

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

Bangkok, Thailand

22-24 March 2011

KEY OBSERVATIONS OF THE ORGANIZERS

1. The following summarizes and elaborates some of the key findings and recommendations from the “Regional working group meeting on preventing abuse of the non-profit sector for the purposes of terrorist financing,” held in Bangkok from 22-24 March 2011. The Center on Global Counterterrorism Cooperation prepared this summary. It is not an official or complete record of the proceedings and does not necessarily reflect all the views of the meeting sponsors or participants.
2. The meeting was the second in a process to discuss the risk of terrorist abuse of the non-profit sector and to share good practices and foster cooperation in responding to that risk. In light of the diversity of the sector, it is widely accepted that there can be no “one-size-fits-all” approach to regulating non-profit organizations (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 to gather tools and good practices to protect the sector from abuse. This dialogue, in its global component, was initiated with an expert group meeting in London from 18-20 January 2011. The key observations of the organizers from that workshop are attached.¹ Against this background, the Bangkok meeting provided the opportunity for experts from South and Southeast Asia to discuss advances that have been made, and challenges that remain, in protecting NPOs from abuse across the region.
3. The meeting was convened under the auspices of the UN Counter-Terrorism Committee Executive Directorate (CTED). It was supported by the governments of Canada, New Zealand, Switzerland, and the United Kingdom, and was hosted by the Thai government. CTED, the Center on Global Counterterrorism Cooperation, and the Charity Commission of England and Wales collaborated in organizing the meeting. Participants included national-level officials with a role in counter-terrorist financing or charities regulation from several governments in South and Southeast Asia, as well as officials from international and regional organizations active in this field. Representatives from the non-profit sector also gathered to provide their perspective on the vulnerability of the sector to terrorist abuse and to reflect on the responses of states – and the sector – to the challenges that arise.

Good practices in the region

4. The meeting included both plenary sessions and working groups, where participants debated fictitious case studies that were designed to enable the identification of good practices across South and Southeast Asia. An initial point made here was that, given the

¹ The full text of the organizer’s summary from the London meeting is available at http://www.globalct.org/images/content/pdf/summaries/18_20Jan11_Keyobservations.pdf.

diversity among the participating states, as well as the breadth of NPO activity across the region, there is always likely to be some variation in regulating the sector. However, in the course of their discussion, participants described a range of good practices.

5. Participants gave several examples of how the principle of **proportionality** can be implemented in practice. In some states, **risk assessment** tools are used to determine the scope and reach of regulatory measures. In other countries, such measures are carefully calibrated to build trust with the non-profit sector and to deter NPOs from fleeing into the informal sector. In investigating cases of possible abuse, participants noted that terrorism is often a “zero tolerance” issue. Nonetheless, the decision to pass a case from regulators to law enforcement or financial intelligence unit (FIU) officials is often preceded by gathering and analyzing relevant data (e.g. a “desk audit”).
6. Many states have taken steps to improve their **knowledge of the sector**. Where they have done so, participants described their experiences in reviewing the sector, as required by Financial Action Task Force Special Recommendation VIII (FATF SRVIII, discussed further below). In some cases, governments collaborated with civil society actors in undertaking the review and, usefully, this had the effect of building relationships of trust among those involved. Other states have created databases to enable a more robust understanding of the sector. For example, such databases may allow regulators to map NPO activity and to analyze the flow of funds into and out of an organization.
7. Participants described a range of **regulatory tools** that are deployed across the region. For example, some states require, as a condition of registration, that NPOs establish a bank account and conduct all of their business through formal financial institutions. Some states go further, requiring the payment of an up-front donation by the NPO to itself, to ensure that the stated charitable purposes can be pursued and to provide a form of guarantee in case of malfeasance. Some states impose a “fit and proper persons” test on NPO officers. Short of seeking law enforcement action, regulators possess several tools to police governance standards (often described using the term, “other enforceable means”). In some states, NPOs can be deregistered. In others, tax exempt status can be suspended or revoked. Some regulators have the ability to freeze the funds of an NPO while an investigation is underway, and to redistribute them if further enforcement action is taken. Many regulators have developed a monitoring function, which may involve reporting by NPOs as well as on-site visits. Such efforts can be resource intensive and some states have automated reporting processes to improve efficiency.
8. **Outreach** to the non-profit sector has been undertaken by many states in the region. Some have institutionalized meetings and other opportunities for dialogue between government agencies and the non-profit sector. Acknowledging that actors in the sector are in need of assistance, some states have held capacity-building workshops for NPOs. Some states require that, upon registration, NPO officers undertake a short training course, to underscore the importance of good governance practices. Some states have found that, in interacting with the non-profit sector, the way in which this issue is framed is important. An explicit emphasis on terrorist financing can put civil society actors offside and give the impression that governments are suspicious of them. Rather, in

engaging the sector, states have found more success in using the language of “good governance,” reiterating that states and NPOs have a common interest in protecting the sector against abuse. To ensure consistency, participants suggested that a common template for outreach activities might be a useful tool.

9. Participants noted the central role played by **law enforcement** agencies and FIUs, especially in detecting, disrupting, and investigating instances of NPO abuse. In light of trends in terrorist financing in the region (i.e. terrorists’ use of cash and of informal mechanisms to transfer funds), the financial activity of extremists is often identified through tip-offs to law enforcement and intelligence. Some states permit civil investigations to proceed alongside criminal investigations: in these states, in turn, administrative sanctions may be pursued separately from criminal sanctions. The degree of involvement of FIUs depends on their mandate and capacity, which varies across the region. Regarding the detection of terrorist financing through the non-profit sector, participants noted that this is more likely to occur through “complicit” NPOs, rather than through the diversion of funds from legitimate charities by individual wrong-doers.²
10. Participants further discussed the nature of “charitable” activities led by terrorist organizations as a means to raise funds and generate community support and agreed that as a matter of policy governments should ensure that terrorist groups do not in any way benefit from charitable activities and that, where links between charities and terrorism are detected, those activities must be prosecuted.
11. Different states in the region have developed different approaches to **interagency cooperation**. Most broadly, many states have initiated “whole-of-government” taskforces on counterterrorism or more focused mechanisms on anti-money laundering and counter-terrorist financing. These bodies may provide opportunities to share information and may be mobilized as instances of abuse proceed from detection, to investigation and prosecution. In some states, information sharing mechanisms include formal memorandums of understanding or guidelines agreed among relevant agencies. In other states, the secondment of staff among stakeholder agencies has facilitated information exchange. In addition, participants noted the importance of informal contacts among relevant agencies and officials.
12. Discussions also focused on the front-line role of financial institutions in detecting possible abuse via the monitoring of NPO funds. Classical tools such as customer due diligence or supervisors’ inspections were examined in relation to NPOs. Participants agreed that the financial sector was not necessarily equipped to detect such abuse and would need intelligence from government agencies or would rely on watch lists. However, good practices were identified, such as government-issued guidelines to the sector on how to conduct sector-specific diligence or inspections, and pre-conferences

² “Complicit” NPOs are those established by terrorists as a front for the purpose of terrorist financing. They are contrasted with “exploited” NPOs, which are legitimate charities that have been infiltrated by terrorists who are engaging in abuse. See Emile van der Does de Willebois (2010) *Nonprofit Organizations and the Combatting of Terrorism Financing: A Proportional Response*, World Bank Working Paper No. 208 (Washington, DC: World Bank).

before inspections where supervisors and banks can agree on specific focus for attention. Participants also encouraged the diffusion of typologies to the financial sector as a good mean to raise awareness of risks. Participants cautioned that a heavy handed approach to regulation might drive NPOs to utilize cash remittances or other payment systems outside the financial sector

Building on strengths, addressing challenges

13. While the meeting amply illustrated the range of good practices in the region to protect the non-profit sector from abuse, at the aggregate level the member states of the Asia-Pacific Group on Money Laundering (APG) have achieved only a modest level of compliance with the relevant **international standard** in this area, FATF SRVIII. Of the 30 APG states to have been evaluated between 2005 and 2011, 80% have been “partially compliant” or worse (see Table 1).³

**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>

14. Participants discussed the specific implementation problems that characterize states in the APG region including weak regulatory controls, limited outreach and guidance to the sector, and an under-appreciation of risks. Participants also noted that problems such as these – and, indeed, low levels of compliance with SRVIII – are consistent with the global trend. At that level, analysts have found that states have been slow to undertake a review of their NPO sector (as required by SRVIII) and that significant capacity constraints exist.
15. Beyond compliance with SRVIII, participants pointed to several challenges faced by states in the region as they seek to protect the non-profit sector against terrorist abuse. For example, with regard to **international cooperation**, several participants noted that links among law enforcement and FIUs are better developed than those among regulatory agencies. Among the participants from these agencies, several noted that there may be value in developing the professional network among them.
16. In addition, participants noted the particular challenge presented by NPO action in post-conflict and post-disaster settings. Faced with these circumstances, some states have relaxed their usual regulatory requirements – or implemented expedited procedures – to enable humanitarian assistance in a timely fashion. However, difficulties were

³ The states that have been evaluated 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. The mutual evaluation reports are available at <http://www.apgml.org/documents/default.aspx?DocumentCategoryID=17>.

subsequently faced when attempting to retroactively impose reporting requirements.

17. A further challenge identified by participants concerns their capacity to achieve and maintain good practices. Lack of capacity is one reason why levels of compliance with SRVIII are low. For example, in some cases, mechanisms for outreach to the non-profit sector were established but could not be sustained, and levels of trust subsequently waned. Governments, of course, have a range of priorities and it can be difficult to keep this issue in the forefront. Such constraints point to the need for capacity-building assistance.

NPO perspectives

18. The regional working group meeting provided the opportunity for representatives from the non-profit sector to discuss their perception of the risk of terrorist abuse in the sector; challenges regarding NPO regulation across the region; and examples of good practices that have emerged from within the sector itself (i.e. self-regulatory initiatives). Experts from a range of NPOs – including local, regional, and international organizations active in diverse fields, as well as umbrella bodies – participated in these discussions. In the course of their deliberations, NPO participants drew attention to several key points.
19. The civil society sector in South and Southeast Asia is both diverse and dynamic. The size, scope, and influence of the non-profit sector have grown significantly in recent decades. NPO activity is often transnational and, in this way, the sector is part of the regional and global economies. As a result, and in light of the terrorist threat that exists in the region, it is perceived that the sector is vulnerable to abuse. But risk can be difficult to assess and, insofar as abuse occurs, it represents only a miniscule part of overall NPO activities.
20. While NPO participants acknowledged the vulnerability of the sector, they underscored that NPOs make a range of vital contributions to the communities they serve. Therefore, regulation should aim to strengthen and secure the sector, reflecting the principle of proportionality. Over-regulation should be avoided. Further, governments should take measures to protect NPOs from erroneous accusations of terrorist abuse, which can damage the reputation of the sector and impact its operations.
21. NPO participants discussed the nature of relationships between the sector and government actors. NPOs appreciate that governments face a range of pressures in determining how to regulate the sector and that resources are sometimes limited. Nonetheless, at a general level, it was felt that knowledge of the sector could be better developed. This could be achieved through further efforts to reach out to the sector, for example, to consult on regulatory changes. In some states, stronger relationships have resulted from joint collaboration to review the NPO sector (as required by SRVIII). Participants emphasized that *mutual* appreciation among civil society and government actors ought to be the goal, towards the establishment of partnerships to ensure effective and proportional regulation.

22. Beyond outreach, NPO participants identified several areas where governments could simplify business processes to make it easier for NPOs to operate. For example, in some cases, procedures for registration and licensing, and for securing tax exempt status (where that is permitted), could be more straightforward. Similarly, some NPOs in the region employ foreign nationals and rely on governments to issue visas. This does not always happen in a timely fashion. At a general level, better coordination within governments, and more communication between governments and the non-profit sector, would be welcomed by NPOs.
23. In turn, NPO participants recognized that actors within the sector could do more to identify and disseminate good practices. Self-regulatory initiatives are more advanced in some states than in others. There may be opportunities to develop tools such as codes of ethics, and to promote good practices in internal monitoring and reporting. Self-regulation happens all the time and the majority of NPOs strive to maintain high standards. But these practices are not always expressed formally. This would further demonstrate that the sector has an interest in good governance and that, in turn, can bolster relationships with government. Some umbrella organizations exist across the regions, but there are opportunities for NPOs to present their views more effectively.
24. Finally, NPO participants noted that they sometimes operate in environments that present significant challenges, for example, in delivering assistance in post-conflict and post-disaster settings. These circumstances require a balance between the urgent need to provide relief and the requirement to abide by counter-terrorist financing measures.

Future steps

25. A key theme of the regional working group meeting was that, despite the diversity of state participants – and despite the scope of NPO activity across the region – many good practices were identified and much consensus was generated. The Bangkok meeting was the first in this process to be held at the regional level: others are being organized for late 2011 and 2012, with a view to concluding the process in early 2013. The findings elaborated here will inform subsequent meetings and will be reflected in the final report of the process.

**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

Key observations of the Organizers: Summary

- 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.