. Rather, the big issue lies in the referencing to the EU's Sanction's list of already specified Palestinian movements. The EU has, despite the campaign and various negotiation efforts by the aid community, remained steadfast and has communicated that the clause will remain intact. As shared by one organization:

We have given suggestions, but they insisted on adding 'designated terrorist organizations' and 'according to the EU sanctions list'. This is a problem because we found ourselves obliged to terminate the contract and we have done this although we need the money.¹¹⁶

Resultingly, a majority of the aid community, at least within the field of peacebuilding, justice, and human rights, has during the last year collectively cancelled all partnerships with the EU and rejected multimillion euro's worth of funding. One organization witness of losing up to 95 % of its annual funding and another organization of being forced to let go of two-thirds of its employees. Many organizations also witness of being scared for the future of their organization due to the enormous loss of funding and the additional stress of trying to find alternative funding and other coping mechanisms to stretch the funding that is left. The rejection and the overall loss of funding due to the regulations have forced

¹¹⁵ Interviewee 6

¹¹⁶ Interviewee 7

organizations to have to prioritize between their various programs, resulting in limitations in their thematical scope, geographical reach and the numbers of beneficiaries reached. Unfortunately, this, in turn, leads to additional losses to communities and the most marginalized and vulnerable people in need of aid, who ends up being the largest losers in this dilemma. These implications further come during a period when there is already a lack of alternative funding sources and already extreme scarcity of funding due to other crises in the world, Covid-19, and other political priorities.

On the other side of the dilemma, is the minority of organizations that still accepts funding but feel forced to betray their principles whilst doing so. One organization that is currently not receiving funding from the EU yet that is open to signing the conditions says that:

If we are to sign, we are going to do it only to get the funds; to get funds for the poorest. We as an organization have commitments to help the poorest regardless of what we must sacrifice for it. Because, you know, here in Gaza they live under very poor conditions and they need the funds more than anyone else in the world ... I feel like we would compromise our principles, but I also take into consideration that some people will die hungry if I do not do this. You lose either way, but this way you get some instant help to help the people.¹¹⁷

It becomes apparent that the high level of aid-dependency in Palestine and with the protracted crisis that is only getting worse, is resulting in some organizations feeling like they are left with no other choice. The Palestinian aid community is being faced with a lose-lose situation from the EU, standing in direct contrast to principles of development cooperation. Rather than upholding or establishing development cooperation partnerships between donors and partner organizations based on shared development goals, it appears that the EU regulations reduce the potential partnerships, to merely financial transactions with attached non-negotiable and securitized conditions. Resultingly, organizations as well as the campaign perceive the EU's approach as an attempt of extortion, to force the Palestinian civil society in a certain political direction:

Today, I cannot see it as aid. I see it more as blackmail. For example, if you lose your principles then here you go; here is the money. Can we even call this aid? I do not think we can. We can call it black mail. Because it does propose that you lose your principles to get the money.¹¹⁸

¹¹⁷ Interviewee 5

¹¹⁸ Interviewee 4

7.2.4 The relationship dilemma: who is with us and who is against us?

The build-up of the EU's counterterrorism approach, the anti-terrorism clause, and the consequential moral dilemma have not gone by without further friction. Combined they have resulted in implications that many organizations witness of being the most severe, the rupturing of relationships; relationships with donors and even more so the relationships within the civil society. First, the relationship with EU donors has for the last few years been stained by the continuous build-up of their conditional limitations, with the most obvious being the termination of partnerships through the rejection and withdrawal of funding. Organizations also express being met with more mistrust by EU donors and experience that the EU has moved from being a neutral actor in the conflict, to aligning with the US and Israel. In return, organizations express a strong sense of disappointment and betrayal in how the EU, with whom they have shared historic relationships with and who they have viewed as an ally, is now implementing the clause, instead of having partnerships built on professionalism, transparency, shared goals and values, or as many have suggested – based on international law. The EU and the Palestinian aid community is, therefore, at a crossroads for their future relationship and cooperation.

I think that the EU needs to decide what they want to do, if they want to have a relationship with Palestine and the civil society. Because organizations will not allow this, and the national campaign will never stop working on this. Previously, we have always had great respect for the EU and for our relationship with the EU and now I am afraid that this will end. So, they need to decide how important their relationship is with us.¹¹⁹

This, of course, becomes a great loss for the EU as well since by ending their relationships they will lose their influence on the ground and lose their ability to achieve their development commitments – leaving no one behind and the search for aid effectiveness. The EU might even be faced with a double loss when reviewing the possible counterproductive aspect of their approach. So far, the approach has led to a severe defunding and shrinking of the civil society, especially amongst those actors trying to bring peace, justice, and security to Palestine. However, by defunding these actors the EU end up eliminating the peaceful channels through which people can get their voices heard about various injustices. The only channels that eventually will remain to voice and fight against such concerns are the same movements that the EU view as terrorist organizations and that they are trying to counter.

¹¹⁹ Interviewee 4

Additionally, the relationship dilemma further appears to create a divide amongst EU donors themselves since all donors are collectively obliged to implement the clause yet not all member states appreciate it. Organizations even witness of some member states actively trying to find ways around the clause, to be able to continue their relationships and aid projects. This is, for example, done by the prolongation of already existing agreements to postpone the issue of having to include the clause in their agreements. At some point, however, these will be forced to face the relationship dilemma too.

The implications on relationships between donors and organizations have been very substantial. However, what organizations deem as the most severe implication of them all, is that the clause has led to a fragmentation of the relationships holding together the Palestinian civil society. Originating from the moral dilemma, the fragmentation has caused a divide mainly between those who agree to sign the new clause and those who refuse it, and especially between those organizations part of the campaign and those who still accept funding. As explained by one organization:

The result is more division and more fraction amongst Palestinians. Before, we at the CSOs level were very united. Now, only 12 organizations, according to the EU website, has signed such contracts. So, the EU enhanced the division amongst Palestinians and caused a new reason to separate and fragment the unity of the civil society because we have different opinion regarding this issue. Those who sign are not accepted by those who do not sign. We do not work with each other and this is a decision made by the campaign against the conditional funding.¹²⁰

To be fully steadfast in not labelling their own people as terrorists, the campaign has, as described above, decided to not work with those organizations who do so by signing the agreement. In many networks and coalitions, memberships have already been cancelled for organizations agreeing to the clause. This has resulted in the termination of historic relationships and joint activities between organizations as well. In addition, there are also those organizations expressing concern of being stuck in the middle as they too reject the funding but do not believe in the alienation of those who do accept it:

I refuse to be part of the campaign because sometimes they criticize and attack those organizations that do sign the EU contracts, accusing them to be working for the Israeli agenda and accusing them to be collaborators. Which is not true. So, I am against the conditional funding, but I am not part of this campaign.¹²¹

¹²⁰ Interviewee 7

¹²¹ Interviewee 6

In turn, this also lead organizations to lose track of their work and forces them to focus on the implications of these dilemmas – how to adapt and keep the organization alive, how to find alternative funding, how to stretch funding – instead of focusing on the actual mission of their work; a free, democratic, and peaceful Palestine. As described followingly:

This is something that is fracturing our work, making us loose our track by only discussing the obstacles of our work. We are so focused on the refusal of funding or speaking about some organizations accepting the funding, putting all this effort to connect with representatives of the EU and this is so time-consuming and shrinks the work of organizations. So many organizations might face having to closing their work because they will not have any funding.¹²²

7.2.5 The operational dilemma: operation impossible or operation pointless?

The anti-terrorism clause has created an additional dilemma, the operational dilemma, that too is part of the basis of organizations' rejection of EU funds and the dilemma is interconnected with both the moral dilemma and the relationship dilemma. To explain, the clause goes against organizations' moral principles but integral is also that it would be operationally impossible to implement the clause even if organizations were to sign it. Since, by agreeing that the designated terrorist organizations are terrorists, organizations would instantly lose their ability to influence and implement any aid programs as they would no longer be respected in the communities – in addition to the already lost respect within the aid community. As one organization explained it:

If I am to sign this, I become two-faced in my community. I am working for my community and how can I continue to work for and with the community while I consider them terrorists? I know that there are some organizations that do accept, but it is still hard to survive because the community will refuse to work with them in the future.¹²³

As discussed under section 7.2.3, for many Palestinians, their identity is closely interlinked with the Palestinian struggle and by labelling Palestinian freedom fighters as terrorists, organizations would too label the whole Palestinian identity as such. Thus, any organization signing the clause would lose its ability to influence communities and individuals. In the field of peacebuilding aid, this implication becomes especially destructive since their core work often focuses on influencing actors of a conflict. Their work might be to train political actors on international humanitarian law or on democratic principles or to influence civilian

¹²² Interviewee 4

¹²³ Interviewee 6

youth to not choose a destructive path, by giving them the tools to communicate and advocate for their causes instead. Organizations are, therefore, faced with the operational dilemma of how to be able to conduct any aid programs in communities that might be sympathetic to the designated terrorist. As one organization explained:

For example, we have programs where we are working to enhance the knowledge and skills of the youth, to educate them on Palestine, human rights, advocacy skills and on how to communicate and support your community. And these youth, you can find them as members or supporters of these political parties, including those classified as terrorist organizations. So, how can I sign a contract saying that their organization is a terrorist one, at the same time as I am required to work with them to influence them? They will not respect me or enroll in our program, so I will lose my ability to influence them and lose my respect. Also, we are required to influence political actors here in Palestine too. We are required to influence not only the right-holders but also the Palestinian actors, which is not only limited to the PLO or the PA, but to political parties because they are influencing our people, our politics and our whole conflict. And then, how can I influence Hamas' approach or Fatah's approach whilst I am saying that they are terrorist organization? We will lose our influence and our relationship with these parties and we will lose our people.¹²⁴

The work of organizations within peacebuilding often entails working with different actors of a conflict, yet this is, of course, not to confuse with providing funds to the organizations. However, none of this work is operationally possible under these conditions and organizations are, once again, faced with a lose-lose situation; either lose the funding and risk having to close the organization or accept the clause but lose their ability to pursue any work beyond humanitarian activities. It appears that the Palestinian civil society cannot win, at least not the actors within peacebuilding and those working on the core issues behind the Palestinian crisis.

Another aspect of the operational dilemma is inherited in the clause's writings. The clause requires organizations to conduct screening and vetting processes 'at the initial distribution of funds' and 'down to the level of final beneficiary' to make sure no person, for example, staff and board members, participants, subcontractors or beneficiaries, on the sanctions list take part in any stage of a project. This requirement forces organizations to become security, intelligence, and policing actors, by acting as informants on their own people. Thus, eroding the role of civil society:

The point of civil society is to protect people's rights and to protect people's ability to speak and to be free. And when you come and ask me to do policing on my own people, then you are changing the true nature of the work of the civil society and you are insulting its role.

¹²⁴ Interviewee 7

An organization might be working with freedom of the people at the same time as they would be obliged to work as moles and police officers. We are not police officers, and this is not our role.¹²⁵

As presented above, the execution of screening and vetting processes to the obligated extent stipulated in the clause counteracts the role of civil society. Even if organizations would be willing to apply these measures in their work, they witness of not nearly having the capacity, tools, or finances to do so. Not to mention the additional layer of distrust and fragmentation in the relationships with communities, partners, potential employees, et cetera, who would feel targeted in the process. The context of Palestine adds another layer of complexity to these types of measures as well, making the requirements even more operationally impossible. Since, during the many decades of occupation and oppressive practices by Israel, a large amount of the population, especially men and anyone vocal against the occupation, has at some point been thrown in jail and accused of being part of terrorist activities. As described by one organization:

Most of us Palestinians, I can surely say all over 40 years old, have been jailed by the Israelis. More than 70 % of us have been jailed. Most of the new generation, perhaps 20 % have been jailed for a couple of months. Israelis they kidnap you, they take you to jail for 2-3 months and after that they free you. But, despite any trial or evidence, you are now a terrorist.¹²⁶

In agreement, another organizations described the following:

For Israel, anyone who is against Israeli policy is a terrorist. For myself, I was in Israeli jail as a child. I was, according to Israel, a terrorist because I was against the occupation. Which was not true. I was a kid. I threw a stone towards a soldier in my village and for that, they put me in jail for 3-6 months. ... The implication for NGOs is that you have to follow the history of each person and if each person has ever been jailed or not, on the Israeli blacklist, on the American blacklist, on the EU blacklist. Let's say I provide nutrition aid in an village to a poor woman, I would have to dig into her history and see if her husband has ever been jailed and affected by the Israeli law, or her brother, or her father, or her family. So, I cannot give aid to anyone because I do not know this information.¹²⁷

Consequently, anyone who at some point has been arrested in their past might be classified as terrorists, and be disqualified from receiving funding or to work for an organization implementing projects. Thus, having the concept of being affiliated to a terrorist organization as a measurement of who is deserving of aid becomes operationally impossible and operationally pointless in the Palestinian context, since anyone and anything can be included

¹²⁵ Interviewee 4

¹²⁶ Interviewee 1

¹²⁷ Interviewee 2

under it, when not anchored in international law. It, once again, as discussed in section 7.2.2, feeds into and reinforces oppressive practices as it criminalizes aid delivery of the already marginalized resisting occupation.

7.3 CAN THE EFFECTS BE MORALLY JUSTIFIED?

The EU's counterterrorism regulations on terrorism financing have had profound effects on aid delivery in Palestine and the question remains if these can be morally justified. In section 4.4, the framework to conduct a full normative assessment of a securitization process was presented consisting of four criteria. In this case, when assessing the effects, it is only the fourth criteria that is of relevance and this criterion consists of two components: the security actor must minimize all negative consequences resulting from a policy action and the securitization must not reproduce structural power imbalances and exclusionary practices.

Concerning the first component, it appears that the EU has continuously failed to be both proactive and responsive to their counterterrorism regulations' negative consequences on aid delivery in Palestine. Firstly, during the past two decades, endless studies have been published and numerous calls have been made by the civil society on the negative implications that counterterrorism regulations on terrorism financing have on aid delivery. The EU has, however, turned a blind eye to these revelations as they during the last few years merely have intensified their counterterrorism approach and aligned their regulations with more assertive actors. Resulting in an intensification of negative effects on aid delivery which have yet to come to a halt.

Secondly, the lack of proactiveness towards negative consequences was extra apparent during the adoption phase of the Directive when, as explored under section 6.1.2, the EU chose to disregard the ordinary impact assessment and, resultingly, also disregard the opportunity for civil society to provide valuable remarks in this regard. Possible to distinguish, however, is a minor effort made by the EU to avoid implications on humanitarian aid delivery by the inclusion of an exemption for humanitarian aid delivery of the stipulations in the Directive. Yet, as discussed in section 6.1.3, the exemption is stipulated without any guidance on how humanitarian activities will be protected in practice whilst extensive guidance is

provided on the counterterrorism obligations. It becomes possible to conclude that the inclusion of such stipulations is so far only symbolic or tokenistic at the same time as they still fail to include exemptions for peacebuilding and development aid delivery as well; the actors in the Palestinian context who has proven to need such exemption the most.

Thirdly, the pinnacle of their new assertive approach, the launch of their anti-terrorism clause, provided additional evidence of the EU's lack of effort to minimize negative consequences in the Palestinian context. As displayed in section 7.2.3, the Palestinian aid community provided numerous alternative wordings to the clause in efforts to avoid having to end all partnerships with the EU and EU donors and the ripple effects of that decision. Yet, the EU remained non-responsive in making any amendments despite being provided with indications of the escalation of negative consequences that we see today.

These three aspects combined provide evidence of how the EU has and continues to disregard the collateral damage their intensifying and more assertive counterterrorism approach has on aid delivery in Palestine. To be noted, of course, is that this assessment is founded on information available for an outsider to review, without any real insight on the EU's potential covert actions on the issue. Regardless, with the negative consequences merely intensifying and with the EU's relationship with the Palestinian aid community being at crossroads, the EU's actions and non-actions, both overt and covert, are seemingly not sufficient or vigorous enough.

In regard to the second component, a myriad of negative effects on aid delivery in Palestine has been discovered in sections 7.2.1 – 7.2.5 that all have, as indicated throughout, reproduced structural power imbalances and exclusionary practices. The various negative effects and their ripple effects have each played a role in reproducing these imbalances and exclusionary practices, yet some have played a larger role. Firstly, one of the main and overarching aspects leading to this outcome, originates in the EU allowing, intentionally or not, the exploitation of their counterterrorism regulations by Israeli actors and further allowing the narrative created by these actors to influence the unofficial conditions implemented. By defunding and undermining aid delivery actors working on the core issues that are causing and reproducing the Palestinian crisis and suffering, the EU ends up reinforcing the Palestinian aid-dependency by not allowing any progress on the issues holding the Palestinian society in a deadlock. The limitations further end up, intentionally or not, benefitting Israel by undermining the only actors holding Israel accountable for their violations of human rights and international law. In turn, cementing the asymmetrical power imbalances in the conflict.

Secondly, the overall defunding of the Palestinian aid community due to the regulations has forced organizations to ‘opt out’ from implementing many of their aid programs and the regulations, thus, ends up depriving communities of their right to receive need-based aid. Standing in direct contrast to the universal development commitment of ‘leaving no one behind’ as well as the EU’s own development strategy for Palestine, as discussed in section 7.2.2. Thus, the prioritization of providing security in the EU from the threat posed by terrorism financing, even though it can be severely questioned to what extent the designated terrorist organizations in Palestine de facto pose a security threat to the EU, comes at the expense of the safety and security of the already vulnerable people of Palestine that they are supposed to aid.

In sum, it is not possible to deem the EU’s counterterrorism regulations’ effect on aid delivery in Palestine as morally just or legitimate since the EU does not appear to have made any efforts to minimize negative consequences resulting from the regulations and their regulations have severely reproduced structural power imbalances and exclusionary practices in an already extremely fragile and asymmetrical conflict environment.

8 CONCLUDING REMARKS

In its introduction, this research expressed concerns about the intensifying environment of transnational counterterrorism regulations aimed to suppress the financing of terrorism and how its intersection with aid delivery risks creating tremendous humanitarian effects in already fragile environments. Questions were raised in how the pursuit of security for some at the expense of aid delivery for the most vulnerable, can be morally justified. In efforts to explore these concerns and questions, this research made use of two guiding questions: (1) how can we understand the development of the EU's counterterrorism regulations on terrorism financing through the lens of securitization? and; (2) how has the EU's counterterrorism regulations on terrorism financing affect aid delivery actors in Palestine and can these effects be morally justified?

In conclusion, it has become clear that the EU's collective counterterrorism approach can be understood and contextualized in relation to the securitization process initiated by the US following the attacks of 9/11. The EU's counterterrorism approach has during the last few years, due to new terrorist attacks throughout Europe, entered a more hyper-securitized phase and started to align their regulations with more assertive counterterrorism actors. In line with the intensification of EU regulations, the intensification of implications on aid delivery has followed. It is possible to, by reviewing the data presented in this research, conclude that the EU's counterterrorism regulations have had a myriad of rupturing, suffocating and destructive effects on aid delivery in Palestine. By allowing the regulations to be exploited by Israeli actors and with the assertive stipulations in their anti-terrorism clause, the regulations have led to an almost obliteration of funding to actors working on the core issues of the Palestinian crisis. In turn, reinforcing the Palestinian aid-dependency, cementing the asymmetrical power imbalances in the conflict, and prioritizing security for the EU at the expense of the security and well-being of the already marginalized Palestinian people. Due to these severe consequences and the reproducing of structural power imbalances and exclusionary practices they cause combined with the lack of effort by the EU to minimize these effects, it is safe to say that the EU's regulations on terrorism financing are currently, in the Palestinian context, morally unjust and illegitimate.

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10 APPENDIX

10.1 A: QUESTIONNAIRE

Thank you for agreeing to take part in this survey. The aim of the survey is to measure the EU's counter-terrorism policies' effect on aid delivery in Palestine by looking at how its implementation in donor agreements affects the work of aid delivery organizations. The study will be published by Lund University in Sweden.

Please be assured that all answers provided will be kept in the strictest confidentiality and that the researcher will not collect any information about the identity of the respondent if not provided voluntarily. The research is conducted according to the ethical principles set out in the Swedish Ethical Review Act and all information is managed as set out in the General Data Protection Regulation (GDPR).

Who can I contact if I have questions or concerns about this research study? If you have any questions, you may contact me at mmoarrydell@gmail.com or on +46766102670. If you have any questions about your rights as a participant in this research, you may contact my Thesis Advisor, Professor Annika Björkdahl at Lund University. Email: Annika.bjorkdahl@svet.lu.se, phone : +46462220162

The EU's counter-terrorism Directive 2017/541

On March 15th 2017, the European Parliament and the Council of the EU adopted *Directive 2017/541 on combating terrorism and replacing Council Framework Decision 2002/475/JHA and amending Council Decision 2005/671/JHA*. The Directive is a revision of the EU's counter-terrorism measures aimed at enhancing security and calls on Member States to establish criminal offences with the aim to target terrorist organizations and terrorist individuals as well as those who assist them.

Article 11 in the Directive refers to terrorist financing and stipulates that all Member States shall take the necessary measures to ensure that providing or collecting funds, by any means, directly or indirectly, with the intention that they be used, or in the knowledge that they are to be used, in full or in part, to commit, or to contribute to the commission of, any of the terrorist offences, is punishable as criminal offence when committed intentionally. It is further stipulated that it shall not be necessary that the funds be in fact used, in full or in part, to commit, or to contribute to the commission of, any of those offences, nor shall it be required that the offender knows for which specific offence or offences the funds are to be used.

Introductory questions

What type of organization are you representing?

- Palestinian non-governmental organization, association or network
- International non-governmental organization, association or network
- Other (Please write)

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What is the main focus area of your organization?

- Humanitarian
- Developmental
- Peacebuilding (including justice and human rights)
- Other (Please write)

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What is your position or role at the organization you are representing?

- Director, head of unit or other leading position
- Program manager, program assistant or other position in relation to operations
- Legal counselor
- Other (Please write)

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Has your organization received funding from the EU or from an EU member state during the past three years? Including if the funding has been received through an intermediary organization/partner.

- Yes
- No

Is your organization currently receiving funding from the EU or from an EU member state?

- Yes
- No

Association and knowledge

Approximately, how much of your organization's total funding amount is currently received from the EU or an EU member state?

- 0-25 %
- 26 – 50 %
- 51 – 75 %
- 76 – 100 %

Has the percentage of your organization's total funding amount from the EU or from an EU member state changed during the past three years because of the EU Directive 2017/541 and/or other related EU anti-terrorism policies?

- Yes, it has increased
- Yes, it has decreased
- No, it has remained more or less the same

How familiar are you with the EU Directive 2017/541 and/or other related EU anti-terrorism policies?

- Not familiar at all
- Familiar to some extent
- Very familiar
- Extremely familiar

Does your organization experience that the legislative EU Directive 2017/541 and/or other related EU anti-terrorism policies provide clear guidance for easy compliance?

- Yes
- No
- I do not know.

Has the EU Directive 2017/541 and/or other related EU anti-terrorism policies ever affected your organization in any way?

- Yes
- No

If yes, in what way has the EU Directive 2017/541 and/or other related EU anti-terrorism policies affected your organization?

- It has to a large extent affected my organization in a positive way
- It has to some extent affected my organization in a positive way
- It has to some extent affected my organization in a negative way
- It has to a large extent affected my organization in a negative way

Operational

Has your organization ever experienced limitations in what types of projects or activities to implement because of the EU Directive 2017/541 and/or other related EU anti-terrorism policies?

- Yes
- No

If yes, please provide information about what types of projects or activities you have experienced limitations surrounding:

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Has your organization ever experienced limitations in which geographical areas to implement projects or activities because of the EU Directive 2017/541 and/or other related EU anti-terrorism policies?

- Yes
- No

Has your organization ever experienced limitations in the amount of beneficiaries reached through projects and activities because of the EU Directive 2017/541 and/or other related EU anti-terrorism policies?

Yes

No

Has your organization ever experienced limitations in the ability to provide neutral, impartial and solely needs-based aid because of the EU Directive 2017/541 and/or other related EU anti-terrorism policies?

Yes

No

Not applicable to the work of our organization

Financial and internal

Has your organizations ever refrained from applying for funding from the EU or from an EU member state because of the EU Directive 2017/541 and/or related EU anti-terrorism policies?

Yes

No

Has your organization ever refrained from accepting funding from the EU or from an EU member state because of the EU Directive 2017/541 and/or related EU anti-terrorism policies?

Yes

No

Has your organization ever experienced an increase in administrative and operational costs because of the EU Directive 2017/541 and/or related EU anti-terrorism policies?

Yes

No

Risks and security

Has your organization and/or your staff ever been exposed to any security risks because of the EU Directive 2017/541 and related EU anti-terrorism policies?

Yes

No

Has your organization and/or your staff ever felt at risk, perceived or not, to be faced with sanctions or other legal repercussions because of the EU Directive 2017/541 and related EU anti-terrorism policies?

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- Yes
- No

Has your organization ever self-censored itself and limited its operations in efforts to minimize any legal risks because of the EU Directive 2017/541 and related EU anti-terrorism policies?

- Yes
- No

Do you think that the EU Directive 2017/541 and related EU anti-terrorism policies affects the possibilities for peace and development in Palestine?

- Yes
- No

If yes, please provide information of in what ways the EU Directive 2017/541 and related EU anti-terrorism policies affects the possibilities for peace and development in Palestine?

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Has your organization ever been affected because of the EU Directive 2017/541 and related EU anti-terrorism policies in any other ways than the previous suggestions in this survey? If yes, please provide information of in what ways.

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Thank you for taking the time to complete this survey. Your participation and sincerity will be very valuable for the completion of this research.

Would you or another representative at your organization be willing to partake in an interview on the subject as part of this study? The answers provided will of course be kept in the strictest confidentiality, offering full anonymity and with the possibility to withdraw answers before publication. If yes, interviews will, due to the current circumstances of Covid-19, be held through phone or videocalls at your convenience during May-July.

If yes, please provide your contact information below or contact me directly through the contact information at the top of this survey.

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Is there anyone you would like to recommend being part of this study? If yes, please provide their contact information upon their approval or ask them to contact me directly through the contact information at the top of this survey.

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10.2 B: INTERVIEW GUIDE

Opening questions	<ul style="list-style-type: none"> - Could you please describe the main focus areas of your organization's work? - In which geographic areas are you active in? - How long has your organization been active in Palestine? - To get an idea about the size of your organization, what is approximately your yearly budget? - How dependent are you on funding from the EU, EU member states and/or EU-based organizations? Has this changed during the last few years?
Operational impact	<ul style="list-style-type: none"> - When was the first time you got in contact with or learned about EU counterterrorism policies in relation to aid delivery in Palestine? Is it possible to define a starting point for any implications regarding these? - Has the adoption and implementation of the EU Directive 2017/541 ever affected your organization in any way? <i>(If applicable)</i> In what ways? - Has the inclusion of EU's anti-terrorism stipulations in their general conditions affected your organization? <i>(If applicable)</i> In what ways? - Do you experience that the EU's counterterrorism policies affect the relationship and cooperation between aid delivery organizations? <i>(If applicable)</i> In what ways?
Legal and security issues	<ul style="list-style-type: none"> - Has your organization and/or your staff ever felt at risk, perceived or not, to be faced with sanctions or other legal repercussions because of EU counterterrorism policies? <i>(If applicable)</i> In what ways? - Has your organization ever self-censored itself and limited its operations in efforts to minimize any legal risks because of EU counterterrorism policies? <i>(If applicable)</i> In what ways? - What do you think differentiates between who gets, perceived or not, targeted and feels threatened by EU counterterrorism policies?
Finances and funding	<ul style="list-style-type: none"> - Has your organization ever refrained from applying for funding from the EU or from an EU member state because of the EU Directive 2017/541 and/or related EU anti-terrorism policies? <i>(If applicable)</i> Why is that? - Has your organization ever refrained from accepting funding from the EU or from an EU member state because of the EU Directive 2017/541 and/or related EU anti-terrorism policies? <i>(If applicable)</i> Why is that?
General difficulties or context-specific	<ul style="list-style-type: none"> - Do you think that there are any difficulties for aid delivery organizations with the EU's counterterrorism policies that are more specific for Palestine only? <i>(If applicable)</i> In what ways?

	<ul style="list-style-type: none">- What role do you think that the conflict-dynamic in the Israeli-Palestinian context has on the impact of the EU's counterterrorism policies?
Donors	<ul style="list-style-type: none">- Do you experience that other donors' counterterrorism policies have any influence on how aid delivery organizations in Palestine perceive and interpret that of the EU? (<i>If applicable</i>) In what ways?- Has it affected the relationship between your organization and your aid donors?
Ending questions	<ul style="list-style-type: none">- Is there anything else you would like to add?- Do you have any questions for me?

10.3 C: INTERVIEW CONSENT FORM

Interview consent form

I agree to participate in a research project led by Moa Rydell that will be published by Lund University in Sweden. The purpose of this document is to specify the terms of my participation in the project through being interviewed.

1. I have been given sufficient information about this research project. The purpose of my participation as an interviewee in this project has been explained to me and is clear.
2. My participation as an interviewee in this project is voluntary. There is no explicit or implicit coercion whatsoever to participate.
3. Participation involves being interviewed by a master's student from Lund University, Sweden. The interview will last approximately 45-60 minutes. I allow the researcher to take written notes during the interview. I also may allow the recording (by audio/video) of the interview. It is clear to me that in case I do not want the interview to be recorded, I am at any point of time fully entitled to withdraw from participation.
4. I have the right not to answer any of the questions. If I feel uncomfortable in any way during the interview session, I have the right to withdraw from the interview. I also have the right to withdraw any answers provided during the interview until the study is published.
5. I have been given the explicit guarantees that, if I wish so, the researcher will not identify me by name or function in any reports using information obtained from this interview, and that my confidentiality as a participant in this study will remain secure. In all cases subsequent uses of records and data will be managed as set out in the General Data Protection Regulation (GDPR).
6. I have read and understood the points and statements of this form. I have had all my questions answered to my satisfaction, and I voluntarily agree to participate in this study.
7. I have been given a copy of this consent form co-signed by the interviewer or verbally given consent of the stipulations in this form at the beginning of the interview.

_____ Participant's Signature Date
_____ Researcher's Signature Date

For further information, please contact the researcher (mmoarrydell@gmail.com, +46766102670) or the researcher's supervisor (Professor Annika Björkdahl, Annika.bjorkdahl@svet.lu.se, +46462220162).