



Developments in the Regulations of NGOs via Government Counter-Terrorism Measures and Policies

Joseph McMahon¹, September 2007

The US government's promulgation of counter-terrorism measures (CTMs) will significantly affect the operations of development-focused NGOs. It is difficult to accurately assess the nature and significance of the impacts, for evidence is anecdotal, trends slow to develop and many other factors affect NGO decisions. The somewhat guarded nature of CTM discussion among NGOs also prevents firm conclusions. Nevertheless, it is clear that the omnipresence of terrorism, increasing mistrust between governments and NGOs² and a broadening view of what constitutes "material support" to terror³, means that CTMs are set to be a long-term and burdensome operational reality for NGOs.

NGOs are forced to deal with a wide variety of CTMs where violation can bring harsh civil and criminal penalties to agencies and their staff. Southern NGOs in relationship with Northern NGOs are also forced to bear a substantial burden of compliance with CTMs. Many are required to "certify" to their Northern colleagues that they do not violate Northern CTMs. Southern NGOs have the double burden of both providing information and certifications required for Northern CTM compliance while at the same time dealing with Southern CTMs that can potentially threaten their survival. The harshest direct effects of Northern CTMs may fall on Muslim NGOs and on smaller Southern NGOs unable to prove their 'bona fides'. Northern NGOs complain that US CTMs are vague, based on inaccurate perceptions and result in costly compliance. Nevertheless, they may serve as the model for CTMs in other countries.

¹ This brief derives, in part, from interviews with NGO staff members who spoke on condition their comments were not for attribution. The author can be contacted at: jpmcmahon@jpmcmahon.com

² The September 2006 update of the *National Strategy For Combating Terrorism* states that the enemies of the USA "raise funds through a variety of means, including contributions from ...NGOs and charitable fronts" (p17). www.state.gov/s/ct/rls/wh/71803.htm

³ A commentator notes that the US government is using material support laws as "catch-all offenses that can be invoked in widely varying situations where individuals engage in conduct that may contribute in some way to the commission of terrorist offenses. The government is also using these offenses as a basis for early intervention, a kind of criminal early-warning and preventive-enforcement device designed to nip the risk of terrorist activity in the bud." "The Material Support Terrorism Offenses", Norman Abrams, *Journal of National Security Law & Policy* 5 (2005).

Northern NGOs, particularly those based in the US, may decide to limit funding for international projects or avoid new programmes that place the Northern NGO at risk of violating CTMs. If they force Southern NGOs to sign CTM certifications or investigate their local staff (perhaps a donor requirement as part of 'best practice'), Northern NGOs risk alienating Southern colleagues. A consequence can be the loss of funding to programmes in high conflict areas of high need.

This paper looks at the effects of CTMs on NGOs in the US, Canada, the UK and the European Union. It should be noted that NGOs may not be able to look at any set of laws or procedures in isolation. An NGO may obtain funds from donors in several countries, receive those funds through its headquarters and pass them through financial institutions in another country. Commingled funds from several countries may therefore pass through several jurisdictions, raising the question of which set of CTMs must be followed. In effect, there is no real answer. The only legally satisfying response is that the NGO and its directors must follow all of the various CTMs. Some observers say that inconsistencies among CTMs, and sheer magnitude of limitation and requirements, make full compliance impossible.

CTMs in the US⁴

The CTM impasse continues in the US as the Treasury – the key government agency overseeing CTMs – reissues its voluntary 'guidelines', while US NGOs press the government to withdraw them and publish their own, alternative, set of best practices for NGOs and terrorism.

In September 2006 the Treasury issued the third version of the *Anti-Terrorist Financing Guidelines: Voluntary Best Practices for U.S.-Based Charities*⁵ which it first released in November 2002. The revised guidelines are substantially the same, pay little heed to the concerns of the US NGO community and continue to provide

only an unconvincing explanation of the government's contention that abuse of charities by terrorists is a substantial problem. The CTM enforcement functions of the Treasury's Office of Terrorism and Financial Intelligence (TFI)⁶ were established by legislation in 2004.

NGOs in the US have several key complaints about the guidelines and CTM implementation:

- Are they really voluntary? The Treasury says they are, but compliance seems mandated. Because of their supposedly 'voluntary' nature, compliance with the guidelines does not given an NGO legal protection. No matter how scrupulously an NGO may comply with the guidelines, it may still find itself subject to legal or regulatory sanctions.
- NGOs are, in effect, being forced to become agents of the US government. US NGOs note that when Southern counterparts become aware of the compliance activities they are undertaking there is inevitably some level of distrust. Some US NGOs have decided that the likely negative impact on partners and their in-country local staff is so great that it is best not to disclose that they are doing so. However, this silence may in itself be just as eroding of trust.
- The revised guidelines impose further burdens on NGOs as they are required to collect additional information.
- Intent is irrelevant. The good intent of the NGO does not prevent regulatory or legal sanctions, and the US government may freeze NGO assets for a violation of the CTMs even if the violation was made in good faith and without knowledge of wrongdoing. Nor is there any requirement of notice to the NGO prior to a freezing of its assets.
- Some are angered by US government assertions that NGOs work cooperatively with the Treasury on CTM compliance. This, they argue, means that many non-US international NGOs are unaware of the strong level of opposition to the CTMs in the US NGO community.

4 For a good summary of US CTMs, see *Legal Dimensions of International Grantmaking: The USA Patriot Reauthorization Act, Treasury Guidelines, and Executive Order 13224: An Update on Implications for Grantmakers* by Ramos and Nichols at www.cof.org/members/content.cfm?itemnumber=6420

5 www.ustreas.gov/offices/enforcement/key-issues/protecting/charities-intro.shtml

6 www.treas.gov/offices/enforcement



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An NGO seeking USAID assistance will need to provide information on the principal officers, directors, programme managers, members of governing bodies and others who control the organisation or administer funds.



- An NGO challenging regulatory action in US courts must be aware that when it comes to CTMs the courts may be “extremely deferential” to the actions of US regulating agencies.⁷ Thus, NGOs have a substantial legal burden if they are to prevail in court.

An additional burden on NGOs is likely as a result of the announcement by the US Agency for International Development in July 2007 of a new record-keeping procedure which it refers to as a “partner vetting system”. As part of the partner vetting system, information obtained from potential recipients of US government funding will be evaluated by USAID. It appears that an NGO seeking USAID assistance, grants or cooperative assistance will need to provide USAID with information concerning the NGOs principal officers, directors, programme managers, members of governing bodies and others who control the organisation or administer funds.

Treasury testimony to Congress in May 2007 again asserted that charities are terrorist targets, terrorists are exploiting charities and “combating terrorist exploitation of the charitable sector represents an important component of TFI’s counter-terrorist financing strategy...”⁸. NGOs, they argue, may have little or no governmental oversight and may attract unwitting donors who could use legitimate activities to attract money for other non-legitimate uses. A subsequent request to the Secretary of the Department of Treasury from a group of US charities – including the American Civil Liberties Union – for substantiation of these

claims has gone unanswered.⁹ The Treasury has reported that the US has designated five US-based charities for terrorism-related activities and has other investigations ongoing and will continue to work with the Financial Action Task Force on Money Laundering (FATF)¹⁰ to counter terrorist exploitation of charities.

The volume of legislation and administrative rules on CTMs in the USA is staggering.¹¹ There are currently 11 categories of CTMs, with a total of almost 100 pieces of relevant legislation or explanatory documents.¹² The USA PATRIOT Act (Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism)¹³ is the cornerstone of CTM legislation. Enacted in 2001 and re-authorised in 2005, it gives law enforcement agencies greater authority to gather and share evidence, limit financial activities, create new crimes regarding terrorism and strengthen immigration laws and enforcement. Executive Order 13224¹⁴ gives the US President a powerful tool to limit funding to terrorism. It provides means to designate organisations and block their assets on suspicion they provide support or services or otherwise associate with terrorists.

The Treasury has developed another CTM tool – a “risk matrix” which it says it hopes charities will find helpful as they comply with US regulations to prevent improper support to terrorist activities. The “risk matrix” identifies what the Treasury contends are low, medium or high risk circumstances in relationships

7 In *Islamic American Relief Agency v. Alberto Gonzales as Attorney General* the Appeals Court found that the government had not improperly designated a US-based affiliate of a Sudanese charity as a “specially designated global terrorist.” The case principally turned on whether the US charity was dominated and controlled by a foreign terrorist organisation. Under US law, the court noted that it must give high deference to the designation of the US government agency – stating that “our review – in an area at the intersection of national security, foreign policy and administrative law – is extremely deferential [to the conclusions of the US government agency.]”

8 Testimony of Chip Poncy, Director, Office of Strategic Policy for Terrorist Financing and Financial Crimes, US Department of the Treasury to Senate Homeland Security and Governmental Affairs Committee, 10 May 2007.

9 Letter of 20 June 2007 from Grantmakers Without Borders to Committee on Homeland Security and Governmental Affairs.
www.ombwatch.org/article/articleview/3868/1

10 FATF (www.fatf-gafi.org) was established by the G7 Summit in Paris in 1989 and is an inter-governmental body charged with developing national and international policies to combat money laundering and terrorist financing.

11 See <http://jurist.law.pitt.edu/terrorism/terrorism3.htm> for list of US CTMs.

12 www.counterterrorismtraining.gov/leg/index.html

13 www.epic.org/privacy/terrorism/hr3162.html

14 www.state.gov/s/ct/rls/fs/2002/16181.htm

among charities and grantees. US NGOs complain that this document, like the guidelines, is inaccurate and should be scrapped.

The US Attorney General's November 2006 Performance and Accountability Report reports 300 convictions or guilty pleas in terrorism or terrorism-related cases since 11 September 2001. Although the precise number is specified, it is believed only a handful involved NGOs. It appears to some US observers that the Treasury is looking more closely at the concept of "dual purpose" charities – charities engaged in charitable work and supporting terrorism. US regulators including the Treasury indicate that they regard charities as not living in a black and white universe, and that suspect charities also engage in legitimate charitable work. This makes distinctions more challenging.

It is widely accepted that not all CTM implications are negative. One US NGO found that having its own internal CTM compliance plan was instrumental in persuading the US government that its work in war zones was effective and government funding should continue. A thoughtful and helpful response from the NGO community has been the development of an alternative set of principles to guide US NGOs in their international funding.¹⁵

In the US legal environment it would be tantamount to legal malpractice if lawyers failed to provide their NGO clients with clear and forceful warnings about the risk of violation of CTMs. A seemingly universal piece of advice to US NGOs is that they must be 'reasonable and prudent' in their actions and efforts to comply with CTMs.

Suspicion and surveillance of NGOs

The risk of CTM violation in the US comes in the wake of increasing government scrutiny of NGOs and their boards and officers.¹⁶ In 2006, increasing attention was directed to the nature and extent of "spying" by the US government on NGOs, and to its legality. Pending disputes concern issues of surveillance and infiltration of NGOs, as well as the use/abuse of a government database on nonprofit and civil society activity.¹⁷ Media reports suggest that anti-war and peace groups are in the database.¹⁸ A Quaker peace group, upon learning that its activities were under surveillance, described state monitoring of its work as "chilling".¹⁹

High profile CTM trial in Texas

In July 2007 a trial began in the US District Court in Dallas Texas in which the US government accuses the Holy Land Foundation, of Richardson, Texas of funneling money to Hamas. Once North America's largest Muslim charity, the charity was shut down by US authorities in 2001 and has also been designated a terrorist entity by the European Union.

The charges against the seven defendants include conspiracy, money laundering and engaging in prohibited financial transactions. The Foundation contends that funds were distributed for families and orphans but the US government alleges money was funneled to Hamas. A key trial issue is tracking the path of the money. A jury will be asked to decide whether the money was sent to the Gaza and West Bank for charitable use only or was used for terrorist activities. The issues will be complicated by the fact that the funds did not go to Hamas but to other groups which the US charges are "controlled" by Hamas.

Emotions are running high, some contending that the US government is pursuing an anti-Islamic witch-hunt at the behest of the pro-Israel lobby, other arguing it is a purely criminal trial. Muslim-Americans and US charities are keenly observing the outcome, as it may help establish the line between legitimate donations and violation of US CTMs.

For latest information about the Holy Land Foundation trial, see: <http://h4jusa.com/intro>

Beyond the legal context, other effects of CTMs may be seen. Muslim charities in the US seem to be finding it harder to raise funds. Reports of a chill on funding to Muslim charities in the US continue.²⁰ Although US voters seemed to reject war in Iraq in national elections in November 2006, polls indicate that the fear of terrorism remains high. Fear of appearing 'soft on terrorism' compels US politicians and agencies to maintain or enhance CTMs. Observers in the US say that although those NGOs historically working internationally are continuing to do so there is some evidence that foundations or donors originally considering expansion to international work are now more reluctant. This hesitation seems based on the advice of risk from legal counsel, intimidation by CTMs and the concern that this may not be a propitious time for a newcomer to enter into international work.

15 *Handbook on Counter-terrorism Measures, What US Nonprofits and Grantmakers Need to Know*, published by the Council on Foundations, Independent Sector, InterAction and Day, Berry & Howard Foundation.

16 See for example *Nonprofits, Sarbanes-Oxley, and the States*, www.guidestar.org/DisplayArticle.do?articleId=779.

17 See www.ombwatch.org/article/articleview/3237/1/411

18 NY Times, *Documents Reveal Scope of US Database on Antiwar Protests*, 13 October 2006 by Eric Lichtblau.

19 Id

20 *Fears of Inquiry Dampen Giving by US Muslims*, Neil MacFarquhar, NY Times, 30 October 2006; see also 'Muslim Charities and the War on Terror' at www.ombwatch.org/npadv/PDF/MuslimCharitiesTopTenUpdated.pdf

US NGOs find themselves being approached by the US military with proposals for joint development and stability activities.



There is a telling difference between how the US government liaises with the business sector and with NGOs. NGOs continue to complain that state agencies fail to meaningfully confer with NGOs before setting policy. They note that despite the absence of real dialogue the government maintains a public position that they do work with NGOs. They are angered to note that when the Bush administration reviewed energy policy, the Office of the Vice President invited key business sector leaders to confer but when challenged by citizens' groups to name those invited refused to disclose their identity, arguing the privilege to maintain secrecy.²¹ The unavoidable and stark distinction is that the US government may refuse meaningful dialogue with civil society on CTMs and their impact on US aid policy yet consult in confidence at the highest level with business leaders.

3D of defense, diplomacy and development

It is impossible to assess CTMs and the effect on US NGOs without simultaneously looking at the changes sought by the US government in integrating defense, diplomacy and development. A December 2005 US National Security Presidential Directive requires greater "coordination between the Secretary of State and Secretary of Defense".²² US Department of Defense Directive Number 3000.05 of 28 November 2005 has broad implications, stating that "stability operations"²³ are "a core US military mission" and calling on the US military to build alliances and relationships with NGOs. In September 2006 the Department of Defense convened an invitation-only consultation for civilians and military with expertise in "security, development, humanitarian assistance, negotiation and conflict resolution, peacebuilding, and human rights." Some observers note that the US military now sees its role in "stability" activities on the same level of importance at its combat mission. In support of its new close partnership with Defense, in 2004 the State Department created the Office of the Coordinator for Reconstruction and Stabilization – an agency

whose goals include channelling aid through contractors and NGO groups.²⁴

US NGOs thus today find themselves being approached in various countries by the US military with proposals for joint development and stability activities. Some NGOs or faith-based NGOs complain that the appearance of joint operations or visits by US military personnel imperil the NGO's reputation for neutrality and independence in the eyes of local communities. Interviews suggest that, while some US NGOs do not want to participate in such joint country efforts, others are eager to team up with military-led programmes.

In the expanding "war on terror" NGOs may be requested to participate in military plans and operations specifically involving counter-terror actions. An example is the Trans-Sahara Counter-Terror Initiative²⁵ programme, involving USAID, designed to help develop the internal security forces necessary to control borders and combat terrorism and other illegal activities. Again, the line between military/governmental operations and civil society blurs. US NGOs are, and will continue to be, called upon to define their desired relationship with the US military as the military expands its international role beyond "defense" to the broader "3D" of defense, diplomacy and development²⁶.

US NGOs should not shy away from engagement in war zones and other high risk areas of the world. They will, however, have to ask more questions than usual, and make careful risk assessments.

It goes without saying that the climate around CTMs is linked to broader issues of the direction of US foreign aid. A recent editorial in *The New York Times* notes with fear that aid to promote democracy is prevailing over and reducing aid to reduce childhood disease and maternal mortality:

21 *Appeals Court Backs Cheney in Secrecy Case*. NYTimes, 11 May 2005.

22 National Security Presidential Directive/NSPD-44, December, 7, 2005, www.fas.org/irp/offdocs/nspd/nspd-44.html

23 Broadly defined to include military and civilian activities across the spectrum from peace to conflict to "maintaining order in States and regions." See Directive 3000.05 ("Directive") at §3.

24 See Post Conflict Reconstruction Essential Task Matrix, April 2005, www.state.gov/s/crs/rls/52959.htm

25 www.eucom.mil/english/Operations/main.asp

26 Regarding "3D", see *Defense, Development and Diplomacy (3D): Canadian and US Military Perspectives*, US Army War College at www.strategicstudiesinstitute.army.mil/Pubs/display.cfm?pubID=732

While foreign aid spending is up over all in the Bush Administration, the increase has come almost entirely in four programs: aid to Iraq and Afghanistan, the 15-country global AIDS initiative and the new Millennium Challenge Corporation, which seeks to help well-governed poor countries. In a worrisome sign, money for programs to address childhood disease and maternal mortality is down by one-third in this year's budget request. The administration is also cutting anti-poverty spending in Latin America and Africa to pay for programs in Islamic countries, considered to be front-line states in the war against terror. Promoting democracy and fighting terrorism are laudable goals. But such work needs to come on top of – not instead of – financing anti-poverty programs, which save hundreds of thousands of lives and earn untold good will for the United States.²⁷

CTMs in Canada

A recently published article (*Canadian Charities: The Forgotten Victims of Canada's Anti-Terrorism Legislation*)²⁸ notes the effects on NGOs of increasingly strict anti-terrorism legislative.²⁹ This article notes that Canadian CTMs have “already created and will continue to create a chill upon charitable activities in Canada, as charities hesitate to undertake programmes that might expose them to violation of anti-terrorism legislation, and with it the possible loss of their charitable status.”³⁰ CTM laws in Canada involve similar risks to those risks encountered by charities in the US, those risks being loss of charitable status, and civil and criminal penalties. An extensive review of legislation in Canada – as well as the US, UK and Australia can be found in *The What, Where and When of Anti-Terrorism Legislation*.³¹

A well-connected observer of Canadian CTM legislation and practice expects that laws will not be relaxed and that NGOs will generally respond by improving their compliance and screening

processes. Although this approach may work satisfactorily for large NGOs, small NGOs with limited staff and resources may struggle. The *Carters.ca Anti-terrorism and Charity Law Alert No. 13*, notes that legislators in Canada may be more open to reducing the burden of CTM on Canadian charities.³²

CTMs in the UK

Terrorism-related issues continue to dominate UK politics. As in the US, there are complaints that CTMs unnecessarily impose restrictions on civil liberties. The Terrorism Act passed in March 2006 created new offences and amended existing legislation. Although acknowledging that connections between registered charities in England and Wales and terrorist organisations are rare, the UK Charity Commission confirms that any such links are totally unacceptable.³³

As NGOs consider the effect of the Terrorism Act on their operations they should consider the following newly created offenses:

1. Acts Preparatory to Terrorism: this aims to capture those planning serious acts of terrorism.
2. Encouragement to Terrorism: this makes it a criminal offence to directly or indirectly incite or encourage others to commit acts of terrorism. This will include the glorification of terrorism, where this may be understood as encouraging the emulation of terrorism.
3. Dissemination of Terrorist Publications: this covers the sale, loan, or other dissemination of terrorist publications. This will include those publications that encourage terrorism, and those that provide assistance to terrorists.
4. Terrorist Training Offences: this ensures that anyone who gives or receives training in terrorist techniques can be prosecuted. The Act also criminalises attendance at a place of terrorist training.³⁴

27 *The New York Times*, editorial, November 25, 2006.

28 See www.antiterrorismlaw.ca for an extensive listing of CTM developments in Canada, including this article.

29 Mr Carter's recent address on *The Impact of Anti-terrorism Legislation on Charities* lists recent legal developments and is available on the website listed above.

30 *Canadian Charities: the Forgotten Victims of Canada's Anti-terrorism Legislation*, Carters Professional Corporation, September 20, 2005 at page 2.

31 This article is found at www.carters.ca/pub/article/charity/2006/tsc0511.pdf

32 See *Major Changes to Anti-terrorism Laws Recommended by House of Commons Subcommittee Report*, Anti-terrorism and Charity Law Alert No. 13 from www.carters.ca

33 Charity Commission policy on charities and their alleged links to terrorism, at www.charity-commission.gov.uk/tcc/terrorism.asp.

34 Home Office, *Terrorism Act 2006*, at www.homeoffice.gov.uk/security/terrorism-and-the-law/terrorism-act-2006/



Charities hesitate to undertake programmes that might expose them to violation of anti-terrorism legislation.

One can imagine that an unwitting NGO, through carelessness in partner selection, could find itself accused of violating the offenses listed above.

The Home Office describes the UK approach to counter terrorism as being based on the four principal strands of: Prevent, Pursue, Protect and Pursue. A comprehensive view of the UK CTM strategy is contained in *Countering International Terrorism, The United Kingdom's Strategy* July 2006.³⁵ It notes that terrorist networks achieve funding through identity fraud, cheque fraud and misuse of charities.

CTMs in the European Union

Core issues concerning NGOs and government regulators in the EU are similar to those expressed in the US, Canada and the UK:

- Governmental anti-terrorist responses are disproportionate to a very limited risk.
- Some NGOs fear that CTMs can be used as an excuse to limit civil society and public discourse.
- Threats/fear are used as a justification for national and international response, while the root causes of terrorism go unchanged.
- National or supra-national CTMs are released without meaningful response to NGO concerns.
- NGOs express concern over the detrimental effects of CTMs on civil liberties, together with the fear that merely raising such a concern can bring governmental suspicion.
- Governments have ignored NGO proposals that codes of conduct be voluntary rather than compulsory. NGOs argue that they have effectively self-policed through codes of conduct for many years.

Observers of the EU CTM scene note that CTMs have not dramatically affected the programmes of NGOs – other than Muslim NGOs. Yet, the burden of complying with CTMs can be difficult for NGOs and divert funds from programmes. The ‘terrorist NGOs’ remain hidden and disconnected from bona fide NGOs. Therefore the limits on the bona fide NGOs only serve to create a real burden for them, with no indications that the CTMs really help deter terrorist NGOs. Some suggest some CTM problems would be eased if Europe had a better definition of what constitutes a ‘non-profit organisation.’

There is particular concern at the EU’s suggestion that political or religious affiliation is a “risk factor” for exploitation of NGOs. In its *Draft Recommendations to Member States Regarding A Code of*

*Conduct for Non-Profit Organisations To Promote Transparency and Accountability Best Practices*³⁶, NGOs are alerted to the risk of working with agencies whose “objectives are tied to a particular political or religious affiliation.” Some NGOs complain that such identification is inconsistent with Article 13 of the Treaty establishing the European Commission that is intended to combat discrimination based, among other things, on religion or belief.³⁷

A key observer of CTMs in the EU suggests options which could improve trust between government agencies and NGOs:

1. Recognise and use NGO codes of conduct.

Government agencies should recognise that NGOs’ long-established voluntary codes are the best way to ensure proper use of charity funds. Rigid governmental rules merely burden NGOs and will not deter terrorists intending to use bogus NGOs to divert funds.

2. Rely on subsidiarity in considering CTM.

NGOs exist with the permission of national governments and have been complying with national oversight for a long time. The existing national oversight is based on local knowledge, historical relationships and the social context of each country. Any supra-national regulation should recognise these historic relationships and, to the extent possible, permit regulation of NGOs at the local level.

3. Rely on NGO commitment to transparency.

Government agencies could support NGO transparency by electronically publishing the reports made available to the government agencies by NGOs. The burden of this practice on NGOs would be minimal as the reports are in existence. In this way, NGOs have an opportunity to demonstrate their support for transparency.

4. Ensure proportionality by reviewing the actual NGO terrorism risk.

Rather than assuming risk, regulators should undertake a risk assessment to determine the proper level of regulation to avoid the diversion of charity funds to terrorism.

5. Government agencies should recognise the unique character of NGOs.

By better understanding the unique work of NGOs, government regulators could understand that some of the unique operations methods used by NGOs

35 [Http://security.homeoffice.gov.uk/news-publications/publication-search/general/Contest-Strategy?view=Binary](http://security.homeoffice.gov.uk/news-publications/publication-search/general/Contest-Strategy?view=Binary)

36 See European Commission Directorate-General Justice Freedom and Security site at http://ec.europa.eu/justice_home/news/consulting_public/code_conduct_npo/draft_recommendations_en.pdf

37 Article 13, 1 of the Treaty establishing the European Community: “Without prejudice to the other provisions of this Treaty and within the limits of the powers conferred by it upon the Community, the Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament, may take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.”

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permit these NGOs to achieve humanitarian goals at minimum cost. These include: the use of non-formal banking systems – because banks often do not exist in crisis regions; office sharing to reduce overheads and use of multiple bank accounts to better track funds from multiple public donors.

CTMs and government relationships with civil society

Terrorism, whether actual or perceived, is a continuing and vivid reality. Civil society must expect that citizens will continually have terrorism on their mind and that political leaders (for a variety of motives) will want to highlight the fear and be seen to act to protect against actual or perceived threats. In this context, and for now and far into the foreseeable future, NGOs will be wrestling with CTMs, how to comply with them and how to seek better relationships with government regulators. NGOs will have to ask themselves a core question: how can civil society operate with appropriate freedom while respecting the legitimate needs for government oversight?

Inevitably there will be effects on North-South NGO relationships. The principal adverse effects of Northern CTMs will continue to be transferred directly from the Northern NGO to Southern partners who will be asked to vouch for staff, officers, directors and associates and certify that funds are not being diverted to terrorist activities. These adverse effects on

North-South NGO relationships come at a time when globalisation and imposition of Northern ideas about development – and perhaps unconscious Northern fears of growing partner competence – are already straining North-South relationships. Some Southern NGOs complain that grants or contracts presented by Northern NGOs have been one-sided arrangements, offered on a 'take it or leave it' basis. The strain of CTM compliance by Southern NGOs would seemingly then be added to an already complex and, at times, strained relationship.

Until there is more reliable data and evaluation of the effects of CTMs on North-South NGO relationships, Northern agencies must be prudent about how they respond to CTMs. To minimise the adverse effects of CTMs on Southern colleagues, Northern NGOs need to be cautious about how they deal with Southern NGOs regarding CTMs. Where the relationship is principally contractual (such as in re-granting funds), the Northern NGO should openly discuss CTMs with Southern colleagues and negotiate contract provisions, rather than unilaterally preparing information and sending it. Where the relationship is more collaborative, dialogue should be undertaken to reach a consensus view about how to best comply with CTMs without adverse and unnecessary impact on the Southern partner.

About INTRAC

INTRAC, the International NGO Training and Research Centre, publishes briefing papers on policy developments that affect the work of civil society organisations worldwide. The current briefing papers, funded by Swedish development agency Sida, deal with two main topics from a civil society perspective: the securitisation of development and the 'War on Terror', and the Paris Declaration and aid effectiveness agenda.

Over 2006/07, INTRAC ran a series of workshops on the role of counter-terrorism measures in international development. These were held in Central Asia, the Middle East, Europe, South Asia, North America, and among the Somali diaspora in Europe. Many of the issues we discuss in these briefing papers were first raised by our workshop partners and participants.

Briefing papers 1-9 can be accessed for free online at:
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