

**Regional working group meeting on preventing abuse of the
non-profit sector for the purposes of terrorist financing**

Bangkok, Thailand

22-24 March 2011

DISCUSSION PAPER

This discussion paper provides background for the “Regional working group meeting on preventing abuse of the non-profit sector for the purposes of terrorist financing” in Bangkok on 22-24 March 2011. It was prepared by the Center on Global Counterterrorism Cooperation with input from the UN Counter-Terrorism Committee Executive Directorate and other members of the UN Counter-Terrorism Implementation Task Force Working Group on Tackling the Financing of Terrorism, as well as the project sponsors. It is not intended as a comprehensive overview of the issue, rather it is designed to highlight areas of consensus that emerged from the first working group meeting which took place in London in January 2011 and flag issues for further consideration. It does not necessarily represent the views of the Counter-Terrorism Implementation Task Force, its constituent entities, or the project sponsors. Any errors or omissions are solely the responsibility of the Center on Global Counterterrorism Cooperation.

Introduction

In the period since the terrorist attacks of 11 September 2001, counterterrorism has been accorded high priority on the agendas of international, regional, and functional organizations. A prominent part of this trend has been the effort to counter the financing of terrorism (CFT). This effort has built on the institutional and operational framework for suppressing money laundering that was in place before 9/11, but CFT measures have extended the scope and reach of the pre-existing anti-money laundering (AML) regime.

Notwithstanding the diversity of non-profit organizations (NPOs), they are often a vital means of providing assistance to those in need.¹ They can fulfil a range of positive cultural, religious, educational, and other purposes. The annual operating expenditure of the non-profit sector is approximately 1.3 trillion U.S. dollars.² It employs over 40 million people globally, and on average it moves \$20 billion in financial assistance to developing countries.³ These figures are even higher after major disasters, when NPOs sometimes play a vital role by *inter alia* coordinating and providing humanitarian assistance.

¹ This discussion paper adopts the definition of ‘non-profit organisation’ used in the Financial Action Task Force’s Interpretative Note: “non-profit organisation or NPO refers to a legal entity or organisation that primarily engages in raising or disbursing funds for purposes such as charitable, religious, cultural, education, social or fraternal purposes, or for the carrying out of other types of ‘good works’”. See Financial Action Task Force, *Interpretative Note to Special Recommendation VIII: Non-Profit Organizations*, February 2006, Paris, p. 2.

² United Nations Counter-Terrorism Implementation Task Force, *CTITF Working Group Report: Tackling the Financing of Terrorism*, October 2009, New York, p. 16.

³ *Ibid.*

Participation in charitable activity derives from fundamental human rights, such as the right to freedom of association. NPOs, and a vibrant civil society more broadly, can also function as a bulwark against the emergence of conditions conducive to terrorism. Through their efforts for development, conflict resolution, and human rights, many NPOs are working to dry up the wells of extremism from which political violence can spring. NPOs help address political grievances and socio-economic injustices that can hinder good governance and stoke expressions of political violence. This work may not be labelled counterterrorism, nor should it be, but it is essential for countering violent extremism.

This discussion paper is part of an initiative that seeks to advance two goals: 1) to protect the non-profit sector from terrorist abuse and 2) to preserve and extend the global provision of public goods by the non-profit sector.⁴ In light of the diversity of the sector, it is widely accepted that there can be no “one-size-fits-all” approach to regulating NPOs. As such, this initiative has been conceived as a dialogue among key international, regional, and national actors, including representatives from the non-profit sector, to share perspectives and gather tools and good practices on preventing abuse of the sector. This dialogue, in its global component, was initiated in a 18-20 January 2011 expert group meeting in London. The key observations of the organizers from that workshop are listed in Box 1, below. (The full text of the organizer’s summary is included in participants’ packets and is available on the website of the Center on Global Counterterrorism Cooperation: www.globalct.org).⁵ On that theme, the next section of this paper elaborates the global debate on securing the non-profit sector against abuse by terrorists.

The subsequent sections aim to “regionalize” that discussion, with a specific focus on South and Southeast Asia. Across those subregions, the non-profit sector exhibits remarkable diversity and vitality. Over the last few decades, against the backdrop of democratic consolidation and globalization, civil society actors have become increasingly prominent.⁶ NPO activity has been motivated by a multitude of causes, utilizing many different forms and addressing a wide range of beneficiaries. Almost uniformly, these developments have been welcomed. At the same time, discussion about governance and accountability in the non-profit sector has emerged.⁷ In several high profile cases – including the response to the 2004 tsunami and recent natural disasters in Pakistan – commentators have pointed to the vulnerability of the sector.⁸ Against this background, this paper surveys terrorism and counterterrorism in those subregions, before describing the role of the non-profit sector. This is followed by an analysis of how states in those

⁴ For a related discussion, see Emile van der Does de Willebois (2010) *Nonprofit Organizations and the Combating of Terrorism Financing: A Proportional Response*, World Bank Working Paper No. 208 (Washington, DC: World Bank).

⁵ http://www.globalct.org/images/content/pdf/summaries/18_20Jan11_Keyobservations.pdf.

⁶ Tadashi Yamamoto, “Roles and Priorities of Foundations in Asia,” presentation to the “Asia Confers 2” conference of the Council on Asian Foundations and Organizations, Hong Kong, 2002; Rory Francisco-Tolentino, “Philanthropy in the Asia Pacific: Trends, Challenges and Opportunities,” presentation at WINGSforum, Sydney, 13 March 2002.

⁷ For example, note the activities of the Asia Pacific Philanthropy Consortium: <http://www.asiapacificphilanthropy.org>.

⁸ See for example: Evan Kohlmann (2006) *The Role of Islamic Charities in International Terrorist Recruiting and Financing*, Danish Institute for International Studies, Discussion Paper No. 7; Alistair Scrutton, “US, Pakistan warn of militant plots over floods”, *Reuters*, 19 August 2010, Islamabad and; United States Treasury, *Typologies and Open Source Reporting On Terrorist Abuse Of Charitable Operations In Post-Earthquake Pakistan And India*. http://www.treas.gov/offices/enforcement/keyissues/protecting/docs/charities_post-earthquake.pdf.

subregions have implemented AML/CFT measures pertaining to NPOs. In concluding, the paper offers some reflections on the importance of dialogue in building consensus and capacity to secure the non-profit sector against abuse by terrorists.

Box 1: Expert working group meeting on preventing abuse of the non-profit sector for the purposes of terrorist financing, Lancaster House, London, 18-20 January 2011

Summary of Key Observations of the Organizers

- Terrorists raise and move funds in diverse ways. Across different sectors of the economy, terrorists seek to abuse legitimate organizations for operations and support. Non-profit organizations (NPOs) are vulnerable to such abuse by terrorists. The primary **policy objective** in this area should be to strengthen and secure the sector, to build its capacity, and protect it from abuse, with minimum disruption to its many positive contributions.
- In many cases NPOs already take strenuous efforts to ensure that they are not open to abuse through their own systems and procedures. Governments can learn from this experience when developing new frameworks for regulating the sector and should involve NPOs in developing new laws and regulations that affect the sector.
- Best practice approaches to NPO regulation emphasize **proportionality**. That is, they seek to preserve and encourage the dynamism of the sector while mitigating the vulnerability of the sector to terrorist abuse. This may entail the utilization of **risk assessment** tools, which also enable regulators to deploy limited resources most effectively.
- **Knowledge of the sector** is critical in regulating NPOs. The sector is remarkably diverse. NPOs have strong incentives to abide by norms of good governance. Within the sector, several initiatives have emerged to improve transparency and accountability, and to reduce fraud and corruption. These are often compatible with the recent emphasis on counter-terrorist financing.
- Different frameworks for regulating the NPO sector can be found in different regions and different jurisdictions. There can be no one-size-fits-all approach in preventing the abuse of NPOs. Some governments utilize multiple **regulatory tools** including registration and reporting requirements which provide opportunities to gather information and perform risk assessments. **Outreach** to the sector is critical to both raise awareness and underscore that NPOs are partners in this process.
- Within governments, several bodies are involved in preventing the abuse of NPOs. **Law enforcement** agencies have an important role in detecting, investigating, and disrupting abuse. Information sharing among regulators, financial intelligence units (FIUs), law enforcement, and prosecutors is vital as cases move from detection to investigation and prosecution. Different governments have evolved different mechanisms for **interagency cooperation**.
- At present, levels of compliance with **international standards** (especially the Financial Action Task Force's (FATF) Special Recommendation VIII) are low. Many states have yet to review their non-profit sector. Relatedly, while there are impediments to **international cooperation** at present, there may be opportunities to consider new mechanisms in the future.

The global perspective on NPOs and terrorist financing

Understanding the threat

In the post-9/11 period, governments have expressed concerns about the misuse of some NPOs as a mechanism for terrorist financing and organization. The Financial Action Task Force (FATF), for example, has said that “[t]error networks often use compromised or complicit charities and businesses to support their objectives”, with “the misuse of non-profit organizations for the financing of terrorism ... coming to be recognized as a crucial weak point in the global struggle to stop such funding at its source”.⁹ A number of governmental and intergovernmental assessments, drawing on data shared by governments, have warned that NPOs are vulnerable to exploitation by terrorists and other organized criminals, who may use them to raise, transfer, and divert funds, or may even have used NPOs as a vehicle for the mobilization and movement of personnel.¹⁰

Although comprehensive statistics on the number of cases of terrorist exploitation of different NPOs in different jurisdictions are unavailable, states around the world have reported some useful data on the subject. As recently as 2006, the Canadian government’s financial intelligence unit found that one third of its case disclosures relating to terrorist financing and other security threats to Canada related to NPOs.¹¹ A UK joint Treasury and Home Office report in 2006 also found that a “significant proportion” of terror finance investigations included analysis of links to charities.¹² And the U.S. Treasury reports that it has designated more than 40 charities and relief organizations and roughly 30 associated individuals in the last 10 years as supporters of terrorism, roughly 15 percent of all US terrorist financier designations.¹³ The United Nations’ Al-Qaida/Taliban list also includes about 90 NPOs. Therefore, while funds linked to terrorism comprise an extremely small portion of overall non-profit activity,¹⁴ where NPOs *do* become a conduit for terrorist financing or organization, the resulting damage both to physical security and to the reputation of the NPO sector may be very significant.¹⁵

NPOs may be seen as attractive targets for terrorist organizations for a number of reasons. By the nature of their business, NPOs sometimes have access to – and an ability to move – large amounts of cash. They frequently have a global presence that provides a framework for transnational operations, including in insecure and conflict-affected areas, where terrorist groups

⁹ Financial Action Task Force, *Terrorist Financing*, 29 February 2008.

¹⁰ See Financial Action Task Force, *Interpretative Note to Special Recommendation VIII: Non-Profit Organizations*, February 2006, Paris.

¹¹ There were 33 total case disclosures relating to terrorist financing and other security threats to Canada that year. See Financial Transactions and Reports Analysis Centre of Canada, *FINTRAC Annual Report 2006*, at 19, available at <http://www.fintrac.gc.ca/publications/ar/2006/menu-eng.asp>.

¹² HM Treasury, *Financial Challenge to Crime and Terrorism*, 28 February 2007.

¹³ U.S. Department of Treasury, *Anti-Terrorist Financing Guidelines: Voluntary Best Practices for U.S.-Based Charities*, revised 2006, Annex, pp. 14-15.

¹⁴ Forthcoming paper, International Center for Non-Profit Law (Doug Rutzen, Director), www.icnl.org.

¹⁵ For example, in Canada, the involvement of the Babbar Khalsa Society in financing the bombing of Air India flight 182 on June 1985 led to 329 fatalities. See *Air India Flight 182: A Canadian Tragedy*, Final Report of the Commission of Inquiry into the Investigation of the Bombing of Air India Flight 182, Ottawa, June 2010.

may be present or seek to operate. NPOs frequently have exposure to a large number of beneficiaries, some of whom may be vulnerable to radicalization. As NPOs often play a role in social mobilization, they may potentially provide a platform for terrorist organization. What is more, NPOs may be subject to limited state regulation on issues such as employee qualifications and vetting, capitalization requirements, and reporting and monitoring.¹⁶ Seen from this angle, NPOs thus risk not only becoming a weak link in global efforts to prevent and control terrorism – especially terrorist financing – but also risk long-term damage to their sectoral reputation from actual exploitation by terrorist groups.

While the risk of terrorist abuse in the non-profit sector along these lines is well known, it is important to consider the broader context. Experience suggests that terrorist financing usually occurs outside of the non-profit sector. The vast majority of NPOs pose little or no risk of terrorist abuse. It is also possible to distinguish between “complicit” and “exploited” NPOs. The former are those established by terrorists as a front for the purpose of terrorist financing. The latter are legitimate NPOs where terrorists have infiltrated and are engaging in abuse.¹⁷ Some anecdotal evidence hints that, where terrorist abuse of NPOs does occur, it is most likely that the organizations in questions are “complicit.” If substantiated, such a finding would support an emphasis on targeted investigation and intelligence work as a means to prevent terrorist financing through NPOs, supplemented by regulatory tools that target the entire non-profit sector.¹⁸ At each stage, it is important to be mindful of the many important contributions of NPOs, described above, and of the potential for damage to the sector and the rights of individuals within it.

Elaborating a response

The key international statement regarding the risk of terrorist abuse in the non-profit sector is FATF Special Recommendation VIII (SR VIII) adopted in October 2001:

Countries should review the adequacy of laws and regulations that relate to entities that can be abused for the financing of terrorism. Non-profit organisations are particularly vulnerable, and countries should ensure that they cannot be misused:

- (i) by terrorist organisations posing as legitimate entities;*
- (ii) to exploit legitimate entities as conduits for terrorist financing, including for the purpose of escaping asset freezing measures; and*
- (iii) to conceal or obscure the clandestine diversion of funds intended for legitimate purposes to terrorist organizations.*

¹⁶ Compare Charities Commission of England and Wales, *Counter-Terrorism Strategy*, July 2008, p. 5.

¹⁷ For a more detailed definition of these terms, see de Willebois, *Nonprofit Organizations and the Combatting of Terrorism Financing*.

¹⁸ Forthcoming paper, International Center for Non-Profit Law (Doug Rutzen, Director), www.icnl.org.

FATF has issued an Interpretative Note to SR VIII,¹⁹ which is formally binding on its members, as well as non-binding International Best Practices in implementing SR VIII.²⁰ SR VIII and its Interpretative Note require countries to protect the sector against abuse, and to identify and take effective action against those NPOs that either are exploited by, or actively support, terrorists or terrorist organizations. As set out in the Interpretative Note, “where NPOs suspected of or implicated in terrorist financing or other forms of terrorist support are identified, the first priority of countries must be to investigate and halt such terrorist financing or support”.

FATF emphasizes that regulation should not be merely punitive (designed to take effective action against those NPOs that are exploited by, or actively support, terrorist organizations), but also preventive (designed to protect NPOs from such exploitation and abuse).²¹ It also stresses that such regulatory measures “should not disrupt or discourage legitimate charitable activities”, but should rather promote “transparency, integrity and public confidence in the management and functioning of all NPOs”.²² For such regulation to be both credible and effective, these documents suggest, it must be based on “[d]eveloping co-operative relationships”,²³ between NPOs and a range of relevant regulatory authorities, such as sector regulators, tax authorities, financial intelligence units (FIUs), donor organizations, law enforcement agencies, and intelligence authorities.²⁴ And while such collaboration, the documents argue, may take diverse forms, “[a]n effective approach ... is one that involves all four of the following elements: (a) Outreach to the sector, (b) Supervision or monitoring, (c) Effective investigation and information gathering, and (d) Effective mechanisms for international co-operation.”²⁵

It is generally acknowledged that levels of compliance with SR VIII remain quite low. Indeed, in the (almost) ten years since SR VIII emerged, several implementation challenges have arisen for states. These include:

Diversity and commonality: It may be as misleading to speak of “*the* NPO sector” as it is to speak of “*the* for-profit sector”. NPOs take a huge variety of corporate and legal forms, from large international philanthropic foundations, to small, localized mutual aid societies, to single-issue lobbying and advocacy groups. They play a very wide range of social roles, from the provision of social security, welfare, and humanitarian relief, to the fostering of cultural and social solidarity, to the pursuit of religious, policy, political, or educational objectives. These different functions and roles are, in turn, embedded in very different social, political, and constitutional contexts, generating a great diversity in the legal and regulatory approaches that states take to regulating these organizations.

Different historical and legal traditions also impact the modalities of regulation. Some states prefer to codify the exact limits of lawful NPO activity, while others prefer to identify only the limits of permissible objectives, and leave NPO conduct subject to regulation by other parts of

¹⁹ FATF, *Interpretative Note*, supra. See also FATF, *AML/CFT Evaluations and Assessors: Handbook for Countries and Assessors*, Paris, April 2009, pp. 63-64.

²⁰ FATF, *Combating the Abuse of Non-Profit Organisations: International Best Practices*, 11 October 2002, Paris.

²¹ *Ibid.*, p. 1.

²² *Ibid.*

²³ *Ibid.*, p. 2.

²⁴ *Ibid.*, pp. 2-3.

²⁵ *Ibid.*, p. 3.

the law (dealing with corporate activity and governance, taxation, political speech, market activity, or religious or fraternal conduct). Different states will give different decision-making powers to different regulatory bodies: specialized agencies (such as the Charity Commission of England and Wales); courts; tax authorities; and legal registers.²⁶

It is perhaps unhelpful, therefore, to think that any ‘one-size-fits-all’ approach to regulation and enforcement could be effective, let alone legitimate. Regulatory diversity seems inevitable. Yet it is also important to recognize that even as different states adopt different *modalities* of regulation, they may be pursuing common policy *objectives*, and confronting similar challenges as they try to meet those policy objectives.

Proportionality and risk analysis: As noted above, the risk of terrorist abuse of the non-profit sector may vary over time, requiring that states consider which kinds of tools are appropriate to the specific threat faced. In turn, proportionality is a critical objective in developing policy responses.²⁷ To be credible and effective, NPO regulation should not impose administrative, business, or reputational costs for NPOs that seem disproportionate to the risk those NPOs face singly and collectively – and which other social actors may face – as a result of their potential abuse by terrorists. This has been recognized by numerous regulators.²⁸ Disproportionate regulation will not only undermine trust between NPOs and regulators, it may also drive NPO activity underground, working against the broader objectives of preventing terrorism financing as well as promoting an enduring atmosphere of trust and cooperation between authorities and the NPO sector.²⁹

Several states seek to operationalize proportionality by utilizing risk-based tools and analysis.³⁰ Among other benefits, risk analysis can be a useful way for states to determine how to invest limited regulatory resources. However, certain specific challenges arise here, including the absence of a reliable evidence base on both the costs that NPOs face from different forms of regulation, and the risks that flow from various kinds of NPO activity. In addition, such a risk-based approach also depends on a certain level of regulatory and enforcement capacity as a source of information and analysis. There are good reasons to believe that NPOs that may be most exposed to the risk of terrorist abuse may operate in jurisdictions with low capacity to counter that threat. Still, the principle of proportionality and the adoption of a risk-based approach to regulation have been common elements in many states’ responses to the challenge of securing the non-profit sector against the risk of terrorist abuse.

²⁶ See for example European Center for Non-Profit Law, *Study on Recent Public and Self-Regulatory Initiatives to Improve Transparency and Accountability of Non-Profit Organizations in the European Union*, April 2009, p. 122; and see D. Rutzen, M. Durham, and D. Moore, *NPO Legislation in Central and East Europe*, International Centre of Not-for-Profit Law.

²⁷ For a recent discussion on this topic, see de Willebois, *Nonprofit Organizations and the Combatting of Terrorism Financing*.

²⁸ See for example United Nations Counter-Terrorism Implementation Task Force, *CTITF Working Group Report: Tackling the Financing of Terrorism*, October 2009, New York, pp. 3-4.

²⁹ Charities Commission, *Counter-terrorism Strategy*, p. 8.

³⁰ For example, see: Australian Government, *Safeguarding your organisation against terrorism financing: A guidance for non-profit organisations*, Canberra, 2009; U.S. Department of Treasury, *Risk Matrix for the Charitable Sector*, 8 March 2007 and ; UKCC Risk and Proportionality Framework for the Commissions’ Compliance Work, June 2008..

Low capacity and humanitarian crises: As FATF has recognized, “low-capacity countries” confront specific challenges in implementing FATF standards, including effectively regulating NPOs. These challenges include: competing priorities for scarce government resources; limited human and financial resources; weak legal institutions; the predominance of informal and cash-based economies; poor documentation and data retention systems; and small financial sectors.³¹ These dilemmas are heightened in post-disaster settings, where the need to act is particularly urgent. Acknowledging similar concerns, the UN Working Group on Tackling the Financing of Terrorism has recently written that:

*Under some circumstances, including humanitarian crises, unavailability of reliable documentation, lack of existing registration requirements and lack of NPO resources, certain due diligence requirements can be unrealistic. There exist cases in which counter-terrorism financing controls precluded aid from being delivered to those in need. This can create a void in which terrorist organizations are in fact delivering humanitarian assistance and building political support, thus worsening efforts to curb terrorism and its financing.*³²

For these reasons, FATF recognizes that “[g]overnment oversight [of NPOs] should be flexible, effective, and proportional to the risk of abuse”, and that “[m]echanisms that reduce the compliance burden without creating loopholes for terrorist financiers should be given due consideration”.³³ For example, “[s]mall organisations that do not raise significant amounts of money from public sources, and locally based associations or organisations whose primary function is to redistribute resources among members may not necessarily require enhanced government oversight”.³⁴ The challenge, then, is to identify regulatory and enforcement measures that promote prudential practices at a reasonable cost for both states and for NPOs that operate in difficult settings.

It is a premise of this initiative, as CTED has concluded from more than 60 visits to UN member states, that good practice on NPO regulation exists in a wide range of jurisdictions and can be just as prevalent and often more effective in so-called low-capacity countries than in wealthier countries which have not yet taken concerted action to address or even review their NPO sectors for risk. States that rely on the sector for vital economic resources often prioritize action to monitor its activities and protect its integrity,

The view from the sector

Before turning to discuss the regional perspective, it is worth considering how the post-9/11 uptick in concern for terrorist financing has been greeted by those in the non-profit sector. For many, the recent emphasis on countering terrorist abuse of NPOs is interpreted as an extension of the existing trend towards the establishment of higher standards for accountability and

³¹ FATF, *Guidance on Capacity Building for Mutual Evaluations and Implementation of the FATF Standards within Low Capacity Countries*, 29 February 2008, Paris, pp. 4-5.

³² UN CTITF, *CTITF Working Group Report*, p. 18.

³³ FATF, *Combating the Abuse of Non-Profit Organisations: International Best Practices*, 11 October 2002, Paris, p. 2.

³⁴ *Ibid.*

governance in the sector. Importantly, this trend has its origins within the sector itself and there is now a lively debate about “self-regulatory” initiatives.³⁵ Civil society actors have had more space to operate, and increasing impact, in the post-Cold War period. In some cases, for reasons distinct from terrorist financing, the non-profit sector has become an object of controversy and has been perceived as vulnerable to corruption, misappropriation, and abuse. Therefore, alongside greater visibility and influence, the operations of NPOs are the object of more intense scrutiny independently of any CTF issue. In turn, those within the sector have recognized that there are strong incentives to elaborate public standards for transparency, accountability, financial management, and good governance. The result is that civil society self-regulatory initiatives have proliferated in the last two decades. Prominent examples include the International NGO Accountability Charter³⁶, the Sphere Project³⁷, the Humanitarian Accountability Partnership³⁸, and the Active Learning Network for Accountability and Performance in Humanitarian Action.³⁹ Beyond these, the think tank, One World Trust, which maintains a database of such initiatives, has recorded more than 340 examples from across the world (whether at the international, regional, or domestic level).⁴⁰ This reflects a remarkable increase in a relatively short period, implying that there is much good will within the sector to entertain further discussion with the goal of raising governance standards.

Self-regulatory initiatives generally fall into one of five categories: codes of conduct and ethics; certification schemes (including self-, peer-, and third party certification); information services and sharing; working groups (i.e., to establish toolkits or guides); and awards schemes.⁴¹ As this suggests, there is much variation in self-regulatory initiatives. For example, the substantive focus of such measures is diverse, covering everything from operational concerns and interactions with external parties and beneficiaries, to internal management and governance-focused matters.

³⁵ For example, see Shana Warren, Robert Lloyd and Jeannet Lingán (2009) “The growth of CSO self-regulation,” *Alliance Magazine* (1 December), available at www.alliancemagazine.org; Shana Warren and Robert Lloyd (2009) *Civil Society Self-Regulation: The Global Picture*, Briefing paper no. 119, One World Trust; Mary Kay Gugerty, Mark Sidel and Angela L. Bies (2010) “Introduction to Minisymposium: Nonprofit Self-Regulation in Comparative Perspective – Themes and Debates,” *Nonprofit and Voluntary Sector Quarterly*, Vol. 39 No. 6, pp. 1027-38; Helmut Anheier and Amber Hawkes (2008) “Accountability in a Globalising World: International Non-Government Organizations and Foundations,” in Martin Albrow et al. (eds.) *Global Civil Society 2007/08: Communicative Power and Democracy* (London: Sage), pp. 124-43; Michael Szporluk (2009) “A Framework for Understanding Accountability of International NGOs and Global Good Governance,” *Indiana Journal of Global Legal Studies*, Vol. 16 Issue 1, pp. 339-61; Mary Kay Gugerty and Aseem Prakash (eds.) (2010) *Voluntary Regulation of Non-profit and Nongovernmental Organizations: An Accountability Club Framework* (New York: Cambridge University Press); Mark Sidel (2009) *Regulation of the Voluntary Sector: Security and Freedom in an Era of Uncertainty* (New York: Routledge).

³⁶ Adopted 6 June 2005. See www.ingoaccountabilitycharter.org.

³⁷ See www.sphereproject.org.

³⁸ See www.hapinternational.org.

³⁹ See www.alnap.org. For historical background to, explanation and analysis of these initiatives see James Cockayne et al., *Beyond Market Forces: Regulating the Global Security Industry*, International Peace Institute, New York, 2009, pp. 122-129.

⁴⁰ One World Trust, “Database of civil society self-regulatory initiatives,” available at <http://www.oneworldtrust.org/csoproject/>. See also Shana Warren, Robert Lloyd and Jeannet Lingán (2009) “The growth of CSO self-regulation”; Shana Warren and Robert Lloyd (2009) *Civil Society Self-Regulation: The Global Picture*.

⁴¹ This paragraph draws on Shana Warren and Robert Lloyd (2009) *Civil Society Self-Regulation*, esp. pp. 5-6. For a similar typology, see Mary Kay Gugerty, Mark Sidel and Angela L. Bies (2010) “Introduction to Minisymposium,” p.1030.

Similarly, these measures vary in terms of their structure and degree of formality. Importantly, however, while some initiatives may involve government actors in some way, they are not mandated by government.

Self-regulatory initiatives, however, are not a panacea against occasional instances of poor administration within the non-profit sector. Several commentators remain skeptical of the sudden upsurge in these measures, hinting that they provide a façade of accountability while practices in the field have remained largely unchanged.⁴² Evidence of the effectiveness of self-regulatory initiatives has not yet been systematically gathered and analyzed. The jury remains out. Still, for present purposes it is important to ask: what might this trend mean for the current effort to secure the non-profit sector against terrorist abuse? It would be premature to advocate any particular self-regulatory initiative for the purposes of advancing implementation of CFT measures in the non-profit sector. That claim, it seems, could not be justified on the basis of our current understanding about these initiatives. Further, it remains unclear how well sector-led self-regulatory initiatives might articulate with government efforts to secure the sector against terrorist abuse. Rather, and more modestly, self-regulatory initiatives may provide a learning opportunity for those seeking to engage the sector on regulatory matters. In other words, further analysis of this body of initiatives may yield insights into the language and tools that states could use to engage NPOs on familiar terms.

NPOs and terrorist financing: Regional perspectives in South and Southeast Asia

Evolving threats and responses

Terrorism remains a priority security concern for states in South and Southeast Asia. According to the Global Terrorism Database maintained by the University of Maryland, approximately 40% of the terrorism incidents in the world since 2001 have occurred within those regions.⁴³ The sources of these threats, and the support networks that extremists in those subregions draw upon, have been described in depth elsewhere.⁴⁴ A general finding of this literature is that as the threat of terrorism has evolved over time, so have methods of financing terrorism. Several commentators within this debate give particular emphasis to the role of charities in supporting terrorism, for example, to raise and move funds.⁴⁵ They also note that some NPOs that appear on

⁴² David Rieff (2008) “Tsunamis, accountability and the humanitarian circus,” Humanitarian Practice Network, www.odihpn.org.

⁴³ See www.start.umd.edu/gtd. Between 2002 and 2008 (the last year for which data is available), 1650 of 15,222 (9.2%) incidents worldwide occurred within Southeast Asia, which is defined to include Brunei, Cambodia, Indonesia, Laos, Malaysia, Myanmar, Philippines, Singapore, South Vietnam, Thailand, Timor-Leste and Vietnam. Over same time period, 4783 incidents (31.8% of the global total) occurred within South Asia, which is defined to include Afghanistan, Bangladesh, Bhutan, India, Maldives, Mauritius, Nepal, Pakistan, Seychelles and Sri Lanka.

⁴⁴ In addition to the sources cited below, note the range of resources provided by the Asia-Pacific Group on Money-Laundering, available at: <http://www.apgml.org/frameworks/default.aspx?FrameworkID=7>. For a recent discussion, see Arabinda Acharya (2009) “Terrorist Financing in Southeast Asia,” in Daljit Singh (ed.) *Terrorism in South and Southeast Asia in the Coming Decade* (Singapore: Institute of Southeast Asian Studies and Macmillan).

⁴⁵ Zachary Abuza (2003) “Funding Terrorism in Southeast Asia: The Financial Network of Al Qaeda and Jemaah Islamiya,” *NBR Analysis*, Vol. 14, No. 5; Aurel Croissant and Daniel Barlow (2007) “Terrorist Financing and Government Responses in Southeast Asia” in Jeanne K. Giraldo and Harold A. Trinkunas (eds.) *Terrorism Financing and State Responses: A Comparative Perspective* (Stanford, CA: Stanford University Press), pp. 203-30;

the UN sanctions list have attempted to operate in South and Southeast Asia. Similarly, high profile events in those subregions – especially the response to the 2004 tsunami, and recent natural disasters in Pakistan – have elicited concern about the potential for terrorist abuse of the non-profit sector.⁴⁶

National emergencies resulting from natural and/or humanitarian disasters in areas where terrorist organizations are present or in control have presented a dilemma in the two subregions. The need to provide urgent assistance to endangered populations may prompt NPOs to conduct legitimate operations in cooperation with or through those organizations, thus exposing themselves to the risk of prosecution for material support to terrorism. Discussion during the 22-24 March meeting will look at, among other things, how this is can be addressed by policymakers and NPOs facing this situation.

If the threat is well documented, the record of cooperation against terrorism in South and Southeast Asia has been mixed.⁴⁷ The institutional architecture for regional security cooperation – including the Association of Southeast Asian Nations (ASEAN), the ASEAN Regional Forum, the Asia-Pacific Economic Cooperation (APEC) Forum, and the South Asian Association for Regional Cooperation, among other bodies – has been mobilized to a greater or lesser extent around the counterterrorism agenda. In recent years, several new regional mechanisms for counterterrorism cooperation have emerged. These include practical measures to share experiences and undertake capacity building, such as through the International Law Enforcement Academy in Bangkok, the Southeast Asian Regional Centre for Counter-Terrorism in Kuala Lumpur, and the Jakarta Centre for Law Enforcement Cooperation. These operational initiatives have helped improve regional cooperation and have created space for policymakers to deal with difficult issues associated with counterterrorism at a practical level.

From this experience, it is reasonable to conclude that states in the two subregions have a clear preference for practical, operational-level cooperation in the field of counterterrorism. A further example in this regard, directly relevant to the debate about NPO regulation, is the Asia Pacific Group on Money Laundering (APG). The APG was formed in 1997 with eight initial members. It now has 40 active members with an additional four observer jurisdictions. It partners with 23 international organizations in the execution of its increasingly busy workload, which is supported by a Secretariat with 10 permanent staff and secondees.⁴⁸ The APG is the largest of the FATF-style regional bodies and is integrated into the global AML/CFT regime that has emerged over the last decade. Before discussing its work further, it is useful to survey the role of the NPOs in South and Southeast Asian civil society today.

Aurel Croissant and Daniel Barlow (2007) “Following the Money Trail: Terrorist Financing and Government Responses in Southeast Asia,” *Studies in Conflict and Terrorism*, Vol. 30 No. 2, pp. 131-56.

⁴⁶ See for example: Evan Kohlmann (2006) *The Role of Islamic Charities in International Terrorist Recruiting and Financing*; Alistair Scrutton, “US, Pakistan warn of militant plots over floods”; United States Treasury, *Typologies and Open Source Reporting On Terrorist Abuse Of Charitable Operations In Post-Earthquake Pakistan And India*.

⁴⁷ Peter Romaniuk (2010) *Multilateral Counter-terrorism: The Global Politics of Cooperation and Contestation* (New York: Routledge), pp. 119-23; Alistair Millar, Eric Rosand, and Jason Ipe (2007) *Implementing the United Nations General Assembly’s Global Counter-Terrorism Strategy in the Asia-Pacific*, Center on Global Counter-terrorism Cooperation.

⁴⁸ *Asia-Pacific Group on Money Laundering Annual Report 1 July 2009-30 June 2010* (30 October 2010). Available at www.apgml.org.

The rise of civil society in South and Southeast Asia

For several reasons, the civil society sector in South and Southeast Asia – which includes NPOs – has become more diverse and dynamic in recent decades.⁴⁹ Political changes in the two subregions have sometimes increased space for non-state actors. Economic growth in the two subregions, especially the emergence of a burgeoning middle class, has also given rise to increasing levels of philanthropy. Moreover, as advocates for civil society have noted, “[i]n many countries in the region, deeply rooted traditions, [and] cultural and religious beliefs in the importance of helping others ... [have] created a culture of individual giving to religious organizations, and to the needy.”⁵⁰ Against the backdrop of globalization and vastly improved communications technologies, the non-profit sector has steadily expanded in size, scope, and influence across the two subregions. In most states, this has been welcomed or actively nurtured by governments.

Accompanying this growth has been a dialogue about governance issues. As at the global level, this dialogue has often been led by civil society actors themselves. For example, an umbrella organization, the Asia Pacific Philanthropy Consortium (APPC), was founded in the mid-1990s. Its roles include policy advocacy, awareness raising, resource mobilization, and capacity building within the sector. Its conferences and publications address issues of NPO governance and include reviews of civil society responses to major disasters, such as the 2005 tsunami.⁵¹ While the One World Trust database on civil society self-regulatory measures lists no region-wide initiative in Asia, such frameworks have been elaborated at the national level in some states. Research has shown that they have become more prevalent over time.⁵²

One recent survey of such initiatives in India, Cambodia, the Philippines, and Pakistan found that actors in the region tend to prefer mechanisms such as certification processes and codes of conduct.⁵³ This study also identified several dilemmas that have emerged in implementing self-regulatory measures, including enforcement, financial sustainability (of the initiatives themselves), and overlapping requirements among initiatives. Nonetheless, for present purposes, it suffices to note that the development of these initiatives, and their diffusion over time, suggests

⁴⁹ These developments are described in greater depth by: Tadashi Yamamoto et al. (1995) *Emerging Civil Society in the Asia Pacific Community: Nongovernmental Underpinnings of the Emerging Asia Pacific Community*, Japan Center for International Exchange; Nakamura Mitsuo (2001) “Introduction,” in Nakamura Mitsuo, Sharon Siddique and Omar Farouk Bajunid (eds.) *Islam and Civil Society in Southeast Asia* (Singapore: Institute for Southeast Asian Studies), pp. 1-30; Tadashi Yamamoto, “Roles and Priorities of Foundations in Asia,” presentation to the “Asia Confers 2” conference of the Council on Asian Foundations and Organizations, Hong Kong, 2002; Rory Francisco-Tolentino, “Philanthropy in the Asia Pacific: Trends, Challenges and Opportunities,” presentation at WINGSforum, Sydney, 13 March 2002; Mutiah Alagappa (ed.) (2004) *Civil society and political change in Asia: Expanding and contracting democratic space* (Stanford, CA: Stanford University Press).

⁵⁰ Rory Francisco-Tolentino, “Philanthropy in the Asia Pacific.”

⁵¹ See <http://www.asiapacificphilanthropy.org>.

⁵² Shana Warren and Robert Lloyd (2009) *Civil Society Self-Regulation*; Mark Sidel (2003) “Trends in Nonprofit Self-Regulation in the Asia Pacific Region: Initial Data on Initiatives, Experiments and Models in Seventeen Countries,” Unpublished paper. Available at <http://zunia.org/uploads/media/knowledge/marksegal.pdf>; Mark Sidel (2010) “The Promise and Limits of Collective Action for Nonprofit Self-Regulation: Evidence From Asia,” *Nonprofit and Voluntary Sector Quarterly*, Vol. 39 No. 6, pp. 1039-56.

⁵³ Mark Sidel (2010) “The Promise and Limits of Collective Action for Nonprofit Self-Regulation.”

that the non-profit sector across these subregions is both familiar with, and interested in, improving standards for transparency and accountability. Discussions around the issue of NPO regulation have often followed the debate initiated within the sector itself.⁵⁴ Achieving an integrated discussion among all stakeholders may be useful as future options for the regulation of the sector are debated and implemented.

Regional challenges in implementing global standards

How, specifically, have states in South and Southeast Asia responded to the post-9/11 increase in concern regarding the abuse of the non-profit sector by terrorists? A preliminary point here is to note that some divergence in response is always likely. States vary in terms of their legal systems, regulatory practices, and levels of development. Similarly, the status and activities of NPOs are different from state to state. Therefore, perhaps the best way to gain an overall perspective on this issue is to pool data on implementation of SRV III by member jurisdictions in the APG, which encompasses both South and Southeast Asia.⁵⁵

Above, it was noted that, at the global level, compliance with SR VIII remains weak. This trend is certainly reflected at the regional level. From 2005 to the present, 30 APG members have been evaluated.⁵⁶ The results are summarised in Table 1, below.

Table 1: Implementation of SRVIII by APG members
2005-2011

Compliant (C)	1
Largely compliant (LC)	5
Partially compliant (PC)	17
Non-compliant (NC)	7
<i>Total</i>	<i>30</i>

According to the evaluation reports, there are several common causes of non-compliance. For states rated NC, there was a general failure to undertake a review of the non-profit sector, as called for by SR VIII. In several of these cases, the basic elements of a regulatory framework are absent or under-developed.⁵⁷ Here, NPOs operate informally. In other cases, such frameworks are in place but implementation is weak or ineffective. In still other cases, reviewers noted that specific tools – including outreach and guidance for the sector – have not been developed.

⁵⁴ “Report on the Workshop on Improving Regulation of the Non-Profit Organisation Sector in Bangkok,” APEC doc. 2009/SOM2/CTTF/003, 19th Counter-terrorism Taskforce Meeting, Singapore, 2-3 August 2009.

⁵⁵ See <http://www.apgml.org/documents/default.aspx?DocumentCategoryID=17>.

⁵⁶ These are: Australia, Bangladesh, Brunei Darussalam, Cambodia, Canada, Chinese Taipei, Cook Islands, Fiji, Hong Kong (China), India, Indonesia, Macao (China), Malaysia, Mongolia, Myanmar, New Zealand, Pakistan, Palau, PR China, Philippines, Republic of Korea, Samoa, Singapore, Solomon Islands, Sri Lanka, Thailand, Tonga, United States, Vanuatu, Vietnam.

⁵⁷ The basic elements of NPO regulation are summarized here: www.ngoregnet.org/About_effective_regulation/The_regulatory_bridge/Building_blocks_of_effective_reg.asp.

More than half of the states in this sample were rated PC by reviewers. In most of these cases, states had undertaken a review of their non-profit sector, but that review was not completely adequate. For example, the review may not have given due consideration to vulnerabilities to abuse by terrorists. Other states rated PC were in the process of undertaking a review. States rated PC were also faulted for failing to develop a strategy to reduce the risk of terrorist financing in the non-profit sector. Several other shortcomings were common among this group of states, too. For example, outreach was deemed to be inadequate in many cases, as were record keeping requirements and provisions relating to interagency cooperation. In still other cases, reviewers commented that more resources ought to be devoted to the various aspects of non-profit regulation.

States rated as LC had undertaken reviews of their non-profit sectors. Common criticisms here pertained to the extent of outreach and guidance to NPOs, as well as inadequate coordination among the different government agencies mobilized around this issue. In other cases, it was noted that supervision and oversight mechanisms were not adequately focused on terrorist financing risks.

Of course, mutual evaluations are an iterative process and the data in Table 1 does not capture measures taken by states as a result of follow-up mechanisms. Further, for some states, the latest mutual evaluation is now almost five years old, and it is likely that improvements have been made. A related point is that some states in the region have sought and received technical assistance. Still, as this summary makes clear – and in light of the fact that only a single APG member has been rated as fully compliant – states in the region have significant work to do if they are to adhere to the global standard in this domain. It warrants mention that a more complete review of state approaches to terrorist financing and NPO regulation might look beyond SR VIII alone. Also, a comprehensive assessment of state responses might take into account the impacts (both positive and negative) on NPOs themselves. But that task is beyond this discussion paper. Here, it seems apt to surmise that, in order to address the existing implementation gap, there will likely be continued efforts to regulate the non-profit sector across the APG-region in the next decade.

Conclusion: Learning through dialogue

At the global, regional, and subregional levels, the NPO sector remains vulnerable to terrorist financing. To protect it, various measures both of a preventive and reactive nature can be taken. It has to be emphasized that promoting opportunities for charitable giving and reducing the risk that the sector is abused for illicit purposes are in no way mutually exclusive goals. Quite the contrary, raising awareness of the risk of terrorism financing, building strong regulatory tools and enforcement practices to prevent abuse, and prosecuting those who are complicit or using NPOs for an illegal purpose are part of the same process and contribute to encouraging charitable giving by reassuring donors that their money will not be misused.

A key objective of this process is to build consensus and capacity. For this reason, dialogue is vital at many levels: between regulators and NPOs but also between regulators, law enforcement, and intelligence agencies. When states come to regulate NPOs, public security, market integrity, and revenue maximization are frequently among their concerns. There is also a need for advisory

and support services to assist NPOs to carry out their activities lawfully, in accordance with their stated purpose, and in a manner which reduces overall systemic risk.