

UNITED NATIONS
COUNTER-TERRORISM COMMITTEE EXECUTIVE DIRECTORATE
And the
CENTER ON GLOBAL COUNTERTERRORISM COOPERATION
On behalf of the
UNITED NATIONS COUNTER-TERRORISM IMPLEMENTATION TASK FORCE
WORKING GROUP ON TACKLING THE FINANCING OF TERRORISM

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

The Langham Hotel, Auckland

7-9 November 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 terrorist financing abuse of the non-profit sector,” held in Auckland from 7-9 November 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 third 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 and disseminate 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 The dialogue continued with a regional working group meeting for experts from South and Southeast Asia, held in Bangkok in March 2011.² Against this background, the Auckland meeting provided an opportunity for experts from the Asia-Pacific to discuss advances that have been made, and challenges that remain, in protecting NPOs across the region from possible abuse.
3. On behalf of the UN Counter-Terrorism Implementation Task Force, the Auckland meeting was convened by the UN Counter-Terrorism Committee Executive Directorate (CTED) in cooperation with the Center on Global Counterterrorism Cooperation. It was supported by the governments of Canada, Switzerland, and New Zealand, which also hosted the meeting. Participants included national-level officials with a role in counter-terrorist financing or charities regulation from governments in the Asia-Pacific region, as well as officials from

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.

² The discussion paper and organizer’s summary from the Bangkok meeting are available at http://www.globalct.org/ourWork_projects_preventing_abuse.php.

international and regional organizations active in this field. Representatives from the non-profit sector in the region also participated, providing their perspective on the vulnerability of the sector to terrorist abuse and reflecting on the responses of states – and the sector – to the challenges that arise.

The regional context

4. The Asia-Pacific region is characterized by its remarkable diversity. It includes both very large and very small states, and developed and developing states, across which there is considerable variation in terms of national legal and political systems. The region is also diverse in terms of the profile and activities of NPOs, especially international non-government organizations (INGOs). While some states are recipients of official and philanthropic development and humanitarian assistance from abroad, delivered through a combination of INGOs and local NPOs, others are “exporters” of such assistance. These differences are reflected in the variety of regulatory issues and responses that have arisen within the region. Importantly, participants noted that for many small, developing states resource constraints and lack of capacity have posed a primary challenge in acting to reduce the vulnerability of the non-profit sector to terrorist abuse.
5. For many states in the region, terrorism has not been perceived as a pressing threat and the issue of countering terrorist financing through the non-profit sector has not been accorded a high priority to date. Few countries in the region have investigated and prosecuted cases of terrorist abuse of the non-profit sector and their legal and administrative frameworks for doing so remain untested. With that said, participants distinguished between the direct threat of terrorism and vulnerability to terrorist abuse. Further, they acknowledged that the broader goal of effective regulation of the non-profit sector serves many purposes, not just countering terrorist financing. In this regard, fraud and corruption *are* high priorities for many states in the region. Action to reduce the vulnerability of NPOs to terrorist abuse was seen as necessitating many of the same regulatory measures and having many positive spillover effects in this regard.
6. Against this background, participants reflected that levels of compliance in the region with the relevant international standard – Financial Action Taskforce Special Recommendation VIII (FATF SRVIII)³ – remain low, consistent with the global trend. The FATF-style regional body in the region, the Asia-Pacific Group on Money Laundering (APG), undertook 37 mutual evaluations of its members between 2005-2011 and more than 80% of states were rated either partially compliant or non-compliant with regard to SRVIII.⁴ However, participants also acknowledged that such review processes, and compliance with international standards more generally, is an iterative process. Within the APG, SRVIII is now included in strategic implementation planning workshops – the mandatory follow-up action after an evaluation is completed. In this sense, the meeting tapped into and extended

³ On FATF SRVIII, see http://www.fatf-gafi.org/document/22/0,3746,en_32250379_32236920_43757718_1_1_1_1,00.html.

⁴ Only one state was rated compliant; 5 were largely compliant; 19 were partially compliant and; 12 were non-compliant. The mutual evaluation reports are available at <http://www.apgml.org/documents/default.aspx?DocumentCategoryID=17>.

an ongoing dialogue about SRVIII among regional actors.

7. There is also much variation in state-civil society relations across the region. Where governments have limited capacity, and where populations are dispersed across remote locations, the civil society sector can play an important role in basic service provision. All participants endorsed the principle of proportionality and, in particular, noted the importance of dialogue, consultation, and outreach between governments and NPOs. Participants commented that over-regulation could lead NPOs to retreat to the informal sector, whereas it is in the interests of both states and NPOs if the latter act in the formal financial sector. Participants also noted with interest the emergence of self-regulatory measures within the non-profit sector, which may provide a basis upon which to build regulatory measures in the future, and which indicate the importance that the sector attaches to maintaining its good reputation. In this regard, participants from civil society emphasized the importance of preserving humanitarian and development space while achieving compliance with proportional measures put forward by governments seeking to reduce the vulnerability of the sector to terrorist abuse.

Good practices within the region

8. Government participants described many good practices that have emerged within the region to reduce the vulnerability of the non-profit sector to terrorist abuse. In the post-9/11 period, there has been significant action in the region to bolster counterterrorism law and policy. Beyond passing new legislation many states have created new inter-governmental mechanisms to coordinate their response to terrorism. Terrorist financing has often been part of these discussions. Similarly, inter-governmental mechanisms have sometimes been created to formulate and implement action plans to achieve compliance with FATF's 40 recommendations against money laundering and 9 special recommendations against terrorist financing. At the same time, several states in the region have conducted extensive reviews of their governmental arrangements for regulating the non-profit sector, leading to the reorganization or establishment of new agencies. While these arrangements will necessarily take some time to become fully effective, several longer term benefits from consolidation have been identified, including increased transparency and improved communication with the sector.
9. Some governments in the region distinguish among types of NPOs for the purpose of registration and regulation (e.g. differentiating NPOs on the basis of their revenue streams), which permits more targeted measures and can aid the objective of proportionality. While some states have found it a challenge to regulate the activities of INGOs, others have attempted innovative measures to link these international actors with local partners. States have evolved practices for receiving and disbursing official development aid from abroad to local NPOs. In addition, some states have developed agreements or protocols with major donors regarding the receipt and disbursement of funds in crisis situations.
10. States in the region have pursued outreach activities in innovative ways. In some states this includes written guidance on the nature of the threat and "best practice" responses, developed in consultation with the sector. In some states, agreements are under discussion to formalize

the interaction of government and civil society actors. At a practical level, some states are developing financial reporting standards for charities. Another state has developed an online self-help governance tool to assist NPOs in professionalizing their business practices. Outreach can have a less formal feel in many small island states, where information tends to travel quickly. In these cases, the density of existing social and familial networks can make it easy to identify suspicious or unusual activity.

11. Some states have endeavoured to identify – and, as appropriate, disseminate to stakeholders – indicators and warning signs relating to terrorist financing through the non-profit sector. This can occur in several ways, whether directly or indirectly, on an ad hoc basis or as part of ongoing outreach activities. (This task is aided by the recent publication of the APG’s typology report, *NPO Sector Vulnerabilities*).⁵ Participants also discussed the issue of performance measurement concerning efforts to disrupt terrorist financing through the non-profit sector. Here, states utilize a number of measurable indicators including prosecutions, instances of inter-agency cooperation, and monitoring and outreach activities.
12. Although experience in deploying enforcement tools remains limited for many states in the region, legislation often provides a series of graduated options, including warnings, deregistration, and alerts. In some cases, enforcement actions are similar to those for related offences, such as fraud. Where enforcement actions entail the freezing or seizure of funds and other assets, states are developing policies to deal with them so as to preserve the intention of donors.

Ongoing challenges

13. Many specific implementation challenges persist in the region. Some states are yet to undertake a review of the non-profit sector, as required by SRVIII. In other states, reviews have been inadequate, in that they have not explicitly considered vulnerability to terrorist financing. Relatedly, some states have not followed up on reviews by utilizing risk assessment tools. Further, several participants commented that the size and diversity of the sector has proven to be a particular challenge in developing and utilizing risk assessment tools.
14. In some states, outreach activities are underdeveloped or yet to be initiated. In those cases, a gulf in understanding between government and the sector is prone to persist. Other states have kept poor records – or no records at all – of their outreach activities. For some, the question of which agency should take the lead on outreach activities remains unresolved. Here, regulators can function as a bridge between the sector and law enforcement. Delegating outreach to the latter can be counter-productive as it may raise suspicions among NPOs. As this infers, participants noted a specific challenge in terms of interagency cooperation. In some states, multiple agencies are involved in registration, regulation, and law enforcement processes regarding charities, in addition to the bodies responsible for anti-money laundering and counter-terrorist financing (AML/CFT). While some states have initiated coordinating committees or other internal cooperation mechanisms, these have not always extended to the full range of actors that interact with NPOs. Where several government agencies are

⁵ Available at <http://www.apgml.org/documents/docs/6/NPO%20Sector%20Vulnerabilities.pdf>.

involved, there is a danger that they are not adequately informed of each other's roles and responsibilities. "Joined up government" should be the goal here and the identification of a single focal point through which to interact with NPOs was acknowledged as good practice.

15. Although there has been much legislative activity across the region in the last decade or more, several states have identified inadequacies in their laws. Specific problems have included overly-convoluted registration requirements for charities and inadequate government powers to regulate the sector effectively. In some cases, legislation limits the ability of regulators and other officials to launch investigations into suspicious activities, requiring that a formal complaint be lodged. In these and other states, legislation is under review, with a view to introducing amendments.
16. Notwithstanding the volume of activity on counterterrorism in the region since 9/11 – and despite broad engagement on AML/CFT issues through the APG – international cooperation remains a challenge. A network of regional contacts on NPO regulation in particular has not emerged but several participants noted that it would be useful. In some cases, investigations in one country have been hampered because of a lack of cooperation from overseas partners, or their inability to do so due to lack of capacity.
17. Participants discussed the challenges that arise when locally-registered INGOs are active in conflict zones. Here, disbursements are difficult to trace and knowledge of final beneficiaries can be difficult to ascertain. Different states have approached this problem in different ways, for example, by licensing NPOs to interact with certain beneficiaries or by identifying "qualified recipients." Participants agreed that striking the right balance between preserving humanitarian space and taking measures to ensure that terrorists do not benefit from charitable activity will require ongoing dialogue among stakeholders.

Perspectives from the NPO sector

18. Just as there is diversity among states in the region, there is significant diversity within the non-profit sector, where limited capacity can also pose a challenge. Still, NPO participants discussed numerous good practices arising from within the non-profit sector itself. For example, some grant-giving organizations have their own due diligence procedures in place, including a review of basic information on grantees and checking their names against relevant lists. In that case, the organization also provides some training to grantees (e.g. on accounting and financial management) and, to ensure transparency, grant funds are maintained in separate accounts. In several countries, actors within the sector have taken steps in the direction of self-regulation. Examples here include the conclusion of a voluntary code of conduct among NPOs in a certain sector, binding them to rigorous governance and business practices with the goal of increasing transparency and accountability. Indeed, this approach has attracted a good deal of interest among civil society actors in the region and may be emulated elsewhere. Relatedly, umbrella groups have taken on different governance-related roles in states across the region, including as gatherers of information about specific NPOs, facilitators of outreach with governments, conduits for reporting from the sector to governments, and capacity-builders.

19. NPO participants endorsed the principle of proportionality. They urged governments to view the problem of terrorist financing through the charitable sector in the context of terrorist financing from other sources, to ensure that NPOs are not singled out for disproportionate attention. They questioned whether development projects that fall below a certain dollar value ought to be reviewed as rigorously as others. Similarly, some disconnect was noted between regulatory requirements imposed on those NPOs that accept funds from governments and those that do not. In addition, NPO participants sought information about what kinds of counter-terrorist financing measures have proven to be most effective, to ensure that the efforts of both governments and the sector are optimally deployed. Governments, they recalled, should be mindful of the question of effectiveness so as not to unnecessarily burden the non-profit – or any other – sector.
20. NPO participants underscored that outreach, consultation, and knowledge of the sector are critical to effective regulation. Some NPOs have encountered specific problems in seeking to comply with regulations in this area, for example, concerning the use of lists and humanitarian activities in conflict zones. Participants noted that clear advice from states regarding how to operate – and with whom – in conflict zones would be most valuable in ensuring that charitable activities do not unwittingly benefit terrorists or other designated individuals or entities. Here, having an identified point of contact that can deliver such advice is important. More generally, beyond establishing good relations among state and civil society stakeholders, it is important to explore new methods for mutual understanding. Participants noted that regulatory changes are unlikely to be successful without consultation and “buy in” from actors within the sector. Further, participants expressed their appreciation of government or multilateral policy statements (such as the Final Communiqué of the 2011 Commonwealth Heads of Government Meeting) that formally set out a role for civil society and that describe state-civil society relations in terms of comity and mutual interests.
21. There are several areas in which NPO participants acknowledged the need for continuous improvement in governance, management, and operations within the non-profit sector. Some non-profits would benefit from the professionalization of business practices while some others, based on their own misperception of the legitimate role of governments in regulating the sector, are perhaps too quick to interpret state actions as unwelcome interference. While umbrella organizations often play an important role in coordinating and representing actors within the sector, these are often topically-focused and do not necessarily address governance issues as directly as they might. Similarly, best practice codes and other such self-regulatory initiatives have attracted much attention, but because of their proliferation there is a sense that there may need to be a rationalization of these measures if they are to be effective in the longer term.

Future steps

22. In sum, the meeting was characterized by a collegial and professional exchange among government and NPO participants alike, welcomed by all as a valuable opportunity to build networks among regional stakeholders. Some specific ideas (such as the establishment of a database of contact points among governments, towards the development of a regional network on SRVIII implementation) may be pursued in the short term. As for the medium

and longer terms, the meeting revealed a deepening knowledge of – and commitment to – proportional and effective measures to reduce the vulnerability of the non-profit sector to terrorist abuse.

23. The Auckland meeting was the second in this process to be held at the regional level. Others are planned for 2012 with a view to concluding the process in New York 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.