



How the Work of Charities Can Counter Terror

and How U.S. Laws Get in the Way

A report based on a March 20, 2009 panel discussion



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How the Work of Charities Can Counter Terror

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For detailed information on U.S. national security laws and the impact on nonprofits, see the July 2008 report: *Collateral Damage: How the War on Terror Hurts Charities, Foundations and the People They Serve*:

http://www.charityandsecurity.org/studies/Collateral_Damage

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About Us

The Charity and Security Network is a project of OMB Watch. It was launched in November 2008 by charities, grantmakers, faith-based, and advocacy groups to eliminate barriers to legitimate charitable work imposed by current national security laws.

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Glossary

ATC	anti- terrorism certificate
CTM	counterterrorism measure
CSO	civil society organization
PVS	Partner Vetting System
TGWG	Treasury Guidelines Working Group
UN	United Nations
USAID	United States Agency for International Development

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Executive Summary

The roots of terrorism are complex and include the hopelessness of poverty, issues about identity and cultural domination, and frustration from being shut of the political process. To reduce the tensions that arise from these factors, U.S. grantmakers, aid and development organizations, and human rights advocates are striving to meet basic needs, promote respect and understanding, and engage people in peaceful political participation. But rather than welcoming their contribution, American national security laws and policies have erected barriers that unnecessarily restrict nonprofits' efforts.

This report addresses the need to acknowledge the critical role nonprofits play in improving our security by alleviating suffering and promoting human rights in global hotspots. It is based on a March 20, 2009, panel discussion sponsored by the Charity and Security Network and Cordaid, a Dutch aid and development organization. The event was held at the National Press Club in Washington, DC.

International nonprofit leaders from Colombia, the Palestinian States, and the Philippines shared their first-hand accounts of working in environments directly impacted by oppressive counterterrorism measures. They explained how U.S. laws complicated program operations for nonprofits in their regions and how their national security laws have been abused as vehicles for suppressing political opposition and human rights activists.

Representatives of the U.S. nonprofit sector spoke about how U.S. laws and policies restrict nonprofit operations beyond what is necessary to protect national security. These include the Treasury Department's *Anti-Terrorist Financing Guidelines: Voluntary Best Practices For U.S.-Based Charities*, and the United States Agency for International Development's (USAID) proposed Partner Vetting System.

Speaking weeks after the attacks of 9/11, one U.S. Senator told colleagues, "If we are going to win this war against terrorism, we have to be willing to invest in the lives and livelihoods of the people of the developing world." She understood that providing basic necessities of life and addressing political injustice can be powerful means of overcoming violent extremism. A comprehensive strategy to combat violent extremism respects all peaceful people, regardless of politics or cultures, and promotes fundamental fairness while protecting our safety and diminishing the factors that drive people to violence. Such a strategy will recognize the good works of nonprofits as a valuable ally in the battle against extremism. Counterterrorism laws should be reformed to reflect that understanding.

Part I: Summary of Presentations

Speaking to a standing-room-only crowd at the National Press Club on March 20, 2009, a panel of nonprofit leaders explained how ill-advised counterterrorism measures (CTMs) diminish the critical work of humanitarian and development groups and exacerbate some of the root causes of terror, such as poverty, religious persecution, and exclusion from the political process. The panel guests shared an in-depth look at how nonprofits experience these issues on the ground, both in the U.S. and abroad.

The panelists from the March 20, 2009 event were:

- **Rob Buchanan**, Managing Director, International Programs, Council on Foundations
- **Evan Elliott**, Advocacy Coordinator, InterAction
- **Alistair Millar**, Director, Center on Global Counterterrorism Cooperation and Vice President of the Fourth Freedom Forum
- **Rana Nashashibi**, Director, Palestinian Counseling Center and Lecturer at Bir Zeit University
- **Olga Amparo Sánchez**, Director of Casa de La Mujer in Bogotá, Colombia

Also in attendance was **Augusto N. Miclat**, the Executive Director of Initiatives for International Dialogue, who spoke during the question and answer period of the event. As of this writing, Rob Buchanan and Evan Elliott no longer work at the Council on Foundations and InterAction, respectively. Additionally, Alistair Millar has become the President of the Fourth Freedom Forum.



Visiting international nonprofit leaders at U.S. Senate, from left to right: Gus Miclat, Olga Amparo Sánchez, and Rana Nashashibi

Millar opened the discussion by explaining how CTMs passed since 2001 have weakened human rights and civil liberties across the globe. Rather than preventing terrorism, many of these laws have “hampered the funding streams” for nonprofits and “diverted money away from longer term issues such as development and education,” Millar noted. The CTMs have discouraged aid, development, and human rights work in the places where there is a great need for it, he said.

Millar also discussed how anti-terror laws restrict nonprofits from relieving the symptoms of violent extremism. Having spent more than a year researching the global impact of counterterrorism laws, Millar has seen the damage to nonprofits and civil society organizations (CSOs). He cited examples in countries such as Ethiopia and Uganda, where CTMs have “been very repressive to the extent to which CSOs can even operate.” He stressed how problematic this is, because the aid and development programs nonprofits provide for people in need are at the heart of defeating extremism. “[T]he way to think about radicalization is to look at preventing terrorism on the preventive end, and that means to insure that people have access to education, that people do not feel politically marginalized, they do not have grievances because of human rights,” Millar said. “And civil society organizations are absolutely vital to ensuring that happens.” The absence of nonprofits working to promote human rights and increase quality of life will have far-reaching effects for years to come.

Millar called on the U.S. President and Congress to hold “hearings to review some of the measures that have been put in place by the Treasury in order to see if [they are] having a negative effect on civil society.”

Millar identified three categories of CTMS: the good, the bad, and the ugly. Millar acknowledged that good CTMS do exist, although more commonly, “the bad and the ugly measures are closing the space of civil society and really disrupting their ability to operate effectively.” However, he sees the principles that shape most CTMS becoming more entrenched. Good CTMs, according to Millar are “those undertaken in a multilateral fashion by the United Nations, those that have developed over time to also look at development issues, to look at these so-called root causes, and with the most important factor is that they pay strict attention to human rights, promoting human rights, due process and other elements.”

Millar praised the United Nations' *2006 Global Counter-Terrorism Strategy* as a good CTM measure. He said:

"In the United Nations, there was recognition since 2006 that the root causes have to be dealt with. The United Nations' counterterrorism strategy was developed with four pillars, one of those pillars focused on what in UN policy referred to as the causes conducive to the spread of terrorism, sometimes referred to as the root causes. So they ensure that education and development and other things are part of that strategy. The second and third pillars deal with the sort of run-of-the-mill counterterrorism measures that were implemented by the Security Council and the ability to build capacity for those after 9/11. And then the fourth pillar is human rights."

Even when CTMs are considered “good,” however, the potential for misuse by governments is large. According to Millar, many CTMs “are put in place as emergency measures in response to a crisis.” However, deciding which crises are real and which are “connected to party political machinations, political processes, elections that were conjured up” is difficult to determine. Millar called on the U.S. President and Congress to hold “hearings to review some of the measures that have been put in place by the Treasury in order to see if [they are] having a negative effect on civil society, who ... can actually help to prevent terrorism if governments allow them to thrive and work with sufficient space to do so.” He also seeks “sunset clauses put on any future laws, so we can make sure that these things, these very negative laws don’t go on of years and years and years, decades, and we’re faced with this same sort of situation at a press conference 10-20 years from now.”

The Good, the Bad and the Ugly

Not all counterterrorism measures are created equal. According to the report, *Friend Not Foe: Civil Society and the Struggle Against Violent Extremism* by the Fourth Freedom Forum and Kroc Institute for International Peace Studies at the University of Notre Dame, policies that are meant to combat terrorism are easily corrupted and contribute little to improving security. CTMs can be separated into three categories:

The Good

In general, these counterterrorism measures protect citizens and property by using internationally accepted standards that reflect an accurate and appropriate response to the problem. They also attempt to address the “root causes” of terrorism such as human rights’ violations and cultural and political perceptions, and not just the violent end product of extremism.

The Bad

Intentionally or not, these laws limit the operating space for civil society organizations and harm the people who benefit from their services. Restrictions on giving to charities jeopardize the long-term viability of aid, development and educational programs that are critical to repairing communities and establishing and maintaining good governance.

The Ugly

Repressive measures that are less concerned with the protection of the public and more often used as the vehicle for suppressing safeguards, civil liberties and political opponents. These laws threaten the existence of civil society organizations and create a climate of fear for charities, donors and those in need of aid.

Olga Amparo Sánchez, Director of Casa de La Mujer in Bogotá, Colombia



As head of a leading advocacy group that works on behalf of women in Colombia, Sanchez witnessed the impact from the convergence of CTMs and the U.S.-sponsored drug war in her country. Speaking through a translator, Amparo Sanchez said the result has been government mismanagement, unchecked paramilitary violence, and a culture of fear for citizens and nonprofits alike. Describing the unstable political situation in Colombia, she explained how CTMs have been used by government and paramilitary forces to criminalize civil protest and make people and groups afraid of going “public to complain about what’s going on.” She said, “If you go to protest against the military actions, if you protest against this network of informants ... then you are a criminal yourself.” Many nonprofits have been closed after being labeled as extremists or working against the state. Amparo Sanchez said political opponents have been silenced, jailed, or killed in the name of protecting the state from extremism.

In some countries political opponents have been silenced, jailed, or killed in the name of protecting the state from extremism.

The Colombian government’s measures responding to threats of terrorism are primarily military and ignore the social injustice and marginalization that often leads to violence. Amparo Sánchez believes the U.S. and Colombia should collaborate better “for striking a balance to watch more social investments and not only military investments, to really address the root causes of the conflict. [This would] strengthen the rule of law, but from the perspective of the civil society and not from the military and suppression.”

Immediately after the event, Amparo Sánchez was returning to Colombia to explore potential openings for negotiations between the government and the Revolutionary Armed Forces of Colombia (FARC). Because the U.S. government has designated the FARC as a terrorist organization, this type of conflict resolution activity would be illegal for her American nonprofit colleagues to conduct, since the USA PATRIOT Act defines such activity as "material support" of terrorism.ⁱⁱ Rather than identifying legitimate grievances, providing relief to civilians caught in the fighting, and working to end the violence through peaceful means, U.S. laws prevent U.S. nonprofits from using their expertise toward these ends.

Rana Nashashibi, Director, Palestinian Counseling Center, Lecturer at Bir Zeit University



Nashabshibi explained how U.S. and other nations’ CTMs make it difficult to create and sustain nonprofit organizations in Palestine. One reason is the history of the Palestinian nonprofit sector. She said many Palestinian nonprofits grew out of political parties, the primary type of civil society organization in Palestine. Since some parties, such as Hamas, have been labeled as terrorist groups by the U.S. and other countries, this historical relationship has become problematic. Nashashibi said the process to determine “who is a terrorist” and the restrictions they impose have created barriers to non-discriminatory aid delivery.

The consequences of these restrictions can be counterproductive. Nashabshibi described the difficulties facing U.S. nonprofits working in Palestine. It is often difficult to legally partner with many local groups, since it is not clear which ones the U.S. government considers to be associated with Hamas. She described the impact on civil society in Palestine:

"[M]any American-based organizations come to and work directly in Palestine without a partner organization in Palestine, which again was problematic ... because they would come and they don't really understand the situation, but they come and they implemented programs. And this also led to a lot of undermining of civil society or NGO work in Palestine because they were not getting the money to do their work."

In addition, Nashashibi explained that nonprofits in the Palestinian region are forced to choose between signing an Anti-Terror Certificate (ATC) in grant agreements for work funded by the United States Agency for International Development (USAID) or doing without funding that would enable them to carry out services and programs. USAID's ATC requires a nonprofit to certify that none of its employees are affiliated with a terrorist group and that they do not provide support to terrorism.ⁱⁱⁱ Many groups have objected to signing the ATC as a matter of principle, since it is perceived as a statement of allegiance to a foreign government.

Signing the ATC does not protect a nonprofit from U.S. sanctions if it is later determined that a person or group they collaborated with has been listed as a terrorist. Overall, the impact of ATCs has been counterproductive, according to Nashashibi. "[M]any of the organizations were excluded, good organizations were excluded, and the ones who were getting the funding were in many cases corrupt organizations, but it was because they accepted to sign the ATC."

Rob Buchanan, Managing Director of
International Programs, Council on Foundations



Having worked for years on behalf of the nonprofit sector, Buchanan is familiar with its dynamic people, wide scope of operations, and dedication to the humanitarian imperative. That is why he challenges the Treasury Department's assertion that charities are a significant source of funding for terrorist organizations and are vulnerable to abuse and manipulation by terrorists. Speaking about the entire nonprofit sector, Buchanan said:

"We feel that [Treasury's] focus on legitimate charities is misdirected.... But legitimate charities are not the problem here. Legitimate charities in fact have a long track record of very, very careful due diligence. They follow the IRS rules and regulations for making grants internationally, they do all the due diligence. They know their grantees before they transfer the money. So to suggest otherwise is just not being fair to the sector."

If the integrity of U.S. charities is in doubt, Buchanan suggests examining the numbers. "There are about 1.8 million U.S. charitable organizations. Treasury has moved against seven of them to shut

them down ... So we feel their whole rhetoric, their whole sort of set of assumptions about this area is not well founded,” he said.^{iv}

“[S]ome grant makers decided to discontinue their international grant making programs because of concerns about the Treasury Guidelines.”

Buchanan also explained why U.S. nonprofits have called for withdrawal of the Treasury Department's *Anti-Terrorist Financing Guidelines: Voluntary Best Practices For U.S.-Based Charities* (Guidelines). While “nobody disputes that terrorism is real and we all have to do what we can to make sure that it doesn't get financed and supported ... we need a more nuanced perspective.” Buchanan acknowledged improved due diligence standards and increased self-monitoring are steps in the right direction, but the Guidelines attempt to apply a “one-

size-fits-all” standard to a diverse sector. The problem is that “anyone who has even a passing acquaintance with the charitable sector in the United States knows that there's tremendous diversity in the size, shape, scope, methods of operation of charities. There's really an enormous diversity in the sector,” Buchanan stated.

Even if a nonprofit strictly adheres to the Guidelines, they are not immune from possible government sanctions. This has caused widespread apprehension for supporting international groups and programs and has resulted in U.S. grantmakers scaling back their international funding. “[S]ome grant makers decided to discontinue their international grant making programs because of concerns about the Treasury Guidelines,” Buchanan pointed out. “Concerns that they would do something inadvertently ... Treasury could actually shut them down.” Buchanan sees this as a roadblock for grantmakers. The Guidelines prevent “a direct connection to some of the really exciting grassroots work that's being done around the world ... because they just want to make sure that they don't get into any trouble with the Treasury Department.”

The consequences of scaling back international grants are dire. Buchanan recalled that after the 2005 earthquake in Pakistan, which left nearly 80,000 dead and 3 million homeless,^v “many U.S. foundations really wanted to respond,” but CTMs like the Guidelines made it “very hard for them to feel comfortable and to find the channels that they need to make their grants in those situations. So they're really caught between a rock and a hard place. It was very hard for charities to raise money for the Pakistan earthquake in 2005.”

Buchanan, like others in the sector, wants to replace the Guidelines with the *Principles of International Charity* (see Appendix for more details). Created in March 2005 by the Treasury Guidelines Working Group (TGWG), these alternative standards draw from the experience and expertise of nonprofits working in dynamic environments who know best how to minimize the threat of funds or services inadvertently aiding terrorists. Buchanan said the TGWG “shared [the Principles] with the Treasury Department and urged them to adopt our principles, which they have done. They have adopted some of them but not all of them.”

Evan Elliott, Advocacy Coordinator at InterAction



Elliott outlined USAID's proposed Partner Vetting System (PVS), a plan requiring USAID grantees to collect and submit highly detailed personal information about leaders in partner organizations,

which would be checked against secret U.S. intelligence databases. The plan has been criticized by numerous advocacy and charitable organizations as unnecessary, poorly designed, and even dangerous to relief workers.

PVS does not provide due process for groups forced to turn over information to USAID, said Elliott. The process of list checking would take place behind closed doors, and the organization would receive no explanation or opportunity for redress if USAID determined there was a problem. He said:

"USAID has said that they will neither be able to confirm nor deny whether a particular person was on the list. So if you submitted 10 names to USAID as part of the screening process, all you'd get back was a letter saying that your funding application had been denied for national security reasons. So they would basically be telling you that you have a suspected terrorist on your staff but not who it was. And so that obviously creates a problem. And that person would never have the opportunity to try to get de-listed because they wouldn't know they were on the list in the first place."

Elliott stated that the "Partner Vetting System is a poorly designed CTM because it doesn't contribute to security" and "does not protect the work of those striving to protect human rights or defend development." According to Elliott, the PVS will not be "effective in actually preventing terrorism or finding terrorists. It would require NGOs to screen their Boards of Directors, which include prominent citizens like John McCain and Secretary Madeline Albright, as well as key officers like their CEOs, CFOs and Chiefs of Party, and senior USAID officials have even admitted publicly that they're not likely to uncover any terrorist by screening that kind of person. That the likely terrorist is going to be the truck driver or something like that, and that's not the kind of person who's going to be screened by the PVS."

"It's almost silly to think that an FBI analyst here in the United States, sitting at a computer looking at a list, is going to be more effective in screening a potential employee than an NGO would be that has years of experience working in a particular community."

Encouraging the withdrawal of PVS, he emphasized that it "won't work and will undermine U.S. development and human rights programs." Rather than strengthen relationships with people and groups in regions with conflicts, PVS would "prevent NGOs from partnering with local communities in the way that they have before." And if local populations are not receiving aid from our nonprofits, Elliott asked, "Who are they going to be turning to?" The work that U.S. nonprofits do overseas improves our national image by changing perspectives about America, and its absence from many places will weaken our position globally and leave a dangerous vacuum to be filled by actors who might not share our values or interests.

Concluding his comments, Elliott quoted President Barack Obama's Inaugural Day remarks, saying, "In matters of our national defense, we reject as false the choice between our security and our safety and our ideals, and it's a view of interaction that humanitarian and development programs represent the best of American ideals, which is the willingness to lend a helping hand to those who are most in need."

Part II: The Work of Nonprofit Organizations Helps Reduce Violent Extremism

The March 20 panel participants come from organizations that contribute to human welfare and world peace every day, both directly and through their membership. This work directly counters the drivers of violent extremism. Drivers, such as threats from outside groups and forces, real or perceived injustices at home and abroad, and the denial of basic human rights, all contribute to instability in many parts of the world.^{vi} Nonprofits address these factors with money and services but also with compassion and respect for local needs and cultures. The organizations represented on the March 20 panel are premier examples of this.

Casa de la Mujer

For over 15 years, Casa de la Mujer (“House of the Woman of the Union”) (Casa) has been dedicated to improving the lives of women in Colombia. Casa asks women to become more familiar with the social, political, economic, and cultural dynamics that may limit their security or self determination and facilitates improvements in these areas. Casa provides training for democracy building and leadership roles, organizational capacity building, and human and political rights. One of the four strategic goals of Casa is to create revenue-generating projects and jobs for women who have few opportunities to earn money on their own. Casa has also been instrumental in creating a radio station that promotes gender equity and is critical of the traditional media outlets that often suppress women and human rights.^{vii}

Cordaid

For more than 90 years, Cordaid has been invested in responding to human emergencies and working to eliminate poverty around the globe. With over 1,000 member groups in 33 countries across Africa, Asia, and Latin America, Cordaid and its partners are able to provide aid in the immediate aftermath of a crisis and also develop long-term program strategies. One of Cordaid’s four major program sectors, Emergency Aid and Reconstruction, develops strategies for aiding the large number of people who are displaced or left without basic services during or after a conflict.

Often, an armed conflict in one country can spill over into a neighboring state or undermine global stability through acts of terror. That is why one of Cordaid’s member groups, Servicio Jesuita a Refugiados (SJR),^{viii} created a program in Colombia that responds to the extreme poverty, social exclusion, and political injustices borne by more than 5 million people displaced by the ongoing internal conflict in that country. Working in the Magdalena Medio, Tierralta (Córdoba), and Valle del Cau regions of Colombia, SJR educates people about their civil, political, economic, social, and personal rights and has helped build base communities for long-term sustainability. The program has also established special services for children who are at risk to leave their communities and join the armed conflict.

Council on Foundations

With more than 2,100 grantmaking foundations and corporations as members, the Council on Foundations (COF) works with legislators, educators, and other leaders to promote philanthropic endeavors. COF believes that philanthropy should be the guiding principle in responding to the

needs of a community in crisis. In addition to helping create the *Principles of International Charity*, COF partnered with the International Center for Not for Profit Law to found the United States International Grantmaking project, which provides model materials for foundations to use with their overseas grantees, as well as information on legal obligations and best practices in the field to safeguard their work from terrorism.

Fourth Freedom Forum

The Fourth Freedom Forum (FFF) advocates for non-military methods for enforcing the rule of law and widely accepted international norms. FFF works with governments, the UN Security Council, and international organizations to reform overly broad or harsh counterterrorism laws that discourage or prevent non-military actors from responding to the threats of terrorism.

One of FFF's projects, the Center on Global Counterterrorism Cooperation (CGCC), headed by Millar, identifies ways to improve existing CTMs and considers new mechanisms for combating terrorism within the UN, the G8, and other international and regional bodies. The analysis conducted by the CGCC has been used in UN counterterrorism programs and the UN Secretary-General's task forces on counterterrorism and reform, and it has helped guide the security policies of individual member countries. Reports like *Building Stronger Partnerships to Prevent Terrorism and Civil Society and the UN Global Counter-Terrorism Strategy* both reframe the counterterrorism dialogue by encouraging reforms for broad or temporary terrorism measures. The project also increases cooperation with nonprofits that have global partners and first-hand experience working around the world.

InterAction

InterAction is a 25-year-old association with 180 international humanitarian and development member organizations. Together, they work with policymakers to develop innovative solutions to deliver humanitarian aid to those who have the greatest need around the world. For example, Save the Children is one of 16 member groups collaborating in Zimbabwe to alleviate suffering in one of the world's worst economic and hunger crises.^{ix} Serving nearly 400,000 children and their caregivers, Save the Children provides food to malnourished children and is dedicated to the overall advancement of children's health and rights in the country. These services, as well as others aimed at reducing or preventing the spread of HIV/AIDS and improving education, help provide children with an opportunity to escape a difficult environment that leads many to abandon their communities and join criminal gangs or private armies.

InterAction is also involved with the Sphere Project.^x At the core of the Sphere Project is a belief that all possible steps should be taken to alleviate human suffering arising out of conflict and that those affected by disaster have a right to receive assistance. Programs developed under this project include training humanitarian responders in Sri Lanka on properly responding to the ongoing crisis and calling for the inclusion of education as part of any emergency humanitarian response. The latter is being sought to provide children with security from physical harm during a crisis and to also produce a long-term benefit for the children and their communities.

Palestinian Counseling Center

The Palestinian Counseling Center (PCC) was established in Jerusalem by a group of psychologists, sociologists, and educational experts in 1983. PCC works on developing and improving mental health services in the Palestinian states. One of the PCC's departments, Socio-Education, is aimed at providing children with counseling and mentors to help steer them away from making poor choices in their lives and to identify and assist children with mental or learning disabilities. Programs called Big Brothers/Big Sisters and Youth At Risk provide children with a safe environment to express themselves, learn about the consequences of their choices, and receive steady encouragement to pursue an education. Issues surrounding identity, politics, and cultural relationships are routinely discussed. PCC believes that developing a strong foundation in children from an early age not only helps create a robust community, but a safer one, too.^{xi}

Part III: U.S. National Security Laws Hamper Nonprofits from Doing Critical Work

In the aftermath of deadly attacks, governments have a duty to implement measures to provide security for the people. But these emergency responses are often not well suited as long-term strategies. In the U.S., there has been little or no oversight of their impacts or whether implementation has been appropriately conducted. The result is that the current U.S. counterterrorism regime is based on flawed strategies that hinder the work of nonprofits and that are counterproductive from a security standpoint.

In looking at how these laws hamper the work of nonprofits, several common themes emerge from the experiences related by the speakers on March 20.

A Narrow Lens Leads to Limited Security Options

Policies that exclusively rely on military actions, watchlists, or anti-terrorist financing programs stymie legitimate charitable work and represent narrow and misguided methodologies that ignore the urgent need for philanthropy, development, and human rights advocacy as part of the response to combating terrorism. The factors that contribute to violent extremism often involve anger at real or perceived threats from external forces.^{xiii} U.S. security policy should reflect a comprehensive approach that uses the strength of the military when necessary but also takes advantages of our nation's ability to respond to a human crisis with immediacy and sympathy.

While the fight against insurgents requires a strong military presence, the broader battle for hearts and minds will not be won with guns alone. Successfully countering the threat of terrorism requires multifaceted approaches, and charities and other nonprofits want to and are qualified to contribute. When Amparo Sánchez spoke about improving CTMs

The factors that contribute to violent extremism often involve anger at real or perceived threats from external forces.

in Colombia, she emphasized an urgent need for “more social investments and not only military investments, to really address the root causes of the conflict.” The U.S. government needs to set the

tone with the rest of the world by fostering an environment conducive for nonprofits to do their work.

Buchanan's description of Treasury's view of charities as part of the problem reflects that agency's limited bureaucratic view, based on its economic sanctions mission. That view fails to take human rights and public diplomacy into account, limiting America's foreign policy options and preventing critical aid from reaching those who are in need of aid.

Restrictive and Counterproductive Measures

Rules meant to prevent the financing of terrorism have had a chilling effect on both donors and charities and have left vulnerable populations underserved. The Treasury Department's Guidelines create an atmosphere of suspicion and anxiety for U.S. charities that operate programs overseas. Calling for their removal, Buchanan said, "I would advocate for the Treasury Department to withdraw the [Guidelines], just get them off the table, they're not adding anything, they're not helpful, they're creating a lot of confusion and angst and frankly, sending a message that is discouraging donors from funding in areas of the world that need their resources very badly."

The Treasury Guidelines have garnered criticism for their implication that nonprofits should function as information gatherers for law enforcement agencies. Buchanan said the Guidelines suggest charities should report "suspicious activities to the FBI without really defining what suspicious activities were." Disclosure of personal information about key members of a group and its partners or grantees is also suggested. The Guidelines recommend that charities check on the official status of their grantee organizations and determine if they have an official registration with the governments where they are located. This inquiry, however, can lead to unnecessary hassles. "This is not public information in some countries. So when you go around asking these kinds of questions, people raise their eyebrows."

"I would advocate for the Treasury Department to withdraw the [Guidelines], just get them off the table, they're ...sending a message that is discouraging donors from funding in areas of the world that need their resources very badly."

Examples of CTMs restricting nonprofits from operating in global hot spots – where need is often greatest – are commonplace. For instance, in February 2009,^{xiii} the Ethiopian parliament passed a law restricting charities and other nonprofits from "activity in human and democratic rights, gender or ethnic equality, conflict resolution, the strengthening of judicial practices or law enforcement."^{xiv} The law also requires that a nonprofit receive no more than 10 percent of its funding from international donors.

Eshetu Bekele, head of the National Task Force on Enabling the Environment of Civil Society Organizations in Ethiopia, said, "There are organizations that are very fragile in their capacity and organizational structure. Those might close down." A prominent member of an Ethiopian opposition party, Beyene Petros, said, "[This] is a scheme to stifle societal activity and voluntary initiatives which would assist both political and economic progress in this country."

Massive Data Gathering Displaces People-to-People Relationships

USAID's Partner Vetting System (PVS), if implemented, would require USAID grantee organizations to submit personal data from key personnel and compromise the independence of

nonprofits operating in some of the world's most dangerous conflict zones. Rather than drawing on the familiarity with regions and people that nonprofits develop over years of partnership-building in local communities, PVS will use error-ridden databases and watchlists to identify who is safe to work with. Mocking that idea, Elliott said, "It's almost silly to think that an FBI analyst here in the United States, sitting at a computer looking at a list, is going to be more effective in screening a potential employee than an NGO would be that has years of experience working in a particular community."

Neutrality or the perception of neutrality of nonprofits from a foreign government is often the critical factor in whether a local population will respond favorably to its presence or whether it will reject them. Elliot believes it "would create the impression that US NGOs are collecting information on behalf of American law enforcement and intelligence agencies" and endangers the lives of aid workers who rely on political neutrality to conduct their operations. Elliott, like other leaders in the nonprofit sector, regards policies like the PVS as a move in the wrong direction. "[T]he Partner Vetting System will constrain U.S. humanitarian and development assistance in a way that will cripple the ability of US NGOs to work overseas, especially in places where they already face the risk," he said.

If the bonds that unite U.S. nonprofits with their overseas partners are weakened by restrictive laws, not only do the beneficiaries of the aid suffer, but people's perception of the U.S. is negatively affected.

Additionally, Buchanan told the audience that the "huge amount of information collection on the part of charities ... would be expensive, it would be time consuming, it would divert funds from their grant making programs into administrative operations in order to gather that kind of information. So they would be able to do less than their actual charity work."

Weakening Grassroots Institutions

Nonprofits that work in the field of community and economic development know that long-term solutions require building sustainable projects that have the support and participation of local communities. According to Grantmakers Without Borders, good social change philanthropy "values and respects the wisdom and experience of local communities."^{xv} InterAction and its member groups, like many other nonprofit organizations, depend on local activists and community leaders to provide "grassroots insights to deliver innovative and integrated solutions."^{xvi} Often, the effectiveness of the aid delivery is dependent on having developed close partnerships with local communities, who help overcome cultural, linguistic or physical barriers that could otherwise prevent the aid from getting through. If the bonds that unite U.S. nonprofits with their overseas partners are weakened by restrictive laws, not only do the beneficiaries of the aid suffer, but people's perception of the U.S. is negatively affected.

This concept is reflected in a Nov. 13, 2009, *New York Times* article that reported the success of small, community-based development projects in Afghanistan.^{xvii} Rather than send in government agencies or hire private contractors at much higher cost, this government project provided small grants directly to villagers, through representatives elected by them. In the village of Jurm, which had no electricity or running water and one of the highest maternal mortality rates in the world, this project has led to water taps, farmers growing wheat instead of poppies, and health services for women. The article noted, "If there are lessons to be drawn from the still tentative successes here,

they are that small projects often work best, that the consent and participation of local people are essential and that even baby steps take years."

The way the U.S. uses its terrorist watchlists, coupled with harsh sanctions if a nonprofit makes an error, has had the negative effect of weakening the very grassroots institutions that provide an alternative to terrorist recruiters. Nashabshibi described how CTMs in Palestine have suppressed development of a strong, locally based nonprofit sector that operates with accountability and transparency. There is "a lot of pressure on the civil society actors, which are trying to promote democratic practices in the Palestinian context," but they are constantly struggling with international designations and sanctions.

Political Abuse of Security Laws

Millar says CTMs from the U.S. and UN serve as models for decision makers in other countries. Commonly, national governments interpret these laws as providing them with "carte blanche ... in the name of preventing terrorism." Overbroad CTMs can be easily corrupted by governments and used to target benign political opponents and nonprofits working to defend civil liberties. CTMs designed to suppress civil protest, quell political dissent, and reduce the space in which nonprofits operate all contribute to instability.

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During the question-and-answer period of the panel event, a guest from the Philippines shared his country's experiences with CTMs. Augusto N. Miclat, the Executive Director of Initiatives for International Dialogue, said Philippine CTMs have been used to undermine political speech and hamper negotiations with insurgent groups. He said that because certain

political groups have been listed as terrorist organizations by the main political party, "the peace process stalled. And up to now it's still frozen. So that is the concrete effect of a CTM."

Miclat said emergency measures have resulted in authorizing long-term military activities that were not designed to be permanent. These actions undermine the law and are not easy to discontinue once installed. He noted:

"CTMs also provide conditions for more sustained, bolder, if not concrete foreign intervention, military intervention on policy intervention in countries like ours. For example, in the Philippines in the south where I am based, we have American forces based there ... and they've been stationed there, sustained presence there in spite of the ban of foreign military bases in our country, but they skirted this by having this agreement wherein they can be deployed in a sustained level but different shifts. But they are there present all throughout. And they are under the guise of running after Al-Qaeda terrorists, Al-Qaeda insurgents."

Part IV: A Better Approach

Identifying a CTM that affirms the usefulness of charities and nonprofits and the values they embrace, Millar spoke about the UN's *Global Counter-Terrorism Strategy* (Strategy).^{xviii} Adopted on Sept. 8, 2006, it “marked the first time that all Member States of the United Nations have agreed to a common strategic and operational framework to fight terrorism.”^{xix} Speaking about the UN's Strategy, Millar said, “There is a more holistic perspective ... and it shouldn't just be about military force, it should include development preventative acts, and it should pay attention to human rights.”

The comprehensive Strategy combines international, regional and national efforts aimed at preventing extremism, in part, by addressing long-term components. According to the UN:

"The United Nations places its counter-terrorism actions within its broader work framed by its overall efforts to promote peace, security, sustainable development, human rights and the rule of law. The multitude of offices, programmes and specialized agencies of the United Nations system works to address conditions conducive to the spread of terrorism including but not limited to prolonged unresolved conflicts, dehumanization of victims of terrorism in all its forms and manifestations, lack of the rule of law and violations of human rights, ethnic, national and religious discrimination, political exclusion, socio-economic marginalization and lack of good governance."^{xx}

At its core, the UN plan recognizes that acts of terrorism do not originate in isolation. Its plan of action is designed to “address the conditions conducive to the spread of terrorism; to prevent and combat terrorism; to take measures to build state capacity to fight terrorism ... and to ensure the respect of human rights while countering terrorism.” Nonprofits share these values and have the expertise and desire to help in places where government actors cannot or will not go. This is why including “civil society, regional and sub-regional organizations in the fight against terrorism” and “to facilitate [NGOs] contributions to the international community's efforts in this area” are part of the Strategy's key initiatives.^{xxi}

Conclusion

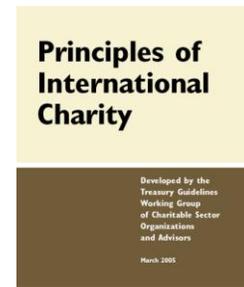
Charities, foundations, development groups, human rights advocates, and other nonprofits have been unfairly targeted by ambiguous and harsh rules and regulations. Laws such as the Patriot Act and the Treasury Guidelines for nonprofits do not protect these groups from the unintended diversion of resources to terrorist groups. Instead, they restrict providing vital relief and deny basic rights by offering little or no redress to groups that are shut down by the government.

U.S. security should take advantage of the experience, capabilities and willingness of nonprofit organizations to address the key factors that contribute to global terrorism. U.S. nonprofits provide urgent aid during a time of crises, address economic and political injustices, or counter negative perceptions about America. The laws should treat them as a valuable ally in the fight against violent extremism.

Appendix

The Principles of International Charity

Responding to the impractical U.S. Treasury Department issued “Anti-Terrorist Financing Guidelines: *Voluntary* Best Practices For U.S.-Based Charities,” a group of non-profit sector leaders and experts created “The Principles of International Charity” (“Principles”) in March 2005. The 8 fundamental principles are:



1. Consistent with the privilege inherent in their tax-exempt status, charitable organizations must exclusively pursue the charitable purposes for which they were organized and chartered.
2. Charitable organizations must comply with both U.S. laws applicable to charities and the relevant laws of the foreign jurisdictions in which they engage in charitable work. Charitable organizations, however, are nongovernmental entities that are not agents for enforcement of U.S. or foreign laws or the policies reflected in them.
3. Charitable organizations may choose to adopt practices in addition to those required by law that, in their judgment, provide additional confidence that all assets—whether resources or services—are used exclusively for charitable purposes.
4. The responsibility for observance of relevant laws and adoption and implementation of practices consistent with the principles contained herein ultimately lies with the governing board of each individual charitable organization. The board of directors of each charitable organization must oversee implementation of the governance practices to be followed by the organization.
5. Fiscal responsibility is fundamental to international charitable work. Therefore, an organization’s commitment to the charitable use of its assets must be reflected at every level of the organization.
6. When supplying charitable resources, fiscal responsibility on the part of the provider generally involves:
 - a. in advance of payment, determining that the potential recipient of monetary or in-kind contributions has the ability to both accomplish the charitable purpose of the grant and protect the resources from diversion to noncharitable purposes;
 - b. reducing the terms of the grant to a written agreement signed by both the charitable resource provider and the recipient;
 - c. engaging in ongoing monitoring of the recipient and of activities under the grant; and
 - d. seeking correction of any misuse of resources on the part of the recipient.
7. When supplying charitable services, fiscal responsibility on the part of a provider involves taking appropriate measures to reduce the risk that its assets would be used for non-charitable purposes. Given the range of services in which organizations engage, the specific measures necessarily vary depending on the type of services and the exigencies of the surrounding circumstances. The key to fiscal responsibility, however, is having sufficient financial controls in place to trace funds between receipt by the service provider and delivery of the service.
8. Each charitable organization must safeguard its relationship with the communities it serves in order to deliver effective programs. This relationship is founded on local understanding and acceptance of the independence of the charitable organization. If this foundation is shaken, the organization’s ability to be of assistance and the safety of those delivering assistance is at serious risk.

Additional Resources

Baron, Barnett. "Deterring Donors: Anti-Terrorist Financing Rules and American Philanthropy." *The International Journal of Not-for-Profit Law*, Volume Six, Issue Two, January 2004

Blocking Faith, Freezing Charity: Chilling Muslim Charitable Giving in the "War on Terrorism Financing" (ACLU: June 2009)
<http://www.aclu.org/free-speech-human-rights/charitable-giving-and-war-terrorism-financing>

Collateral Damage: How the War on Terror Hurts Charities, Foundations, and the People They Serve (OMB Watch: July 2008)
<http://www.ombwatch.org/files/npadv/PDF/collateraldamage.pdf>

Friend not Foe: Civil Society and the Struggle against Violent Extremism (Fourth Freedom Forum and Kroc Institute for International Peace Studies at the University of Notre Dame: October 2008)
http://www.fourthfreedom.org/pdf/08_10_Friend_Not_Foe.pdf

OMB Watch Executive Report "The USA PATRIOT Act and its Impact on Nonprofit Organizations," September 2003. Available online at <http://www.ombwatch.org/article/articleview/1803>

"Principles of International Charity," developed by the Treasury Guidelines Working Group of Charitable Sector Organizations and Advisors, March 2005. Available online at http://www.cof.org/files/Documents/International_Programs/2005Publications/Principles_Final.pdf

Safeguarding Charity in the War on Terror (OMB Watch: October 2005).
http://www.ombwatch.org/pdfs/safeguarding_charity.pdf

Endnotes

ⁱ In November 2001, Sen. Diane Feinstein (D-CA) co-sponsored a resolution to triple the United States' foreign aid. She said the US would help itself by helping nearly 800 million people who don't have enough to eat and more than 1 billion who don't have safe drinking water. See <http://www.usatoday.com/news/sept11/2001/12/04/foreignaid-usat.htm>

ⁱⁱ 18 U.S.C. §2339A(b), but incorporated by reference in 18 U.S.C. §2339B(g)(4) (2002). The USA PATRIOT Act expanded the definition of "material support" by adding "expert advice or assistance." Pub. L. No. 107-56, §805(a)(2), 115 Stat. 272 (2001).

ⁱⁱⁱ Certification Regarding Terrorist Funding required by Internal Mandatory Reference AAPD 04-14, available at <http://www.usaid.gov/wbg/mis/2007-WBG-26.pdf>.

^{iv} As of the date of publication of this report, nine U.S. based charities have been closed by Treasury.

^v South Asia Earthquake: Fact Sheet #25 (FY 2006): <http://www.reliefweb.int/rwarchive/rwb.nsf/db900sid/KHII-6J93HT?OpenDocument>

^{vi} Atron, Scott and Robert Axerod, "Reframing Sacred Values." *Negotiation Journal* (July 2008), pp. 221-246.

^{vii} See Casa de la Mujer website (translated into English): <http://bit.ly/520ZZv>

^{viii} See Cordaid website: <http://www.cordaidpartners.com/partners/servicio-jesuita-a-refugiados-en-colombia-sjr>.

^{ix} See InterAction website: <http://www.interaction.org/document/member-activity-report-zimbabwe-2008>.

^x See Sphere Project website: <http://www.sphereproject.org/>.

^{xi} See Palestinian Counseling Center website: http://www.pcc-jer.org/english/dept2_en.php.

^{xii} Christine Fair and Bryan Shepard, "Research Note: Who Supports Terrorism? Insights from Fourteen Muslim Countries," *Studies in Conflict and Terrorism*, Vol. 29, No. 2 (December/January 2006).

^{xiii} See International Center for Not For Profit Law website: <http://www.icnl.org/knowledge/ngolawmonitor/ethiopia.htm>.

^{xiv} SperoNews (2009), *Ethiopia Passes Law to Restrict Charity Activity*. See <http://www.speroforum.com/a/17560/Ethiopia-passes-law-to-restrict-charity-activity>.

^{xv} See Grantmakers Without Borders' 2008 Conference Session requests: "Just Giving: Global Social Change Philanthropy". See www.gwob.net/justgiving2008/pdf/callforsessions2008.doc.

^{xvi} InterAction's Issues & Field Insight website. See <http://www.interaction.org/issues-field-insights>.

^{xvii} Sabrina Tavernise, "An Afghan Development Model: Small is Better," *New York Times*, Nov. 13, 2009 p. 1.

^{xviii} The United Nation's Action to Counter Terrorism website. See <http://www.un.org/terrorism/strategy-counter-terrorism.shtml>.

^{xix} The United Nation's Action to Counter Terrorism website. See <http://www.un.org/terrorism/index.shtml>.

^{xx} The United Nation's Action to Counter Terrorism website. See <http://www.un.org/terrorism/makingadifference.shtml>.

^{xxi} The United Nation's Action to Counter Terrorism website. See <http://www.un.org/terrorism/strategy-highlights.shtml>.