

## **National Security and International Development: Implications for Northern Civil Society**

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### **Introduction**

INTRAC's involvement with the effect of counter-terrorism measures (CTMs) on civil society began with a paper from INTRAC Associate Alan Fowler in 2005.<sup>1</sup> During a subsequent series of international workshops we have seen some of this analysis echoed and reinforced in the real-life experiences of partners in different regions of the world<sup>2</sup>.

INTRAC's workshops have enriched our understanding of the fallout from the 'War on Terror' (WoT). In South Asia we have seen links between CTMs and deprivation of rights of the poor. In the Middle East the WoT has added to the instability and misery brought about by foreign invasions, occupations, wars and state oppression. In Central Asia, many NGOs are struggling to maintain democratic rights to freedom of association and participation. The Somali diaspora has found CTMs complicating the *hawala* system of remittance transfers that act as the lifeblood of Somalia, Somaliland and Puntland. UK-based Somalis have come under heightened police suspicion and surveillance. US NGOs are struggling to find a balance between challenging their government and compliance, seeking to find ways of dealing with increasingly stringent CTMs whilst still maintaining independence and distancing themselves from the emphases of the WoT.

Meanwhile, Northern civil society organisations (CSOs) in the aid chain are seeing increasingly clearly that overseas development aid is a branch of foreign policy, and that foreign policy has taken on strong overtones of national security priorities. The development sector includes ever-expanding elements of the WoT<sup>3</sup>; the securitisation of development; military manoeuvring to secure energy sources; a rising sense of xenophobia and intolerance; conflict and instability and the stark polarisation of a new cold war. These pose daunting challenges for the development sector and the CSOs who work within it. In this context INTRAC will continue to work with CSOs, researchers and policymakers to analyse the unfolding situation and expand space for analysis and debate.

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<sup>1</sup> Fowler 2005: diagram for presentation at INTRAC's conference "CTMs and their Effects on Northern and Southern NGOs", Utrecht, the Netherlands, January 2006.

<sup>2</sup> These opportunities to discuss real-life impacts of security, insecurity and CTMs were created through a series of workshops sponsored by Cordaid, Save the Children Fund, ICCO and Danida and hosted by Center Interbilim (Kyrgyzstan), VANI (India), InterMediation (USA), Stichting Mondiale Samenleving/Global Society Foundation (Netherlands/UK) and the Consultative Centre for Studies and Documentation (Lebanon).

<sup>3</sup> Some of these manifestations are more constructive than others, e.g. the OECD-DAC's "A Development Co-operation Lens on Terrorism Prevention" (2003) specifies that development cooperation's role is to address the underlying grievances that feed violent tendencies whereas e.g. the Danish Institute of International Studies' Evan Kohlmann (2006) singles out specific NGOs accused by the US security services of funding Al-Qaida.

The key concerns surrounding CTMs raised by a growing number of NGOs relate to the overlap of new counter-terrorism legislation with existing criminal law; the secrecy and opaque decision-making around counter-terror policy and regulations; and the absence of public debate on both the economic and human cost and sacrifices associated with the WoT. The formal legal nature of CTMs, combined with the highly-charged language of national security used in their formulation, makes it hard for non-specialist NGO advocates to challenge them. Partly for this reason, civil society discussion, especially among Northern organisations, has been muted, although the ramifications of CTMs are far-reaching and severe.

This paper is one of a series on the current findings from INTRAC's work on NGOs, development and counter terror measures. It sets out Northern concerns and ongoing initiatives and examines the evidence of securitisation of development and its implications for civil society and North–South partnerships.

This paper begins with a discussion of the term 'security' in development – how the concept's meaning has shifted away from 'human security' towards 'national security' and a military focus. This leads into a section on how national security is linked to CSOs in the current foreign policy discourse, before examining some of the detail on civil society-related CTM legislation and policy initiatives in the US, UK and EU and outlining some of the wider ramifications of the shift to 'development for security'.

## **The international war on terror and the language of 'security'**

The 1994 Human Development Report's original definition of human security is "safety from chronic threats such as hunger, disease and repression" and "protection from sudden and hurtful disruptions in the patterns of daily life".<sup>4</sup> In 2000, Amartya Sen expounded on the key features of human security (as defined by the then Japanese Prime Minister Obuchi Keizo) as "the menaces that threaten the survival, daily life and dignity of human beings". These include economic, environmental and political or participatory downturns.<sup>5</sup> Sidel<sup>6</sup> points out how "the tolerance of opposition" is a key feature of human security. Yet tolerance seems to be antithetical to current national security operations.

As highlighted by Fowler (2005), security is to do with the quality of statehood, and its relationship to the degree of poverty and inequality. The greater the poverty and the more unequal the country, the higher the likelihood it will be insecure. Thus, the reverse – lower poverty and more equality – may increase security. CSOs have a significant role to play in the areas of statehood, poverty and inequality<sup>7</sup>, which history has clearly revealed are more likely to bring about security.

Currently the term 'security', omnipresent in political discourse, refers to a different kind of security: namely national or geopolitical security, linked to military interests – a far cry from the notion of human security. 'Security' has become a euphemism for war and violence. Such terminology and transformative language supports the military interests of dominant countries, rather than contributing to efforts towards redistribution and justice.

The policy instruments to implement military-centred 'security' are already in place. A US National Security Presidential Directive from 2005 calls for greater alignment between 'defence, development and diplomacy'. Directive 30000.05 sets 'stability operations' as a core defence force

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<sup>4</sup> UNDP quoted in Sidel 2006:200 and Waddell 2006: 536

<sup>5</sup> *ibid*, Waddell 2006:536

<sup>6</sup> 2006:200

<sup>7</sup> Alan Fowler's presentation at INTRAC's conference "CTMs and their Effects on Northern and Southern NGOs", Utrecht, the Netherlands, January 2006

activity, and encourages the US military to build alliances with NGOs.<sup>8</sup> Some NGOs have been approached by the military to cooperate in joint humanitarian and development joint operations. Many NGOs see the possibility for such cooperation – even visits from the military – as undermining their neutrality in the eyes of partners and other stakeholders and have tried to distance themselves from such directives.<sup>9</sup> However, other NGOs have responded positively. Anecdotal evidence suggests that some Northern NGOs, have been persuaded to work with the national military forces' humanitarian operations in conflict zones. It is possible that financial dependence on government funding can ameliorate an NGOs' criticism of military interventions abroad.<sup>10</sup> Some American NGOs have also been persuaded to cooperate<sup>11</sup> with the US military.

Another related concern about the security focus of US aid policy is the diversion of poverty reduction spending to security- and war-related aid. Official Development Assistance (ODA) that would previously have financed antipoverty work has now been reallocated to Iraq and Afghanistan as Muslim countries are considered 'frontline states' in the WoT.<sup>12</sup>

The debate about the meaning of 'security' is significant, especially if the idea of civil society action to alleviate poverty or empower marginalised communities becomes linked with 'insecurity' in the minds of policymakers: "Governments that believe that the third sector is a source of human insecurity may respond with heightened and over-broad regulation of the non-profit sector, regulation that imposes broad new requirements...that are largely untargeted against particular offending organisations."<sup>13</sup> Such wide-ranging legislation – already in force in the UK and US – affects every registered NGO, and may even have the effect of driving smaller organisations with fewer resources underground.<sup>14</sup>

Governments that perceive CSOs as 'sources of insecurity' have a pretext to "engage in extra-legal persecution"<sup>15</sup> of CSOs through CTMs. And in situations where authorities are less likely to implement such oppressive alternatives the threat remains in the current climate and civil society may simply become silent out of fear: The non-profit sector has, in some cases, engaged in self-censorship, or failed to defend non-profit organisations caught up in overly broad government action".<sup>16</sup>

Linking the concepts 'development' and 'security' can serve the interests of NGOs who want to associate their own cause with the top political priority of the day – the WoT<sup>17,18</sup>. But the underlying values of poverty reduction are fundamentally different from those of the terrorist witch-hunt. Associating poverty reduction with the WoT can only serve to undermine the very values on which international development cooperation purports to stand. Facilitating the convergence of security and development is far more likely to lead to a 'securitisation of development' than a 'developmentalisation of security'.

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<sup>8</sup> McMahon 2007:7

<sup>9</sup> Guidelines for relations between U.S. Armed Forces and non-governmental humanitarian organizations in hostile or potentially hostile environments: United States Institute for Peace, Washington, 2007

<sup>10</sup> personal communication from NNGO employee, May 2007

<sup>11</sup> McMahon op cit p. 8

<sup>12</sup> New York Times 25.11.2006 quoted in McMahon 2007:9; OECD-DAC aid data through queries in <http://stats.oecd.org/WBOS/Default.aspx?DatasetCode=CRSNEW>

<sup>13</sup> Sidel 2006:202; Howell et al 2007:13

<sup>14</sup> Sarah Sheriff from Muslim Women's Helpline, speaker at "Organising Within and Around Muslim Communities in the UK" Roundtable discussion, 2.3.2006, London, organised by Centre for Civil Society, LSE

<sup>15</sup> Sidel 2006:202; Howell et al 2007:13

<sup>16</sup> Op cit:203

<sup>17</sup> Waddell 2006:539; Sidel at LSE workshop June 2007

<sup>18</sup> This is despite the evidence that poverty does not lead to terrorism and that such linkages are weak and misleading. See e.g. Bornemisza (2003) and OECD-DAC 2003.

A crackdown on dissent in the North is also likely to have negative financial repercussions for NGOs in developing countries that rely on financial support from Northern NGOs, because of the increasingly burdensome regulations on partnership that form part of the new procedures. This area has been discussed at length in other INTRAC briefing papers, e.g. Briefing Paper 10: 'The War on Terror and the Onslaught on Development'<sup>19</sup>.

## **Geopolitics and Northern Defences**

The US and EU member states are vulnerable to terrorist attacks, including the 9/11 airplane attacks on the US, the 'once de marzo' train bombings in Madrid in March 2004 and the July 2005 Underground and bus bombs in London. Governments have acted decisively since 9/11 to protect the space for their citizens to live free of fear and have thwarted many acts of random terrorist violence, as publicised in the media. However, the counter-terrorism project has expanded far beyond its original, laudable objective of protecting Northern citizens from harm. In its current form it even threatens to escalate violence and marginalisation, and to fuel resentment among communities both in the North and South that are being disproportionately targeted.

Caught up in the events of a tense world, Northern CSOs and their partners are being subjected to increasingly stringent legislation by their governments. Under the 'one per cent theory' – that "if it's one per cent possible that it's true, act on it"<sup>20</sup> – Northern governments are concerned about the formation of terrorist groups abusing vulnerable NGOs, to fund their violent activities<sup>21</sup>. Governments differ on the degree to which they should single out the non-profit sector (as opposed to the private sector) as being likely conduits for terrorist financing, and the extent to which non-profits are considered victims or complicit. There is a growing view among state agencies that charities' financial transactions are considered to be more porous than others<sup>22</sup> thus making them potentially unwitting victims of terrorist money-launderers. However, some American federal authorities have gone as far as to suggest that "the connection between American-based charities and foreign terrorists is 'knowing and intentional'".<sup>23</sup> Such growing mistrust and near-criminalisation of civil society causes many organisations, especially in the US, to feel vulnerable to disproportionate scrutiny.

This mistrust manifests itself in different ways. Governments are introducing new regulations on CSO funding that complicate Northern NGO co-operation with Southern CSOs. Codes are being created that give little choice for CSOs but to sign up. Muslim agencies are being singled out for surveillance and proscription. This has the effect of not only creating polarisation in the NGO community, encouraging non-Muslim NGOs to disassociate themselves from the most obvious targets – Muslim NGOs – but also of suppressing mainstream CSO critiques of the current CTM regime. Despite this, CSOs are continuously falling under government surveillance and suspicion while room for dissent in the current climate shrinks further.<sup>24</sup>

## **Infringement of Northern citizens' human rights**

At one level, some Northern countries have dealt with the 'terrorist threat' by enacting special 'counter-terrorism' legislation above and beyond the existing criminal law that already makes it punishable to inflict or try to inflict violence on state institutions and groups of civilians. Many

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<sup>19</sup> Available to download at [www.intrac.org/pages/policy\\_briefing\\_papers.html](http://www.intrac.org/pages/policy_briefing_papers.html)

<sup>20</sup> Wendell Belew, Belew Law Firm - comment at LSE workshop 28 June 2007

<sup>21</sup> DIIS papers, Washington workshop. See also Financial Action Task Force Special Recommendation VIII: Non-profit Organisations. Interpretive Note to SRVIII.

<sup>22</sup> OMBWatch, personal communication; EU Code of Conduct: Non-Profit Sector 2005

<sup>23</sup> Testimony of Chip Poncey to the Senate Homeland Security and Government Affairs Committee, 2007, cited in CIVICUS CSW Monthly Bulletin July 2007.

<sup>24</sup> McMahon, INTRAC briefing paper, September 2007

lawyers argue that existing criminal law is sufficient to deal with terrorism<sup>25</sup>, and the duplication of offences as specifically 'terrorist' creates leeway for inconsistent and arbitrary judgements.

Much Northern regulation refers back to the United Nations, but the relevant UN Resolution – Security Council Resolution (SCR) 1373 of 28 September, 2001 – and its human rights implications have largely been sidelined. SCR 1373 mandates all UN member states to adopt specific binding and counter-terrorism measures, including:

- (i) Prevention of the financing of terrorism, through, inter alia, freezing of the financial assets or economic resources of persons who commit, or attempt to commit, terrorist acts or who participate or facilitate the commission of terrorist acts;
- (ii) Establishment of terrorist acts as serious criminal offences in domestic laws and regulations, with commensurably serious punishment; and
- (iii) Taking appropriate measures before granting refugee status to ensure that the asylum seeker has not planned, facilitated, or participated in the commission of terrorist acts. (Human Rights Watch, 2003)<sup>26</sup>

The UN Security Council also established a Counter Terrorism Committee (CTC) to oversee implementation of SCR 1373. The UN Human Rights Committee and Article 19 (the freedom of speech group) criticised the definitions of terrorism in the anti-terror legislation of several countries for being 'over-broad' and for allowing leeway for disproportionate clampdowns on civil society activity, such as activist protests.<sup>27</sup> The UN Human Rights Committee initially voiced concerns about the human rights implications of SCR 1373, specifically the scope it provided governments to partly withdraw from human rights legislation and the threats it posed to principles of non-discrimination, the right of asylum, legal process and the prohibition on refoulement (forcibly sending refugees back to the dangerous environment they fled from).<sup>28</sup> Yet despite such high-level dialogue with the UN Human Rights Committee and Commissioner, there has been little change on the ground and CTC has simply not acted on the recommendations. The UK has, in fact, derogated (partially withdrawn from) the European Convention on Human Rights and Fundamental Freedoms (ECHR) on grounds of threats to national security, from terrorism and arguing that "its obligations to the CTC under Resolution 1373 take precedence over its obligations to the Human Rights Committee".<sup>29</sup> UK legislation has been heavily criticised for removing the right of terror suspects to essential information as to the grounds for their arrest, and for allowing their detention for increasingly long periods of time without trial.<sup>30</sup> The definition of 'terrorism' in the law is also believed to allow over-use by police to stop and search populations.<sup>31</sup> Such trends demonstrate the increasingly severe consequences counter-terror legislation poses to CSOs, individuals and fundamental freedoms.

## **The United States of America: With us or against us**

The US government's approach to counter-terrorism measures for charities tallies with its overseas development assistance priorities, under which 50% of American aid goes to just six countries who are 'allies in the WoT'<sup>32</sup>.

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<sup>25</sup> See e.g. Grantmakers Without Borders in CIVICUS Civil Society Watch Monthly Bulletin 26, July 2007, and Article 19 2006

<sup>26</sup> From <http://hrw.org/un/chr59/counter-terrorism-bck3.htm>

<sup>27</sup> Article 19 2006:5; Quigley & Pratten 2007: Appendix 1, Legal Opinion

<sup>28</sup> From Human Rights Watch op.cit: <http://hrw.org/un/chr59/counter-terrorism-bck3.htm>

<sup>29</sup> Human Rights Watch 2003: [http://hrw.org/un/chr59/counter-terrorism-bck4.htm#P317\\_75109](http://hrw.org/un/chr59/counter-terrorism-bck4.htm#P317_75109)

<sup>30</sup> Ibid; headlines immediately following Gordon Brown's appointment as Prime Minister focused on his renewed crackdown on terrorist suspects.

<sup>31</sup> Article 19 2006: p. 6

<sup>32</sup> Bazzi, Herrling & Patrick (2003): p. 5

After September 11 a handful<sup>33</sup> of (mainly Muslim) charities were prosecuted as supporters of terrorism<sup>34</sup>. In the prevailing political climate few non-Muslim charities challenged this clampdown, hoping instead that non-Muslim organisations would remain unaffected if they remained silent. The danger of such a tactic is that it creates a precedent of acceptance of or compliance with very intrusive regulations, enabling even harsher future regulation of civil society activity.<sup>35</sup> The US government's 'Anti-terrorist Financing Guidelines: Voluntary Best Practice for U.S-Based Charities', first presented by the US Treasury in 2002, have clear ramifications for the US non-profit sector as a whole and have provoked considerable resistance from many quarters<sup>36</sup>. The Treasury's 'Risk Matrix for the Charitable Sector', is another allegedly voluntary measure to help grant makers identify 'organisational risk factors'. These CTMs align NGOs and grant making trusts' ways of working with government policy, thereby effectively labelling them as the agents of the state.

By demanding detailed and wide-ranging new standards for overseas grant-making, the Risk Matrix and the Guidelines require charities to spend more resources on gathering information about their grantees. They have to follow much more detailed financial reporting criteria than before and must be wary of imprecisely defined but potentially destructive legal action.<sup>37</sup> NGO compliance with these CTM procedures does not necessarily provide immunity from prosecution by the government<sup>38</sup> – having followed these 'voluntary' regulations, an organisation can still be investigated and designated as a terrorist supporter.

Reaction to the Risk Matrix was one of the first instances of a country's charitable sector protesting against CTM-related government control. US NGOs argued that the onerous new regulations were ineffective in deterring any real terrorist financing, but rather would have the effect of discouraging and inhibiting the good work of the sector as a whole. There is also anger at the way the Treasury persists in claiming that it works closely with NGOs, while the charities themselves contend that regulators pay little or no attention to the needs of NGOs, or to engaging in dialogue and consultation.<sup>39</sup> The American non-profit sector was also the first to propose self-regulation (the 'Principles of International Charity') as an alternative to state CTMs. Self-regulation. It has been argued that this can work in very specific, well-demarcated situations, but there is little to be gained from trying to regulate the entire non-governmental sector with a single instrument. Attitudes to self-regulation among CSOs vary; whereas some believe it can improve practice dramatically, others view it simply as a damage-limitation exercise to pre-empt more stringent government regulation.<sup>40,41</sup>

The American NGO campaign has succeeded, to some extent, in having the 'voluntary' Guidelines revised, (in 2005 and again in 2006), but this has not deflected the threat to non-profits' freedom of association. There is evidence of government surveillance of non-profit transactions, phone calls

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<sup>33</sup> In 2006, ten organisations had been prosecuted - presentation by Joseph McMahon, InterMediation, at INTRAC's conference "CTMs and their Effects on Northern and Southern NGOs", Utrecht, the Netherlands, January 2006. To date, the number stands at 44 – out of an estimated 10 million charities in the US. Summary of Treasury's May 2007 Senate Testimony on Charities and Islamic Extremism

<sup>34</sup> See e.g. Al-Marayti 2006 in the Washington Post

<sup>35</sup> Sidel 2006:204, Billica 2007, unpublished workshop paper

<sup>36</sup> Billica 2007, presentation at LSE Centre for Civil Society workshop "Aid, security and civil society in the post-9/11 context" held at Goodenough College, London, 28-29.6.07

<sup>37</sup> Sidel 2006: 205; Grantmakers Without Borders in CIVICUS CSW Monthly Bulletin, July 2007

<sup>38</sup> Presentation by Joseph McMahon, InterMediation, at INTRAC's conference "CTMs and their Effects on Northern and Southern NGOs", Utrecht, the Netherlands, January 2006

<sup>39</sup> McMahon 2007:8

<sup>40</sup> Sidel 2007: Presentation at LSE workshop

<sup>41</sup> Outside the US, similar protests have been followed by alternative proposals for self-regulation. These include the standards proposed under the Monterey Initiative's 'white list' and Islamic Relief's 'Humanitarian Forum'. However these have failed to make a significant impact on the nature of the dominant discourse on terrorism.

and events<sup>42</sup> organised by organisations with no connections to the originally suspected Muslim charities. Anti-Iraq war rallies have been labelled ‘potential terrorist activity’, and even Quaker peace activists have found themselves on a confidential US government database of suspect civil society activities.<sup>43</sup>

Meanwhile, the US Department of the Treasury line remains that “[combating] terrorist exploitation of the charitable sector, represents an important component of [the Treasury’s] counter-terrorist financing strategy...”<sup>44</sup> According to the US Treasury, charities are likely terrorist targets because they enjoy public trust, have access to considerable funds with little governmental oversight and can attract unwitting donors and use legitimate activities to cover illegitimate ones. Their claim that such abuse is “well-documented”<sup>45</sup> relies on surveillance agency testimonies with restricted public access. This situation is further complicated by the complex layers of CTM regulation. Different development funding institutions – at the federal and state levels and through international NGOs – all have different regulations in place that NGOs have to comply with.<sup>46</sup>

In practical terms, US charities – especially grant-making organisations – increasingly comply with the Guidelines by requiring certification from Southern partners that they are not funding terrorism. There has been a dramatic decrease in giving to Muslim charities (especially those in conflict-torn areas such as the Gaza strip in Palestine). There is some indication that some organisations are reluctant in the current climate to even to begin work overseas.<sup>47</sup> Whether such written guarantees as requested by the US government to ill-defined potential crimes are the best means to detect or deter terrorism is doubtful at best.

The ramifications of US counter-terrorism policy have implications worldwide as the US Treasury operates outside US territory, sharing information and proscribing organisations “without making evidence available either to the organisation concerned or to the relevant authorities in its country of origin”.<sup>48</sup> This is having a direct effect on international development cooperation by civil society actors. Since governments share the US view of NGOs as vulnerable to unwitting abuse by insurgent groups, they regard Muslim grant making charities with particular suspicion.<sup>49</sup> The justification for focusing on CSOs as conduits for financing for terrorist groups has its origins in the Soviet–Afghan war, when Islamic charities (allegedly) funded the military operations of the embryonic al-Qa’ida network<sup>50,51</sup>.

## **The United Kingdom: duplicating criminal legislation**

More recently, Muslim NGOs undertaking humanitarian work have been added to proscribed organisations lists in the US and UK, freezing their assets and complicating their work, even where they have been cleared of wrongdoing. Charities working in politically charged humanitarian emergencies, such as relief to Palestine, are in an especially vulnerable position where

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<sup>42</sup> Washington Post and NBC News quoted in Sidel 2006:206

<sup>43</sup> McMahon 2007:6

<sup>44</sup> Congressional testimony of Chip Poncey, Director, Office of Strategic Policy for Terrorist Financing and Financial Crimes, US Department of the Treasury US 10 May 2007, quoted in McMahon 2007:4

<sup>45</sup> McMahon 2007:4

<sup>46</sup> Presentation by Joseph McMahon, InterMediation, at INTRAC’s conference “CTMs and their Effects on Northern and Southern NGOs”, Utrecht, the Netherlands, January 2006

<sup>47</sup> McMahon 2007: 6; Grantmakers Without Borders in CIVICUS CSW Monthly Bulletin July 2007.

<sup>48</sup> NCVO 2007:6

<sup>49</sup> US National Strategy For Combating Terrorism, September 2006, quoted in McMahon 2007 (forthcoming).

<sup>50</sup> Kohlmann 2006: pp. 1-3

<sup>51</sup> In tandem with US and Saudi Arabia powers, who supported *mujahidin* fighters at the time in pursuit of their own Cold War agenda. See e.g. Human Rights News 2001 and Talbot in Samad and Sen (eds) 2007: pp. 100-08

accusations of breaching regulations can easily be made without the opportunity to either challenge or counter the accusations.

A volume of other multilateral counter-terror initiatives are also underway, such as a proposed EU code of conduct for non-profit organisations<sup>52</sup>, OECD-DAC regulations<sup>53</sup>, OSCE initiatives<sup>54</sup> and the Financial Action Task Force's existing role.

The 2006 'Countering International Terrorism, the United Kingdom's Strategy' identifies "misuse of charities" alongside identity fraud and cheque fraud as means for terrorist networks to acquire funds.<sup>55</sup> Tainting charities by categorising them with these criminal practices adds to the difficulties NGOs face in resisting the sweeping negative impacts of CTMs.

The duplication of counter-terrorism legislation over and above existing and hitherto sufficient criminal law is especially flagrant in the UK. According to the NGO umbrella organisation BOND, "There is no evidence that existing charity regulation is inadequate for the task of preventing terrorist abuse".<sup>56</sup>

British critics of CTM laws have also pointed out the difficulties that CTMs pose for international CSO partnerships; "The current system has inadvertently created humanitarian 'no go' areas".<sup>57</sup> CSOs working in Gaza find themselves in a difficult situation as Hamas is on both the US and EU lists of proscribed organisations. The British relief organisation Interpal has been on the US list since the beginning of the decade, despite having twice been investigated and cleared of wrongdoing by the British Charities Commission. However, it is still under scrutiny within the UK. Ibrahim Hewitt, Interpal's Chair of Trustees notes that "trying to prove that you are not what people say you are ('proving the negative') has been an uphill struggle...but I believe that we have right on our side, we have never done anything to be ashamed of and we operate entirely according to English charity law. Having been swept up into the 'war on terror' has made life more difficult than it should be and has diverted valuable human resources away from the real task of helping the poor and needy".<sup>58</sup> The mere suspicion of being a terrorist supporter can inhibit the work of an agency under investigation for considerable periods.

## The European Union: multilateral initiatives

The Council of the European Union has an established list of 'designated organisations' dating back to December 2001<sup>59</sup>. According to the Common Position, the assets of listed organisations are frozen, and it was only in June 2007 that the Council revised the rules on designation so that organisations have the right to know the reasons for being listed. There is no financial compensation for having been listed, and the definition of terrorism (the list includes several non-political crimes) is criticised for being too vague<sup>60</sup>. Following three court rulings against the Council

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<sup>52</sup> Council for the European Union 2005

<sup>53</sup> BOND 2007, p. 2. The main OECD-DAC policy statement is 'A Development Co-operation Lens on Terrorism Prevention: Key Entry Points for Action' from 2003.

<sup>54</sup> OSCE (2005): Permanent Council Work Programme for 2007 on Preventing and Combating Terrorism

<sup>55</sup> McMahon 2007:11

<sup>56</sup> BOND: Security and civil society report

<sup>57</sup> p. 38, Appendix to NCVO Report: The UK's 'Anti-Terrorist' Finance Regime and its Implications for the Non-Profit Sector, Legal Opinion by Edward Fitzgerald Q.C and Caoilfhionn Gallagher, Doughty Street Chambers, London

<sup>58</sup> Ibrahim Hewitt, Chair of Interpal, interviewed for BOND in 2007.

[www.bond.org.uk/networker/2006/nov06/people8.htm](http://www.bond.org.uk/networker/2006/nov06/people8.htm)

<sup>59</sup> Known as Common Position 2001/931/CFSP

<sup>60</sup> Ussar 2007

over designations, it has now established a Working Party<sup>61</sup> to scrutinise designations (especially those coming from third countries) to make sure they are lawful<sup>62</sup>.

The EU has plans to link counter-terrorism concretely to overseas development assistance (ODA), arguing that “the new security environment is one of increasingly open borders in which the internal and external aspects of security are indissolubly linked”.<sup>63</sup> CTMs are also included in country strategy papers. The aim appears to be to ‘mainstream CTM in ODA’ – without adequately defining what is meant by ‘mainstreaming’.<sup>64</sup> The Madrid EU Declaration on Combating Terrorism includes suggestions for incorporating counter-terrorism technical assistance into “all relevant external assistance programmes to promote good governance and rule of law”.<sup>65</sup> It is interesting that ‘good governance’, traditionally intended to improve the transparency and accountability of governments to citizens, now embraces counter-terror aspects which tend to have the opposite effect.

A current EU proposal suggests cutting EC funding to, and discouraging member states’ association with, organisations on the EU terrorist list. The Council of the European Union has also drafted a European code of conduct for non-profit organisations to prevent terrorist financing.<sup>66</sup> The Portuguese presidency of the EU in the second half of 2007 is likely to see anti-terrorism featuring prominently on the European agenda. This could mean implementing the measures from the Financial Action Task Force’s Special Recommendation VIII.<sup>67</sup> These include domestic reviews of the national NGO sector by using “all available sources of information in order to identify features and types of NPOs”; outreach to the sector; supervision or monitoring of the sector; effective investigation and information-gathering, and effective mechanisms for international cooperation.<sup>68</sup> This involves, for example maintaining information on individuals who influence and direct the NGOs’ operations; detailed financial statements, and registration.<sup>69</sup> Most of the FATF’s recommended measures are already part of charity regulations and accepted good practice. The ‘know your beneficiary’ rule (measure a-V) is recognised as a cornerstone of effective partnership practice. Measure a-VI on maintaining financial records is also standard auditing practice.

Why, then, is the FATF duplicating existing regulations and criminal legislation in the name of counter-terrorism? CSOs already have a long-standing record of complying with similar charity regulations without reference to any threats of violent abuse of their funding, and without the tone of menace tainting the discourse. Hence, it should be easy to agree to follow the implementation of the FATF recommendation VIII. As existing legislation already provides the necessary protection against terrorist abuse of charities, signing up to FATF regulations leaves CSOs prone to ever-tighter future regulation.

## **Conclusion: solidarity over suspicion**

It is becoming clear that civil society cannot simply focus on CTMs in isolation: they are symptomatic of the ubiquitous influence of the WoT which, in effect, has become a new cold war. This ‘securitisation of development’ affects civil society worldwide in two main ways. Donor governments are seeking to enlist development-focused NGOs to support foreign policy operations with ‘security’ objectives. The omnipresence of the WoT provides repressive states with the pretext to clamp down on ‘dissident’ CSOs. Nations that are active allies in the WoT can suppress internal

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<sup>61</sup> The Council Working Party on implementation of Common Position 2001/931/CFSP

<sup>62</sup> Ussar op.cit

<sup>63</sup> EC – Solana 2003 quoted in Waddell 2006:537

<sup>64</sup> Cordaid presentation at LSE workshop 29.6.07

<sup>65</sup> Madrid EU Declaration cited in BOND 2007:7

<sup>66</sup> Council of the European Union doc. 14694/05, 2005

<sup>67</sup> Cordaid presentation at LSE workshop 29.6.07

<sup>68</sup> FATF: Interpretative Note to Special Recommendation VIII: Non-Profit Organisations

<sup>69</sup> *ibid*

dissent and brand opponents as ‘terrorists’ with little fear of repercussions. In all these international interactions, Muslims and Muslim CSOs are routinely demonised as the ‘enemy within’ and have to struggle to defend themselves against unsubstantiated allegations of terrorism.

Civil society has always had to struggle to challenge the status quo and champion the rights of the oppressed and marginalised, but CTMs have made this task even harder. CTMs are raising the stakes and severity of government counter-measures. When challenging CTMs, individuals and organisations quickly find themselves in a legal jungle of anti-terrorism measures rushed into law without thorough consideration and consultation. The ambiguity and vagueness of anti-terrorism laws in some countries puts civil society at great risk of inadvertently breaching them. When CSOs are judged to have committed an offence, the sanctions are heightened because of a fixation with threats to national security. Those accused of terrorism lose many of the rights of due process – such as the defendant’s right to know the details of accusations and the right not to be detained indefinitely without prospect of trial.<sup>70</sup> With the financial and criminal punishments for breaking counter-terrorism laws so severe, many CSOs are thinking twice about the choice between rights activism and service delivery work. The WoT provides an incentive for civil society to take on activities that may provide relief, but which do not address the political and economic structures that keep people poor and marginalised.

The international development sector is now feeling the influence of national security thinking. In a world centred on material wealth whose expansion relies on a gulf of inequality between haves and have-nots for the continued comfort of the former, securitisation of development implies a drastic reorientation away from solidarity and justice to protection of the interests of the ‘haves’. The terrorist attacks on the New York World Trade Centre in September 2001 marked the re-emergence of a ‘counter-terrorism’ strategy as a global political aim, memorably articulated in the American foreign policy establishment’s phrase ‘you’re either with us or against us’. As the War on Terror is repeatedly invoked to justify invasions, geopolitical clientelism and military spending, it also creates a climate of fear – and compliance with government – in Northern countries, most notably in the US and Britain.<sup>71</sup> With the governments’ defence departments across the world flexing their muscles against this newfound enemy, defence policy has begun to actively influence foreign and development policy.<sup>72</sup> Northern countries’ international development cooperation policies have embraced activities with military partners that sit uncomfortably with the former ethos of solidarity, global redistribution and justice for the weak.

Although counter-terrorism measures and other policies associated with the WoT cause uncertainty, inconvenience and the threat of proscription to Northern CSOs, the effects on their Southern partners are more extensive and more severe. In some cases it may mean reduced funding from Northern partners and in others, discrimination and harassment from Northern and Southern governments. CTMs provide a new justification for constricting rights activism, freedom of speech and freedom of association. It is incumbent on Northern civil society and Northern NGOs to strive to reformulate existing counter-terrorism legislation and make it more specifically defined, targeted and answerable to the public. It is important to defend space for civil society association, stand up with Southern CSOs facing serious oppression and destruction, and safeguard opportunities for continued partnerships in solidarity with Southern civil society.

**Linda Lönnqvist and INTRAC Research Team, January 2008**

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<sup>70</sup> NCVO Legal Opinion, Nolan & Quigley 2007

<sup>71</sup> Goodin 2006: 28, 79

<sup>72</sup> Natsios 2006, see e.g. DFID’s integrated policy in Afghanistan, BOND 2007:6

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