

Friend Not Foe

US-driven counter-terrorism policies that treat humanitarian and charitable organizations primarily as a liability are counterproductive and undermine efforts to prevent terrorism.

by Owen Frazer

Combating the financing of terrorism has been central to global counter-terrorism efforts. The “financial war on terror” was a key plank of the Bush administration’s counter-terrorism strategy and many of the measures introduced remain in force. One specific area of focus has been the misuse of humanitarian and charitable organizations, particularly Islamic charities, for terrorist financing purposes. However, the chosen approach, which treats such not-for-profit organizations (NPOs) as a potential liability, has lost sight of the larger goal of preventing terrorism. Policies to combat the financing of terrorism will be more effective if they adopt a more proportionate, nuanced approach to the regulation of NPOs which is based on sound analysis of the problem, promotes rather than obstructs efforts to respond to humanitarian needs, facilitates financial transactions, avoids stigmatizing Islamic charities, and treats NPOs as valuable partners. Getting the approach right requires policy-makers to engage with the NPO sector to identify how best to minimize the risks of abuse of NPOs and how to avoid regulatory measures that have counter-productive consequences for preventing terrorism.

Targeting NPOs

The US has played a lead role in shaping the international regulatory environment. Through its own domestic legislation it has set standards and approaches on

combating terrorist financing which many other countries have felt obliged to follow and it has promoted these through international bodies like the United Nations and the Financial Action Task Force (FATF). The impact of US domestic measures has been further felt, not only through the direct effect on many US-based NPOs, but through the extra-territorial reach of some US legislation which applies to US citizens or activities anywhere in the world, as well as foreign nationals when in the US.

While some measures were already in place before September 2001, the counter-terrorism financial regime was greatly reinforced in the wake of the 11 September attacks. Significant measures affecting NPOs include the

KEY POINTS

- US-led efforts to counter the financing of terrorism counter-productively target NPOs.
- Counter-terrorism laws need reform to avoid contributing to a “humanitarian vacuum” that can be exploited by violent groups.
- Financial regulations must take a lighter, risk-based approach to avoid driving financial flows underground.
- Islamic charities should be encouraged, not stigmatized, if perceptions of US policy as anti-Islamic are to be countered.

black-listing of certain charities, the introduction of banking restrictions and new standards on financial transparency, and increased government oversight. In addition, US “material support” laws criminalize the provision of support to listed or suspected terrorist organizations regardless of whether the provider of the support intends it to be used for terrorist ends or not.

The way these measures have been interpreted and implemented has created significant obstacles for humanitarian and charitable organizations to carry out their activities overseas. Investigations have effectively shut down some organizations without due process, access to banking services has been disrupted, administrative costs and hurdles have increased, and requirements to vet beneficiaries have opened organizations to accusations of spying. Most significantly, the broad way in which material support laws have been interpreted has had a “chilling effect” on donations to, and activities in, areas where groups listed as terrorists are present. One of the most striking examples of this was an 88% drop in US humanitarian aid to Somalia between 2008 and 2010 following the designation of al-Shabaab as a terrorist organization.¹ Donors and organizations fear that even unintentional leakage of aid to these groups could leave them open to prosecution for supporting terrorism.

The negative humanitarian consequences of these obstacles and how they undermine fundamental humanitarian principles and international humanitarian law has been well documented elsewhere.² The still widely prevalent view that these consequences are an unfortunate but necessary result of counter-terrorism efforts makes a false choice between protecting citizens at home from terrorist attacks and helping needy people overseas.

Analyze, prioritize, adapt

Current policies were developed in the wake of 11 September 2001, based on assumptions regarding terrorist financing developed in the 1990s. There is no solid current data on what proportion of financing for terrorist attacks passes through NPOs; however, the actual number of proven cases is very limited and most date back to the 1990s. There is little evidence to suggest that NPOs remain an important vector. It is time to take a step back and re-evaluate whether heavy-handed regulation of humanitarian and charitable organizations is justified by the current data.

Insufficient account is being taken of the heterogeneous nature of armed groups and how their funding strategies adapt to the economic opportunities in the contexts in which they operate, whether they be legitimate business, black-market activities, hostage-taking, drug-trafficking,



Members of al-Qaeda-linked al-Shabaab, distribute relief at Ala Yaasir camp near Somalia's capital Mogadishu, September 3, 2011 *REUTERS / Feisal Omar.*

etc. Where there is money to be made armed groups will likely try to get a share of the cake. Diversion of direct government transfers to conflict-affected areas also represents such an economic opportunity. In his recent final report the US Special Inspector General for Iraqi Reconstruction was unable to account for \$8 billion of the \$60 billion the US spent for Iraqi reconstruction. In 2010, a US House of Representatives sub-committee report on the US supply chain in Afghanistan suggested that significant portions of security payments potentially ended up funding the Taliban. Which begs the question, on what basis are humanitarian and charitable organizations being subject to such restrictive policies when other large financial flows to conflict areas do not appear to be subjected to the same level of scrutiny?

This is not to argue to that NPO funding should be exempt from scrutiny, nor to deny that NPOs are vulnerable to abuse. It is rather to say that efforts to combat the financing of terrorism should be based on sound analysis that identifies and targets the funding mechanisms specific to each context rather than adopting a blanket, one-size-fits-all legislative approach.

Remove legal threats to humanitarian activities

Fear of prosecution under counter-terrorism laws deters humanitarian organizations from operating in areas where listed or suspected terrorist groups are present. While it is difficult to put a figure on the scale of the problem, the active advocacy of many humanitarian organizations around this issue suggests they experience the problem as very real. The consequent ‘humanitarian vacuum’ not only means that needy people go unassisted, but it can also be exploited by militant groups to engage in activities to win hearts and minds. Recent examples include reports of al-Qaeda distributing humanitarian aid in al-Shabaab-controlled ar-

eas of Somalia and al-Nusrah Front providing humanitarian aid in Syria.³ In both contexts counter-terrorism laws have been a factor in deterring aid organizations.⁴ Nor is it simply Western organizations that are being deterred. Islamic charities and donors from Gulf countries are equally affected. Such actors are becoming increasingly important on the humanitarian scene and are often better placed to negotiate access and fill the humanitarian vacuum in conflict-affected areas in Islamic contexts.

Keep financial flows visible

Regulations to prevent funding for terrorism from flowing through the financial sector, while potentially having a deterrent effect (something that is near impossible to measure), also have the unintended consequence of making financial flows harder to monitor. Banks, wary of prosecution, have at times refused to open accounts for charities, to receive donations or to transfer money.⁵ This has particularly affected Islamic charities or funds destined for countries where listed groups are present. UK bank Barclays' recent announcement that it will close accounts of 250 money transfer operators – a decision that will have devastating effects for the many people in Somalia dependent on remittances from abroad – is just the latest example. Even when banks do provide services, transaction times can be significantly increased due to heavy screening and checks. These obstacles mean that people who are determined to send financial assistance and remittances are sometimes forced to use unofficial channels such as cash couriers and bank transfers between individuals. Such transfers are removed from the purview of banking regulators and “following the money” becomes harder. By driving financial transactions underground, heavy-handed regulation actually increases the scope for these funds to be diverted to activities which the regulations aim to curb.

Avoid fuelling anti-US discourse

US-led counter-terrorist financing policies have disproportionately targeted Islamic charities. While there was a very limited number of cases pre-September 2001 where Islamic charities were shown to have been involved in terrorist financing, since then the majority of charities placed under investigation in the US have been Muslim, yet only one was actually convicted, and it was unrepresented at trial.⁶ The media attention generated by these cases has made many donors nervous, affecting the funding flows to Islamic charities. Perceptions that Islamic charities are all being tarred with the same brush strengthen the case of those who argue that the US is anti-Islamic.

This contributes to the widespread anti-US sentiment that violent anti-US groups use to justify their actions and recruit supporters.

Recognize NPOs as valuable partners

In their overseas work humanitarian organizations typically work with local partners in civil society. Vibrant civil societies and strong social sectors weaken the appeal of violent extremist movements by providing a range of alternatives for the expression of grievances and engagement for social and political change. Counter-terrorism regulations that scare away support for such local partners in contexts where listed groups are present effectively close off alternative channels for expression and potentially increase the appeal of groups with violent agendas. Additionally, through their good connections with local partners, humanitarian and charitable organizations are often an important source of information about the situation in a particular society and where and how it can be best supported and strengthened against the influence of violent groups. In the context of the political transitions in North Africa and the Middle East, Islamic charities in particular are important channels of communication to authentic local civil society and, as such, are a valuable resource for Western governments hoping to understand how best they can support the development of socially and politically stable societies in the region.

Four recommendations for US policy-makers

At the international level, policy-makers are beginning to recognize the need for a proportional response that mini-

FURTHER READING

Countering the Financing of Terrorism *Thomas J. Biersteker and Sue E. Eckert (eds.) (Routledge, 2008)*

A wide-ranging collection that examines the organization and financing of terrorism and the corresponding regulatory responses.

“Draining the Ocean to Catch one Type of Fish: Evaluating the Effectiveness of the Global Counter-Terrorism Financing Regime”

Aimen Dean, Edwina Thompson & Tom Keatinge (Perspectives on Terrorism, Vol 7, Issue 4, 2013)

A recent, concise summary of what is wrong with the current global counter-terrorism financing regime with clear recommendations on how to improve it.

Nonprofit Organizations and the Combatting of Terrorism Financing

Emile van der Does de Willebois (World Bank, 2010)

<http://elibrary.worldbank.org/content/book/9780821385470>

This working paper no. 208 makes a strong case for a proportionate response to the challenge of protecting NPOs from abuse for terrorist financing purposes.

mizes the negative impacts on NPOs while protecting them from abuse for the purpose of terrorist financing. There are encouraging examples of dialogue on this topic (the UN-led Global Dialogue to Counter Terrorist Abuse of the Nonprofit Sector, recent consultations between the FATF and the NPO sector, the efforts of the Humanitarian Forum). However, given its global influence, it is in the US where a decisive change in policy direction is most needed. Such change should include:

1. Reforming the Material Support laws and sanctions regimes so that provision of humanitarian aid in conflict areas is free from the threat of criminal liability.

2. Adopting a targeted, risk-based approach to financial and charity regulation based on contextualized analysis of where specific groups are getting their funding, rather than an inefficient blanket-approach that places the onus on NPOs and financial institutions to show that every single transaction, beneficiary, etc. is free from associations to listed or suspected terrorist groups

3. As the UK has done, encouraging Islamic charities' overseas work as an important force for integration domestically and a positive outlet for Muslims to express solidarity with their co-religionists overseas

4. Fostering an inclusive dialogue between relevant departments and agencies and all concerned stakeholders, including Gulf-based policy-makers and charities. The aim should be the agreement of mutually-acceptable policy solutions that address both counter-terrorism and humanitarian concerns. In particular there needs to be sustained exchange on what NPOs can do to increase transparency and confidence in the sector in order to foster a policy environment based not on suspicion but on partnership.

For too long US policy-making has been dominated by a narrow point of view which has treated the NPO sector as part of the problem rather than part of the solu-

tion. Action in these four areas would represent a long overdue shift to a more holistic approach that recognizes NPOs as friends rather than foes in global efforts to counter terrorism.

SELECTED SOURCES

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2. See, for example, Pantuliano, Sara, Mackintosh, Kate, Elhawary, Samir, and Metcalfe, Victoria, *Counter-terrorism and humanitarian action: tensions, impact and ways forward*. HPG Policy Brief 43, October 2011.
3. Jeffrey Gettleman, "Al Qaeda tries a new tactic in Somalia: Philanthropy" *The New York Times*, www.nytimes.com/2011/10/17/world/africa/al-qaeda-brings-food-aid-to-somalia-famine-victims.html?_r=0, 16 October 2011; Channel 4 News, *Syria's Descent: the agony of Aleppo's children, 7'20"*, www.channel4.com/news/syrias-descent-the-agony-of-aleppos-children, 25.03.2013
4. Molly Cunningham, *Deadly Combination: Disaster Conflict and the U.S. Material Support Law*, Washington: Charity and Security Network, April 2012; Tom A. Peter, "In Syria, terrorist designation means more go hungry" *The Christian Science Monitor*, www.csmonitor.com/World/2013/0516/In-Syria-terrorist-designation-means-more-go-hungry, 16 May 2013
5. For example, UK charity Islamic Relief had its bank account closed by UBS and discovered the bank was blocking donations from customers to the charity: www.civilsociety.co.uk/finance/news/content/13757/banking_sector_nerves_blocking_international_relief_says_islamic_relief_finance_director
6. See Nathaniel Turner, *US Muslim Charities and the War on Terror: A Decade in Review*, Washington: Charity and Security Network, December 2011

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