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THE IMPACT THAT COUNTER-TERRORISM MEASURES ARE
HAVING ON THE LEGITIMATE OPERATIONS OF NGOS - OUR
GOAL IS TO DO SOMETHING ABOUT IT

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Transcription Arizona
533 E. Ingram
Mesa, AZ 85203
Ph: 480-626-7426
1-866-460-3349
Fax: 480-907-6529
E-mail: msorg@cox.net
www.transcriptionarizona.com

Charity & Security Network
The Impact That Counter-Terrorism Measures Are Having on the Legitimate
Operations of NGOs - Our Goal Is To Do Something About It
July 1, 2009

MODERATOR: Kay Guinane, Program Manager, Charity & Security Network

PANEL: Brian Majewski, Partner, Global Emergency Group
Charles Swift, Partner, Swift & McDonald, Counsel to Muslim
Legal Foundation of America
Jennifer Turner, Human Rights Researcher, ACLU Human
Rights Program
Mohammed Alomari, Chief Operating Officer, Life for Relief &
Development
Jan Lane, Policy Advisor and Senior Fellow, Homeland Security
Policy Institute, George Washington University

(Inaudible) = Areas that could not be heard due to poor audio quality, background noise, quiet/stifled speaking, etc.

Kay Guinane: Thank you for coming. I'm Kay Guinane, I'm the Program Manager of the Charity and Security Network, which is a project of OMB Watch, a government watchdog organization here in DC, and a joint effort of a number of nonprofit organizations, grant makers, faith based organizations, civil liberties groups, NGOs, service providers who are all concerned about the impact that counter-terrorism measures are having on the legitimate operations of U.S. NGOs, and our goal is to do something about it. We think this is the right time.

Part of coming up with a solution is asking the right question about the problem and looking at it in a framework that helps us arrive at a solution that protects both public safety and human rights. So our panel today is our way of trying to open up the discussion beyond what, in the past several years has been all about anti-terrorist financing and charities being abused by terrorist organizations, to look at the much wider question of what legitimate charities are doing and how other frameworks apply, including international humanitarian law and other codes of conduct.

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So without any further ado, each panelist will speak for about 10 minutes, then we'll have question and answers until 4:00, when at that point we launch our new website and you're all welcome to stay, and we have all the snacks and whatnot for that reception will come out at 4:00. And we encourage you to ask questions. When you do ask a question or make a comment, if you would wait and get the microphone, just press the little button, it turns green, it will make sure that your question is recorded. Because this event will be, the audio file will be posted on our website.

So, end of introduction. I first like to introduce Brian Majewski, who is with the Global Emergency Group, and you can see on the agenda, has vast experience in the field dealing with a variety of types of emergencies and a variety to types of conditions for NGOs to operate in those context. So I will turn it over to Brian. Thank you.

Brian Majewski: Thank you Kay. I'm going to set a little bit of an overall picture on codes of conduct and humanitarian principles which apply to our work. Many of you here will be familiar with this, but that I think it compliments nicely what Charlie's going to talk about in terms of international humanitarian law.

In terms of humanitarian principles and standards, a lot has emerged in the last 20 to 30 years to try to establish a common culture and a set of behaviors across NGOs, humanitarian organizations, international organizations to guide our conduct. Based on common sense of humanitarian principles, many of these principles have existed and have been adopted by individual organizations long ago, but been codified in common codes of conduct in recent times, and as we'll see in a little while, many of them come into direct conflict with US anti-terrorism laws, and have I'm sure caused many of you headaches, I know they have

caused me headaches in my past positions within the humanitarian community, and have challenged our ability to live up to the humanitarian imperative.

Essentially, humanitarian imperative is the notion that everyone has a right to humanitarian assistance and to be treated with dignity. Also the right to offer it, which really comes into play when your NGO is trying to weigh these different legal constructs and codes.

The other top level common principle which most NGOs, the UN System, the Red Cross Red Crescent Movement, have focused themselves upon is neutrality. Basically, that humanitarian agencies do not take sides in an armed conflict or any types of hostilities, or controversies which are based on political racial religious ideological arguments.

Impartiality is the other widely widespread common principle which many of our organizations have really adopted and built into their day to day work. The idea that aid is provided solely based on need. This very directly comes into conflict with US anti-terrorism laws and with the idea of denying into a particular actor or party in a given situation.

Where did all of this come from? Not to toot the horn of the International Red Cross and Red Crescent Movement too much, but that is to a large degree where my background is, and as one of the oldest private networks of humanitarian organizations around the world, the International Red Cross and Red Crescent Movement really got a head start on discussing and trying to come up with common humanitarian principles. And this has in large ways driven and impacted how other organizations, networks of organizations, have looked at key principles for guiding humanitarian action and for insuring that they can

continue to have access to those they needed to serve and enjoy the competence involved.

Seven fundamental principles of the International Red Cross Red Crescent Movement were first adopted in a slightly form actually in 1921 and written into the International Committee of the Red Cross, the statutes at that point in time. This was seen as a way of trying to coordinate and establish common culture across a growing number of National Red Cross Red Crescent Societies, the International Federation and the ICRC to insure that standards of conduct and behavior were understood, and also to create an ethical framework in many ways from decision making within the Red Cross Red Crescent Movement about how when, where, they would act. Humanity, impartiality, neutrality, independence, voluntary service, unity, universality are the seven fundamental principles today.

Interestingly, these fundamental principles were agreed not just by the Red Cross Red Crescent Societies, the ICRC and the Federation, but in 1965 they were adopted by an International Conference of the Red Cross, which states party to the Geneva Convention is to participate and have an active voice and vote. So all of those signatories, to the Geneva Conventions, agreed that these should be the fundamental principles guiding the actions and decision of the International Red Cross Red Crescent Movement as early as 1965. Again, they're largely, well in many cases especially around impartiality and neutrality, humanity derived from aspects of the Geneva Conventions.

Humanity is important I think in this debate because it talks very much about bringing assistance to those in need without discrimination. Talks about alleviating suffering based on need and a number of other aspects. But again, this principle seems to be a burden in terms of how NGOs and humanitarian

organizations ought to conduct themselves visa vie the current regimes around anti-terrorism.

Impartiality and neutrality I think are two of the other key fundamental keys of Red Cross Red Crescent Movement where we felt conflict within the movement, especially the American Red Cross where I worked for many years, because on the one hand you have a domestic set of laws to which we have to comply or risk serious legal challenges. And on the other hand our entire makeup, our entire personality as organizations and as part of a movement, is supposed to be based on impartiality and neutrality. Neutral and impartial humanitarian action is very much the driving concept within the movement, even to this day, and we debate amongst one another very much the lines we should and shouldn't cross to comply with domestic legislation and other pressures.

Impartiality talks again about non-discrimination based on nationality, race, religious beliefs, class, or political opinions. Relieving suffering based needs giving priority based on the most urgent needs. And neutrality talks about, in order to enjoy the confidence of all, not taking sides in those hostilities or engaging in controversies of political, racial and other natures. I think one of the things which I found that the US Government had a hard time sometimes understanding is that are complying with national law, we were seen by our partners within the movement and our other partners on the ground as engaging in a political act, and essentially, we were seen as endorsing very controversial and political views of the US Government in terms of who is and isn't a terrorist, what constitutes terrorism, and who deserves to receive assistance.

The other big one which is somewhat unique to the Red Cross and Red Crescent Movement is independence. And this is because Red Cross Red Crescent Societies are essentially auxiliary to government and were formed as an

outgrowth of their government signing on to the Geneva Conventions. And as an auxiliary you have a constant balancing act to do, and inherent the Red Cross is far from unique in that among other international societies, but certainly the current debate around antiterrorism regulations and laws took this in a very complicated and more difficult direction in many ways, proving that they were independent while asking partners to sign certifications saying that they would in no way provide material assistance to people on the STN lists, or openly saying that we could not provide assistance in giving country due to economic sanctions over in place, certainly caused others to believe what are independence had have been undermined. And finding a way to balance those pressures and to make sure that we could come up with the legal justification for doing what we were mandated to do and what our own government and others have agreed we ought to do based on the fundamental principles on the go was a real challenge, especially post 9/11, and over the six or seven years that I was will with the American Red Cross after that.

To broaden those principles beyond the International Red Cross and Red Crescent Movement, code of conduct for movement and NGOs in disaster relief was developed in 1996, and I won't focus a lot on the details, but essentially the Steering Committee for Humanitarian Response and its member organizations decided that these same concepts should be applied clearly to situations of disaster relief and applied beyond just the Red Cross and Red Crescent Movement to try to establish these norms and this culture of cross-organizations, again to safe guard our access and the confidence of those we serve. It has two basic parts, the code set standards for the organizations providing disaster relief, but also makes recommendation to governments on the environment that they should be creating in order to make this possible.

Again, it reinforces many things which the Red Cross Red Crescent Movement have talked about for a long time, and which many of these individual organizations had tried in their own policies and standards. Humanitarian imperative comes first, and it's given regardless of race, creed and nationality. And importantly, aid will not be used to further particular political or religious standpoint. There are a number of other elements here which focus on professionalization I think cross organizations and the industry, but those are the ones that jump out.

In terms of what was recommended to governments, again, it was mentioned that governments should recognize and respect the independent humanitarian impartial actions of non-governmental humanitarian organizations. And for donor governments in particular, second one here talks about providing funding with a guarantee of operational independence. Again, these were just recommendations but they were certainly very strongly pointed out to governments in various different settings and agreed to cross a variety of pretty diverse NGOs.

One other place where, just to set the context where you see a number of the same concepts coming up is the Sphere Project, and in particular its humanitarian charter. Permitted into act in accordance with the principles of humanity and impartiality is clear in the humanitarian charter, the code of conduct itself is actually very directly referenced and fundamental principles and international human rights law are also referenced here as well. So you begin to see a body of policy that cuts across the humanitarian sector, which really motivates us to behave in a way where assistance is provided on the ground based on need alone. While at the same time we've, in the last decade especially been challenged to act in a very different way by many of our main funding partners, as well as just to maintain legal compliance.

I think I will stop there. I certainly can send around some of the additional details and a little bit on the particular conflicts that I've seen come up as a result of aspects of anti-terrorism laws. So let me turn it over to Charlie and talk more on the international legal front here.

Charles Swift: I'm going to duplicate for just a moment, and the purpose on duplicating with respect to previous presentation is to point out that the Geneva Conventions, which I have been asked to talk about, recognize NGOs, or relief societies as referred to in the Conventions, their part of it and the principles of relief societies are in fact drawn from the Geneva Conventions. And I'll talk in more detail how that actually plays out in the context of armed conflict.

The purpose is and the ones, there are three purposes to IHO, two of which are not particularly relevant to an NGO unless it's monitoring the military and trying to get it to comply. NGOs don't attack anyone, hopefully, and NGOs don't prisoners, hopefully, so their conduct in how they treat, you know, these first two principles has been IHO govern the military. The last principle, however, governs humanitarian aid. Because the ultimate purpose of the Geneva Conventions is to alleviate human suffering, any unnecessary suffering in context with war. And generally that's done first and foremost by caring for the sick and wounded. And secondly, by providing food and shelter for civilians. The Geneva Conventions do not mandate that there be any provision for food or shelter for combatants on the other side. Taking away the combatant's food and shelter is fine. Taking away a civilian's food and shelter is not.

What do they do? As I said the mandate humanitarian aid, it plays the principle responsibility for humanitarian aid on the parties to a conflict. First and foremost, those fighting are responsible to protect visibly and population, and that includes providing humanitarian aid. It is a great feat not to. However, the Geneva

Conventions also recognize that it is a war, and sometimes one party because of attack or resources, cannot provide that support or is unwilling to provide the support, and that should not be a too bad so sad occasion, wherein the civilian population starves or lacks medical care. And so they recognize the ability of NGOs and for the International Committee to the Red Cross to alleviate these sufferings when the protecting powers are not.

The last part is to provide international law also is to provide protection to those who deliver the aid. They are considered (outside of) combat. That is, you can't shot them, you can't intern them and you cannot try them for their activities. What it doesn't do? It does not supply national sovereignty. In particular when we talk about internal arm conflict the Geneva Conventions were not meant to take over the sovereignty of any one country and to say that they had to change their laws. They put in basic humanitarian principles in the context of internal armed conflict, but they do not supplement internal sovereignty. And most importantly, they do not permit aid to be used as a weapon by either side. This is the principle of neutrality where aid is seen. Aid is not a weapon. Those who provide aid must be neutral in providing it. Nor can one of the parties of the conflict prevent aid as a means of waging war. And if you think about it, it makes absolute sense, doesn't it? Everyone in the room, think for a moment that you can bomb, under IHL, a civilian village. But you can attack intentionally knowing that it will hit it, a civilian village and destroy it. It has no military purpose. That's obviously out of bounds. So why can you starve the village? Why is that permissible if you can't bomb it, aren't they just as dead in six months? So again, international law does not allow aid to be turned into a weapon.

Now just like dropping bombs, it allows the military to look at the necessities of the situation. Does that mean aid flows unrestricted? No it does not. Briefly, and I presume an awful lot of knowledge and I'll be available to answer questions, but

I can spend the two hours explaining the different types of conflict. I'm going to presume you generally understand them. The types of conflict are international armed conflict, that's conflict between two nation states or high contracting parties to the Convention. Then there is occupied territory. That follows international armed conflict in many cases. Iraq, would be an example of occupied territory, Afghanistan, would be an example of occupied territory. That's governed under the Fourth Geneva Convention. I say occupied territory is important because it's the only one where aid societies in their presence are mandated under the Convention.

And finally, internal armed conflict, that's everything else after the Hamdan decision, it's no longer just civil war, the Supreme Court has spoken, at least as far as the United States is concerned, and it goes with the NCRC that internal armed conflict basically covers all conflict that is not international and is not in occupied territory.

When we go back from different portions you can start out in international and say NCRC, I like this slide you go back and forth. However, the principles of humanitarian aid as far as NGOs go are very consistent throughout the three situations. As I said, it's only mandated in an occupied territory and I think that again makes sense when we raise the commentary it was practical. Where a battle was going on it was hard to mandate that an aid society would be allowed on the battlefield. But in an occupied territory it's very difficult to say why they could not go.

Briefly, to talk about the occupied territories. And I highlighted the part that really has run a fowl in US policy, where the Fourth Geneva Convention and I like to call it the Forgotten Geneva Convention because nobody tends to talk about it. And yet the United States, in particular, and occupied territories make up an

awful lot of the issues. The occupied territories under Article 36, "The occupying power may not require any changes in personnel or structure to these societies which were prejudiced before said actions." They must be neutral. But the occupying power under it cannot come in and reshape it to meet what they want. This is the understanding that that would violate the principle of neutrality. Nor can they, the part that I wouldn't put up the aid has to go to those who need it, not to who the occupying power would see to get it. There is over 200 hundred central principles and those are mandated. Yes?

Unidentified Male Speaker: United States is signatory to this?

Charles Swift: Yes, the United States is signature, ratified the Geneva Convention to 1049, yes they did.

Unidentified Male Speaker: At all of these conventions?

Charles Swift: Yes. Absolutely.

Unidentified Male Speaker: So it is the law of the land?

Charles Swift: It is. I point that they may be talking about the fourth convention but it has an awful lot to say about our conduct. And if we are the occupying power that is mandated under international law.

Common Article 3 for the rest of it, very briefly. Common Article 3 deals with everything else that's not classic nation state conflicts, or non (inaudible). And it says that is shall be, the wounded and sick shall be collected and cared for. An impartial humanity body such as the International Red Cross may offer its

services to the parties. That's all it says on that topic. It just, carefully worded, and but you may offer services.

But I'll go on to Additional Protocol 2. The United States is not a signatory to Additional Protocol 2. However, the articles that I'm going to refer to, Article 18 and Article 10 were not areas where we disagreed. Our problems which we got to be POWs than these were ratified under, all the Geneva people are nodding. All problems where the definitions of combatants and their protections. Not word the idea of humanitarian aid in the United States and Bosnia took the positions that Article 10 and Article 18 are international common law even if they're not signed by the United States, and under the guiding principle they are equally binding on the United States.

The Hamdan Court cited Protocol 2 and Article 13 which provides the judicial guarantees in what would be necessary in the civilian tribunal or in the military tribunal and overturning the President's executive order at the time. So certainly our Supreme Court has shown them willingness to take from Protocol 2, at least in the uncontroversial areas. One would presume they might be willing to do that in the future.

And here it says, under hardship, owing to a lack of the supplies essential for survival, and it sets out that the same principles that you just heard that are in the charter are wondering where we got them from, I think they just basically went down and said Protocol 2 looks awfully good and embodied that into it. What you see is that the NGOs, the major ones at least, build their structure to comply with what they believe was the existing international humanitarian law.

And without any adverse distinction, and this is impartial in nature and conducted and shall be undertaken subject to the consent of the high contracting party.

Now the high contracting party says yes, but in the articles of commentary or people they talked to about it, what does this mean, myself included said that that implies on it that you cannot say yes, but you will get it impartially. Because that would go to the, oh you would get it in a partial manner, I can consent to that. Because that would be against the entire structure of the Convention to read it that way.

Additional Protocol 2 in the commentary, i think that this really sets out for our goals. If one takes it and decides what would be available, I'm running out of time, I'm talking very fast, but if you look at Additional Protocol 2 and the commentary it sets out how the agencies ought to do this. And again I know that your agencies spend an awful lot time reading that section of commentary to try and set them up. Their problem has been recently that in the United States they don't have a partner helping them achieve their goals. Well it is possible under international law, and I'm certainly not advocating this, to say no, you cannot go. We are low aid, we are a party to this conflict, and we are not going to provide aid to the other side or we're not remaining neutral in this, or we are arguing in international affairs. What I don't believe that it's possible under international law, and you create the absolute conflict and say you can go but we've got all these restrictions that are not in accordance with international law. Because you put someone in the damned if you do, damned if you don't situation of having to sweat which regime of law they will govern, and US law will govern them here, and international law will govern them there. So in terms, the United States is not in compliance the charity is in an impossible situation

Lastly, I'd like to again the beneficiaries, etcetera. One last part because this shows you the extreme to which the medical provision, material support provision goes. Under the martial support if an NGO or a hospital set up routinely treats members of a designated terrorist organization i.e., binds up their wounds, and

so that they can go back out and fight, would be the argument. Therefore it is providing material support, they may well be guilty of a crime. International law at its core, because remember all of this was set up so that doctors could go onto battlefields and not be shot, absolutely forbids the prosecution for that activity. The aid activity, giving aid in the country, is still subject to domestic law, but it absolutely forbids the prosecution of someone under that. We've accepted Article 10 back in the pre 9/11 days the ideas of prosecuting someone for providing medical aid to anyone, and medical aid has to be provided neutrally, and the way that you determine who gets the first aid and I always wanted to ask this, well is the American soldiers first at the tent? No, it's the most critical soldier first at the tent, regardless of uniform. That's the way the aid works. And that's what international law requires. And remember the Geneva Conventions were not negotiated by NGOs, they were negotiated by the militaries of the world with diplomatic help. This is what at the end of World War II the major military powers of the world, and believe me there were insurgencies and terrorists during WWII, all agreed would be the minimum requirements. The Geneva Conventions were negotiated principally and foremost by the world's militaries, not by the world's politicians or by the world's NGOs.

Kay Guinane: Thank you.

Jennifer Turner: So of course I'm just going to give you a brief snapshot of the current US terrorism financing laws. And second, I'll go into my research interviewing American Muslims who are, because of these laws and policies, experience a chilling effect on their donations which they wish to make to humanitarian relief organizations and American charities providing humanitarian relief.

First, with respect to the charity financing laws, I encourage you to read the report if you are looking for more detail because it's quite complex. But there are

two major regimes under which, that are covered by the Terrorism Financing Laws. First, the criminal material support statute which criminalizes material support for terrorism or to a terrorist organization. And second, a scheme under which the federal government can designate organizations as terrorist organizations and shut them down under a blocking order, say an administrative action by the Treasury Department. And in those cases, often there are no allegations of criminal wrong doing, and criminal cases are not brought. This is an administrative action, not a criminal action. Both of these regimes raise different issues, but what they share in common is they both contain serious due process, failures, and also impose guilt by association.

So first I'm going to talk a bit about the designation scheme and then I'll speak about the Criminal Material Support Statutes. The designation scheme is encoded in the International Emergency Economic Powers Act (IEEPA), in an Executive Order signed by President Bush, Executive Order 13224, and together these provide the Department of Treasury with wide discretion to designate American organizations and international organizations and individuals as terrorist organizations. The consequences of designation are severe, several penalties and criminal penalties. And under blocking order the federal government may seize the assets of these organizations and forbid any doing business with those individuals or organizations.

And under the scheme, the scheme lacks even very basic due process protections for an organization that may be designated. So under this scheme, the Treasury Department has virtually unchecked power to designated groups. The government may shut down the organization on the basis of secret evidence with no notice to the organization, do not require the federal government to provide of list of statement of grievances for the designation or even to give the organization opportunity to defend itself. It also, the law does not identify the

burden of proof that the Treasury Department carries and is very unclear about any deadlines about providing notice to organizations. And under this law, Treasury has by discretion, and after their designation, there's very limited judicial review for organizations that may be designated and shut down.

There's a big differential after the fact judicial review because it's an administrative agency action, and in fact, the 9/11 Commission when examining terrors and financing laws, stated and found that these laws raise serious civil liberties concerns.

In addition, under an expansion of the law encoded in The Patriot Act, the Federal Government Treasury Department can seize the assets of organizations merely by asserting that the organization is under investigation, so this is pending designation. And it effectively shuts down the organization. And under this again, there's no notice, opportunity to responded, meaningful ability to defend in court, etcetera, and under this it really requires merely the signature of the midlevel treasury official and imposes essentially most of the consequences of designation. In the case of one American charity, Kindhearts, over three years ago the Federal Government issued a blocking order, seized its assets effectively putting it out of business. And now over three years later the charity has not had an opportunity to defend itself, has not been the evidence against it, and it's never been designated nor had criminal charges brought against it, but was bullied out of business. That charity, in a challenge to that blocking order and awaits a judicial decision on that. But the law still permits the government to seize the assets pending designation.

There's very little oversight for these actions, and the limited review that has taken place raises serious causes for concern that the evidence the Treasury Department has used to designate organizations can take very serious flaws.

For instance the 9/11 Commission looked at the designation of two American Muslim charities and found that it was based on rank hearsay, evidence that would be inadmissible in court, and primarily news articles. In some cases, when a federal court found that the news articles in some cases didn't even mention the charity in question. But because the charity does not have the opportunity to see the evidence against it or to rebut it in court the agency's decision to designate remains pretty much intact.

And moving onto the criminal material support statute, that's included in the Anti-terrorism Effective Death Penalty Act, (EDPA). It contains criminal provisions in Section 2329(a)(b) and it's been amended by the Patriot Act and by the Intelligence Reform in Terrorism Prevention Acts, IRTPA. And if you want more detail about that, again look at the report.

But the statute raises two serious issues. First, it's very vague. It effectively criminalizes guilt by association. It doesn't provide guidance about what is and is not prohibited in terms of material support for terrorism. And it's also very over broad. It defines material support for terrorism very broadly and it poses punishment without regard for the intent or the character of the support that's provided. So the statute currently does not require the government to prove that when providing material support intended to further the terrorist aims of an organization or further terrorism. So, therefore the law can be used to punish wholly innocent assistance of humanitarian relief. So for instance, for American donors the statute could be used to prosecute them for innocent assistance given to say a charity that's later designated a terrorist organization, though they only intended to support humanitarian relief or to perform a religious obligation, fulfill a religious obligation. And the government merely has to show some form of knowledge about the organization in order to impose criminal penalties.

And the government has actually argued that those who provide support can run a fowl, well even they intend oppose unlawful activities of an organization, intend their support only to be used from humanitarian purposes, and take precautions to insure that their support is only used for those humanitarian purposes.

Also this statute contains no general exemption for humanitarian assistance. So the only exemptions are strict and for medicine and religious materials. So under the statute one can provide medicine but cannot provide clean drinking water with which to take the medicine. So a number of benign activities normally considered humanitarian aid could be labeled material support under the statute such as provision of food aid, latrines, blankets, clothing, tents, to noncombatant civilians. Also teaching English to nurses, public health experts, advice on creating some water supplies or medical training. And the Patriot Act expanded this statute to include training, expert advice and assistance.

And there's great confusion about what will be considered material support for terrorism and therefore criminalized and what may not. Especially for American donors who wish to support humanitarian assistance, there's a great deal of confusion about whether providing donations to a charity or humanitarian relief organization could expose them to criminal liability, and I'll get into that further in a moment.

But I now want to shift to discuss the ACLU report. I conducted a research for the reports based on 120 interviews with American Muslim donors and Muslim community leaders, leaders of American US based Muslim charities, religious scholars and religious leaders, as well as former Treasury Department officials and terrorism financing and Islamic banking finance experts, and the basis of the research was, the purpose was to identify what effect, if any, there is of these laws and policies on American Muslims who wish to make donations to

humanitarian relief organizations and American charities, in fulfillment of their religious obligation to give charity, which is called zakat, and is a religious obligation for all observant Muslims. And what I found is there's a tremendous fear among American Muslims about giving in charity and that the US terrorism financing laws and policies are creating a very clear and widespread chilling effect on American Muslims who wish to donate.

Muslims of many different ethnic backgrounds, both immigrant and US born, told me that they feel that they cannot fulfill their sacred duty to give zakat. Many said that they feared if they considered giving a donation that they could get arrested for their donation, prosecuted criminally, subpoenaed to appear in a criminal prosecution as a witness or a grand jury, targeted for law enforcement interviews by the FBI about their donations to lawfully operating charities. Deported or denied citizenship or a green card because of their donations or otherwise targeted or implicated because of donations given to charities. And I want to be clear, charities that are registered with the IRS and are currently operating. Among donors I found that there's a belief that it's unsafe for them or they're unable to donate, especially to Muslim charities or to organizations providing humanitarian relief in Muslim countries or countries experiencing conflict, or countries where designated terrorist organizations may be operating in controlled territory are otherwise operating. And many donors told me specifically that because of this they thought that they were not fulfilling a religious obligation and it was affecting their religious standing. Like all major religions, Islam requires a tithing, and for many Muslims, American Muslims they are unable to fulfill that obligation.

One specific piece, the many donors told me that specifically they felt that they were unable to give donations for overseas relief efforts. Across the board, they found a chilling effect, but most very specifically on overseas aid. And for many

Muslims, many Muslims told me they viewed their obligation to give zakat as one to give to the neediest in the world, which they interpreted to be those overseas, those living in refugee camps. Those from their country's original because they interpret their religious obligation to give to those closest to them or with some relation to them, meaning those in their home country. And many told me that they feared running a fowl of the law if they gave specifically for overseas effort, they felt that especially US based charities providing overseas effort would be targeted for future enforcement. And for many donors this certainly interferes with their ability to practice their faith in accordance with their personal religious beliefs.

For instance, I talked with a Chinese Muslim who said after the earthquake in Sichuan Province he wanted to send aid or to donate to a charity who was providing aid but he was too scared to do so because he thought he could be denied his pending citizenship application or get an FBI knock at the door about his donations to that province. I also talked to Pakistanis who felt that they couldn't donate after the earthquake in Pakistan.

Many Palestinians similarly told me that they thought it was completely not an option for them to donate to Palestinians, whether in occupied territories or elsewhere, or donate to Southern Lebanon, for instance for relief efforts.

What I also found was, in speaking with people that in terms of the cause of this climate of fears, because the laws are so vague and overbroad, there's much confusion about the criminal law and whether donations can be ultimately subject to prosecution. And for many donors and community leaders, they told me that in meetings with the Treasury Department and law enforcement officials, they've sought clarification about the law, and the officials have refused to clarify whether they could be exposed to criminal liability of donations given in good faith to

legally operating humanitarian relief or US based charitable organizations. And similarly, donors tell me that they're targeted for interviews by law enforcements because of their donations and they've seen criminal prosecutions take place.

I'm just going to end in one second. But another impact of these laws and policies is that they're counterproductive. Donors told me that as a result, they are now giving in cash and giving generous amounts, but in cash so that they are not subject to enforcement which some experts have said should complicate efforts to track terrorism financing. And what we've also seen is that these policies are alienating American Muslims who now distrust law enforcement and should rather be treated as key allies instead in the war on terrorism financing. And I'll end here.

Mohammed Alomari: A brief background, I know my time is limited so I won't go into details. Life & Relief and Development (Life) is an American Muslim charity, founded back in 1992 and it's considered the largest US founded American Muslim charity. Our annual budget is about \$20 million, and we've delivered about \$130 million of aid since 1992.

Originally, Life was founded to help the people of Iraq during the time of the sanctions, throughout the '90s, and that was the primary concentration of work during that time. Since then, Life has expanded its humanitarian operations to include other countries. We have offices in Jordan and Syria, in Israel providing humanitarian aid to the Palestinian territories, as well as in Sierra Leone which is West Africa, and Afghanistan and Pakistan. We've also done humanitarian aid here locally in the US after Hurricane's Ike and Gustav, as well as the floods in Iowa.

Charity & Security Network
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Operations of NGOs - Our Goal Is To Do Something About It
July 1, 2009

Life has two aspects of its work, the emergency aid and the long-term development. Emergency aid when the catastrophe hits, an earthquake, floods or anything of that nature, we provide food, water, temporary shelter to the victims. Long-term development, we've have built schools, water treatment plants, providing clean water to neighborhoods, as well as workshops for low income women, for low income neighborhoods. So we have a variety of different programs that we've implemented across these different countries.

Other than the normal registration requirements that we file with the IRS and the local state authorities, the only time we've actually had to deal with the federal government in the past was, to do humanitarian work in Iraq you needed a special license in order to deliver medical supplies and humanitarian aid. And we've, throughout the '90s applied to OFAC, with is the Office of Foreign Assets Control in the Treasury Department, and we received licenses. We were one of the very few, if any, American Muslim organizations that was licensed by the Iraqi Red Crescent and by the Treasury Department to deliver medical supplies and humanitarian aid to Iraq at the time.

Since then, from I'd say 2003, 2004, we've had a variety of other challenges. And what I'm going to do is classify them into two categories, direct challenges and indirect challenges.

Direct challenges is we've had raids obviously. Our Baghdad office was raided in 2004 by the US Military and they took our computers, they took our paperwork and whatnot. A week later they returned all the property and the Pentagon on at the time offered us an apology. Of course, the stigma we made and as everyone knows, anytime an NGO or any organization is raided, whether it's the military or federal authorities, there's always going to be that stigma associated with it.

Then we had the raid in 2006 of our Michigan office and some of the board members. Now at the time the law enforcement agents told us that it was not related to terrorism and that we could continue to operate as before. But in the course of the raid they took our computer servers, which had not only our critical files, our databases, our email, and financial information. And so for about a week we were down, pretty much inoperative. After a week they returned our computer servers and we were able to come back online. Later on, we had requested that they return our documents, our financial documents, our bank statements, things of that nature, in order for us to do our normal tax filings because they told us we could operate as before. And one of the things that we had to face was they came back and they said we're going to have to charge you \$100,000 to get copies of your own documents, which to us was ridiculous. That their reason was these require special security clearance. And so we filed suit in federal court for return of property. And the first thing the judge asked the government was if these are Life's documents why would they require special security clearance? And they didn't really have an answer for it. And the judge ended up ruling for us and they said that you could easily copy these documents at Kinko's, it's at 1/10 the price. And the judge said it's not fair to have Life pay for it, so they ordered the government to pay half.

And of course, the other direct challenge which I'll briefly mention is obviously legal representation. You know, file suit in federal court, we have to get attorneys and to this day we have staff of attorneys, outside attorneys, that are ready in case of anything with that now might occur.

The indirect challenges are the stigma and the after effects of the raid. First and foremost is the media, the negative media attention. The media was there the same time as the federal officials during the raid. And needless to say, we feel that they were tipped off, they happened to show up right at the same time, and

that initially caused, at least for the local news and for the local community, to be obviously scared off into thinking that something is wrong and so we're not going to donate any more. It happened just a week before Ramadan. Ramadan is the holy month of fasting, that is a time where we collect normally about 40% of our annual income, cash income. Because during that fasting month, Muslims feel that they can get more reward in paying their zakat, their tithing, during the months of Ramadan. And so by having that raid staged right at the beginning of Ramadan, there's a possibility that obviously we could lose 40% of our cash donations and eventually close down.

The other aftereffect of it was as soon as the raid was in the media, our local bank decided to close our accounts. And so everything from payroll to the regular wire transfers, to all of our business would be naturally affected. And so we had to scramble to find another bank. And that was, needless to say, caused us a lot of headache and concern. We eventually found another bank.

Another indirect challenge were visits of local law enforcement officials to, a former law enforcement I should say, to our large donors and basically asking them why are you donating to Life. A lot of our donors come from the immigrant communities who are used to dictatorships, that when a local policeman or security person comes to their door, knocks on their door, they're immediately scared that they might go to jail for something. And so many of our donors, our large donors, have told us because of these visits we can't donate any more.

Another challenge that we've had to face was our partners. We've partnered with some American charities as well as foreign charities, Australian charities, Arab Gulf charities. In 2007 and 2008 we had two partners tell us that they were approached by State Department employees because they're not in the US, one was in Australia and the other one was in the Arab Gulf, and specifically told

them not to deal with us. One project was to help Iraqi refugees in Syria after the civil war in Iraq. In 2007 there was a stream of almost a million Iraqis that fled to Syria and there was a program that we partnered, we signed the contract with this Australian charity to provide humanitarian assistance to these Iraqi refugees. And the State Department employee told them not to continue with the contract and deal with us. In 2008 we provided humanitarian aid to flood victims in Iowa and victims of Hurricanes Ike and Gustav, and we wanted to rebuild an Iowa clinic. And so a State Department employee went to this Gulf charity and told them don't deal with Life.

And so these are some of the challenges, and I know I'm running out of time. Since basically from 2004, so until 2008, but I can say that we have not faced anything new in 2009. With the current administration I can say that there is a different spirit in the air that we can feel at least, the same pressures are not, we haven't felt any of the same pressures in 2009. You know, we're hopeful that we can overcome some of these challenges, whether direct challenges or indirect challenges. Because the bottom line is, if the American Muslim cannot carry out his religious obligation which is guaranteed by the constitution, then ultimately we're going into the area of how can we guarantee the constitutional rights of these American Muslims. Thank you.

Kay Guinane: Thank you. Take it away.

Jan Lane: Thanks Kay, for the Charity and Security Network and for InterAction hosting us today. It's an important discussion, and I am totally impressed that Brian and Charlie and Jennifer could get through almost 150 years worth of law and codes of conduct, and do it so beautifully and articulately and then having Mohammed drive it home on the operational aspects.

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Not to make this an American Red Cross tutorial, but as Brian shared with you, these challenges of that nexus between the US Government and an NGO have existed long before 9/11. One of the things, as head of Government Relations, the American Red Cross, I always had to be careful of was who wanted to wrap themselves in our banner? Whether it be private industry, the US Government, or in some cases we did have the challenge with certain I think, questionable charities after 9/11.

And he is right. The impartiality challenge is baked into the DNA of the organization and its people. Ensuring aid is not used to promote political agendas doesn't make you very popular. What it makes you is someone who looks at what do both sides need to do to win, if you will. What does the government need in order to fulfill its mission, whether that's the Treasury Department, whether that's the Department of Homeland Security. What does the NGO need to do to fulfill its mission? And I think this is only going to get dicier. I think we've kind of come through a situation where pre-9/11 there were there dynamic intentions. Post 9/11 we came into a situation where there were knee-jerk reactions. And as Charlie so eloquently laid out, here is an existing framework that basically was held at arms length. One of my least favorite cartoons, and one that still I find heartbreaking, but very true, was a picture of a big book that opened and it was entitled The Geneva Suggestions. You know, that's where we get ourselves into trouble is when we think that they are suggestions.

Red Cross, at least in this country, has the challenge also further of alleviating human suffering from the standpoint of our charter I believe is unique in that we also provide emergency communications for armed services. So on the one hand, we're doing international work and this was so schizophrenic during the first Iraq war where you would be working on emergency communications

between the armed forces and their loved ones at home, at the same time you're delivering services to refugee camps. It makes one very nimble and it does force you to think through every action, how it's perceived.

I think one of the challenges, and Charlie, I hope we kind of get a chance to get into this, is we have had in previous decades the luxury of high contracting parties educating their militaries. As we move now to an increasing number of failed states, what does that mean for the Conventions and how can we still work within that framework?

Jennifer drove home, and I wouldn't say schizophrenic, but having served with the Red Cross as VP from '99 to 2005 I then switched to the George Washington University and was working with the Homeland Security Policy Institute where it became important to understand why the US Government was doing what it was doing. How was it formulating its counterstrategy, and specifically what was it that we were doing that was, and let me use the example of "the war on terror", possibly one of the worst phrases that we could have ever used because it enabled a leveling of the battlefields of an asymmetric warfare situation. And did not win us any friends. And Jennifer drove home in her comments the fear as she interviewed these leaders of Muslim charities. These leaders within the Muslim community.

One of the things that the Institute worked with with the Department of Homeland Security was their Civil Rights and Civil Liberties Unit, working with their young Muslim leaders' group to try to get some understanding. As it was said so eloquently, these are folks who should be allies in helping fight extremism, yet we were driving them away. And it was amazing to me these college students, incredibly bright, incredibly articulate, but it took the first two hours to break that ice and for them to be willing to understand that people really did want to hear.

And the fear was absolutely palpable and the stories that came out. Now these are kids who have been raised in this country. You can all imagine what a first generation individual feels.

And I think Mohammed, I haven't had to deal with the OFAC situation ourselves with Red Cross and the operational impacts, it is a challenge. But you're right, there is a different spirit in the air. One of my concerns as we move into, and I think this is that next iterations of this relationship with the US Government, we are focused on smart power, we're focused on the understanding that we need to move beyond military and intelligence means of defeating an extremist ideology, an extremist narrative. And that has been an awakening to the use of all other instruments of state craft which take everyone down the line of humanitarian assistance, development aid. Well the challenge for the NGO's, and I hope a number of you in the room are lobbyists for your particular charity or nonprofit, because the bottom line becomes, it's good because people are waking to the importance of what the NGO community does to increase the nation's security, but it's going to be fraught with challenges because we have, especially when you look at DoD and when you look at Treasury, with its counter-terrorism strategy with the financial issues. You have the distinct potential of being co-opted. We have different missions, we have different cultures, we have different strategic outcomes. We do not speak the same language.

I met an absolutely wonderful naval captain who had been part of a group with the DOD and humanitarian organization talking about DOD support during major disasters, and he could not understand for the life of him why an NGO would not want to be called a partner. Now if we can't get passed the simplicity of lexicon.

So I guess I would say to the group that one of the things that we need to do especially with this new, I think opening with the new administration, is to be

forthright and keep pushing our agenda, just as Kay (Guinane) is here to get those discussions on the table. And when you don't run through the rule making process, because we focused a lot on Treasury today. Treasury has used the bureaucratic tools that it has at its disposal and that's very major. Regulatory rule making, once it's there it's solid. It's unlike an excretion of barnacles that keeps going. We have to find a way to keep that discussion going with rule making bodies, while at the same time building pressure, congressional pressure, other administrative pressure, public pressure to kind of rethink these issues and look forward in a much smarter way.

-- Q&A Begins Here --

Unidentified Female Speaker: How you're progressing on these issues with the new administration in light of the fact that there has been reports to burrowing in by the former administrations...

Unidentified Female Speaker: ...And I think this is a problem in many of the agencies (inaudible). So how are you working around that and what extent are you raising (inaudible) so to speak, to a (inaudible) because I think a lot of the what I call (inaudible) and kind of passive aggressive means of stopping (inaudible) so to speak, is done very shrewdly and very discreetly and, (inaudible) something that's so egregious that the new politicals realize it as opposed to being put on notice that need to know about the (inaudible) and needs to think, you know, what people say and what we hear is not always what we (inaudible). So I'm just curious to know how you are addressing that, how (inaudible) it's (inaudible).

Kay Guinane: Who wants to go first?

Charles Swift: I'm going to talk about it, but not directly in this area because I haven't done it in this area yet, but I did do a lot on commissions and you're right. I want to start with the idea that while there may be a new spirit in the air, the functionaries who run national security policy have not changed one iota. There is no one new, there are new directors. However, for risk analysis and risk assessment, the same people who wrote them on January 20th, write them today, there's no difference. Risk assessment drives the Guantánamo policy. For as much as one might want it to be idealistic of more following, and I sat by the President before he gave his speech and (inaudible) his reasons, it is pragmatically driven and the information that is provided goes in the information that goes in internally. I welcome this organization because I think it's extraordinarily important to get out ahead of the curve. If we stay where we are and hope that it will happen in a spirit it's not going to. We need only watch what happened with military commissions in Guantánamo to know that a board wonderful sweeping things would be different does not necessarily mean that they are so.

I also have another observation. One of my favorite things taught to me by my Uncle Vice Admiral was follow the money. There's an awful lot of money in national security. And bureaucracies have to produce results so they lose their money, especially in these parts. Muslim charities in particular, are viewed as low hanging fruit by these organizations, they're easy to take. You could show parts. There's the political backlash when (inaudible) little for what they do. And largely speaking outside of the Muslim charities themselves which as a collective group has much reason to be silent, thus they be next, it goes without comment from (inaudible) except the person sitting to my left, who you know, has fought almost by themselves and was privileged by (inaudible) for a while. I mean an incredible and continuing battle. But the organizations alone have to understand that I think the threat that was set up, not only in Muslim charities being up now,

but the idea for anyone who provides international aid are being corrupted, not getting their independence now. Are the rules becoming? Sure you can play as long as you play by our rules, inside our system. We welcome you, it's coming soon. This will be a pragmatic solution to the rules. Well we'll just fold you inside and you'll have nothing to worry about. And you can give your aid and we'll put our arm around you and everything will be fine, and you can be part of our Hearts and Minds Campaign. And never mind that that actually probably makes you combatants under the international law, I don't think it holds within any of your charters. And explain that and getting that up front and this really is to my way of thinking for everyone here and why I wanted to come, (inaudible) paying moment. Because if you don't stand up for the Muslim charities that have been on the line, you may well be next. Not in the same level, not being shut down, but being shut out.

Kay Guinane: Other panel (inaudible)?

Jan Lane: Charlie, I think absolutely when you focus on Guantánamo and what hasn't been said and what hasn't been done, I think that's where we're heading. I want to get at that phrase "hearts and minds" because I think this gets back at some of the burrowing in and one of the frustrations that I have right now. Being part of a policy institute all you can do is to keep the discussion going, get the right people in the room, find people who are like minded. The phrase "hearts and minds", it is so wrong. Because it tends to go straight down the path of this is a popularity contest. I really don't care whether anyone likes the US, I really don't care as a former VP for an NGO what they think. What I want to see happen is a diminishment of the extremist threat from a standpoint of not buying intact to that narrative that we are oppressors. And how do we as a country get our messages out. And our message is one of walking the talk, our credibility.

And here's where we're straining, freedom of religion. I mean just seeing that word (inaudible) paper I think put it very articulately.

Going to the point of this is not a US Government solution, this is more a people to people, it is the NGO to NGO world where you're going to get much more movement. I think that Obama did what he could with setting the tone with his speech in Cairo. But it is a recognition that using instruments of State are unlimited. They are limited in what they can achieve. It really comes down to those scholarship exchange programs. The person to person connection. The NGO, the humanitarian assistance for just the value that the humanitarian assistance is. Not as part of a larger, we're trying to keep ourselves safe, or our allies safe.

Kay Guinane: Any comments, reactions?

Mohammed Alomari: I would just add that I do think the problems remains the same so far. I think one of the reasons the problem remains the same is the nature of the problem. That regulations were extraordinarily vague to begin with, and one of the things that many of us encountered when seeking clarifications were these vague assurances that oh no we would never come after you as long as your intentions are good. I think one of the things we have to push for as a community is the precision and clarity around what kind of appropriate due diligence, what reasonable and appropriate due diligence system would look like and what you can and won't be held accountable for, and for some blanket exemptions to these regulations in specific circumstances where assistance needs to be provided solely on the basis of need and in an impartial manner. It certainly may not get there but I think that argument for precision and clarity is a logical argument is hard, that the new administration would have a hard time arguing against.

I think the that other thing that I would point out is I think we need to stress that actually the system is creating (inaudible) accountability. I can say that that personally I found myself in a difficult position many times understanding from legal advice that I was being given, that the less I knew about a program I was interested in donating to the better. And the more detailed the appeal or the program documents were, the harder time I had in arguing that material assistance wouldn't get to a particular population or a particular SDN or FTO or whatever the case may be. And I think this goes way beyond just the Middle East. Certainly in Sri Lanka (inaudible), we had, I had numerous cases where we were working very hard to justify things, like preparing wells and community health clinics and providing basic relief buildings because they were meant for the community, and the community was made up of many people belong to that (inaudible) party. So I think we need to argue that there's real incentive for the administration to reinforce good humanitarian accountability, which it does in other parts of the US Government, and that they've created a system where why people can create their legal justification by knowing as little as possible, and that's going to lead to its own set of problems.

And then I think there's also an argument to be made around the problems that Jennifer's report has documented and researched thoroughly. But the fear is a durative (inaudible), stigma and discrimination, and that undermines US (inaudible) and US image as much more than anything else.

Charles Swift: One think I'd like to add into that. Because I thin it's important that everyone understand here because I know the personalities of several of the leaders, worked on their staff's at times, and argued with them about some of this stuff and I know the personalities have changed at the highest levels.

The personalities in the previous administration likely broad undefined so that they could whatever they wanted. This administration will, if it continues to broad undefined, continue for a different reason, so that the can co-op you. And this is the absolute feel of veteran General Jones, to call names, absolutely believes in this. He doesn't see why you should be separate. He sits with that captain, why would you not want to be my partner I'm a good guy. I don't torture people at Abu Ghraib. Let me put my arm around you and bring you in. And if you meet General Jones he is a good guy, okay? He is. But the explanation that I have a different mission and will have a long list of why you want to join him in his current economic efforts in Afghanistan and all the things he can do for you, in that sense. But clarifying that allows you to be independent. Not clarifying provides the greatest protection, so that we, this DOD or Treasury or other organization guaranteed these projects so you can go ahead, you'll just be co-opted.

Marjorie Lightman (sp?): (Inaudible). I'm Marjorie Lightman and I'm with (inaudible) Associates, and I'm, actually I want to ask an historical question. I'm old enough to come into this discussion at the tail end of the Cold War, and therefore, saw a tremendous amount of this going on, and what I saw was the tail end. I do know that back in the '50s there was serious questions raised that sound very parallel to the kinds of questions that have been raised since 9/11. And I want to know if there's any history that resolves the problems of the independence of humanitarian organizations visa vie government policy in the past that could be reapplied back into the future. In other words, have we, did we learn anything the conflicts during the Cold War?

Kay Guinane: Who wants to grab that one?

Charles Swift: I'll grab into this one but I'm going to answer it limited, because are you talking domestically or internationally? At the ICRC level, because that's the (inaudible) I'm most familiar with.

Marjorie Lightman: Well when I stepped into this ocean it was both domestic and international. I couldn't get scholars from abroad to come here because they had evidence they had funds (inaudible) communist party

Charles Swift: From an international standpoint, the NGOs on this part certainly on the declarations that you saw, the efforts that you saw that was part of the ICR's meaning in the '60s and early '70s was all brought down, but the NGOs needed to abide by international, by the principles of neutrality and impartiality. This being the concern, and if they abided by that then they would be protected.

What you didn't have until the '60s was this widespread understanding that an NGO was international. The ICRC led the way on that. They were unique in that most organizations were nationalists, they were national based. When we look at what existed in the world at the time in the '50s and '60s they were still either opposing national policy or supporting national policy, but they were (inaudible) from national policy. The '60s saw an awakening where wide and I think that he organization that set out to do the work adopted this framework. The problem, and I think it's dissimilar today, is by going to the ICRC model, there were at least to Western governments, because let's face it everybody does not play by the rules so (inaudible) never have and we never will. This is defined by how we play by the rules. The Western governments agreed on that. The problem after post 9/11 may seem similar but to me is dissimilar, is now playing by the rules of impartiality and neutrality no longer get you a free pass. Those reviewed as the free pass, as long as I can show you I'm impartial and neutral in this thing, I've got a free pass, now impartial and neutral in material support and the Treasury

regulations seem to be geared toward you'd better not be impartial and neutral, you better target, you better control, you better make sure that you're on our side because the rules really came down to a simple principle. As the President said, you're either for us or you're against us. There was no room for a neutral in that definition of policy.

And so in that concept I do think that it's different. Can we return to impartiality in an area where very well meaning I think the neutrality to be a softer and gentler country, we're still trying to co-op to have a unified message. After all we're all friends, we all want the same things, we're on the same side as you are and your co-op (inaudible), and that's a real difficult part. I think challenging because it sounds good but isn't.

Kay Guinane: I got a question over here (inaudible).

Nikki Smith (sp?): Yes, hi. Thank you. My name's Nikki Smith, I'm with the International Rescue Committee. First of all it's very refreshing for a European to actually hear about Geneva Conventions, international humanitarian law in the US, and think I've been here almost two years and this one of the handful of times that it's actually mentioned in a positive way and not as a dirty word, so thank you for that.

My comments are really back to Charlie. I mean, I take your point about the NGOs needing to be aware of being corrupted. I think the problem right now is that aid has already been corrupted, and it's been corrupted by DOD and also by State and it really is a weapon for right now. And we look at the increasing use of contractors in the environment and you know, they don't follow Geneva Conventions and they're not signatures to any code of conduct. And how they behave in an environment, Pakistan or Afghanistan, does have a ripple effect.

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And so you know, I really would see how we can work together to try and get them on board and recognize that they are that pebble in the water and they do put our lives on the line by the way that they behave in that environment and do become part of the conflict. Especially given the fact that 20% of aid is now being farmed through DOD, which of course very worse.

And the third point I would make is really to Mohammed, I mean you know, IRC was closed down in Northern Sudan in March and very similar tactics seem to having been (inaudible) US here and you know, it's quite disgusting I think that they've managed to get away with that for son long, and so my sympathies to you; it's going to be difficult to cleared your name and wish you lots of success with that.

And then lastly, some comments about the Patriot Act. It's not (inaudible) agency the Patriot Act is incredibly difficult to work with and very draconian sort of laws, and again, I think I would ask your advice on if there was ways within the administration, and I am a lobbyist here, and the challenges for me are not so much the administration but with congress and trying to get theme to change. And as we know that's not going to be easy. And you know, National Security Council have already admitted that many of the rules and many of the things are going to stay the same, the only opening is that there will be another space at the table to hear about the alternatives, whether that be development or the political, so it's not just a one horse race at the moment.

But I, yeah, it comes back to the Patriot Act in particular how do you see those changes, you know, how can the lobbyist themselves? Where do you see the ladders that we can apply pressure here to make some of those changes, because this obviously under the legalized stuff that's a bit beyond me. Thank you.

Charles Swift: I'll respond to two. I think one has to be careful on one part. DOD under international law is absolutely worked to do what they do in the sense that if you look over and say can they provide aid? In fact, arguably, as I said there at the beginning the high contracting party on the ground, and while the occupation in Afghanistan is supposedly independent, okay. The reality is the high contracting party on the ground is the United States. And we're supposed to, where war has caused the famine, where war has caused the destruction, where war is the reason there aren't crops, feed the people. (Inaudible) in international law they don't. And they can absolutely use contractors to do it. Now the idea that someone contractors don't follow, aren't educated on it, that's not true. Contractors are directly responsible to (inaudible) a general in command.

One of the things that was severely lacking in Iraq from this humble mid-grade officer's opinion was the old idea of accountability. Under international humanitarian law the military commander who was in the occupied territory is always ultimately accountable. He cannot say I did not know or gee, I couldn't get here, you know, accidents happen. He's accountable for everything that happens. And I do see one area a fresh level of accountability. So where commanders are as an NGO, when you see something and say hey look, that's not in compliance. I believe at least now with the current commanders, some of them whom I know, that there is a difference that you will have a more likely idea that hey let's look at that. Now also understand that failing to comply is hurting them. So and it hurt them badly and they've learned those lessons.

So part of it is in my mind, NGOs knowing the law and you lose credibility when you walk in and say well you can't do you this and you can't do that and (inaudible) them, well absolutely you can. You know, knowing the law, being able to address it and say that was a violation, it hurts us, it hurts you, don't do it again. And I want to get this out to the commanding officer, I want them to know.

The ICRC plays that important role, but the ICRC has a problem. The ICRC in its neutrality role, you know, they have documented thousands and thousands of bridges, they always do. But they will never publicize them. The only way you hear about those reports is they're leaked by DOD itself. The ICRC will not release a report (inaudible) motis operandi. That does not apply to you. You know, you don't have the same requirements. You may want to think about whether you want to do that, but it certainly puts a different level of pressure when (inaudible) not only from the ICRC but from other NGOs. I think...

Nikki Smith: (Inaudible) testify you know, in front of congress you know, about some of these issues?

Charles Swift: I think that they growing need though in the end, of NGOs, of the military going into this area is the absolute reason the NGOs need to stay independent. They may do a great deal and they should, they actually are obligated to, it shouldn't just be say, hey look we broke the country and the NGOs will fix it. That's not the way it works. They should be obligated. But one of the principle functions about a neutral bridge is the military is not neutral and the aid is not applied neutrally. And it's applied to your friends and it punishes your enemies and you'll capture your enemies when you get there. More NGOs need to be the bridge for the if you're thinking intelligently in military strategy for a moment, why you want an independent NGO out there is so that there is a bridge. So that people are not starving and driven into the other camp. But yet if somebody says you know what, I don't want to play on the other side, I just want to feed my family today. There's someplace they can go. That they don't have to choose one side or the other. Because in these states that defines more that 50% of the people. And we don't give out all the aid that's (inaudible), because they don't want to join us. And there should be that part, that's I think the fact that

we're doing it doesn't eliminate, although the military does, it doesn't eliminate the need, it absolutely demonstrates the need for independence from the NGOs. Because if they're co-opted you only have one choice, you're with us or you're against us, there's not neutrality.

Kay Guinane: Okay. More questions?

Wendell Belew: Hello, my name is Wendell Belew and I'm a lawyer and I represent an organization of Islamic NGOs that operate outside the United States, and my members, by the way, did attempt to (inaudible) in Sudan on behalf of the international NGOs. I don't know how much of that we had but there's certain resistance and solidarity there.

I'd like to ask a question about information, the importance of information in this whole context of charities, because I think it's a situation where a lot of policy makers even, aren't very well informed about Islam, about charities, and they are subjected to a narrative that contains a lot of inaccurate material. In fact, there are folks...

Unidentified Male Speaker: That's a very nice way of saying (inaudible)...

Multiple Speakers - Undistinguishable

Wendell Belew: I'm trying to be polite. And you know, there's a notion of some sort of conspiracy to impose (inaudible), it involves Islamic finance and it involves charities. Many of the people who advance this narrative start off by saying of course we're not saying talking about most Muslims. But in fact they are and they identify the Islamic Society of North America as part of the Muslim

brotherhood, and even some people who have academic credentials like Matt Lovette (sp?) articulate this.

As recently as this week the Canadian government is putting a bunch of information together to try to block an Afghan man from refugee status in Canada because he wants to work for the Muslim World League, which has never been designated. And you see in the New York Times earlier last week an article that contains a document that apparently if you read the footnotes basis a designation of another Islamic charity on a complaint in the lawsuit filed against that organization and others for a trillion dollars. So you're taking representations from plaintiff's counsel and I have nothing against plaintiff's counsel, who stand to gain substantially, and you're classifying that information and using it as the basis for the designation and of course the designation helps out the plaintiff's counsel to prove it's case.

So what I guess I'm saying very long-windedly, there is especially with open sources becoming more important, a problem of information being used in a pejorative way in the lack of institutions, especially given the flaws in the Treasury process to be able to use traditional evidentiary standards to sort out what's legitimate and what's not.

Kay Guinane: Comment?

Mohammed Alomari: I just have one small comment. (Inaudible) I think the major a major element in I think a lot of this stuff that has happened in the last eight years where's all this misinformation? And it's not hard to figure out where this information's coming from. I mean you could do a bunch of Google searches on Islamic charities or whatever and you'll get all these hate sites, anti-Islam hate sites. That's the exact same garbage information, well this guy's brother-in-law

who knows this grocery store guy who's down the street from this guy, they must all be connected on this you know, huge conspiracy. And it's all the same garbage that you end up seeing the reasons of either charities being closed down or people being investigated or for whatever reason people are targeted. And I think the only way that we can fix it is to get some knowledgeable people up through you know, the administration and be able to clarify a lot of these issues. Because a lot of it is miss information and disinformation. I mean there are hateful people who are trying to propogandize for their own agendas, and unfortunately it's hurting us. I mean it's hurting us as American Muslims, it's hurting the United States.

Jennifer Turner: I'd like to add that this really gets to you the issue of the lack of transparency and accountability for the Treasury Department's actions. And the lack of due process protections that would protect charities from government mistake and abuse. Surely after 9/11, George Bush would conduct press conferences in the rose garden, that his staff was called The Rose Garden Strategy, where he would announce major blows in the War on Terror, and that's when he would announce the closure and beginning of December 2001, the three larges Muslim charities in the country at the time, making inflammatory allegations about those charities that ultimately, not until a criminal prosecution later revealed that in fact with him saying there wasn't really evidence even to bring charges on these particular issues.

But similarly because there isn't accountability (inaudible) the Treasury Department actions that what (inaudible) are you know, what is (inaudible) press conferences, and ultimately for instance the 9/11 Commission conducted a review of the designation of two charities it found that the basis for those designations was very weak, and in fact did not necessarily support disputative action. Yet, what persists is this narrative that American Muslim charities are

funneling money to terrorism even though criminal weren't brought, for instance in some of these instances

Another issue is that in criminal prosecutions, both charities and their leaders or associates aren't able to challenge the underlying designation of the charity, which raises a huge issue there where Treasury allegations end up getting replicated and relied upon in criminal cases where again, they're still not adequate access to review evidence against the those accused, including statements that they made themselves and are unable to review those. So it gets back to the need to build in due process protections to these policies to conduct oversight to see, rather than to take Treasury at its word that it is striking blow after blow on the financial terrorism networks, or not networks for terrorism, rather to really look at these claims and expose any gaps or failures.

Jan Lane: Let me get back to your first statement and let's just look at the nonprofit world in total as it deals with congress. There is a lack of understanding as to how the nonprofit community works. Look at how long it too, of the IRS to come up with intermediate sanctions. If you were found, as any charity, if you were found in violation of IRS laws depending upon the egregious, how egregious it was for a long time all they could do was revoke your 501(c)(3) status. I mean it was groups you know, like independent sector and others that fought long and hard to get those intermediate sanctions, which may be a case study that we want to look at in this area, and of course look at all the attacks on advocacy. You know, (inaudible) and others, you know, going after the very ability of nonprofits to address law makers. So (inaudible) you know, we don't have pacts. So.

Unidentified Male Speaker: There are some.

Jan Lane: There are some, and it depends...

Unidentified Male Speaker: There's the Center for American Progress pact,
there's the (inaudible)...

Jan Lane: But look at those groups, I mean these groups by and large are
promoting a specific political agenda at points, and they are not a 501(c)(3), I
believe they're actually going into a 501(3)(4) category in order to be able to do
that. Which is a (inaudible).

Multiple Speakers - Undistinguishable

Christina: So I wanted to continue on the question of independence, and
perhaps this is for Mr. Swift or others. My name is Christina and I'm with Islamic
Relief USA. And as the name implies, we are a Muslim charity and we are
amongst the family of Islamic Relief Worldwide, so we are the largest (inaudible)
affiliation of confederation of Muslim charities in the world and even here in the
US, our budget is close to \$1 million.

But my question is exactly on that. Although we are a standalone with our own
governing board and our structure here in the US, I'm curious if being part of the
affiliation or confederation of a family of likeminded charities that carry a common
mission and a common need, if that has increased risk or increased protection...

Charles Swift: You're not going to like my answer. It has increased risk. It does
not have increased protection. Prosecutions of all of the charities have, as the
Holy Land for instance prosecution demonstrates, it's not what Holy Land did
directly, it's who they gave to. And even though those have been (inaudible) by
state (inaudible) at the time by the government (inaudible), but it was later

determined that they shouldn't have been cleared because Hamas had membership inside them. Therefore, they were actually giving to Hamas and they knew or should have known of that membership's presence, and therefore they were guilty of a crime.

Right at the most difficult parts, again, in the law where I talk about worrying about being co-opted, and what I mean by co-opted is co-opted by the government, in a way to protect yourself from prosecution you wrap your arm around what they are, the government to wrap its arm around you and you lose your identity. Or two, you you become an alternate tax collection methodology.

(Inaudible) you go for the other part that comes in here is that everyone in this room if they're involved with charities will start talking out all their partners. Partners is how you get the job done. If you don't use a local on the ground and a partner on the ground you're going to waist the vast majority of your aid, of the NGOs loan vat. (Inaudible) that they need local partners, they're most effective doing this. And one of the great dangers incurred materials (inaudible) treasury regulations at least in the Islamic world and (inaudible) were in other parts of the world is neither was (inaudible) out. You want to check your partners out very closely if you're trying to protect the funds of the people who gave you their hard earned money, especially in this economy.

On the other hand checking them out very, very closely is probably not a good idea from a lawyer's standpoint, because you may be held accountable for it. So again restructure in which this has been arranged needs to be changed. You need to know who you can associate with and be able to be confident in that association. And the most difficult part being is after Holy Land, unless this is changed on appeal, the fact that someone, another charitable organization has not been designated as a terrorist organization, you think I'm safe, right? Wrong.

The committees to which they gave money had never been designated and to this day have not been designated, yet they were prosecuted for it because there were potential presence, again I say potential, presence of Hamas in those organizations as well.

Kay Guinane: All right (inaudible). Mohammed?

Mohammed Alomari: I think again this was very unclear to me of many points in time. Because we had multilateral partners within the movement, both the International Federation and the ICRC having international, differing international organization status, there were questions about whether they were exempted to some degree from some of these regulations and whether having those partners was an asset for us in terms of being able to give them the money to then document progress in the best neutral and partial way. In some ways it also takes me back to the question what happened in the '50s, '60s, '70s that I worry about that if it were a real asset, if that were the chosen way around this for American NGOs, because after World War II and in the '50s, '60s, '70s the American Red Cross very much backed away from international relief and development itself and allowed all money to go directly to the multilateral level, and I think that a lot of American know-how, a lot of technical resources within this country lost a conduit to contribute to the International Red Cross and Red Crescent Movement as a result of that. So I would, and I think it undermines the whole notion of smart power and projecting through independent neutral mandatory action a positive face of this country overseas.

So it's not clear to me whether these multilateral organizations are legally an asset or not, but it is certainly suggested that they could be in some ways because they're not held to the same exact rules and regulations.

Kay Guinane: (Inaudible).

Brian Majewski: Being in the same line of work as (inaudible) charity, partnering is an absolute must. Most charities can't be in every country at every time, and wait for the next disaster. One of the reasons why other organizations approach us and say we want to partner with you to do work in this country is because we're registered and licensed in a certain country. Whether it's Iraq or the Palestinian territories or whatever other country, charities can't be everywhere. And so what you do is you partner with charity that is licensed and registered in that local country to be able to carry out or implement that project. And yes, obviously it carries additional risk, but that's the nature of our business. We cannot function effectively as a charity if we don't form partnerships with other charities.

Mohammed Alomari: I just have one more thing, the reverse of that is that I think we became a liability for our partners, and I think that that's where we really crossed the line and got into a point where things are getting dangerous. And our partners had to make difficult choices about whether to take resources because of the regulatory strains placed on us and passed down to them and political consequences of that for them. I completely agree, there's absolutely no operational way we could work in this sector nowadays without local partners, but this certainly (inaudible).

Kay Guinane: I'm going to take the prerogative of (inaudible) and ask the last question, then we'll break up and have our reception, celebrate lunch of the Charity and Security Network website and we'll put the website up there and you're welcome to come use the mouse and cruise around it. And when you get home go visit it.

One of the questions that I found myself being asked by reporters over and over again is what happens if you allow this charity to operate, then the child of suicide bomber may get aid. My response to that is isn't that okay? Are we holding innocent children responsible for the actions of others. And under US law is that really a crime? And should it be and if it is or it should not, how can we change it? Anybody want to answer?

Charles Swift: Well I can answer three ways to that part. I listen to the same thing what if somebody reads Guantánamo Bay and goes and commits another crime. Yeah, okay. First and foremost in this world, because it is a battle of hearts and minds. Now I'm going to switch to the DOD side, it's a battle of hearts and minds.

The first part is American credibility and back. The America can't directly aid for the purpose of the (inaudible) of that child. Yet we know that if we don't aid that child we get another suicide bomber. If there's three of them we get three more. And we start to lose. NGOs filled the neutral (inaudible) because the first part in this world (inaudible), is to keep the neutrals from joining the other side. So I don't care, and a military commander is concerned that if you feed the child then they haven't read the big picture book. And I don't think that General Petraeus or General Jones if they think about it "at all concerned that that child is fed". That's a smart move, unless of course you're doing one kind of a war, and that's where we have annihilation and our job it so annihilate one side. We say we're not doing that. The only way we'll have the credibility is to make sure that NGOs do it. Because quite frankly, the child is probably not going to take food from the United States Army tomorrow morning. Well it'll come down to that where somebody has to do it.

Number two in the part is the reason we're the good guys when we are is because we follow what's up there, this is what I was taught when I walked in in 1980. We're the good guys because we follow it no matter with. We understand that we have the most powerful military in the world and we're going to win. How we win matters. If we are to be who we are. If how we win is (inaudible) the top (inaudible) of Genghis Kahn, then who are we? How we win matters. And just win baby doesn't cut it, otherwise we have become what we said we never would.

Jennifer Turner: I would add rather than posing a solution, over and over when I spoke with Muslim donors, they raise this issue, and many people talked about children and children in need who they felt they couldn't support. I talked to a lot of donors who had previously sponsored children and who had completely stopped doing so. People who have done it for 10 years and stopped because they just could not be sure what a family member of that child done if they could be help responsible. I even talked to donors how knew that child, (inaudible) done anything with their family and not done anything, but will were afraid they could still be prosecuted for their donations. I talked to donors who had seen (inaudible) they refer for medical services relief to children until they couldn't donate because they just couldn't be sure. And they said how can I (inaudible) a child that I'm supporting? (Inaudible) organization that is supporting children. And it's certainly whether or not they can be held viable, there's been questions of the vagueness of the laws, but certainly the perception with donors that they can be and it's limiting their ability to support needy kids around the world.

Kay Guinane: Jan?

Jan Lane: Okay. Charlie, you and I agree that it is keeping the neutrals from joining the other side, but it's who's playing that role in insuring that the neutrals don't join the other side. And it's not a matter of offering an American vision of

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hope and opportunity, it's a matter of allowing competing visions of hope and opportunity to spring within those countries. And I think you're absolutely right on the credibility as far as walking the talk, and the talk is that American face of aid which will support that child. Now it may also go a little contrary. Remember the reason that the US Treasury is trying to shut down financing of terrorist organizations. The bottom line is those terrorist organizations take very little for them to mount an attack. Where it is capital intensive is for them to maintain their payrolls and to maintain the funding that is going to support the families of suicide bombers. So it's a multi pronged approach that goes to feeding that child and who's feeding that child.

END OF TRANSCRIPT

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