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The Brookings Project on U.S. Relations with the Islamic World
2012 U.S.-Islamic World Forum Papers

Developing New Mechanisms to Promote the Charitable Sector

CONVENED AND AUTHORED BY:
Dean Dilley and Elizabeth Ryan



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For the ninth annual U.S.-Islamic World Forum, we returned once again to the city of Doha. The Forum, co-convened annually by the Brookings Project on U.S. Relations with the Islamic World and the State of Qatar, serves as the premier convening body for key leaders from government, civil society, academia, business, religious communities, and the media. For three days, Forum participants gathered to discuss some of the most pressing issues facing the relationship between the United States and global Muslim communities.


Each year, the Forum features a variety of different platforms for thoughtful discussion and constructive engagement, including televised plenary sessions with prominent international figures on broad thematic issues of global importance; morning “breakfast” sessions led by experts and policymakers focused on a particular theme; and working groups which brought together practitioners in a given field several times during the course of the Forum to develop practical partnerships and policy recommendations. This year, the Forum also featured a signature event, “The Long Conversation,” in which all participants came together in an off-the-record and town hall style format discussion on the evolving relationship between the citizen, religion, and the state. For detailed proceedings of the Forum, including photographs, video coverage, and transcripts, please visit our website at <http://www.brookings.edu/about/projects/islamic-world>.

Each of the four working groups focused on a different thematic issue, highlighting the multiple ways in which the United States and global Muslim communities interact with each other. This year’s working groups included: “Compassion: An Urgent Global Imperative,” “Between Interference and Assistance: The Politics of International Support in Egypt, Tunisia, and Libya,” “Water Challenges and Cooperative Response in the Middle East and North Africa,” and “Developing New Mechanisms to Promote the Charitable Sector.”

We are pleased to share with you the third of our four working group papers, “Developing New Mechanisms to Promote the Charitable Sector.” Please note that the opinions reflected in the paper and any recommendations contained herein are solely the views of the authors and do not necessarily represent the views of the participants of the working groups or the Brookings Institution. All of the working group papers will also be available on our website.

We would like to take this opportunity to thank the State of Qatar for its partnership and vision in convening the Forum in partnership with us. In particular, we thank the Emir of Qatar, HRH Sheikh Hamad bin Khalifa Al-Thani; the Prime Minister and Foreign Minister of Qatar, HE Sheikh Hamad bin Jassim bin Jabr Al-Thani; H.E. Sheikh Ahmed bin Mohammed bin Jabr Al-Thani, the Minister’s Assistant for International Cooperation Affairs and the Chairman of the Permanent Committee for Organizing Conferences; and H.E. Ambassador Mohammed Abdullah Mutib Al-Rumaihi for their collective support and dedication to the Forum and the Project on U.S. Relations with the Islamic World.

Sincerely,



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ABSTRACT

Zakat (charity) is one of the pillars of Islam and an important expression of religious faith for Muslims worldwide. In pursuing important anti-terrorism and anti-money laundering objectives, the United States and many other governments have implemented aggressive law enforcement programs to investigate, sanction, and prosecute organizations suspected of disbursing funds for illegal purposes—including, in some cases, charitable organizations. During the past decade, several highly publicized government investigations and international counterterrorism efforts have resulted in a chilling effect on well-intentioned donor activity within the

charitable sector and among Muslim-focused charities in particular. President Barack Obama acknowledged this problem specifically in his 2009 speech in Cairo, Egypt. This working group convened key stakeholders to consider this new challenge to philanthropic giving and to develop practical solutions. Among other possible solutions, the group examined the feasibility of a newly established, independent organization dedicated to evaluating Muslim charities and charities operating in Muslim-majority countries, with the objective of contributing to donor confidence and thereby promoting the success of this charitable sector.

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* Patton Boggs LLP is an international law firm based in Washington, D.C. In undertaking this project, Patton Boggs does not represent any clients' interests.



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UNIQUE CHALLENGES FACING MUSLIM CHARITIES AND CHARITIES OPERATING IN MUSLIM-MAJORITY COUNTRIES

The first decade of this century will be remembered for tragically violent attacks on civilian populations by extremist groups asserting political or religious agendas. In response to these attacks, many governments launched new and more muscular law enforcement programs to monitor, investigate, sanction, and prosecute organizations suspected of disbursing funds for illegal purposes or terrorist financing. In a few highly publicized cases, charitable organizations were targeted in criminal investigations, prosecutions, and asset seizures.

Unfortunately, these government investigations and prosecutions have cast suspicion on well-intended donor activity within the charitable sector and among Muslim-based charities in particular. Of the nine U.S.-based charities that have been designated as terrorist organizations or had assets blocked by the U.S. Department of Treasury, seven are Muslim charities.¹

Clearly, an important national security priority for every country is preventing the diversion of

charitable assets for illegal purposes. At the same time, many Muslim charities and charities operating in Muslim-majority countries now confront significant handicaps in fundraising and in operating overseas. Donors who wish to support such charitable activities face a dilemma when assessing the qualifications of a particular charitable organization in what has been described as “a climate of fear.”² Similarly, and in reaction to their own changing regulatory obligations, financial institutions are increasingly risk averse in dealing with Muslim charities.

In the United States, some Muslim Americans have been reluctant to make good faith contributions through charitable channels for fear that the charities to which they give might be designated by the U.S. government as providers of “material support” to terrorists and terrorist organizations.³

A June 2009 report from the American Civil Liberties Union described a “pervasive fear among Muslim charitable donors that they may be arrested, retroactively prosecuted for donations made in good

¹ U.S. Department of the Treasury, *Protecting Charitable Giving Frequently Asked Questions* (June 4, 2010), <http://www.treasury.gov/resource-center/terrorist-illicit-finance/Documents/Treasury%20Charity%20FAQs%206-4-2010%20FINAL.pdf> (citing the following entities: (1) The Holy Land Foundation for Relief and Development; (2) Global Relief Foundation; (3) Benevolence International Foundation; (4) Al Haramain Foundation-USA Branch; (5) Islamic African Relief Agency; (6) Goodwill Charitable Organization; and (7) KindHearts for Charitable Humanitarian Development, Inc.)

² American Civil Liberties Union, *Blocking Faith, Freezing Charity: Chilling Muslim Charitable Giving in the “War on Terrorism Financing*, June 2009, at 8 (concluding that there is a “climate of fear that chills American Muslims’ free and full exercise of their religion through charitable giving, or Zakat, one of the ‘five pillars’ of Islam and a religious obligation for all observant Muslims”).

³ *Ibid.*

faith to legal Muslim charities, targeted for law enforcement interviews for exercising their religious obligation to pay Zakat, subpoenaed to testify in a criminal case, subjected to surveillance, deported or denied citizenship or a green card, or otherwise implicated because of charitable donations made in fulfillment of their religious obligation to give Zakat.”⁴

These challenges were succinctly acknowledged by President Barack Obama in his June 2009 speech in Cairo when he stated:

[I]n the United States, rules on charitable giving have made it harder for Muslims to fulfill their religious obligation. That’s why I’m committed to working with American Muslims to ensure that they can fulfill zakat.⁵

Indeed, as discussed below, the U.S. Department of Treasury and other international agencies have attempted to reach common ground with the charitable sector to reconcile these issues, but thus far, the burden of suspicion that falls disproportionately on Muslim charities has not been substantially relieved.

Without commenting on the existing laws and regulations by which governments pursue their law enforcement and counterterrorism objectives, it is evident that none of the responsible stakeholders—governments, charitable organizations, financial institutions, and donors—accepts the status quo to the extent that it reflects invidious discrimination. Donor choices, and more broadly, the stan-

dards against which Muslim charities are measured, should be the same as those applied to all charitable organizations.

The statement of this principle is easier than its implementation. Given the size, scope, and diversity of the worldwide charitable sector, a single solution is unlikely to address the legitimate objectives of all concerned. The goals of this paper are to (1) consider the legal environment within which the stakeholders operate, (2) examine some of the previous or existing models in which a reconciliation of those interests has been attempted, (3) suggest a set of working principles designed to produce both the appearance and reality of a nondiscriminatory environment for Muslim charities and charities operating in Muslim-majority countries, and (4) propose concrete solutions that are realistic and achievable.

The working group convened key stakeholders to consider these challenges to philanthropic giving and to develop practical solutions. Among the options considered in this review was the viability of an independent rating or evaluative organization that would produce public reports on individual charitable organizations, assembling purely objective information relevant to prospective donors. This includes, for example, information regarding governance, internal controls, accounting practices, primary donors and grantees, and participation, if any, in any public sector sponsored activities. While this paper attempts to reflect faithfully the discussions of the working group, specific recommendations represent the views of the authors.

⁴ Ibid., 13.

⁵ White House Office of the Press Secretary, *The Remarks by the President on a New Beginning*, June 4, 2009, <http://www.whitehouse.gov/the-press-office/remarks-president-cairo-university-6-04-09>.



THE COUNTERTERRORISM LEGAL FRAMEWORK AND ITS IMPACT ON THE CHARITABLE SECTOR

While concerns about terrorist exploitation of the charitable sector are global, specific counterterrorism efforts and law enforcement regimes differ by jurisdiction. International cooperation among regulators and information-sharing between governments also vary.

THE COUNTERTERRORISM LEGAL FRAMEWORK AND ITS IMPACT ON THE CHARITABLE SECTOR IN THE UNITED STATES

The United States employs broad legal counterterrorism tools. Among these is the “USA PATRIOT Act” of 2001, a sweeping amendment of several pre-existing law enforcement tools.⁶ Under this legal framework, the secretary of state, in consultation with the attorney general and the secretary of the treasury, is authorized to designate organizations as “Foreign Terrorist Organizations.”

Executive Order 13224, issued by President George W. Bush in 2001, is also a central component of U.S. efforts to prevent terrorist financing.⁷ It designated twenty-seven organizations and individu-

als as “Specially Designated Global Terrorists” and authorized the secretary of the treasury and the secretary of state to name additional organizations and individuals to this list, which is maintained by the Treasury Department’s Office of Foreign Asset Controls.⁸

Together, these laws prohibit transactions with groups designated as terrorist organizations by the U.S. government and enforce criminal penalties for those groups or individuals who provide “material support” to terrorist activity. Today, the broadly-defined “material support” provisions are among the most controversial requirements of the U.S. counterterrorism legal framework affecting the charitable sector.

When a charity is designated for providing “material support” to a terrorist organization, its U.S. property and financial assets are blocked and its financial and donor records are seized. Even short of an official designation, the PATRIOT Act allows the federal government to freeze charitable assets when it opens an investigation into whether an organization should be designated.⁹

⁶ *United and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism of 2001 (PATRIOT Act)*, Pub. L. No. 107-56, Title I, § 106, 115 Stat. 272 (2001), amending the *Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA)*, Pub. L. No. 104-132, 110 Stat. 1214 (1996) and the *International Emergency Economic Powers Act (IEEPA)*, Pub. L. No. 95-223, 91 Stat. 1626 (1977).

⁷ E.O. 13224, *Blocking Property and Prohibiting Transactions with Persons who Commit, Threaten to Commit, or Support Terrorism*, 66 Fed. Reg. 49,079 (Sept. 23, 2001).

⁸ *Ibid.*

⁹ PATRIOT Act, Pub. L. No. 107-56, 115 Stat. 272.

Since 2001, the United States has designated approximately sixty charities worldwide as terrorist organizations.¹⁰ Of these, eight U.S.-based charities were designated formally, and the assets of one additional U.S. charity were blocked pending investigation.¹¹ As of 2009, the total amount of assets blocked pursuant to the U.S. government's counterterrorism sanctions was approximately \$19.8 million.¹² In addition, approximately \$3 million in assets of U.S.-based charities have been blocked pursuant to either a formal designation or a pending investigation.¹³ These amounts are relatively small in comparison to the total value of asset seizures in other U.S. law enforcement proceedings, but the targeting of charities—including Muslim-based charities—contributes to the chilled philanthropic climate that President Obama described in Cairo.

COUNTERTERRORISM EFFORTS AND THE ROLE OF THE CHARITY COMMISSION IN THE UNITED KINGDOM

By contrast, the United Kingdom charity regulators play a central role in investigating and combating the diversion of charitable assets to terrorist organizations. The Charity Commission for England and Wales (Charity Commission) acts as both an independent regulator and registrar of UK charities.¹⁴ As a non-ministerial department, it operates independently from the government and maintains a transparent and publicly accessible charity registry. Under the Charities Act of 2011 (Charities Act), the Charity Commission is charged with five objectives: (1) to increase public trust and confidence in the charitable sector; (2) to promote awareness and understanding of the public benefit; (3) to promote compliance by charity trustees with their legal obligations and charity management; (4) to promote

effective use of charitable resources; and (5) to enhance the accountability of charities to donors and the public.¹⁵

The Charities Act provides the Charity Commission with a range of investigatory and enforcement measures when a charity is suspected of ties to a terrorist organization, including the authority to open an investigation, gather information about a charity that it shares with other government agencies, take measures to remove or replace an organization's trustees, and freeze charitable assets.¹⁶ In this capacity, the Charity Commission works in partnership and coordination with both the government and the charitable sector to combat terrorist financing. It plays a central role in coordinating with intelligence and law enforcement bodies while, at the same time, encouraging UK charities to develop best practices.

The Charity Commission employs a risk-based and proportionate approach to its regulation of UK charities, and it collects varying types of information based on the size of a registered charity.¹⁷ Only charities with an expected income over £5,000 are required to register with the Charity Commission.¹⁸ Through this publicly accessible regulatory system, key information such as financial records, risk analysis, compliance history, and historic data is available in the public domain for donors and financial institutions to assess the qualifications of any particular charitable organization.

OTHER INTERNATIONAL COUNTERTERRORISM LAWS AND POLICIES

In addition to the law enforcement tools employed by individual countries, multilateral organizations have developed specific counterterrorism policies

¹⁰ U.S. Department of the Treasury, *Protecting Charitable Giving Frequently Asked Questions* (June 4, 2010), at 10.

¹¹ *Ibid.*

¹² *Ibid.*

¹³ *Ibid.*

¹⁴ Charity Commission, *Counter-Terrorism Strategy*, (Rev. April 2012), <http://www.charitycommission.gov.uk/Library/ctstext.pdf>.

¹⁵ *Ibid.*, 2.

¹⁶ *Ibid.*

¹⁷ *Ibid.*, 4.

¹⁸ Charity Commission, *Frequently Asked Questions*, http://www.charitycommission.gov.uk/FAQS/Registering_a_charity/ID239.aspx.

that apply to charities. For example, the Financial Action Task Force (FATF) is the primary standard-setting body in the international effort against terrorist financing and money laundering. Established in 1989 by the G-7 Economic Summit, FATF is an intergovernmental body comprising thirty-six member states.¹⁹ FATF sets global standards, assesses member compliance with those standards, and promotes compliance through diplomatic coordination with its member governments.

In particular, FATF's Special Recommendation VIII establishes a framework for governments and financial institutions to ensure that nonprofit organizations are not misused for financing terrorism.²⁰ It states that countries should "review the adequacy of laws and regulations that relate to entities that can be abused for the financing of terrorism" and ensure that nonprofit organizations cannot be misused (a) by terrorist organizations disguised as legitimate entities, (b) as conduits for terrorist financing, or (c) to obscure the diversion of funds intended for legitimate purposes to terrorist activity.²¹

The United Nations also plays a central role in the global counterterrorist financing effort. UN Security Council Resolution (UNSCR) 1267 and its successor resolutions establish a binding legal obligation on member states to freeze funds and other financial resources of designated individuals and entities affiliated with the Taliban and al-Qaeda.²² In addition, UNSCR 1373 obligates member states to establish programs that impose economic sanctions against all entities that engage in or support terrorist activities.²³ Specifically, under UNSCR 1373, member states are asked to implement sanctions against any person or entity involved in terrorist activity,

regardless of whether that person or entity was specifically designated by the United Nations. Many countries have not yet implemented these sanctions programs.

Finally, while banks and other financial institutions are not directly responsible for oversight of charitable organizations, they play an important role in effectively channeling charitable fundraising and disbursements of funds through traditional banking systems, which are heavily regulated and monitored. All U.S. financial institutions are required to implement "Know Your Customer" standards to prevent banks from being used, intentionally or unintentionally, by criminal elements for money laundering and terrorist financing activities. Other major banking jurisdictions employ similar requirements, which enlist financial institutions in policing and reporting suspected criminal activity that relies upon the banking system, and subjecting these institutions to liability for failing to do so.

In this complex legal environment, several assumptions are important to devise fair and neutral solutions that reconcile and balance the law enforcement and counterterrorism objectives of governments with the interests of philanthropic donors and charitable organizations.

These assumptions include the following:

- **By law and by custom, law enforcement and counterterrorism investigations will not be public.** In the United States and most countries, the unauthorized release of classified intelligence information is a serious crime, and in most jurisdictions, pre-indictment criminal

¹⁹ Financial Action Task Force (FATF) member governments include: Argentina, Australia Austria Belgium Brazil, Canada, Denmark, European Commission, Finland, France, Germany, Greece, Gulf Cooperation Council, Hong Kong, China, Iceland, India, Ireland, Italy, Japan, Luxembourg, Mexico, Kingdom of the Netherlands, New Zealand, Norway, People's Republic of China, Portugal, Russian Federation, Singapore, South Africa, South Korea, Spain, Sweden, Switzerland, Turkey, United Kingdom, and the United States.

²⁰ Financial Action Task Force, *International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation* (February 16, 2012), [http://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF%20Recommendations%20\(approved%20February%202012\)%20reprint%20May%202012%20web%20version.pdf](http://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF%20Recommendations%20(approved%20February%202012)%20reprint%20May%202012%20web%20version.pdf).

²¹ Financial Action Task Force, Special Recommendation VIII.

²² United Nations Security Council Resolution S/RES/1267 (1999).

²³ United Nations Security Council Resolution S/RES/1373 (2001).

investigations also may not be disclosed.²⁴ As a result, in the context of rating or evaluating charitable organizations for the purposes of providing relevant information to prospective donors, financial institutions, or project partners, it is fair to assume that there will be no public access to either adverse or favorable information about charities from government law enforcement agencies or intelligence sources.

- **It is not customary for governments to publish an “approved” list, or to state that a particular organization is not under investigation.** While governments occasionally publicly identify individuals or organizations that are subject to regulatory or criminal sanctions—for example, the U.S. OFAC Specially Designated Nationals and Blocked Persons List mentioned above, or administratively “debarred” persons/organizations prohibited from doing business with the U.S. government—it is not customary for governments to publish an “approved” list, or to state that a particular organization is not under investigation.
- **As a matter of public policy, governments may be expected to endorse nondiscriminatory application of investigative resources (i.e., to reject “profiling” or other negative presumptions in regard to a particular segment of the charitable sector).** However, as a practical matter, law enforcement and counterterrorism investigations will direct their priorities to

perceived risks, which may continue to disproportionately burden Muslim-based charities or charities operating in Muslim-majority countries and communities.

- **Governments have relevant information that is presumptively public and could be shared with donors and others.** For example, government aid organizations, such as the U.S. Agency for International Development (USAID) and the UK Department for International Development (DFID), routinely enter into grants and contracts with charitable organizations around the world and approve specific sub-contracts or subgrants to such organizations, as part of the implementation of international development and assistance programs. This information is presumably relevant to donors and reflective of some measure of vetting or due diligence by the government itself. It may be useful to enlist governments to collect and publish this information.
- **Any effective solution will require some level of coordination between governments and the charitable sector.** Although it is unlikely that any solution will be endorsed by all governments, some level of coordination between governments and the charitable sector is effective and necessary. At the same time, it is important that charities maintain independence and are not perceived as agents of governments in carrying out their philanthropic missions.

²⁴ In the United States, for example, Grand Jury Secrecy rules rigidly restrict disclosure of information regarding the deliberations of a grand jury in criminal proceedings. See, FED. R. CRIM. P. 6.



A SURVEY OF APPROACHES FOR ENCOURAGING DONOR CONFIDENCE AND PROMOTING CHARITABLE GIVING

During the last decade, several initiatives have emerged from governmental, charitable, and financial stakeholders to encourage transparency and accountability in the charitable sector and to reduce the risk of misuse of funds for terrorist financing.

GOVERNMENT GUIDELINES AND APPROACHES

In the United States, the Treasury Department plays the leading role in coordinating intergovernmental activities with respect to counterterrorist financing and its implications for the charitable sector. The issuance of the Treasury Department's voluntary guidelines is among the most controversial actions taken by the U.S. Government with regard to the charitable sector.

In late 2002, and again in 2006, the Department released the "Anti-Terrorist Financing Guidelines: Voluntary Best Practices for U.S.-Based Charities."²⁵ The guidelines provide recommendations for charitable organizations to apply in developing a philanthropic giving strategy that prevents the diversion of funding to terrorist organizations. Among other items, the guidelines recommend vetting and certifying grantees, reviewing financial records, and strengthening due diligence requirements.

From various sources within the charitable sector, there was opposition to the guidelines, including:

(1) data collection requirements and due diligence recommendations, (2) provisions suggesting that charitable organizations are agents for governments, and (3) that although the guidelines are labeled voluntary, in practice, they may be treated as *de facto* legal mandates by banks and other government agencies.

To tackle some of these concerns, a Treasury Guidelines Working Group was established in 2003 by the Council on Foundations. The working group's mission was to replace the guidelines with "Principles of International Charity," which were adopted in 2005 by a group of private foundations, public charities, corporations, religious organizations, and nongovernmental organizations. The Principles emphasized that charitable organizations must comply with U.S. laws but are "non-governmental entities that are not agents for enforcement of U.S. or foreign laws or the policies reflected in them."

According to press reports, the group disbanded in 2010 over a perceived lack of progress or adoption of the Principles by the Treasury Department. The working group issued a press release criticizing the Treasury Department for a lack of "any substantive changes to its approach—or to recognize the important role of global philanthropy in increasing national security through funding to address poverty, inequality, disease, and other pressing needs."²⁶

²⁵ U.S. Department of the Treasury, *Anti-Terrorist Financing Guidelines: Voluntary Best Practices for U.S.-Based Charities*, (Nov. 2002, revised Sept. 2006), http://www.treasury.gov/resource-center/terrorist-illicit-finance/Documents/guidelines_charities.pdf.

²⁶ The Charity and Security Network, "Nonprofit Groups End Talks with Treasury about Ineffectual Guidelines," (December 1, 2010), http://www.charityandsecurity.org/news/Nonprofit_Groups_End_Talks_With_Treasury_about_Ineffectual_Guidelines.

At present, the situation appears to have reached a stalemate, with many U.S. charities continuing to object to the guidelines, and the U.S. Government continuing to reject the proposed new principles.

In 2007, USAID announced plans to launch a “Partner Vetting System” (PVS) that would require non-governmental organizations seeking USAID grants to submit detailed information about grantee personnel to check against government lists, such as the OFAC Specially Designated Nationals and Blocked Persons List. According to USAID, PVS would “screen key contract and grant personnel and organizations against national security databases.”²⁷ Although many charities opposed the proposed PVS and its implementation has stalled for several years, the State Department issued a notice in the Federal Register in 2011 announcing plans for a pilot program.²⁸

More recently, there has been an effort by USAID and the Departments of State and Treasury to engage with the Muslim charitable sector outside the United States. For example, an effort was launched in mid-2012 to convene key stakeholders in London to discuss ways to protect charities from entanglements with illegal activity. In addition to representatives from the charitable sector, the U.S. Government also involved the financial services industry in this initiative, and the results may help to inform new approaches and best practices.

CHARITABLE RATING AGENCIES AND MONITORING ORGANIZATIONS

Some nonprofit organizations and private sector accreditation organizations have moved forward to develop a set of “best practices” within the charitable sector, including at least one organization dedi-

cated to Muslim nonprofit organizations. In fact, a 2010 World Bank study on nonprofit organizations argued that oversight of the charitable sector should take place through self-regulatory organizations, which “may not have the force of law, [but] they can have the force of contract and the power to sanction their members where there is violation of an agreed code of conduct.”²⁹ In considering the appropriate role for governments, the study encouraged government regulators to “recognize the need felt in the sector to demonstrate its good governance and care and its standing as a responsible actor and use that aspiration to also address terrorism financing concerns, allowing it to take ownership of its own problems.”³⁰

With approximately 1.8 million charities in the United States alone, there is no shortage of benchmarks and standards that have been applied to the charitable sector. The following are some examples of the charitable and philanthropic organizations that have established best practices to protect charitable assets from misuse:

- *Muslim Advocates*: In 2008, Muslim Advocates, a national legal advocacy and educational organization, and the Better Business Bureau’s Wise Giving Alliance (BBB-WGA) partnered to create the Muslim Charities Accreditation Program. For a charity to become accredited, groups must meet “20 Standards for Charity Accountability” established by the BBB-WGA.³¹ In 2009, three Muslim American charitable organizations became the first groups to gain the accreditation.³²
- *InterAction*: With over 190 members, InterAction is the largest group of U.S.-based

²⁷ Department of State, Status Report, “Partner Vetting System (PVS) Pilot Program,” <http://www.charityandsecurity.org/system/files/PVS%20PUBLIC%20Mtg%20STATUS%20REPORT%2009082011%20FINAL.pdf>.

²⁸ 60-Day Notice of Proposed Information Collection: DS-4184, Risk Management and Analysis (RAM), 76 Fed. Reg. 203 (Oct. 20, 2011).

²⁹ Emile van der Does de Willebois, “Nonprofit Organizations and the Combatting of Terrorism Financing: A Proportionate Response,” The World Bank (2010), at 20.

³⁰ Ibid.

³¹ Muslim Advocates, “BBB Wise Giving Alliance Standards for Charity Accountability,” http://www.muslimadvocates.org/documents/standards_for_charity.html.

³² The first charities to receive accreditation through the Muslim Advocates program include: (1) Islamic Networks Group, (2) UMMA Community Clinic, and (3) Inner-City Muslim Action Network.

international nongovernmental organizations. Interaction's "Private Voluntary Organization (PVO) Standards," updated in January 2011, set criteria for the "financial, operational, and ethical code of conduct for InterAction and its member agencies" to ensure the public's "confidence in the integrity, quality, and effectiveness of member organizations and their programs."³³

- *Humanitarian Accountability Partnership (HAP) International*: HAP is a multiagency member initiative designed to provide best practices to humanitarian aid agencies. HAP developed a specific set of benchmarks for accountability and quality management in humanitarian work. In 2010, it published the "HAP Standard in Accountability and Quality Management."³⁴
- *Transparency International*: Transparency International developed and published (in both Arabic and English) a "Preventing Corruption in Humanitarian Operations Handbook" that evaluates corruption risks and develops standards to reduce such risks.³⁵
- *The Joint Standards Initiative (JSI)*: In 2011, three nonprofit organizations—Sphere Project, HAP, and People in Aid—collaborated to form the Joint Standards Initiative. The initiative is designed to bring together the multiple standards and best practices for delivering humanitarian aid into a common "single coherent framework" for the charitable sector. It is specifically geared toward small and large nonprofit organizations engaged in international aid and development work.³⁶

PUBLIC-PRIVATE PARTNERSHIPS

Another model that has achieved success in its limited circumstances has been the formation of public-private partnerships by the U.S. Government and a group of NGOs working in international conflict zones such as Palestine or Afghanistan.

As part of a pilot project in 2008, USAID signed a Memorandum of Understanding (MOU) with the American Charities for Palestine (ACP), initiating a partnership and establishing an alternative relief mechanism for the Palestinian Territories.³⁷ Under the MOU, ACP raises private donations from donors and collaborates with USAID to jointly provide the funds in direct support of mutually agreed-upon projects and activities in the West Bank and Gaza, particularly in the areas of health and education.³⁸

One important benefit to this public-private model is that all partners are held accountable by the agreed terms of the MOU, and contract performance assessments may be conducted to assure compliance. An obvious limitation of this approach and a concern for many nonprofit organizations is that it effectively restricts charitable activities to those that are aligned with the policy objectives of a particular government and its inherent political or foreign policy objectives.

LESSONS LEARNED FROM THESE APPROACHES

Among these cross-sector initiatives, there are some lessons to consider:

- **There is no shortage of generally accepted "best practices" that might be adopted by**

³³ InterAction, "InterAction's PVO Standards," <http://www.interaction.org/document/interactions-pvo-standards>.

³⁴ Humanitarian Accountability Partnership, "Preventing Corruption in Humanitarian Operations Handbook," <http://www.hapinternational.org/projects/standard/hap-2010-standard.aspx>.

³⁵ Transparency International, "Handbook of Good Practices: Preventing Corruption in Humanitarian Operations," http://www.transparency.org/whatwedo/pub/handbook_of_good_practices_preventing_corruption_in_humanitarian_operations.

³⁶ Joint Standards Initiative, <http://www.jointstandardsinitiative.org>.

³⁷ American Charities for Palestine, Press Release, "American Charities for Palestine signs 'Historic' Partnership Agreement with USAID" (July 31, 2008), <http://www.americaforpalestine.org/pr/2008/11/20/8>.

³⁸ Ibid.

a standards-setting organization, but all impose resource obligations on the participating charities. Before accepting these additional burdens, the participants naturally hope for some reasonable assurance that compliance with these standards will be rewarded with a reliable “seal of approval” or designation on an approved “white list.” Insofar as governments are concerned, this has not been forthcoming, and for the reasons mentioned above, is not considered a realistic goal. With millions of registered charities around the world, governments argue that an approved “white list” could never be comprehensive or current. In addition, since terrorist and other illegal activity is constantly adaptive, charities listed on any approved list at any particular time could be manipulated, or even targeted, for terrorist financing purposes in the future.

- **The public-private partnership model is credible and unique, but it may be best suited for limited settings,** such as active combat zones or occupied or disputed territories, where it is more difficult to channel charitable donations and direct humanitarian aid without violating U.S. or other counterterrorism laws.

- **The well-intentioned Treasury Guidelines Working Group may reflect unrealistic expectations on all sides.** The U.S. Government, like many governments, is burdened by multiple policy objectives: an interest in supporting the charitable sector, a public policy that forbids discrimination on the basis of religious affiliation, a classified law enforcement environment, a broad intelligence gathering and counterterrorism apparatus, and aggressive prosecutorial machinery designed to cripple criminals and those that support them. These are legitimate objectives and roles, but they may preclude governments from acting as a broker or mediator in resolving these difficult and complex issues, and from credibly balancing its own interests with those of charities seeking to dispel unreasonable suspicions. Similarly, charitable organizations may have unrealistic expectations of securing a “safe harbor” designation from government in return for adhering to its recommended due diligence and vetting requirements. In addition, charities may be unlikely to agree among themselves on the wisdom of a government “approved list” of charities, which by default, implies that an unapproved “black list” also exists.



REFLECTIONS OF THE WORKING GROUP

As a threshold matter, the working group agreed that there is a special burden on the Muslim charitable sector as well as charities operating in Muslim-majority countries and international conflict zones. Given the size, scope, and diversity of the charitable sector, however, no single solution will provide a panacea for the challenges facing charities in the present security environment. Insofar as all concerned parties have a shared interest in advancing good governance and best practices within the charitable sector, the working group aimed to help reach consensus on shared principles.

The working group identified some basic shared principles that are important in devising fair and neutral solutions that reconcile the law enforcement and counterterrorism objectives of governments with the interests of philanthropic donors and Muslim-based charitable organizations.

Any solution will require a strong partnership between all stakeholders—governments, nonprofit organizations, financial institutions, and donors. Yet to achieve both the perception and the reality of independence, any new organization established to address these problems should not be affiliated with one particular government, charity, or donor. In fact, in certain sensitive international hot zones, association with government actors may pose operational risks and hazards to charities on the ground. To achieve credibility among donors, the organization will want to assemble a board of directors

that also represents key stakeholders from various disciplines.

The working group also considered the appropriate scope of the charitable sector to be evaluated—agreeing on the importance of a broad-based solution that could encompass a range of charities, including Muslim charities, charities operating in Muslim-majority countries, and charities operating in high-risk conflict zones.

Finally, in considering specific remedies to produce both the appearance and reality of nondiscriminatory environment for Muslim charities, the working group identified two possible solutions in detail below. These solutions include:

1. Self-Regulating Organization:

One solution examined by the working group is the establishment of a self-regulating umbrella organization managed and governed by Muslim charities to promote sound fiscal management policies among its member organizations. Similar to the Evangelical Council for Financial Accountability (ECFA)—a Christian accreditation agency with 1,700 members—this self-regulating body would provide accreditation certification to Muslim nonprofit organizations that demonstrate compliance with established financial and accountability standards.

Unlike the Muslim Advocates/Better Business Bureau's Wise Giving Alliance (BBB-WGA) existing

partnership, through which Muslim charities receive accreditation for meeting BBB-WGA's accountability standards, this approach would allow a self-regulating body, composed of Muslim charities, to establish its own standards and benchmarks. Certainly, there are benefits to a self-regulatory umbrella organization that does not have "the force of law" but does have the power to promote best practices and sanction members for violations of agreed standards.

A limitation to this approach and a concern for many working group participants, however, is that the standards against which Muslim member charities would be measured may differ from those applied to the charitable sector as a whole, with unpredictable impact on Muslim charities. Moreover, while a self-regulating organization might establish specific standards to promote broader accountability and transparency requirements, it also must include a framework for protecting against the diversion of charitable assets for terrorist purposes in order to address law enforcement concerns and objectives. Some working group participants expressed concern that compliance with law enforcement provisions is, and should be, outside the purview of a charitable accreditation agency.

Finally, while certain guiding principles are central to preventing the diversion of charitable funds, other working group participants expressed concerns that it would be difficult for a self-regulating body to build consensus around a framework of guiding principles given the scope and diversity of the Muslim charitable sector. A single solution or set of counterterrorism practices would not be effective for every member organization.

2. Independent Fact-Based Risk Management Organization:

The working group participants agreed in concept that one practical solution to the problem facing

the charitable sector is to develop a new risk management and mitigation resource. Specifically, the working group considered the feasibility and architecture of a newly established risk management organization that would evaluate charities using established fact-based criteria.

There was consensus around several fundamental principles. First, the criteria should not be intended to impose new legal requirements or to render value judgments, but rather to enhance accountability and financial standards across the board through a fact-based analysis of key standards relevant to the donor community and/or the financial sector.

Keeping in mind that all standards inevitably burden charities and the selection of any standards will be potentially divisive among key stakeholders, the working group agreed that it is appropriate to draw from existing and generally accepted standards, such as the financial sector's "Know Your Customer" standards or international anti-money laundering standards. Among other items, these standards should include good charitable practices, governance, accountability, and transparency; financial accountability and controls; and programmatic verification.

Under this model, the organization would produce a fact-based report about the risks associated with funding any particular charity. There would be no fees associated with this evaluation, and any charity that wished to be evaluated could submit a request. These fact-based reports would be publicly available so that interested donors and financial institutions could make informed judgments about funding a particular charitable organization.

We recommend this model, given the benefits associated with an independent risk-based analysis and its potential widespread application across key sectors.



PROPOSING A FRAMEWORK: THE ESSENTIAL ELEMENTS FOR A NEW RISK MANAGEMENT ORGANIZATION

At the outset, one of the first mandates of a new risk management organization should be to convene experts from key stakeholders—prominent charities, governments, donors, and financial institutions—to define the most relevant fact-based criteria for evaluation by the organization.

While this paper does not attempt to define the entire universe of potential benchmarks that would be established by these experts, it offers a suggested set of practices and essential elements that are drawn from the standards of policy and conduct generally accepted by governments and nonprofit organizations worldwide, as well as previous or existing models in which a reconciliation of government and charitable interests has been attempted. Among other items, these benchmarks should address fundamental principles of good governance, charitable practice, accountability and transparency, financial accountability, and transparency; programmatic verification; and counterterrorism and anti-money laundering controls and policies. We have attempted to outline several of these benchmarks in more detail below.

INDEPENDENCE AND GOVERNANCE

To achieve both the perception and the reality of independence, the new organization should not be affiliated with any one government, charity, or donor. Instead, prominent multilateral agencies may be well suited to oversee this initiative, such as the

regional Financial Action Task Force for the Middle East and North Africa region. Alternatively, an umbrella organization established by an amalgam of financial institutions or groups such as the American Bankers Association might be well suited to provide seed funding and organizational assistance to launch the new entity. To achieve credibility among donors, the organization will want to assemble a prestigious board of directors that represents key stakeholders from various disciplines.

SUGGESTED BENCHMARKS AND RELIANCE ON FACT-BASED INFORMATION

The first objective of the new organization should be to assemble a broad range of expertise to establish the benchmarks that will be applied. The following are some suggested examples:

- *Partnerships with Government:* Relevant information on any grants, agreements, or subcontracts between charities and government agencies, such as USAID, DFID, or the Middle East Partnership Initiative, may be an important factor for donors to consider in their philanthropic giving choices since it reflects some measure of vetting or due diligence by the government itself.
- *Partnerships with Prominent Donors:* Information on any grant agreements or partnerships with prominent charitable donors, or intergovernmental entities such as the World Bank,

would be relevant for donors since these organizations have established grantmaking criteria and procedures.

- *Independent Audits:* Annual independent auditing is a widely recognized practice of ensuring that an organization's accounts accurately reflect the condition of its finances.
- *Bank Accounts:* Charities should avoid disbursing funds in cash, maintain bank accounts for their operations and activities, and utilize formal and recognized financial channels for making international funds transfers.
- *Sources of Funds and Programmatic Reports:* Charities should publish periodic reports that describe their project partners and the amounts of funding provided to each with key deliverables.
- *Real-Time Monitoring for Criminal Issues:* Charitable organizations should be vetted by reviewing public government watch lists and criminal designations such as OFAC's List of Specially Designated Nationals and Blocked Persons, the UN's 1267 Designations, and criminal designations by the Department of Justice.
- *Vetting Potential Recipient Organizations:* In making grant distributions, charitable organizations should conduct basic vetting of potential foreign recipient organizations.
- *Counterterrorism and Anti-Money Laundering Controls:* To weigh the risk for diversion of charitable assets, charities should implement a counterterrorist finance policy with proportionate screening and controls.

DELIVERABLES AND WORK PRODUCT

As a basic premise, the newly established organization would not demand compliance with specific standards from charities or publish a "seal of approval" when they meet any of the established benchmarks. Rather, it would publish a fact-based

report at designated intervals (annually or biannually) that provides useful information to donors and financial institutions. For example, a report on a particular charity might disclose that the charity met twenty-nine of thirty-two established benchmarks.

Information gathered by the new organization should include both public sources about a particular charity and the voluntary completion of a questionnaire that addresses the established fact-based benchmarks. If a charity declines to complete the questionnaire, that fact should be published without comment in the organization's report.

Publication should take the form of a web-based tool that is accessible without limitation.

SCALE AND START-UP ACTIVITIES

Because the size and scope of the charitable sector is so large, the organization should begin with a pilot program. Recognizing the value of this approach, the organization could consider proactively reviewing prominent charities at the outset to establish its credibility. This initial review might include the top fifty Muslim charities operating in the United States and abroad. In addition, any nonprofit organization of at least nominal size should be invited to participate and receive a review.

GOVERNMENT INVOLVEMENT

While it is important that this organization is independent and not affiliated with any particular government, it is also essential that government officials are not hostile to the concept. In addition, governments have relevant information that is presumptively public and could be shared with donors and others. For example, government aid organizations, such as USAID, routinely enter into grants and contracts with charitable organizations around the world and approve specific subcontracts or subgrants to such organizations. This information would be relevant to donors and reflective of a measure of due diligence by the government itself. It would be useful to enlist governments to collect

and publish this information. Of course, any solution relying, in part, on evidence that a particular government does business with a particular charity may discourage governments from sharing that information—either to protect the charity from some perceived risks or to protect the government from appearing to endorse a particular organization. However, key government agencies could assign a liaison to interface with the new organization. Finally, and perhaps of greatest value to the charitable sector, a charitable organization’s willingness to undertake this type of risk analysis may be viewed as a “good faith” contributing factor for consideration by law enforcement authorities.

LEADERSHIP COMMITMENT

Like any new enterprise, the success of this approach will depend critically upon commitment from a few highly qualified individuals to serve as the founding members of the management and governance teams. This should include representatives from each of the responsible stakeholders, including prominent charities, governments, donors, and financial institutions. Although funding sources will be necessary, more important will be the early establishment of credibility—both through the credentials of the leadership and a demonstrable commitment to independence and objectivity.

About the Brookings Project on U.S. Relations with the Islamic World

The Project on U.S. Relations with the Islamic World is a major research program housed within the Saban Center for Middle East Policy at the Brookings Institution. The project conducts high-quality public policy research, and convenes policy makers and opinion leaders on the major issues surrounding the relationship between the United States and the Muslim world. The Project seeks to engage and inform policymakers, practitioners, and the broader public on developments in Muslim countries and communities, and the nature of their relationship with the United States. Together with the affiliated Brookings Doha Center in Qatar, it sponsors a range of events, initiatives, research projects, and publications designed to educate, encourage frank dialogue, and build positive partnerships between the United States and the Muslim world. The Project has several interlocking components:

- The U.S.-Islamic World Forum, which brings together key leaders in the fields of politics, business, media, academia, and civil society from across the Muslim world and the United States, for much needed discussion and dialogue;
- A Visiting Fellows program, for scholars and journalists from the Muslim world to spend time researching and writing at Brookings in order to inform U.S. policy makers on key issues facing Muslim states and communities;
- A series of Brookings Analysis Papers and Monographs that provide needed analysis of the vital issues of joint concern between the U.S. and the Muslim world;
- An Arts and Culture Initiative, which seeks to develop a better understanding of how arts and cultural leaders and organizations can increase understanding between the United States and the global Muslim community;
- A Science and Technology Initiative, which examines the role cooperative science and technology programs involving the U.S. and Muslim world can play in responding to regional development and education needs, as well as fostering positive relations;
- A Faith Leaders Initiative which brings together representatives of the major Abrahamic faiths from the United States and the Muslim world to discuss actionable programs for bridging the religious divide;
- A Brookings Institution Press Book Series, which aims to synthesize the project's findings for public dissemination.

The underlying goal of the Project is to continue the Brookings Institution's original mandate to serve as a bridge between scholarship and public policy. It seeks to bring new knowledge to the attention of decision-makers and opinion-leaders, as well as afford scholars, analysts, and the public a better insight into policy issues. The Project is supported through the generosity of a range of sponsors including the Government of the State of Qatar, The Ford Foundation, The Doris Duke Charitable Foundation, and the Carnegie Corporation.

The Project Conveners are Stephen R. Grand, Fellow and Director of the Project on U.S. Relations with the Islamic World; Martin Indyk, Vice President and Director of Foreign Policy Studies; Tamara Cofman Wittes, Senior Fellow in and Director of the Saban Center; Kenneth Pollack, Senior Fellow in the Saban Center; Bruce Riedel, Senior Fellow in the Saban Center; Shibley Telhami, Nonresident Senior Fellow in the Saban Center and Anwar Sadat Chair for Peace and Development at the University of Maryland; and Salman Shaikh, Fellow in and Director of the Brookings Doha Center.

About the Saban Center for Middle East Policy at Brookings

THE SABAN CENTER FOR MIDDLE EAST POLICY was established on May 13, 2002 with an inaugural address by His Majesty King Abdullah II of Jordan. The creation of the Saban Center reflects the Brookings Institution's commitment to expand dramatically its research and analysis of Middle East policy issues at a time when the region has come to dominate the U.S. foreign policy agenda.

The Saban Center provides Washington policymakers with balanced, objective, in-depth and timely research and policy analysis from experienced and knowledgeable scholars who can bring fresh perspectives to bear on the critical problems of the Middle East. The center upholds the Brookings tradition of being open to a broad range of views. The Saban Center's central objective is to advance understanding of developments in the Middle East through policy-relevant scholarship and debate.

The center's foundation was made possible by a generous grant from Haim and Cheryl Saban of Los Angeles. Ambassador Martin S. Indyk, Vice President of Foreign Policy at Brookings, was the founding Director of the Saban Center. Tamara Cofman Wittes is the center's Director. Within the Saban Center is a core group of Middle East experts who conduct original research and develop innovative programs to promote a better understanding of the policy choices facing American decision makers. They include Daniel Byman, a Middle East terrorism expert from Georgetown University, who

is the center's Director of Research; Kenneth M. Pollack, an expert on national security, military affairs and the Persian Gulf; Bruce Riedel, a specialist on counterterrorism; Suzanne Maloney who focuses on Iran and economic development; Michael Doran, a specialist in Middle East security issues; Khaled Elgindy, an expert on the Arab-Israeli conflict; Natan Sachs, an expert on Israeli domestic politics and the Arab-Israeli conflict; Stephen R. Grand, Fellow and Director of the Project on U.S. Relations with the Islamic World; Salman Shaikh, Fellow and Director of the Brookings Doha Center; Ibrahim Sharqieh, Fellow and Deputy Director of the Brookings Doha Center; Shadi Hamid, Fellow and Director of Research of the Brookings Doha Center; and Shibley Telhami, who holds the Sadat Chair at the University of Maryland. The center is located in the Foreign Policy Studies Program at Brookings.

The Saban Center is undertaking path breaking research in five areas: the implications of regime change in Iraq, including post-war nation-building and Gulf security; the dynamics of Iranian domestic politics and the threat of nuclear proliferation; mechanisms and requirements for a two-state solution to the Israeli-Palestinian conflict; policy for the war against terrorism, including the continuing challenge of state sponsorship of terrorism; and political and economic change in the Arab world, and the methods required to promote democratization.

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