

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

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**DISCUSSION PAPER\***

**Summary**

This discussion paper briefly outlines the current state of discussion at the international level on preventing abuse of the non-profit sector to finance terrorism – with limited reference to experiences and approaches at the national level. First, it identifies a number of recurring challenges that states and international regulators face in talking about effective regulation of this sector. Second, building on FATF Special Recommendation VIII, it identifies some approaches that states have begun to use to try to address some of these issues. It highlights the importance of states sharing their experiences, and explains the process now being initiated to allow states (and NPOs) to develop shared understandings and tools for effective action at the national level and through international cooperation. It concludes with a set of questions to consider.

**Introduction: what is the problem?**

The annual operating expenditure of the non-profit sector is approximately 1.3 trillion U.S. dollars.<sup>1</sup> It employs over 40 million people globally, and on average it moves approximately \$20 billion in financial assistance to developing countries per year.<sup>2</sup> In some years, major disasters – such as the tsunami of 2004, the Haitian earthquake of 2010, and the Pakistani floods of the same year, may result in non-profit organizations (NPOs) serving as the channel for even more charitable giving. The non-profit sector is, in other words, a central mechanism in the global, voluntary redistribution of wealth and provision of assistance to those most in need, and fulfils a range of positive cultural, religious, educational, and other social purposes.<sup>3</sup> NPOs thus play, as the United Nations has acknowledged, a crucial part in fighting the conditions conducive to terrorism.<sup>4</sup>

Yet the non-profit sector has also become an object of controversy, perceived as vulnerable to corruption, misappropriation, and abuse. Concerns over accountability in the international non-governmental sector have led to a number of initiatives in the last decade from within the sector itself, such as the adoption of the International NGO Accountability Charter<sup>5</sup>, the Sphere Project<sup>6</sup>, the Humanitarian Accountability Partnership<sup>7</sup>, and the Active Learning Network for Accountability and Performance in Humanitarian Action.<sup>8</sup> When they operate in places where state regulatory capacity has been weakened by war, natural disaster, or other forms of crisis, NPOs face extraordinary challenges in ensuring effective management, supervision, and control.

Recognizing these challenges, governments have concerns about the misuse of some NPOs as a mechanism for terrorist financing and organization. The Financial Action Task Force (FATF), for

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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”.<sup>9</sup> 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.<sup>10</sup>

Although comprehensive statistics on the number of cases of terrorist exploitation of different NPO sectors 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 involved NPOs.<sup>11</sup> 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.<sup>12</sup> And the U.S. Treasury 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 U.S. terrorist financing designations.<sup>13</sup> The United Nations’ Al-Qaida/Taliban list also includes a number of NPOs. But even if the intersection of terrorist financing and non-profit activity is low when compared to the overall size of non-profit activity, cases such as the involvement of the Babbar Khalsa Society and Sikh temple funds in Canada – connected to the bombing of Air India flight 182 on June 1985, which killed 329 people – make clear that where NPOs *do* become a conduit for terrorist financing or organization, the resulting damage both to physical security and to the reputation of an NPO sector may be very large indeed.<sup>14</sup>

NPOs are 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 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; and as NPOs often play a role in social mobilization, they may potentially provide a platform for terrorist organization. What is more, for good reasons the paper explores further below, NPOs are often subject to limited state regulation on issues such as employee qualifications and vetting, capitalization requirements, and reporting and monitoring.<sup>15</sup> 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.

As a result, over the last decade a number of states have imposed regulatory requirements and undertaken enforcement action to ensure that NPOs are not used to finance terrorism. The policy justification for strong regulation of the sector on counter-terrorist financing issues is not hard to discern: governments can easily point to their necessary concern for the protection of their own citizens’ physical security and the reputational risk to NPOs that may itself result in diminished levels of charitable giving. What emerges is a difficult question of public policy and governance, at both the national and international levels. The existence of many NPOs is a manifestation of the fundamental right of their members to freedom of association. The protection of this right is an important public policy objective in and of itself. At the same time, governments and society have a justified public interest in preventing and disrupting the financing of terrorism. And NPOs – and society more broadly – have a justified public interest in promoting charitable giving. How can these interests be balanced through effective measures proportionate to the risk of abuse? How can we ensure, specifically, that actions taken to protect NPOs against exploitation by terrorist organizations contribute more broadly to their effective management and governance, thereby contributing to their larger, positive social objectives?

## Recurring challenges

### *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. In some societies, charitable giving is first and foremost viewed as a private, moral act, perhaps even a religious duty; state regulation is correspondingly constrained, in some cases even by constitutional norms.<sup>16</sup> In other societies, NPO activity is seen primarily as a vehicle for political activism, and is therefore subject to state regulation designed to protect political rights such as freedoms of association and speech. In yet other societies, NPO activity is seen as a subset of private consumption and investment activity, and so regulation is viewed primarily through the lens of ensuring public safety and market integrity. And of course, in many regulatory systems, all of these different perspectives on NPO activity cohabit.

Different historical traditions may also impact the modalities of regulation. Some states prefer to codify the exact limits of lawful NPO activity, while others may prefer to identify only the limits of permissible objectives, and leave NPO conduct subject to regulation by other parts of 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.<sup>17</sup>

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. This discussion paper seeks to touch on some of those objectives, and explain how the United Nations, in cooperation with the Center on Global Counterterrorism Cooperation (CGCC), and with the support and engagement of a variety of governments, and international and regional organizations, hopes to encourage sharing of experiences that might allow states better to meet these objectives, and contribute to the robust performance of the NPO sector as a whole.

### *Proportionality and risk analysis*

Perhaps the most obvious – and controversial – policy objective that regulators are grappling with in this area is the question of ‘proportionality’. To be credible and effective, NPO regulation must 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 for terrorist financing. This has been recognized by numerous regulators.<sup>18</sup> Apparently 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.<sup>19</sup>

Discussions of this issue are bedeviled by 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 different kinds of NPO activity – and even an identification of where those risks fall (i.e. on NPOs, beneficiaries, donors, or broader society). Access to such evidence remains weak, in part – and in something of a Catch-22 – because of the limited scope of existing reporting and monitoring of NPO activity at the domestic level, and in part because of limited international cooperation to ensure effective oversight of international activities.<sup>20</sup> However typologies, notably as prepared by FATF and regional FATF-style-regional bodies (FSRBs), show some of the ways that NPOs can be used by terrorists to raise, store, and transfer funds to different jurisdictions. The purpose of the typologies exercises is to inform the development of international standards that address ‘real world’ cases, rather than theoretical scenarios.

Despite those typologies and many examples of NPO abuse, the lack of systematic reporting and registering of cases often results in the proportionality of NPO regulation for counter-terrorist financing purposes to be questioned. It should be noted that there needs to be appropriate NPO regulation for numerous reasons many of which have nothing to do with counter-terrorist financing concerns. A state that has appropriate measures in place vis-à-vis NPO regulation can further calibrate its response to the threat of terrorism involvement in the sector without additional administrative burden on the sector. Some commentators have nevertheless raised concerns around due process, the right to property, and the freedom of association. Some also question whether disproportionate regulation of NPOs can undermine broader counter-terrorism objectives, by undermining NPO’s ability to operate both through the imposition of unmanageable administrative burdens, and through a broader ‘chilling effect’ on engagement with certain types of NPO.<sup>21</sup>

Partly in response to such concerns, states increasingly emphasize matching both their own and NPO’s own regulatory efforts to *risk analysis*, carried out not solely by reference to typologies but also by analysis of specific cases. One typical example is provided by the ‘Best Practice Principles’ released by the Australian Government in 2009, which encourages NPOs to adopt a ‘risk-based’ approach.<sup>22</sup> The guidance suggests that NPOs face a “higher risk if they: conduct or contribute to aid programs or projects overseas; and/or donate funding to other NPOs or projects overseas; and/or work with, or provide funding to, other NPOs that conduct programs or projects overseas... [as well as] where NPOs: operate in regions where terrorist activity is known to occur; and/or use alternative remittance services or pay for goods or services in cash rather than using formal financial mechanisms (such as electronic funds transfers); and/or engage other individuals or organizations to deliver aid without conducting screening processes; and/or are not able to provide direct oversight over programs or projects.”

The United States Treasury Department has likewise published a “risk matrix” identifying “common risk factors associated with disbursing funds and resources to grantees”.<sup>23</sup> It encourages NPOs to consider such matters as: whether a grantee has explicit charitable purposes, and discloses how funds are used; the terms of agreements between charities and grantees; prior relations between grantees and the charity in question, referees, or other charities; the presence of programmatic verification, including on-site or field audits; documentation of the use of funds; banking and accounting arrangements; and location.

Another interesting model is provided by the Charity Commission of England and Wales. Following consultation with the public, the Charity Commission released guidance that uses a traffic light model (green is low risk; amber is medium risk and red is high risk) to guide regulators in ensuring proportionality in their approach and actions. These risks are constantly re-calibrated through the use of reporting by charities. Charities’ trustees must report suspicious incidents indicative of possible abuse as soon as trustees become aware of it, if that incident is deemed serious or significant, and in the annual return filed by the charity at the completion of the calendar year.<sup>24</sup> Serious incident reporting provides the Charity Commission with firsthand information regarding abuse of any kind of the charitable sector. Once

received, the Charity Commission reviews the serious incident report and uses the traffic light model to assess the most appropriate and proportionate response and resources that will be directed to the case. The “red light” or most serious incidents include such things as significant financial loss to a charity; harm to beneficiaries; criminality; and/or issues that could damage public trust in the Commission of the charitable sector.<sup>25</sup> Those issues determined to require “zero tolerance” – such as links to proscribed or terrorist organizations or misuse of a charity to foster criminal extremism – receive immediate attention. In the most serious of cases, when there is evidence or serious suspicion of misconduct, mismanagement, or risk to property, the UKCC may use its regulatory power to remedy and protect to launch a statutory inquiry<sup>26</sup> in instances where information necessary to conduct a comprehensive inquiry cannot be obtained otherwise. The Charity Commission publishes the outcomes of both statutory and regulatory inquiries to maintain accountability and transparency within the sector and the public at large.

Such risk-based tools and analysis may help NPOs and regulators to assess their current practice. Targeted regulatory efforts are likely to improve efficiency for both NPOs and regulators, which is clearly desirable in a period of fiscal austerity; it helps ensure that legitimate NPO activity, including charitable giving, is not unduly impeded; and it helps to build trust between regulators, NPOs, and the broader public.

Canada too uses a risk-based approach to ensure compliance with the laws and regulations governing charities and the work they undertake. Risk-based tools are used by the Charities Directorate within the Canada Revenue Agency to ensure that resources are allocated to the most serious cases, while allowing for education where compliance failures are unintentional or reflect a lack of understanding of a charity’s legal responsibilities. To further support this graduated approach to regulation, Canada has adopted a series of intermediate sanctions that reflect the need for serious consequences for willful non-compliance but that fall short of the need for the revocation of the charity’s registered charity status. Moreover, intermediate sanctions and the reasons for those sanctions, as well as the reasons for the termination of a charity’s registered charity status, are made public through the regulator’s website. Where warranted, press releases are issued to alert the public to a sanction or revocation of registered charity status and the associated reasons. These “transparency” actions serve to both educate the public and the charitable sector and to promote the fact that an observant regulator is overseeing the actions of charities.

Such a risk-based approach also depends on a certain level of regulatory capacity as a source of information and analysis, whether that is found in NPOs themselves, in home state regulators, or in host states countries. And there are good reasons to believe that NPOs that may be most exposed to the risk of exploitation for terrorist financing may operate in areas where that capacity is low.

### ***Low capacity countries and humanitarian crises***

In the wake of Pakistan’s recent earthquake and later floods, concerns were raised that some charities might be diverting aid to groups with ties to terrorist organizations.<sup>27</sup> Similar concerns may arise in other countries whose weak regulatory capacity stems from other causes. As the Charities Commission of England and Wales has explained:

*Great humanitarian need often exists in the same places where there is conflict or where it is thought terrorist groups, or those connected with them, operate. [Yet it] would be profoundly undesirable if an unintended consequence of a counter-terrorist strategy were to make it impossible for legitimate overseas aid charities to be involved in providing aid, or make it impossible for any charity to provide aid in particular parts of the world.<sup>28</sup>*

For this reason, some regulators – such as the U.S. Department of Treasury – have acknowledged that in “certain exigent circumstances (such as catastrophic disasters)” application of guidance that applies in other circumstances may prove difficult.<sup>29</sup> 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.*<sup>30</sup>

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.<sup>31</sup> This poses particular risks for NPOs operating in such situations, not least because some regulators in other jurisdictions may seek to make up for weak governmental regulatory capacity by displacing the regulatory burden onto NPOs themselves. This raises challenges for ensuring proportionality.

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”.<sup>32</sup> 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”.<sup>33</sup> The challenge is to identify regulatory arrangements that promote prudential practices at a reasonable cost for NPOs.

Flexibility will be required to identify appropriate models for internal supervision and management in contexts where such governance structures are less integral to the charitable and NPO sector. And such flexibility will benefit from states sharing their own experiences and approaches with each other, in order to identify common policy objectives and the tools that are needed to achieve them.

### **Current approaches to protecting the non-profit sector from terrorism financing**

States may reach very different answers about how best to ensure both effectiveness and credibility in their regulation of NPOs to prevent their exploitation by terrorists. The diversity of NPO roles in different contexts – and the diversity of different state capacities and governance strategies – will inevitably lead to different combinations of tools in response. There can be no one-size fits all solution.

But the questions that they must ask themselves, and the interests they must weigh, are frequently quite similar. States must weigh and balance a number of policy objectives: transparency and privacy, accountability and proportionality, and they might consider a balance of compliance-based approaches with self-regulation. They must also empower their law enforcement agencies to take proportionate action in case of existing abuse, even as they find ways to work with NPOs to ensure effective prevention. States have much to learn from NPOs about how to ensure that regulation is ‘fit for purpose’; they also have much to learn from each other.

The key touchstone that provides the framework for states to share their experiences in regulating NPOs is FATF Special Recommendation 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.*

FATF has issued an Interpretative Note to SRV III,<sup>34</sup> which is formally binding on its members, as well as non-binding International Best Practices in implementing SR VIII.<sup>35</sup> SR VIII and its Interpretative Note require countries to protect the sector against abuse and 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”.

They emphasize 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).<sup>36</sup> They also stress 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”.<sup>37</sup>

For such regulation to be both credible and effective, these documents suggest, it must be based on “[d]eveloping co-operative relationships”,<sup>38</sup> 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.<sup>39</sup> 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.”<sup>40</sup> Below we set out some examples of how different regulatory bodies currently approach each of these elements of regulation – including examples of law enforcement action and tools to disrupt terrorism abuse – and the reactions these approaches have received.

### ***Outreach to the NPO sector***

The Financial Action Task Force emphasizes the publication of clear policies for transparency, integrity and public confidence in NPO sector management.<sup>41</sup> It suggests that such policies ought to be developed and refined through engagement with NPOs themselves.<sup>42</sup>

Clear statements of regulatory policy and obligations are essential to ensuring effective NPO compliance, buy-in, and the credibility of enforcement action. The Charity Commission of England and Wales (‘Charity Commission’), an independent regulator of 190,000 charities, has published a specific ‘Counter-terrorism Strategy’,<sup>43</sup> and other forms of guidance.<sup>44</sup> The Government of Hong Kong has published *An Advisory Guideline on Preventing the Misuse of Charities for Terrorist Financing*.<sup>45</sup> As we saw earlier, the Australian government has published guidance for NPOs.<sup>46</sup> So has the U.S. government, in the form of the *Anti-Terrorist Financing Guidelines: Voluntary Best Practices for U.S.-Based Charities*, first published in 2002 and updated, after a period of notice and comment, in 2006. For its part,

the Canadian regulator, the Charities Directorate, has issued a checklist for charities (*Checklist for Charities on Avoiding Terrorist Abuse*) to help promote an understanding of the due diligence required to ensure that they neither willfully nor unintentionally engage in or fall prey to terrorist financing activities.<sup>47</sup>

Outreach, however, should not be seen as a one-off exercise, but as a continuing process of interaction with NPOs to ensure that regulation is optimizing its performance and maintains the sector's awareness of their vulnerabilities and the steps they can take to remedy them. In the U.S., the Treasury department undertakes frequent outreach events with charities and non-profits to maintain relationships, some organized in conjunction with other governmental agencies.<sup>48</sup> In the UK, the Charity Commission of England and Wales disseminates lessons learned from its compliance casework to the NPO sector and public to promote good practice and minimize risk, and publishes periodic alerts to provide information on risks and prevention advice.<sup>49</sup> In Canada, the Charities Directorate holds in-person information sessions for charities across the country and, in addition, has now developed regular live Webinars where charities can sign up to view, and participate in, charity regulation-related sessions on important topics related to their legal obligations as registered charities.

### ***Supervision, monitoring, and self regulation***

Supervision and monitoring of NPO activity to prevent terrorist financing may take many different forms, but the methods are much the same as those required to prevent money laundering, fraud, and other abuse. Whatever their approach, the goal of regulators should be to help NPOs ensure that systems and procedures are in place to combat any misuse of funds, whether for terrorist financing purposes or otherwise.

FATF has said that countries should encourage NPOs to “conduct transactions via regulated financial channels, wherever feasible”, while keeping in mind the different capacities of financial sectors and the urgency of some financial transfers that NPOs engage in, especially relating to humanitarian contexts.<sup>50</sup> Specifically, FATF has said that NPOs should maintain and make publicly available information on: (1) the purpose and objectives of their stated activities; (2) the identity of the person(s) who own, control or direct their activities, including senior officers, board members and trustees.<sup>51</sup>

FATF has also said that NPOs should issue annual financial statements that provide detailed breakdowns of income and expenditures and be “licensed or registered”, though this may occur in the context of broader regulation, for example for taxation or prudential purposes.<sup>52</sup> FATF's guidance also says that NPOs should have appropriate accounting controls in place, to ensure that funds are spent “in a manner that is consistent with the purpose and objectives of the NPO's stated activities”, including by maintaining, for at least five years, records of domestic and international transactions.<sup>53</sup> The FATF *International Best Practices* encourage the use of independent auditing of NPO accounts and, where possible, field audits.<sup>54</sup> FATF likewise says that NPOs should “make best efforts to confirm the identity, credentials and good standing of their beneficiaries and associate NPOs”, including by documenting the identity of their significant donors (while respecting donor confidentiality).<sup>55</sup>

The Interpretative Note says that observance of these standards by NPOs should be ensured both by actions of the NPOs' controlling personnel (boards, directors, managers), and by monitoring of compliance by “appropriate authorities”, which might include governmental or self-regulatory bodies and accrediting institutions. Such bodies should “be able to properly sanction” violations of these standards by NPOs and NPO personnel, for example by freezing accounts, removing trustees, issuing fines, or de-certifying, de-licensing or de-registering NPOs.<sup>56</sup> Such measures must be carefully tailored: it is often only one or two people within an NPO whose behavior is problematic.

As examples such as the Charity Commission of England and Wales and the Canadian Charities Directorate mentioned earlier, make clear, some states treat supervision and monitoring as a question of registration and reporting. The Charity Commission has developed a compliance toolkit comprised of guidance on best practices, good governance, laws, and regulations that pertain to charities and terrorist financing, reporting requirements, and terrorist designations. The Commission also issues advice designed to assist trustees to comply with applicable regulations and good practice measures. It undertakes site visits to selected charities identified as potentially at risk, to assist them in putting adequate systems in place for minimizing and managing the risk of terrorist financing. On occasion, these visits even occur overseas.<sup>57</sup> Selections for such interventions are made through information developed by the Charity Commission's intelligence-led Monitoring Unit, which helps to identify risk profiles and risk indicators, working in part with information shared from other government agencies. Canada sees site visits both random and risk based, as an essential component of its compliance activities. Plans for site visit selection are conducted annually with knowledge gained used to enhance guidance for the charitable sector and to determine compliance trends and gauge the risks of terrorist financing. The information obtained is fed into a stand alone unit within the Charities Directorate with staff specially trained in the analysis and detection of terrorist financing who work in concert with other government intelligence agencies.

Some other jurisdictions also mandate reporting by NPO personnel. For example in Hong Kong, section 12 of the *United Nations (Anti-Terrorism Measures) Ordinance* mandates reporting to the Joint Financial Intelligence Unit any property that a person (including NPO personnel) knows or suspects to be terrorist property; the Hong Kong authorities have indicated that NPOs are expected, like financial institutions, to submit Suspicious Transaction Reports.<sup>58</sup>

Other jurisdictions place a greater burden on NPOs to ensure effective self-regulation, failing which they may be subject to investigation and sanctions (dealt with below). For example, in the U.S., with much NPO activity traditionally being regulated at the state level, the emphasis at the federal level has been on compliance with existing federal law and with voluntary standards. The Treasury Department's *Anti-Terrorist Financing Guidelines: Voluntary Best Practices for U.S.-Based Charities* is voluntary and cannot release a charity from legal ramifications if found to have been a conduit for terrorist financiers, but according to the Department it may reduce the risk for abuse by providing organizations with voluntary best practices (developed after review of comments submitted by charitable organizations), a risk matrix, a counter-terrorist referral form for charities; and typologies which help to alert NPOs to increased risk exposure.<sup>59</sup>

A voluntarist approach is also gaining ground at the European Union level. The European Commission issued a Communication in 2005, EU COM (2005) 620, which encouraged EU member states to regulate NPOs to ensure good governance, transparency, and accountability, and effective oversight.<sup>60</sup> Since then, European Union member states have adopted some 140 initiatives to regulate NPOs.<sup>61</sup> One major study found that these initiatives were meeting most of the European Commission's and FATF's goals, but that states clearly faced particular challenges in ensuring that NPOs "know their donors" and "know their beneficiaries". The study pointed to the importance of collaboration amongst regulators and NPOs to develop effective, proportionate models for ensuring NPOs met these goals.<sup>62</sup> In October 2009, the EU Presidency proposed setting binding legal standards at the EU level regarding NPO transparency and accountability in the context of the fight against terrorism. Following comments from the NPO sector, under the 2010 Stockholm Action Plan,<sup>63</sup> the European Commission has indicated that it will issue voluntary guidelines for NPOs, to protect against their abuse for terrorist financing purposes, in 2011. In June 2010 the European Commission released a discussion paper containing draft guidelines for consideration by the NPO sector.<sup>64</sup> These include a set of basic principles, methods of good governance, standards of accountability and transparency, improved donor relations, "know your beneficiary" policies, and suspicious activity reporting. These EU-level voluntary guidelines are intended to supplement

binding regulation at the EU member state level, though some NPO representatives argue they will go beyond existing regulation and “add an excessive administrative burden on NPOs and lead to a decline in international grant-making and programmes as well as discourage newly set up foundations from becoming active internationally”.<sup>65</sup>

### ***Investigation and information gathering***

FATF’s guidance on regulating NPOs points to the importance of ensuring “effective co-operation, co-ordination and information sharing... among all levels of appropriate authorities or organizations that hold relevant information on NPOs”.<sup>66</sup> This includes ensuring access to effective investigative capacity, and to the information on NPOs that such investigators need. This should include establishing appropriate mechanisms to ensure that information about possible abuse of NPOs for terrorist financing purposes “is promptly shared with all relevant competent authorities”.<sup>67</sup> As we have seen, numerous jurisdictions make such reporting mandatory.

Intra-governmental information-sharing is also a recurring issue for effective NPO regulation. NPOs frequently interact with a range of regulatory bodies whose focus is not on protecting against terrorism financing. Yet these bodies may, through the regulatory process, gather information which is critical to ensuring such protection. Information-sharing arrangements, for example between tax regulators and FIUs, or between NPO registers and law enforcement bodies, is therefore particularly important.<sup>68</sup> As the UN Working Group on Tackling the Financing of Terrorism recently acknowledged, “[m]aximum use should be made of information already available to Governments or to sector regulatory organizations in order to avoid burdening NPOs with redundant and onerous reporting requirements”.<sup>69</sup> This may require an emphasis on risk analysis, to ensure NPO compliance efforts are focused on the most risky situations.<sup>70</sup> And it may also be useful for regulators to make clear, to NPOs, where their compliance with existing regulations will help prevent against the risk of terrorist financing.<sup>71</sup>

### ***Intervention and disruption***

Where terrorism financing through NPOs – whether with or without their knowledge or active participation – is identified, enforcement and control actions will be necessary. FATF suggests that there may be circumstances in which there is a “need to undertake immediate and effective actions to advance the immediate interest of halting terrorist financing or other forms of terrorist support provided by NPOs”. It calls for cooperation between those agencies that “traditionally deal with terrorism and regulatory bodies that may not be aware of the terrorism financing risk posed to non-profit organizations”. Domestic information-sharing between law enforcement, regulators, and the non-profit sector is key – as are investigation capabilities and legal authority to find, follow, and freeze the funds diverted from charitable purposes to finance terrorism. Among available tools to deter terrorism financing are the use of designations of organizations or watch-lists empowering authorities to freeze all funds and assets pertaining to that organization and prohibiting any dealing by third parties.

### ***International and regional cooperation***

FATF specifically encourages countries to “identify appropriate points of contact and procedures to respond to international requests for information regarding particular NPOs suspected of terrorist financing or other forms of terrorist support”.<sup>72</sup> International cooperation is particularly important where NPO activities and disbursements are transboundary, not only because states will need to cooperate to ensure effective oversight, but also because NPOs themselves may need assistance to understand the different regulatory requirements imposed in and by different jurisdictions.

Such international cooperation has been far from systematic to date. As the European Union's Counter-Terrorism Coordinator recently indicated, "there could be a better exchange of information and best practices between relevant stakeholders and authorities" and "some guidance could be useful in order to assist NPOs to comply with existing obligations", for example through collaboration around a 'Centre of Excellence'.<sup>73</sup> In what might be seen as such an effort, the NGO Regulation Network,<sup>74</sup> a project of the international program of the Charity Commission of England and Wales, is a website that provides general information on charity regulation and a Regulation Review Tool (RRT) that is used to implement a regulatory framework. The RRT provides users with guidance and instruction to conduct an NPO sector survey; assess framework for regulation of the sector; undertake identification and communication of strategic issues and a template for production of a final report. The RRT was pilot tested in the Philippines between October 2007 and March 2008.

A more comprehensive forum for discussing these important issues has not yet, however, emerged. The FATF has developed a substantial body of knowledge, especially through its mutual evaluation process, yet many of the lessons these experiences hold for states regulating NPOs remain poorly known around the world. Similar issues have been occasionally addressed by FATF-Style Regional Bodies (FSRBs) such as the Asia/Pacific Group on Money Laundering,<sup>75</sup> the Eastern and South African Anti Money Laundering Group, the Middle East and North Africa Financial Action Task Force,<sup>76</sup> the Eurasian Group, and other regional groupings such as the Office of the Co-Ordinator of OSCE Economic and Environmental Activities, as well as in *ad hoc* discussions such as the EU-U.S. Troika discussion of 8 December 2008. But a sustained forum for discussion and learning on these issues has been absent.

On a more general level, however, it should be noted that an annual conference of international charity regulators was hosted first by the Charities Directorate of Canada, in 2006, and subsequently by the Charity Commission of England and Wales, the Charity Commission of New Zealand, and most recently by the U.S. Department of Treasury. This annual conference of regulators allows for the discussion of and a sharing of best practices on a broad range of issues pertaining to the regulation of charities, including the threat of terrorist financing. On a regular basis, information is shared between regulators to ensure that they are aware of regulatory compliance trends and activities and the ways that regulators are dealing with them.

### **Conclusion: learning through dialogue**

The charities 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 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.

Dialogue is key 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 amongst their concerns. Perhaps for these reasons, states often emphasize monitoring, investigation, and enforcement capacities, rather than the advisory and support services that are needed to assist NPOs to carry out their activities lawfully, in accordance with their stated purpose, and in a manner which reduces overall systemic risk.

### *The CGCC-UN CTITF process*

Recognizing this, the United Nations, in cooperation with the Center on Global Counterterrorism Cooperation (CGCC), supported by the Governments of Canada and the United Kingdom, is bringing governments and international organizations and some NPOs together, to consider these issues. The process is predicated on the premise that states will benefit from hearing from each other about how they have tackled – or are tackling – the challenge of effective and credible regulation of the NPO sector, particularly with respect to countering the financing of terrorism, as well as the challenges NPOs face in this regard. This dialogue will include both: 1) a global component – seeking to frame the discussion in terms of a shared understanding of how best to implement existing global standards, such as FATF SR VIII; and 2) regional discussions, focused on the experiences in particular regions that will also include standalone consultations with NPOs.

Invited participants in a first expert working group to be held at Lancaster House in London on 18-20 January 2011 will seek to identify common policy objectives and the tools that are needed to achieve them. The meeting will involve presentations by a range of governmental and intergovernmental actors, with a view to beginning to prepare a tool box for countries to use to promote risk-based, proportionate, and collaborative regulatory strategies at the national level. This expert working group meeting is also intended to provide concrete guidance on the format and substance of future project workshops at the regional level. CGCC will also produce a note following the meeting that reports key findings and recommendations.

The initial expert working group will be followed by a series of regional workshops to be held in South/South-East Asia; East/Horn of Africa; North America and Europe; Latin America and the Caribbean; the Pacific; and the Middle East and Gulf states. Each regional workshop will involve governments, regulatory bodies, and other competent authorities that regulate charities and NPOs at the local level. CGCC will again prepare an expert background paper that identifies specific challenges relevant to the NPO sector in that particular region, and will provide a meeting summary. These expert workshops will also be accompanied by stand-alone consultations with NPOs from the region. CGCC will summarize the key messages shared by NPOs at these meetings, and feed them into the deliberations of the formal workshops.

The project will conclude with an expert working group meeting at the global level, likely held in New York in late 2012 or early 2013. This will discuss insights gleaned from the series of regional events, and will consider what concluding findings, recommendations, and tools (e.g., a risk matrix to enable jurisdictions to assess the level of risk to their NPO sector) might be developed out of the project.

## NOTES

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<sup>1</sup> United Nations Counter-Terrorism Implementation Task Force, *CTITF Working Group Report: Tackling the Financing of Terrorism*, October 2009, New York, p. 16.

<sup>2</sup> Ibid.

<sup>3</sup> 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.

<sup>4</sup> UN CTITF, *CTITF Working Group Report*, supra, p. 16.

<sup>5</sup> Adopted 6 June 2005. See [www.ingoaccountabilitycharter.org](http://www.ingoaccountabilitycharter.org).

<sup>6</sup> See [www.sphereproject.org](http://www.sphereproject.org).

<sup>7</sup> See [www.hapinternational.org](http://www.hapinternational.org).

<sup>8</sup> See [www.alnap.org](http://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.

<sup>9</sup> Financial Action Task Force, *Terrorist Financing*, 29 February 2008.

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

<sup>11</sup> 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>.

<sup>12</sup> HM Treasury, *Financial Challenge to Crime and Terrorism*, 28 February 2007.

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

<sup>14</sup> 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.

<sup>15</sup> Compare Charities Commission of England and Wales, *Counter-terrorism Strategy*, July 2008, p. 5.

<sup>16</sup> Compare FATF, *International Best Practices*, p. 2.

<sup>17</sup> 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.

<sup>18</sup> 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.

<sup>19</sup> Charities Commission, *Counter-terrorism Strategy*, p. 8.

<sup>20</sup> One study, commissioned by the European Union, is sometimes held up by NPO sector advocates as an indicator of the absence of evidence of terrorist abuse of the sector. However, on closer inspection, it is evident that the methodology used to prepare the study did not ensure the authors’ access to the information that governments allege they hold which indicates such abuse. See Matrix Group, *Study to Assess the Extent of Abuse of Non-Profit Organisations for Financial Criminal Purposes at EU Level*, 2008.

<sup>21</sup> See especially David Cortright with George A. Lopez, Alistair Millar, and Linda Gerber-Stellingwerf, *Friend not Foe: Civil Society and the Struggle against Violent Extremism*, October 2008. See also American Civil Liberties Union, *Blocking Faith, Freezing Charity: Chilling Muslim Charitable Giving in the “War on Terrorism Financing”*, July 2009, pp. 117-130.

<sup>22</sup> Australian Government, *Safeguarding your organisation against terrorism financing: A guidance for non-profit organisations*, Canberra, 2009.

<sup>23</sup> U.S. Department of Treasury, *Risk Matrix for the Charitable Sector*, 8 March 2007.

<sup>24</sup> Charities with an annual income of 25,000 GBP must sign a declaration in the Annual Return attesting to the fact that all serious incidents that occurred over the prior year were reported.

<sup>25</sup> UKCC Risk and Proportionality Framework for the Commissions’ Compliance Work, June 2008.

<sup>26</sup> Actions are authorized under S.8 of the Charities Act of 1993

<sup>27</sup> See for example Alistair Scrutton, “US, Pakistan warn of militant plots over floods”, *Reuters*, 19 August 2010, Islamabad. See also 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](http://www.treas.gov/offices/enforcement/keyissues/protecting/docs/charities_post-earthquake.pdf)

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- <sup>28</sup> Charities Commission, *Counter-terrorism Strategy*, p. 7.
- <sup>29</sup> U.S. Department of Treasury, *Anti-Terrorist Financing Guidelines: Voluntary Best Practices for U.S.-Based Charities*, revised 2006.
- <sup>30</sup> UN CTITF, *CTITF Working Group Report*, p. 18.
- <sup>31</sup> 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.
- <sup>32</sup> FATF, *Combating the Abuse of Non-Profit Organisations: International Best Practices*, 11 October 2002, Paris, p. 2.
- <sup>33</sup> *Ibid.*
- <sup>34</sup> FATF, *Interpretative Note*, supra. See also See also FATF, *AML/CFT Evaluations and Assessors: Handbook for Countries and Assessors*, Paris, April 2009, pp. 63-64.
- <sup>35</sup> FATF, *Combating the Abuse of Non-Profit Organisations: International Best Practices*, 11 October 2002, Paris.
- <sup>36</sup> *Ibid.*, p. 1.
- <sup>37</sup> *Ibid.*
- <sup>38</sup> *Ibid.*, p. 2.
- <sup>39</sup> *Ibid.*, pp. 2-3.
- <sup>40</sup> *Ibid.*, p. 3.
- <sup>41</sup> FATF, *Interpretative Note*, p. 3.
- <sup>42</sup> *Ibid.*
- <sup>43</sup> Charity Commission, *Counter-terrorism Strategy*, July 2008.
- <sup>44</sup> Such as its Operational Guidance on *Charities and Terrorism (OG96)*, and guidance on charities' legal obligations under UK terrorism legislation.
- <sup>45</sup> Narcotics Division, Hong Kong Security Bureau, July 2007.
- <sup>46</sup> Australian Government, *Safeguarding your organisation against terrorism financing: A guidance for non-profit organisations*, Canberra, 2009.
- <sup>47</sup> The Checklist for Charities on Avoiding Terrorist Abuse, which also provides links to the above noted Charity Commission and U.S. guidance, is available online at: <http://www.cra-arc.gc.ca/chrts-gvng/chrts/chcklsts/vtb-eng.html>.
- <sup>48</sup> Testimony of Daniel L. Glaser, Deputy Assistant Secretary (Terrorist Financing and Financial Crimes) US Department of the Treasury, Before the House Committee on Financial Services, Subcommittee on Oversight and Investigations.
- <sup>49</sup> Charities Commission, *Counter-terrorism Strategy*, July 2008, pp. 9, 11.
- <sup>50</sup> FATF, *Interpretative Note*, p. 3. See also FATF, *International Best Practices*, p. 3.
- <sup>51</sup> FATF, *Interpretative Note*, p. 3.
- <sup>52</sup> FATF, *Interpretative Note*, p. 3.
- <sup>53</sup> FATF, *Interpretative Note*, pp. 4-5. See also FATF, *International Best Practices*, pp. 2-3.
- <sup>54</sup> FATF, *International Best Practices*, p. 3.
- <sup>55</sup> FATF, *Interpretative Note*, p. 4.
- <sup>56</sup> FATF, *Interpretative Note*, p. 4.
- <sup>57</sup> Charities Commission, *Counter-terrorism Strategy*, p. 12.
- <sup>58</sup> Hong Kong, *Advisory Guideline on Preventing the Misuse of Charities for Terrorist Financing*, supra, p. 8.
- <sup>59</sup> 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](http://www.treas.gov/offices/enforcement/keyissues/protecting/docs/charities_post-earthquake.pdf)
- <sup>60</sup> Commission Communication to the Council, the European Parliament and the European Economic and Social Committee: "The Prevention of and Fight against Terrorist Financing through enhanced national level coordination and greater transparency of the non-profit sector", 29 November 2005, Brussels.
- <sup>61</sup> 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.
- <sup>62</sup> *Ibid.* Further guidance on developing appropriate KYC rules for this sector might draw from recent work addressing application of KYC rules to low-income serving financial service providers, e.g. Raúl Hernández-Coss, Chinyere Egwuagu, Jennifer Isern and David Porteous, *AML/CFT Regulation: Implications for Financial Service Providers that Service Low-income People*, World Bank and Consultative Group to Assist the Poor, 2005, Washington, D.C.
- <sup>63</sup> COM (2010) 171 final of 20.4.2010, p. 40.

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<sup>64</sup> *Voluntary Guidelines for EU based non-profit organizations discussion paper*, July 2010, 3<sup>rd</sup> Conference on Enhancing Transparency and Accountability of the Non-profit Sector.

<sup>65</sup> See European Foundation Centre, SBF, Cordaid, *Joint comments on the discussion paper "Voluntary guidelines for EU based non-profit organisations"*, 10 September 2010.

<sup>66</sup> FATF, *Interpretative Note*, p. 4.

<sup>67</sup> FATF, *Interpretative Note*, p. 4.

<sup>68</sup> See further FATF, *International Best Practices*, pp. 5-6.

<sup>69</sup> UN CTITF, *CTITF Working Group Report*, supra, p. 17.

<sup>70</sup> Ibid.

<sup>71</sup> See e.g. Hong Kong's *Advisory Guideline on Preventing the Misuse of Charities for Terrorist Financing*, which refers NPOs to the 'NGO Corner' of the Social Welfare Department for best practices in internal management and governance. *Advisory Guideline*, supra, p. 5.

<sup>72</sup> FATF, *Interpretative Note*, p. 4.

<sup>73</sup> See Counter-Terrorism Coordinator, *Report on the implementation of the revised Strategy on Terrorist Financing*, COTER 34, 8864/1/09 REV 1, Brussels, 5 May 2009, EN, p. 7.

<sup>74</sup> [www.ngoregnet.org](http://www.ngoregnet.org).

<sup>75</sup> Significantly, the Asia/Pacific Group on Money Laundering agreed in July 2005 to give priority to reviews of compliance with FATF SR VIII by December 2006. A July 2007 Summary Report by APG found that 68% of APG members had either partially or entirely incomplete reviews.

<sup>76</sup> See MENAFATF, *Best Practices Issued by the Middle East and North Africa Financial Action Task Force Concerning the Charities*, September 2007, available at: <http://www.menafatf.org/images/UploadFiles/CharitiesEng.pdf>.