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**A BALANCING ACT: ANTI-TERROR FINANCING
GUIDELINES & THEIR EFFECTS ON ISLAMIC
CHARITIES**

by

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December 2006

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EFFECTS ON ISLAMIC CHARITIES**

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ABSTRACT

Although anti-terror financing efforts have yielded positive results, national and international guidelines that are in place to stem the flow of funds can have unintended consequences on legitimate business, charitable organizations, and communities in general. Specifically for Islamic charitable organizations, the negative effects are particularly bad because charities many times are created and operate in areas that support communities both affected by and interconnected with conflict. Islamic charities have drawn scrutiny after the attacks on September 11, 2001 and their ability to operate in the United States and elsewhere have run into roadblocks associated with anti-terror financing regulations. Several countries including the United States have started to regulate and monitor these organizations in an effort to stem the flow of funds to terrorist organizations. Yet, the policies can have an overall negative effect on the capability of these organizations to operate in the perceived constrained environment because of donor fear of being associated with Islamic charities, fear that donations will be misused, and/or fear from government retribution. This thesis will explore the trade-offs involved for shutting off the funding to Islamic charities and determine if a balance can be struck between the policies and charities.

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I. INTRODUCTION TO ISSUES ARISING FROM ANTI-TERROR FINANCING GUIDELINES FOR CHARITIES

A. BACKGROUND AND SCOPE OF THE PROBLEM

Finding, identifying, tracking, capturing and prosecuting terrorists are at the forefront of national and international interests and subsequent policies. One subset of those policies focuses on tackling terrorist financing as a means for disrupting terrorist organizations and prosecuting the offenders. The reason for this is that terrorist financing is not only an indicator but also the source and means of enabling those who carry out violent acts. As President George W. Bush stated on 24 September 2001,

At 12:01 a.m. this morning, a major thrust of our war on terrorism began with the stroke of a pen. Today, we have launched a strike on the financial foundation of the global terror network...I've signed an executive order that immediately freezes United States financial assets of and prohibits United States transactions with 27 different entities. They include terrorist organizations, individual terrorist leaders, a corporation that serves as a front for terrorism, and several nonprofit organizations...We will starve the terrorists of funding, turn them against each other, rout them out of their safe hiding places and bring them to justice.¹

Although identifying sources of funding is complex and takes time, tackling terrorist financing is an important step in dismantling the terrorist networks that exist today and in the future. This thesis will not address whether the anti-terrorist financing (ATF) effort should exist, nor will it address whether information should be used for tracking terrorists versus prosecuting terrorists. This thesis will focus on the ATF policies currently in place and the effects of those policies on a segment of society, specifically Islamic charities and the people they support or who support them. Islamic charities account for a large portion of humanitarian assistance throughout the world. Much of the literature talks about potential trade-offs but lacks robust policy options to try and mitigate the costs to the charities. By exploring the tension between the

¹ See remarks by President George W. Bush. "President Freezes Terrorists' Assets", The Rose Garden. 24 September 2001. Available on-line at <http://www.whitehouse.gov/news/releases/2001/09/10010924-4.html> (accessed 25 September 2006).

regulations and the Islamic charitable organizations, policy makers will be able to understand the trade-offs involved in anti-terror financing policies and potentially minimize them.

1. Terrorist Financing Apparatus

Understanding how terrorists raise and/or acquire funds to build and maintain their organizations and run operations is crucial to analyzing the effects of guidelines and policies intent on disrupting them. Each terrorist organization is different. Extensive research on how terrorists earn, move and store funds does not exist; however, there are a few academic sources that have examined the Palestinian Liberation Organization (PLO), The Liberation Tigers of Tamil Elam (LTTE), and the Irish Republican Army (IRA). Steve Kiser, in his doctoral dissertation, constructed an analytical framework by which to analyze the financial structure of a terrorist network based on the available academic knowledge. Within this framework, he took the information gleaned from the PLO, LTTE, and IRA and applied it to terrorist networks such as Al Qaeda. Figure 1 shows the different types of activities that any terrorist organization may engage in when earning, moving or storing funds.

	Earning	Moving	Storing
Internal	Front businesses Collecting for fake charities Donations at churches/mosques Drugs	Bulk cash smuggling Unregistered informal transfer system Over/under billing between front businesses	Conflict gems/gold Banks sympathetic to group
External	Individual donations Donations from charities	Wire transfers Business transactions	Fake bank accounts

Table 1. Basic Model of Terrorist Financial Networks with Representative Activities²

Based on this framework, terrorists have a variety of methods for acquiring funds, moving them, and storing them. Each organization may not necessarily use all of these methods, but generally, their methods fall into one or more of these categories. Yet, based on the information gathered on the PLO, LTTE and IRA, there is strong evidence

² Steve Kiser, "Financing Terror: An Analysis and Simulation for Affecting Al Qaeda's Financial Infrastructure" (Doctoral Degree in Public Policy Analysis, Pardee RAND Graduate School), 26, http://www.rand.org/pubs/rgs_dissertations/2005/RAND_RGSD185.pdf (accessed 25 April 2006).

that suggests that one of the major conduits of funds is non-governmental organizations (NGOs). Terrorist organizations may use charities, NGOs and IGOs both as a source of funds and as cover for operations in certain regions.³ These non-profit organizations can be complicit or aware of the purpose of the funds given to these terrorist networks, or they can be infiltrated by a member of the terrorist network, and completely unaware of the purpose of the funds siphoned off. In either case, these NGOs provide a cover for terrorist individuals or terrorist operations in all parts of the globe. By filtering funds through legitimate and/or charitable organizations, the money is cleaned and legitimized before being used for illegitimate purposes. Although the money coming into the NGOs is not necessarily “dirty” and it is difficult to assign intent to money prior to its use, terrorists who utilize NGOs require a legitimate conduit to disguise their true intentions. In this sense, the money is laundered, similar to how criminal organizations operate.⁴

The scope of terror financing is large and complex. Yet, the majority of the policies focus on anti-money laundering efforts and shutting off access to money and money transferring capabilities. And, while the concept of laundering money can be applied to the process of raising and transferring funds through NGOs, since the money from charities is not “dirty” to begin with it is difficult to track and monitor funds until used by a designated group or person for nefarious purposes. In addition, much of the evidence shows that a large portion of the money attained by terrorist organizations flowing through charities is difficult to trace since these organizations have little to know accountability requirements. Finally, “It may be difficult to establish that either the purpose or the effect of financing such an organization will be to support terrorist activity.”⁵

B. LITERATURE REVIEW

Since the existing apparatus for addressing financial crime was built during the 1990s to deal principally with money laundering, the natural progression in the wake of

³ Steve Kiser, “Financing Terror: An Analysis and Simulation for Affecting Al Qaeda's Financial Infrastructure” (Doctoral Degree in Public Policy Analysis, Pardee RAND Graduate School), 35-53, http://www.rand.org/pubs/rgs_dissertations/2005/RAND_RGSD185.pdf (accessed 25 April 2006).

⁴ Information acquired during Terrorist Financing graduate class at NPS given by Jacob Shapiro, 2 May 2006.

⁵ Kevin E. Davis, “The Financial War on Terrorism” in *Global Anti-Terrorism Law and Policy*, eds. Victor V. Ramraj, Michael Hor and Kent Roach, 1st ed., Vol. 1 (Cambridge, United Kingdom: Cambridge University Press, 2005), 184.

the 9/11 terrorist attacks was to modify it to include tracing of funds through charitable organizations. In addition to tracing funds through anti-money laundering efforts, charities and other NGOs are encouraged to abide by regulatory guidelines. Current regulatory efforts focus on encouraging charities to abide by ATF regulations and are promised prosecution at the worst and investigation as a minimum if they do not comply. Although ATF regulations and guidelines are applied to all charities and NGOs in a blanket fashion, there is evidence that the majority of the focus of ATF investigations has centered on Islamic charities.⁶ As a result, ATF regulations run the risk of shutting off funding for legitimate Islamic charitable organizations either wittingly or unwittingly due to fear from its constituency base. This may have unintended consequences for the overall U.S. anti-terrorism strategy by undermining moderates, engendering poverty and hopelessness that contribute to terrorist recruiting, alienating strategic allies, etc.

1. Overview of ATF Policies

Recent research shows that the main focus of ATF policy has been to freeze alleged terrorist assets from “tactically targeted” groups and individuals. Many of the policies require little proof before assets are frozen and groups are blacklisted. This has a potentially detrimental effect on legitimate humanitarian organizations, as Robert Looney suggests in his article titled “*The Mirage of Terrorist Financing: The Case of Islamic Charities*”. Identifying charities that have nefarious intentions and then tracking the money can be difficult. The difficulty stems from the fact that charities have been used in two different ways. They have either been exploited by unscrupulous workers, or were founded specifically as a front masking terrorist activities.⁷ Islamic charities are particularly vulnerable targets for terrorist fundraising because funds collected for *zakat* or *sadaqa* can be used for, “...everything from jihad to assisting the poor and feeding the needy.”⁸ As a result, Islamic charities many times are raising funds for causes that are contrary to Western interests in the Middle East. In addition,

⁶ “A Year of Attacks on Advocacy, Flawed Anti-Terrorism Measures,” *The Watcher*, 13 December 2005, 1, <http://www.ombwatch.org/article/articleview/3215/1/408> (accessed 28 March 2006).

⁷ Robert Looney, “The Mirage of Terrorist Financing: The Case of Islamic Charities,” *Strategic Insights* V, no. 3 (March 2006), 3, <http://www.ccc.nps.navy.mil/si/2006/Mar/looneyMar06.asp> (accessed 13 April 2006).

⁸ J. Millard Burr and Robert O. Collins, *Alms for Jihad*, 1st ed., Vol. 1 (Cambridge, New York, Melbourne, Madrid, Cape Town, Singapore, Sao Paulo: Cambridge University Press, 2006), 18.

donations in large measure remain anonymous. Both conditions combined with the often opaque financial and operating structure of Islamic charities provide an ideal environment for exploitation by terrorist groups.⁹

In either case, tracking funds through charities and proving that the money was in turn used to fund terrorist organizations is extremely difficult owing to the “fungibility” of the money.¹⁰ As a result, charity assets have been frozen or they have been shut down, whether guilty or not, in an effort to “do something” about the problem. The proposed solutions suggest a different approach to the problem. Looney concludes that increasing government understanding of cultural requirements for charitable donation, increasing donor understanding and accountability, encouraging organizations that offer alternatives to radical Islam, and approaching ATF from an intelligence/information gathering approach rather than a search-and-seize approach would yield better results.¹¹

Additional research also suggests that the difficulty in tracking funds through Islamic charities is compounded by western misunderstanding of Islam in general and Arab governments in particular. A less aggressive stance combined with incentives for collective action would have yielded more than the seize-and-freeze stance that Western states have used regarding ATF policies. Moyara de Moraes Ruehsen, in her article “*Arab Government Responses to the Threat of Terrorist Financing*”, indicated that “The prevailing attitude in the Arab world shifted from sympathy to defensiveness (after 9/11) and a reluctance to cooperate with Western investigations and strengthen financial sector regulations.”¹² This defensiveness stemmed from the quick seize-and-freeze actions taken directly after the 9/11 attacks, which focused almost exclusively on Islamic groups. Ruehsen called this “guilt by association”. Ruehsen’s article also suggests that although Arab governments acknowledge that funds sometimes flow through Islamic charities into the hands of terrorists, and those governments may be willing to enact regulations on stronger charity accountability, the implementation and enforcement of those regulations

⁹ Looney, “The Mirage of Terrorist Financing: The Case of Islamic Charities,” 2.

¹⁰ *Ibid.*, 3.

¹¹ *Ibid.*, 10.

¹² Moyara de Moraes Ruehsen, “Arab Government Response to the Threat of Terrorist Financing” in *Terrorist Financing and State Response*, eds. Jeane Giraldo and Harold Trinkunas, 1st ed., Vol. 1 (Stanford, California: Stanford University Press, 2006), 3 (accessed 12 May 2006).

are slow to take place.¹³ The conclusion is that a collective and coherent international response is necessary to succeed in stemming the flow of funds to terrorists, while still maintaining a viable charitable footprint.

A survey of the literature shows that the general solution seems to be increased collective international action, with an expanded understanding of the role of Islam in governance and charitable donations so as to minimize the negative effects on legitimate groups. Yet, the literature shows that collective international action has experienced some seemingly insurmountable roadblocks. Anne Clunan's article titled "*Collective Action Problems in the Fight against Terrorist Financing*" suggests that the states will adopt varying approaches depending on how they define their interests. "The U.S. seems to prefer the current patch-work approach of utilizing multiple international frameworks when it suits U.S. interests...while the Europeans' interests are broader, seeking to create rule-of-law economics."¹⁴ Clunan suggests that the cause of the collective action problem is the lack of a common definition of the problem posed by terrorist financing and non-state actors, leading to disjointed strategic options. Prior to the attacks on September 11, 2001 national and international policy makers acknowledged the threat posed by terrorist organizations and as a result ratified anti-terrorist financing conventions. The literature on the subject focused on the tracking of large sums of money traversing the traditional banking system. These laws and conventions were implemented in an effort to halt the funds flowing to terrorist organizations either through state-sponsorship or otherwise.¹⁵ Most of the accepted knowledge involved state-sponsorship of terror and the laws in place resulted in sanctions on those countries identified as financial sponsors of terror. "Efforts to curtail the flow of funds to terrorists...took different approaches: pressuring states to curb their support for terrorism versus ensuring that states had the domestic capacity and incentives to suppress transnational criminal networks."¹⁶ In addition, the mechanisms in place to track and identify terror financing were drawn from anti-money laundering efforts previously used

¹³ Ruehsen, "Arab Government Response to the Threat of Terrorist Financing," 12.

¹⁴ Anne L. Clunan, "Collective Action Problems in the Fight against Terrorist Financing" (*Political Science Quarterly*, 17, draft article submitted April 2006).

¹⁵ *Ibid.*, 10.

¹⁶ Clunan, "Collective Action Problems in the Fight against Terrorist Financing," 7.

to track criminal organizations. UNSC Resolution 1333 shifted the focus from state-sponsorship of terrorism to the financing of terrorism through transnational criminal organizations.¹⁷ Yet, the monograph from the 9/11 Commission asserted that, “Before 9/11 the limited U.S. and UN efforts to freeze assets of and block transactions with Bin Laden were generally ineffective.”¹⁸

After the attacks on September 11, the U.S. and international community took swift action to try and freeze assets of suspected terrorists. “The United States engaged in a highly visible series of freezes of suspected terrorist assets after 9/11.”¹⁹ Yet, the attacks on the World Trade Center and the Pentagon did not change the methods by which domestic and international regulations continued to focus on anti-money laundering efforts. They merely expanded to include non-state sponsors of terror. Knowledge on the financing of terrorism has expanded, but the literature shows that the policies have not evolved along with the knowledge gained. “The 2000 UN Convention against Transnational Organized Crime required member states to enact comprehensive domestic banking laws and regulations to deter and detect money laundering.”²⁰ Tighter formal banking controls were implemented domestically and a number of countries agreed to tighten their own control on the banking industry to increase transparency in large transactions. Very little past the seize-and-freeze efforts have been enacted regarding charitable donations.

Ironically, although international collective action regarding banking regimes is starting to take shape, collective action regarding charities has fallen behind. Collective action is hampered by the tension that exists between the Western style of governance/regulations and the role of Islam in Arab governments as suggested by J. Millard Burr and Robert O. Collins in their book *Alms for Jihad*.²¹ They explored the major approaches that the international community have taken with regard to Islamic

¹⁷ Clunan, “Collective Action Problems in the Fight against Terrorist Financing,” 10.

¹⁸ John Roth, Douglas Greenburg and Serena Wille, *Monograph on Terrorist Financing: Staff Report to the Commission* (Washington D.C.: National Commission on Terrorist Attacks upon the United States, [2004]), 12, http://www.9-11commission.gov/staff_statement/index.htm (accessed 13 March 2006).

¹⁹ *Ibid.*, 14.

²⁰ Clunan, “Collective Action Problems in the Fight against Terrorist Financing,” 11.

²¹ Burr and Collins, *Alms for Jihad*, 7.

charities, the influence of extremist ideology, and the ability of each regime to stem the flow of funds to terrorist organizations. The book especially focuses on the tension between the Islamic duty of *zakat* and the transparency required to prevent the funds from flowing to terrorist organizations. Many of the regulations in place owe their history to anti-money laundering regimes. “While money laundering is concerned with laundering assets of illegal origin and bringing them back into legal economic circulation, charity-based financing of terrorism is concerned with using legal assets for an illegal activity, namely terrorist attacks.”²² The regulations in place are incapable of preventing fundraising through charities, and unable to identify money funneled through charities until used for terrorist acts. As a result, the only regulations in place to tackle the issue of fundraising through charities are black-listing, requirement of background checks on employees, and increased transparency into their finances. These efforts pose issues for certain charities that neither have the funds to accomplish background checks nor the capacity. Blacklisting charities runs the risk of indiscriminately affecting all charities through fear of its constituency base.²³ Transparency of financial transactions is a viable solution but there is no international enforcement regime. In addition, there are no common policies or regulations across the international community including “the scope of groups targeted and responses and penalties.”²⁴

C. FRAMING ATF POLICY AND ISLAMIC CHARITY DISCONNECTS AND THESIS ROADMAP

Although finding and stopping funds from flowing to terrorist organizations are important steps in the fight against terrorism, there are clear implications for charitable organizations. This thesis will examine ATF regulatory guidelines, the function the Islamic charities serve in both Islamic and non-Islamic countries, and the role of charities in the spread of extremism. Specifically, to capture the trade offs and disconnects, the following chapters will examine the lack of common policies or regulations across the international community; the common ground and differences between the West and Islamic countries on charity and the difference between charity and proselytizing activities; the emergence of Islamic charities involved in insurgent/freedom fighter

²² Looney, “The Mirage of Terrorist Financing: The Case of Islamic Charities,” 2.

²³ Burr and Collins, *Alms for Jihad*, 267.

²⁴ Looney, “The Mirage of Terrorist Financing: The Case of Islamic Charities,” 3.

activities; and, possible solutions which can be implemented by both governments and charities to exclude financing terrorism from legitimate activities.

This thesis involves a comparative study that uses four factors related to regulating charities and uses them to examine the regulatory frameworks in place in the United States, Great Britain, Saudi Arabia, Sudan, and Russia. These four factors are the degree of governmental oversight, transparency of financial transactions, limitations on types of donations, and penalties for noncompliance. This thesis will argue that although there is some degree of effectiveness to the regulatory frameworks in place in each country, their effectiveness can be increased through collective action rather than separate approaches to the problem. In addition, this thesis will argue that there are aspects of the regulatory frameworks that have drawbacks for charities in general and Islamic charities in particular that should be addressed and modified to mitigate them.

These cases examined here were chosen due to their role in the financial and political world, and either as users or raisers of funds. The U.S. was chosen as a leader in the financial world, the U.K. holds the same distinction, Russia in the past few years has passed laws regarding nonprofit organizations, Saudi Arabia has ties to many of the Islamic charities, and the Sudan housed and allowed Osama Bin Laden to operate and later shut him down. In addition, Sudan is facing a humanitarian crisis and NGOs are present in the country to mitigate the crisis. The four elements of ATF policy studied were: degree of governmental oversight, transparency of financial transactions, limitations on types of donations, and penalties for noncompliance. Public documents, articles in academic journals, and published books provided the basis for the research. Works by various academics and institutions in the field of terrorist financing were used to outline the development of current regulatory practices and the tension that exists between the regulations and Islamic charities. Charitable giving will not be quantitatively measured since such data does not exist and as such much of the thesis will evaluate policy based on speculative data. Yet, the tensions that exist and speculated effects from those policies are sufficient enough to offer conclusion and propose future areas of study.

Chapter II will focus on Islamic Charities. Understanding the requirement for charitable giving in Islam, and the function that these organizations serve in Islamic countries provides a basis for examining governmental roles in regulating Islamic charities. In addition, the chapter will show the role that Islamic charities have played in the spread of Islamic extremism as well as their less nefarious role within Islamic communities and their humanitarian efforts.

Chapter III will change pace and focus on ATF policies and regulatory guidelines by comparing regulatory guidelines across five countries: United States, United Kingdom, Saudi Arabia, Sudan, and Russia. Specific regulatory factors previously mentioned are degree of governmental oversight, transparency of financial transactions, limitations on types of donations, and penalties for noncompliance. The chapter will conclude with an analysis of the similarities and differences of the regulatory guidelines and their effectiveness on stemming the funds to terrorist organizations.

Chapter IV will suggest a policy solution to mitigate the tension between the Islamic charities and ATF regulatory guidelines. The policy options are based on the comparative analysis taking into consideration the aspects that aggravate the legitimate charitable sector.

Chapter V concludes by providing a recap of ATF regulatory guidelines and the tension between Islamic charities and existing policies. Finally, the thesis will conclude with a summary of recommended policy actions based on the gathered evidence.

II. ISLAMIC CHARITIES

A. IMPORTANCE OF CHARITABLE GIVING IN ISLAM

Charitable giving throughout the world and across time has been used for sustainable society and personal satisfaction. Yet, charitable giving has evolved differently in Islamic and non-Islamic societies. The roots of charitable giving in Islam are steeped in tradition almost fourteen centuries long. The majority of charitable giving in early Islamic societies was local in scope rather than national or international. Charitable institutions designed to manage charitable resources gradually expanded in size and capability.

Many Islamic societies, particularly those of the Middle East and South Asia, benefited in pre-colonial and even colonial times from sophisticated charitable institutions that channeled and managed donated resources. These institutions played an immeasurably important role in delivering social services from education to health care, in sustaining centers of research and artistic creation, and in promoting an active civic life in the cities of these regions.²⁵

The three charitable institutions within Islam are *waqf*, *sadaqa* and *zakat* which is a religious obligation or pillar of Islam. These charitable elements first used familial relationships and religious courts to manage the distribution of charitable donations.²⁶ Over time, Islamic charities were created to manage distribution of donations either given through mosques or as direct donations. Due to government interference and control over charitable institutions, monitoring mechanisms have devolved into the opaque system that exists today.²⁷ In general though, *zakat*, *sadaqa* and *waqf* are utilized to sustain communities economically, socially and politically.²⁸

In contrast, charitable giving for non-Islamic societies is in addition to rather than part of economic stability and development. Although charitable giving has been a part

²⁵ Jennifer Bremer, "Islamic Philanthropy: Reviving Traditional Forms for Building Social Justice" (Washington D.C., University of North Carolina, Chapel Hill, 28-29 May 2004), 5, [http://www.islam-democracy.org/documents/pdf/5th_Annual_Conference-Bremer_paper.pdf#search=%22role%](http://www.islam-democracy.org/documents/pdf/5th_Annual_Conference-Bremer_paper.pdf#search=%22role%22) (accessed 3 October 2006).

²⁶ Ibid., 9-12.

²⁷ Ibid., 13.

²⁸ Ibid., 21.

of other religious establishments, because non-Islamic societies tend towards secular forms of governance, they have adopted taxation as the basis for creation of and maintenance of functioning governments and societies. “Charity is now equated with social work, social welfare and social justice.”²⁹ Taxation on the other hand has been the source of government revenue which throughout history has experienced moments of popular support (American Civil War) and moments of avoidance where business people have viewed it as a burden rather than a tool of civil society and social justice.³⁰ In either case, charities are an added benefit rather than the source of community revenue. Because of this charities hold a different level of importance in Islamic societies than non-Islamic societies.

1. Waqf, Sadaqa & Zakat

Waqf (p. *awqaf*) is the charitable institution that manages the transfer or bequeathing of real property either to a community or family for charitable reasons or for “preserving family wealth.”³¹

The long history of the *waqf*, fourteen centuries after the death of the Prophet, and the permanent nature and management of the institution has resulted in the accumulation of a huge amount of property throughout the Muslim world devoted to religious and philanthropic purposes. In the nineteenth century *waqf* represented one-quarter of all the land under cultivation in Egypt and about one-third in Turkey. Historically, the most frequent purpose of a *waqf* was for mosques, their construction, maintenance, and personnel.³²

The *waqf* is drafted into a legal document, similar to a will, and is managed by a trustee under the jurisdiction of the courts (religious). Within the document, donors designate the disposition of the assets given in charity. Communities would thrive or degrade under the *waqf* system. “Since *awqaf* property could not in theory be sold, under-utilized or mismanaged *waqf* properties could fall into disuse and ruin, damaging the urban space of which they were a part and undermining the financial stability of the social services

²⁹ Deborah R. Taggart, “Charity,” Learning To Give and Center on Philanthropy at Indiana University, 2, <http://www.learningtogive.org/papers/index.asp?bpid=8> (accessed 3 October 2006).

³⁰ “A History of Taxation,” Tax World, 3-4, <http://www.taxworld.org/History/history.pdf#search=%22history%20of%20taxation%22> (accessed 3 October 2006).

³¹ Bremer, “Islamic Philanthropy: Reviving Traditional Forms for Building Social Justice,” 9.

³² Burr and Collins, *Alms for Jihad*, 21.

that depended on them.”³³ While *waqf* has had a rich history in charitable giving, the most recent *waqf* institutions have no resemblance to its predecessors. “Although some countries have recently sought to revive the customary *waqf* by new laws to recover former *waqf* properties confiscated by the state and to encourage individuals to create new *awqaf*, the dislocation of *waqf* management and the creation of large sums now distributed to porous charitable organizations has seriously diluted if not destroyed the principle of performance in favor of grants to agencies whose lax accountability any older, traditional *waqf* donor would denounce with scorn.”³⁴ In this sense, *waqf* institutions have lost their prestige and transparency.

Sadaqa, although not a charitable institution, is the term used to describe the “voluntary and spontaneous giving by individuals.”³⁵ *Sadaqa* is given as a confirmation of good fortune and piety and is given without strings or requirements. It is not tied to a certain percentage of income and is given as private direct donations to a charitable institution. This form of Islamic charitable giving is the majority of the funds generated in Western Muslim communities.

In Canada and the USA where the tithe, regardless of whether it be Christian or Muslim, is regarded as a tax rather than a benefice...was preferred to the institutionalized almsgiving. Private donations of *sadaqa* provided an essential means by which mosques and their outreach programs in support of Muslim communities were able to survive in North America.³⁶

While *awqaf* is an accepted and encouraged process for charitable disposition of property and *zakat* is regarded as a formal obligation under Islam, *sadaqa* is a voluntary gift from the “heart” rather than a required tithe. “In many Muslim states where the administration and distribution of charitable donations were decentralized *sadaqa* rather than *zakat* became the principle source of Muslim charity.”³⁷

³³ Bremer, “Islamic Philanthropy: Reviving Traditional Forms for Building Social Justice,” 11.

³⁴ Burr and Collins, *Alms for Jihad*, 22.

³⁵ *Ibid.*, 11.

³⁶ *Ibid.*, 19.

³⁷ *Ibid.*, 19.

Zakat is the required almsgiving for all able adult Muslims and has become one of the five pillars of Islam.³⁸ Another explanation for *zakat* is that it is a devotional duty, one that should not be shirked or avoided.³⁹ As such, "...*zakat* provides a constant flow of charitable resources from the broad membership of Islamic society."⁴⁰ Those with a certain income over a threshold amount must give a fixed percentage of their income to the poor.⁴¹ There is no specific form of payment and many *zakat* payments are given in cash and quite often are anonymous. Throughout the Muslim world, there are and have been a variety of mechanisms to collect *zakat*. In some communities, the *ulema* collect and distribute *zakat*. In others, the state collects *zakat* very similar to taxation in Western states. But, predominantly *zakat* charitable institutions were created to try and manage the flow of *zakat* from Islamic communities. Unlike *sadaqa*, *zakat* has specified recipients who can receive and benefit from *zakat*. Those are: the poor; converts; wayfarers; those in bondage or in debt; newcomers to Islam; and, to facilitate and enhance Jihad. *Zakat* has become an important component of the socio-economic infrastructure of emerging Muslim societies. The charities that are used to collect and distribute *zakat* are the primary instrument in those societies.⁴²

B. EMERGENCE AND MANAGEMENT OF ORGANIZATIONS TO DISPERSE DONATIONS IN ISLAMIC SOCIETIES

Management of charitable organizations has evolved from reliance on the local *ulema* (clerics), to community boards, to national state-led organizations, to international organizations to distribute *zakat* and other donations.

Because individuals are free to give their *zakat* contributions as they think best, there is in effect a competition among various charities and donative institutions to attract *zakat* contributions from the Muslim community. This has led to the emergence of a variety of new models, although evidence for this is anecdotal rather than the result of in-depth study of *zakat* institutions.⁴³

³⁸ Burr and Collins, *Alms for Jihad*, 11.

³⁹ Hamid Algar, *Wahhabism: A Critical Essay*, Vol. 1 (Oneonta, New York: Islamic Publications International, 2002), 32.

⁴⁰ Bremer, "Islamic Philanthropy: Reviving Traditional Forms for Building Social Justice," 11.

⁴¹ Burr and Collins, *Alms for Jihad*, 11.

⁴² *Ibid.*, 12-13.

⁴³ Bremer, "Islamic Philanthropy: Reviving Traditional Forms for Building Social Justice," 11.

These charitable institutions use a variety of techniques to attract donations from creative advertising to appealing to causes that attract popular support. “What starts out as a free gift from the public ends up as commodity in the marketplace of competitive humanitarianism.”⁴⁴ As such, these charitable institutions take on a business life of their own.⁴⁵ Although there is not one agreed upon definition of terrorism there is evidence that during the 20th Century the nature of terrorism has become more ideological and religious.⁴⁶ With the changing nature of terrorism and its new ideological basis, popular support for their causes is inherently tied to the ideology proposed by the charitable organizations. And, charitable causes have evolved from helping the needy locally and creating local socio-economic infrastructure, to helping Muslim communities abroad affected by war, famine and natural disasters. By expanding their (charities) scope of involvement, they increase the probability of being involved in legitimate and illegitimate causes. And, due to their popularity and resourcefulness,

Islamic charities through the Middle East and the rest of the world have a consistent source of funding from religious Muslims. Although the vast majority of charities are legitimate enterprises, funding community development in Islamic communities, a number also have close ties to terrorist groups. Additionally, a number of terrorist organizations, such as Hamas and Hezbollah, include charity and nongovernmental organizations (NGOs) as an overt part of their organizational structure, which raises questions of whether charitable funds are channeled to charitable purposes or terrorism.⁴⁷

⁴⁴ Jock Stirrat, “Competitive Humanitarianism: Relief and the Tsunami in Sri Lanka,” *Anthropology Today*, 22, no. 5 (2006), http://www.therai.org.uk/pubs/at/contents/current_issue.html (accessed 5 October 2006).

⁴⁵ A survey of Islamic Charity websites show a variety of techniques such as flashy websites, online photo albums, educational material, etc. See <http://www.cair-net.org>, <http://www.wamy.co.uk>, <http://www.mwlcana.org> as a sample of Islamic charity websites.

⁴⁶ Carlo Masala, et. al., “Fighting Terrorism: Financial and Economic Aspects” (Rome: NATO Defense College, [2004]), 9, <http://www.isn.ch/pubs/ph/details.cfm?v21=72665&lng=en&size51=10&id=14338> (accessed 3 October 2006).

⁴⁷ Mark Basile, “Going to the Source: Why Al Qaeda’s Financial Network is Likely to Withstand the Current War on Terrorist Financing,” *Studies in Conflict & Terrorism* I, no. 27 (2004), 173, <http://taylorandfrancis.metapress.com/media/e39xlgtwwn7uq7tkuw1h/contributions/j/g/m/5/jgm54e92232qyban.pdf> (accessed 9 April 2006).

1. Humanitarian versus Terrorist Causes

Distinguishing between humanitarian and terrorist causes can be difficult and many times both purposes coexist in one organization. This does not necessarily implicate these charities with terrorist organizations. There are thousands of charities that receive significant amounts of money and assets for legitimate humanitarian and religious purposes.⁴⁸ Yet, charities continue to fall under scrutiny for supporting violent causes and terrorist organizations. It is important to distinguish between legitimate and illegitimate charitable purposes to be able to create mechanisms to track and monitor them and ultimately stem the flow to violent organizations. Traditionally, Islamic charities were used to distribute *zakat*, build mosques, establish religious education, and create health care institutions.⁴⁹ Yet, some charities support both humanitarian and political causes and some are purely a front for terrorist organizations.⁵⁰ This has not always been the case. Research has shown that charities have evolved to support terrorist causes in the past twenty to thirty years. Prior to this timeframe, charities in general and specifically Islamic charities primarily supported local and international sustainable development and disaster relief projects.

As previously mentioned the ideological aspects of religious terrorism have a popular support base throughout the world and is perpetuated by charities through their programs and projects in developing states. These charities owe their beginnings to Islamic states such as Saudi Arabia that created and used the charities not only for humanitarian assistance but to further their ideology and cement their influence in developing societies. In addition, these charities have gained support in Western Islamic communities that seek to support humanitarian causes, and have few options to choose from. Although this will be covered later in this chapter, it is important to note with respect to terrorist causes that states play a role in supporting ideologies that evolve into extremist causes supported by charitable organizations. States do not do this in a conspiracy theory-type plot, but rather in an effort to combat foreign influence on Islamic societies. “Saudi influence has been pervasive in creating schools, curricula, and

⁴⁸ Burr and Collins, *Alms for Jihad*, 1.

⁴⁹ *Ibid.*, 11-23.

⁵⁰ Roth, Greenburg and Wille, “Monograph on Terrorist Financing: Staff Report to the Commission,” 21-22.

textbooks influenced by the teachings of Shaykh Muhammad ibn Abd al-Wahhab (1703-1792) that instruct Muslims to return to the fundamentals of Islam as preached by the Prophet Muhammad.”⁵¹

Much of the knowledge regarding the difference in humanitarian and terrorist financing structure in charitable organizations has stemmed from research regarding Al Qaeda’s financing network. Scholars who have studied the roots of contemporary Al Qaeda financing have discovered that their financing network, “...can be directly traced back to the lessons learned by Arab-Afghan fighters during the early days of the Soviet-Afghan jihad nearly two decades ago.”⁵² Research shows that by the mid-1980s, Afghanistan had been overrun with Islamist agencies including at least thirteen Islamic charities, to assist the Afghan fighters in fighting against the Soviets.⁵³ These charities provided blankets and food to the fighters and assistance to refugee populations.⁵⁴ At the height of the Afghan war, Pakistan welcomed a large amount of Islamic charities, but has since expelled many who have supported revolutionary organizations. Yet real interest in the complicity of these charities was not taken until these charities upset the political balance of states that they operate in. For Pakistan, “...it was not until the government was faced with growing internal violence and President Pervez Musharraf narrowly escaped several attempts to assassinate him that the Pakistan National Economic Council announced in January 2004 a \$100 million program to administer the religious school curriculum and reform some 8,000 *madrassas*.”⁵⁵ Regardless, charities who support both humanitarian and terrorist or violent opposition causes quite often find fertile ground in developing societies because they are capable of providing “public goods” that states either cannot or will not provide.⁵⁶

⁵¹ Burr and Collins, *Alms for Jihad*, 23-24.

⁵² Evan F. Kohlmann, “The Role of Islamic Charities in International Terrorist Recruitment and Financing” (Copenhagen, Denmark: Danish Institute for International Studies, [2006]), 1, <http://www.diis.dk/graphics/Publications/WP2006/DIIS%20WP%202006-7.web.pdf> (accessed 1 May 2006).

⁵³ Frontline, PBS, November 6, 2001.

⁵⁴ Burr and Collins, *Alms for Jihad*, 85.

⁵⁵ *Ibid.*, 103-104.

⁵⁶ Kohlmann, “The Role of Islamic Charities in International Terrorist Recruitment and Financing,” 17.

2. Role of Wahhabism and Salafism in Proliferation of Islamic Ideas

Although extremism is not solely attributed to Wahhabism, Wahhabism has been implicated in spreading extremist ideology and many Islamic charities have their basis in Wahhabi thinking and backing. A good working definition of Wahhabism comes from Hamid Algar, who admits that those who follow the teachings of ibn Abd al-Wahhab may not agree with his depiction of Wahhabism. However, Algar's definition of Wahhabism will be used for the purposes of this thesis. He defines Wahhabism as a movement designed to do away the structures of law, theology, mysticism, and religious practices and find a way back to the original sources of Islam.⁵⁷ The followers of al-Wahhab found support among the Saud tribe and cemented their influence through the Saudi family which has ruled over Saudi Arabia since the 1920's.

Salafism is similar to Wahhabism. Yet, "Two important and interrelated features have served to distinguish the Salafis from the Wahhabis: a reliance on attempts at persuasion rather than coercion in order to rally other Muslims to their cause; and an informed awareness of the political and socio-economic crises confronting the Muslim world."⁵⁸ While Wahhabism goes hand-in-hand with the Saudi state and as such the Saudi's propagate Wahhabi thinking, Salafis are not connected with a particular state but rather groups of people committed to socio-economic and Muslim reform. They first commingled in the 60's when Salafis traveled to Saudi Arabia with the emergence of oil and the need for foreign labor.⁵⁹ In either case, both advocate a pure form of Islam and condemn any other form of Islam. Organizations imbued with Salafi and Wahhabi thinking were formed to further propagate the ideologies. Some examples of these organizations who are also involved in charitable giving throughout the world are the Muslim World League (MWL) and the World Assembly of Muslim Youth (WAMY).

Scholars tend to disagree on which "ism" influences extremist thinking in Islam. According to the Testimony given by Mr. Alex Alexiev, a distinguished fellow at the Center for Security Policy, at the U.S. Senate Subcommittee on Terrorism, Technology and Homeland Security on June 26th, 2003, "The Wahhabis continue to believe and

⁵⁷ Algar, *Wahhabism: A Critical Essay*, 10.

⁵⁸ *Ibid.*, 47.

⁵⁹ *Ibid.*, 48.

preach violence and Jihad as a pillar of Islamic virtue, rigid conformism of religious practice, institutionalized oppression of women, wholesale rejection of modernity, secularism and democracy as antithetical to Islam and militant proselytism.”⁶⁰ They do this not only within Saudi Arabia but also in other communities worldwide through the mosques and educational institutions that they build as part of the zakat collected from Muslims.

Although some scholars have attributed extremism to Wahhabism, there is evidence that Salafism is at the heart of the current extremist thinking. According to Sherifa Zuhur, a Research Professor for the Strategic Studies Institute, “Wahhabism usefully served as a philosophy and mobilizing means for the alliance of the House of Sa’ud and the House of Shaykh to define a state.”⁶¹ While Wahhabism started out as an extremist ideology, over the years it has become more moderate due to the tempering relationship with the Saudi family.⁶² In contrast, the influence of the Salafi movement in Saudi Arabia arose as an opposition movement interested in challenging the status quo. In fact, “Usama bin Laden is emblematic of the cross-currents of salafist politics that emerged in years 1979 and 1980.”⁶³ Because extremism has been attributed to Wahhabism rather than Salafism, Saudi Arabia, who has a symbiotic relationship with Wahhabi-trained clerics find it difficult to modify their support of Islamic charities that propagate this ideology. If on the other hand Salafism is at the heart of extremist ideology and Islamic charities are actually falling prey to this influence, then Muslim states who want to suppress this opposition movement may find themselves more interested in regulating these charities. But, whether extremism is tied to Wahhabism, Salafism, or a hybrid of the two, the fact that charities are involved is unarguable. Islamic charities are the tools utilized to collect funds, build mosques and schools, and

⁶⁰ United States Subcommittee on Terrorism, Technology and Homeland Security, “Wahhabism: State-Sponsored Extremism Worldwide,” 108th Congress, 1st sess., 2003, 2, http://www.globalsecurity.org/security/library/congress/2003_h/030626-alexiev.htm (accessed 25 September 2006).

⁶¹ Sherifa Zuhur, *Saudi Arabia: Islamic Threat, Political Reform, and the Global War on Terror*, 18, (Carlisle, PA: Strategic Studies Institute, [2005]).

⁶² *Ibid.*, 18.

⁶³ *Ibid.*, 22.

provide educators and educational materials to spread the ideology. While these are not violent actions, they advocate an ideology intolerant of other ideologies.

a. Madrassas (Religious Schools)

One example of the spread and influence of extremist ideologies are the few *madrassas* (*madrassahs*) or religious schools that teach violence as a part of their curriculum. As previously mentioned, many Islamic charities are involved in creating and funding *madrassas* or religious schools in developing societies where state provided education either does not exist or is out of reach of the lower middle class and poor populations. “The reasons for the huge growth in the number of *madrassas* dates back to 1979, when the Soviet Union’s invasion of Afghanistan led to large amounts of money flowing into Pakistan from the West and countries in the Gulf.”⁶⁴ These schools are non-secular and offer limited subject material mostly focusing on religious education.⁶⁵ And, while these schools did not exist in early Islam, they have become the predominant Islamic education in places like Pakistan, Indonesia, Malaysia, India, and Bosnia. Since 9/11 *madrassas* have been criticized as creators of future terrorists.⁶⁶ The majority of the negative attention has centered on the *madrassas* in Pakistan; thus, much of this discussion will focus on those, but many of the same arguments transcend location.

There is disagreement on the effects of a *madrassa*-type education on the youth of developing societies. Some journalists, scholars and terrorist experts believe that the type of anti-western education given in *madrassas* directly influence the creation of future terrorists. “These criticisms have focused on the few dozen Pakistani *madrassahs* that served as de facto training grounds for jihadists fighting the soviet occupation of Afghanistan in the 1980’s.”⁶⁷ Others believe that only the combination of *madrassas*, relative poverty, and political authoritarianism creates future terrorists.

⁶⁴ Alastair Lawson, “Pakistan’s Islamic Schools in the Spotlight,” *BBC News*, sec. South Asia, July 14, 2005, 1, http://news.bbc.co.uk/2/hi/south_asia/4683073.stm (accessed 3 October 2006).

⁶⁵ *Madrassah* (Internet: Wikipedia, 2006), 1, <http://en.wikipedia.org/wiki/Madrassa> (accessed 5 October 2006).

⁶⁶ Stan Crock, “Korans, Not Kalashnikovs at Madrassas,” *Business Week Online*, 27 October 2004, 1, http://www.businessweek.com/bwdaily/dnflash/oct2004/nf20041027_5509_db056.htm (accessed 3 October 2006).

⁶⁷ Alexander Evans, “Understanding Madrasahs,” *Foreign Affairs*, January/February 2006, 1, <http://www.foreignaffairs.org/20060101facomment85102/alexander-evans/understanding-madrassahs.html?mode=print> (accessed 3 October 2006).

When the Pakistan economy was so dismal that *madrassa* graduates joined terrorist groups because no jobs were available, it was easy – but wrong – to conclude that the *madrassas* were responsible for nurturing terrorists. A country’s military, foreign powers, war lords, and the local economy all play major roles in the growth of jihadism – certainly more significant roles than the religious-based schools.⁶⁸

Although in depth research on *madrassas* does not exist, a few conclusions can be made from the presence of *madrassas* in developing societies based on anecdotal experiences by some scholars and analysts.

- The first is that *madrassas* provide an opportunity for poor children who would otherwise not become literate. “For young village kids, it may be their only path to literacy and for many orphans and the rural poor, *madrasahs* provide essential social services.”⁶⁹
- The second is that although the primary training is religious in nature, it does not necessarily mean that the curriculum is militant. According to an interview with Vali Nasr, only a few *madrasahs* teach violence and hatred, although they are extremely conservative without offering expanded curriculums and altering viewpoints.⁷⁰
- The third is that since the *madrassas* teach a limited almost exclusively religious curriculum, that the knowledge gained by the students is skewed in favor of the views and ideologies of the teacher.

Based on the conclusions drawn above, government policies intent on punishing the charities that support the *madrassas*, assuming that all *madrassas* create terrorists, could create more problems. Marc Sageman, a forensic psychiatrist and former foreign service officer, has done extensive research on Al Qaeda’s terror network and published his findings in his book *Understanding Terror Networks*. Based on his empirical information of the education levels of the terrorists in the Al Qaeda network, more than 50% were trained in secular schools, with only 23 of the 137 terrorists receiving religious training. In addition, more than half were from the upper and middle classes and over 60 percent received at least some college education. “The data refutes the notion that global Salafi terrorism comes from *madrassa* brainwashing, with the

⁶⁸ Crock, “Korans, Not Kalashnikovs at *Madrassas*,” 1.

⁶⁹ Evans, “Understanding *Madrasahs*,” 1.

⁷⁰ Stan Crock of *Business Week Magazine* interviewed Vali Nasr, Professor of Middle East and South Asia politics at the Naval Postgraduate School. Crock, “Korans, Not Kalashnikovs at *Madrassas*,” 1-2.

exception of the Indonesian network.”⁷¹ Alexander Evans, who works for the British Foreign and Commonwealth Office, published his analysis in *Foreign Affairs Magazine*. He stated that it is important for policy makers to encourage internal debate rather than demanding changes from above, while containing the outlier extremist *madrassas* by prosecuting them.⁷² Demonizing *madrassas* just as demonizing Islamic charities will not solve or reduce terrorism. While both can be a tool for spreading extremist ideology, they both also have the capacity for spreading development.

C. ROLE OF ISLAMIC CHARITIES IN ISLAMIC AND NON-ISLAMIC STATES

The beginning of this chapter explained the basis for charitable giving both in Islamic and non-Islamic societies from their very inception. In addition, it explained that Islamic charitable organizations were the instrument by which Muslims performed their religious duty by giving *zakat*, as well as *waqf* and *sadaqa*. These charities are the mechanism used to foster sustainable development at home and abroad, they are responsible for building mosques, schools, healthcare centers, and administering to poor populations. Yet, these charities also fulfill a much more strategic and important role for the states that sponsor them. Not only are Islamic charities the tool used to collect and distribute *zakat*, *waqf* and *sadaqa*, but they also are used as strategic tools by governments who avoid overt action in a country facing humanitarian issues while still exerting developmental influence. For instance, in developing societies previously known as the “Third World”, rather than engage the government on reforms which is the formal political process, NGOs have become the leading actors in development assistance.⁷³ NGOs also act as leaders within states who do not have the capacity to provide for infrastructure to sustain communities within their borders. In developed states such as Saudi Arabia, the state created and funded Islamic charities infused with Wahhabi ideology in an effort to compete with the Shi’a influence growing after the

⁷¹ Marc Sageman, *Understanding Terror Networks*, Vol. 1 (Philadelphia: University of Pennsylvania Press, 2004), 74-75.

⁷² Evans, “Understanding Madrasahs,” 1.

⁷³ John Rapley, *Understanding Development: Theory and Practice in the Third World*, Vol. 1 (Boulder, CO: Lynne Rienner Publishers, Inc., 1996), 158.

Iranian Revolution.⁷⁴ And, in western developed states such as the United States, the state saw the conservative Salafi infused Wahhabism more preferable to the spread of communism and funded Islamic charities along with Saudi Arabia.⁷⁵ Thus, Islamic charities were funded in an effort to support the *mujahideen* in Pakistan and Afghanistan who fought the Soviet invasion of Afghanistan. Yet, the role of Islamic charities in Islamic and non-Islamic states should not be generalized. Each state is different and as such Islamic charities and the role they fulfill is different. As an example though, the differences will be explored by detailing their roles in Saudi Arabia (wealthy Islamic state), the United States (wealthy non-Islamic state), and Sudan (poor Islamic state in need of humanitarian assistance). An example of a poor non-Islamic state will not be given because the Islamic charities do not hold a particularly important role in development in those societies.

1. Saudi Arabia

Saudi Arabia, a country managed by a royal family in concert with Sunni clerics, saw the Iranian revolution under the aegis of Shi'ism as a threat. The Shi'ite clerics in Saudi Arabia regarded the Iranian Revolution as a sign of the revival of Islam with a Shi'a bent. In addition, Sunni wahhabists saw the Iranian revolution as a threat and tried to seize power away from the Saudi royal family and establish more extreme rule.⁷⁶ The Saudi royal family in turn took steps to solidify their power base without falling prey to extremist ideology during the resurgence of Islam, and used the oil revenue to fund this effort. "The principal means to accomplish the latter objective was to increase financial support for Saudi Islamic charities."⁷⁷ This expanded into funding Muslim communities in both Islamic and non-Islamic countries in an effort to spread the ideology and solidify Saudi power. In Saudi Arabia the Islamic charities are inherently tied to the state.

Yet, how and why Islamic charities began to emerge is not as important as understanding their present role. As previously mentioned, Saudi charities are used as a

⁷⁴ This information was taken from a lecture given by Vali Nasr in his class titled Islamic Fundamentalism on 16 May 2006. See also Burr and Collins, *Alms for Jihad*, 26-27.

⁷⁵ Fawaz A. Gerges, *The Far Enemy: Why Jihad Went Global*, Vol. 1 (New York: Cambridge University Press, 2005), 71.

⁷⁶ Burr and Collins, *Alms for Jihad*, 26-27.

⁷⁷ *Ibid.*, 27.

pseudo tax for the state. “The fact that there is no Saudi income tax and Saudi Arabia is still a highly patriarchal, tribal, and clan oriented society, dependent on personal patronage and charity, makes Saudi Arabia a nation that places a heavy reliance on voluntary Islamic charity.”⁷⁸ In this sense, the “tax” collected was funneled to groups of people who requested assistance either internal to Saudi Arabia or in other countries much like other states use tax money for foreign aid and assistance. Yet, according to Anthony Cordesman and Nawaf Obaid, both researchers employed by the Center for Strategic and International Studies, Saudi officials “...had far too little political sophistication to evaluate the groups asking for money.”⁷⁹ In addition, Saudi officials delegated the technical aspects of money transfer to junior staff with little oversight and accountability requirements.

In the past there were a number of government ministries that were involved either, “...directly or indirectly in charitable giving: the Ministries of Finance, Education, Foreign Affairs, Health, Higher Education, Information, Pilgrimage, and the Ministry of Islamic Endowments and Guidance Affairs.”⁸⁰ Each ministry was led by a member of the Saudi royal family. Since 2003 however, Saudi Arabia has established one agency to manage charitable giving within and outside of the country and even shutdown charitable giving outside of the country to try and get a handle on accountability. “In June 2004, the Saudi government announced that the future activities of all Saudi charitable committees and organizations that send aid abroad will be monitored and directed by the Saudi Nongovernmental National Commission for Relief and Charity Work Abroad.”⁸¹ The effectiveness of this organization will be examined in the next chapter. The important point to take away though is that Islamic charities hold an important role in the Saudi state government.

⁷⁸ Anthony H. Cordesman and Nawaf Obaid, “Saudi Internal Security: A Risk Assessment” (Washington D.C.: Center for Strategic and International Studies, [2004]), 6, http://www.csis.org/media/isis/pubs/isis_ariskassessment.pdf (accessed 25 September 2006).

⁷⁹ Ibid., 6.

⁸⁰ Burr and Collins, *Alms for Jihad*, 27.

⁸¹ Alfred B. Prados and Christopher M. Blanchard, “Saudi Arabia: Terrorist Financing Issues,” 11, (Washington D.C.: Congressional Research Service, [2006]) (accessed 16 March 2006).

2. United States

The emergence and role of Islamic charities in the United States was quite different than in Saudi Arabia. The Islamic charities were not used as a form of taxation and were not entirely tied to governmental foreign aid. Rather, their initial appearance in the U.S. was tied to the strategic alliance created by President Franklin Roosevelt and King Saud bin Abd al-Aziz al-Saud in 1945. Prior to this meeting, there were very few mosques and very little opportunity for religious growth. Islamic charities were used as the conduit for proselytization and as an avenue for Muslim Americans to give zakat and engage in other Islamic charitable giving. Saudi Arabia provided the money and influence for expansion. "In the USA and Canada an estimated eight percent of all Islamic establishments received some Saudi financial support for many years."⁸²

Research shows that Islamic charities in the United States have formed an important support system for Muslim communities, and provided a conduit for charitable giving as well as political activism within the American political system. For instance, it was noted that two major Muslim charities in North America have collected over 20 million dollars in relief aid for earthquake victims in Pakistan. Although this information was collected last year, the author estimated that the Muslim contribution would exceed the relief packages proposed by the U.S. government.⁸³ And, in 2004 Muslim charities and non-profit political activist groups lobbied to allow time off during Ramadan for Muslim students in Brooklyn for the first time. Similarly in Maryland, a court prohibited hearings on Muslim holidays. And, Muslim voter registration has risen to 350,000 in the states of Florida, Michigan and Ohio and 1.2 million across 42 states.⁸⁴

3. Sudan

In the Sudan, Islamic charities have been used to both alleviate underdevelopment and humanitarian crisis as well as proselytization of the population. Since its

⁸² Burr and Collins, *Alms for Jihad*, 263.

⁸³ Abdus Sattar Ghazali, "American Muslims Donations Likely to Exceed US Administration's Aid for Quake Relief," *American Muslim Perspective*, 28 October 2005, 1, http://www.archives2006.ghazali.net/html/charities_re_emerge.html#donations (accessed 13 October 2006).

⁸⁴ Abdus Sattar Ghazali, "Chronology of Islam in America (2004)," *American Muslim Perspective*, 2004, 1-2, <http://www.amp.ghazali.net/html/2004-iv.html> (accessed 25 September 2006).

independence in 1956, Sudan has been a country plagued by ethnic conflict and humanitarian crisis.⁸⁵ In addition, Sudan was a haven for Al Qaeda and Osama bin Laden. According to Burr and Collins,

In 1991 some 25 million Sudanese were represented by nineteen major ethnic groups and hundreds of smaller ones speaking some four hundred languages. Arabic is the lingua franca in the urban enclaves, but English is often the preferred language of the elite. Unfortunately, it was only too true that ‘religion in the Sudanese political context was no longer a matter of personal ethics, piety, spirituality or morality; but a lethal weapon in the power struggle’ between Arab North and African South.⁸⁶

Due to the Islamic influence in political matters, Islamic banking is the primary financial infrastructure. In addition, the Islamic government exerts administrative control over the Islamic charities present within its territory.⁸⁷ Charities in general and Islamic charities in particular, provide humanitarian assistance to a population in need of food, shelter and protection since Sudan as a state is incapable of providing sustainable development. Yet, the lack of a strong state, Islamic banking system and the presence of outside organizations such as charities create an environment susceptible to nefarious organizations and money laundering activity.

The Muslim World League, based out of Saudi Arabia, was the first Islamic charity to make a significant presence in Sudan. Their mission was to proselytize the secular population. Another Islamic influence came from the Islamic organization by the name of Islamic Call based out of Libya, intent on spreading the message of Islam. Its headquarters moved to Khartoum in 1980, establishing a firm influence on Sudanese society. “Not surprisingly, after Islamic Call moved to Sudan it initiated a determined proselytizing effort, especially in the southern Sudan among those practicing indigenous religions and Christianity.”⁸⁸ There is evidence that these charities along with other

⁸⁵ *Country Profile: Sudan* (Washington D.C.: Library of Congress: Federal Research Division, [2004]), 3, <http://lcweb2.loc.gov/frd/cs/profiles/Sudan.pdf> (accessed 3 November 2006).

⁸⁶ Burr and Collins, *Alms for Jihad*, 105.

⁸⁷ *Ibid.*, 106.

⁸⁸ *Ibid.*, 112.

smaller organizations not only provided humanitarian and sustainable development initiatives, but they also provided assistance to Muslim revolutionary movements and terrorists.⁸⁹

Since the inception of these charitable organizations, they have been used by corrupt and predatory regional governments, been involved with radical Islamist groups, and lead the creation of madrassas.⁹⁰ As previously discussed though, the presence of these organizations and the creation of madrassas are not necessarily a negative influence on the population. Rather, they provide communities with an infrastructure that their state is unable or unwilling to provide. The presence and role of Islamic charities in Sudan is not clear cut. They work in concert with the state government and also at cross purposes depending on the affiliation of the charitable organization and its intentions within the country. Telling the difference is difficult, and even harder to control.

D. THE EFFECTS OF ATF POLICIES ON ISLAMIC CHARITIES

Most of the analysis with regard to the effects of ATF policies on Islamic charities is speculative in nature since specific donor information does not currently exist. There is evidence on overall donor confidence for foundation giving in the United States, but this does not extend outside of the United States nor does it drill down to Islamic charities. Although the data is anecdotal, there is a consensus among leaders within Islamic charities and scholarly think tanks. The only speculative survey of Islamic charitable giving was conducted by the Casey Foundation and documented in Laura Donohue's article for the Michigan Journal of International Law titled "*Anti-Terrorist Financing in the United Kingdom and the United States*". The Foundation "...conducted a survey of 30 mosques and found that all of them had suffered a loss of funds..." due to fear of the federal government from their constituency base.⁹¹

⁸⁹ Burr and Collins, *Alms for Jihad*, 112-113.

⁹⁰ Tim Docking and Ken Menkhaus, "Terrorism in the Horn of Africa" (Washington D.C.: United States Institute of Peace, [2004]), 16, <http://www.usip.org/pubs/specialreports/sr113.html> (accessed 13 July 2006).

⁹¹ Laura K. Donohue, "Anti-Terrorist Finance in the United Kingdom and the United States," *Michigan Journal of International Law* 27, no. 4 (Winter 2006), 406-407, http://fsi.stanford.edu/publications/antiterrorist_finance_in_the_united_kingdom_and_the_united_states/ (accessed 3 November 2006).

A review of the literature shows that there is consensus among think tanks and charitable organizations that ATF domestic and international policies have caused a drop-off in public support for Islamic charities.⁹² The direct and indirect result of those policies is as follows:

- Closing of Islamic charities due to criminal investigations
- Donor fear due to criminal investigations combined with little legal recourse once implicated
- Reduced capacity for projects abroad for communities that need assistance.
- Risk of charities gaining the perception of acting as tools of government rather than independent actors devoid of agenda.

Although states will argue that all charitable giving is scrutinized, leaders within the Islamic charities and scholars who have studied the effects of ATF policies disagree. They feel that the policies unfairly target Islamic charities. For instance, it has been noted that the charities that have been investigated and shutdown have been exclusively Muslim charities and that other businesses and charities that have dealings with restricted groups and states have not fallen under suspicion since they are not Muslim affiliated.⁹³ This runs the risk of not only negatively impacting a segment of society but also undermining the anti-terrorism effort by alienating Islam rather than working with Islamic groups to bring an end to violence. According to John Esposito, an Islam expert at Georgetown University, “We run the risk of leaving a message that it’s not extremists we’re going after, but Islam.”⁹⁴ In addition, Islamic communities overseas feel the brunt of these policies more so than other communities who continue to receive assistance by charities not targeted by ATF policies.

⁹² Kevin Davis, “The Financial War on Terrorism,” *Global Anti-Terrorism Law and Policy*, 179-189, Cambridge University Press, Cambridge, 2005. See also the Council on Foundations website accessed on 13 July 2006 at <http://www.cof.org>, OMB Watch’s response to U.S. Department of Treasury guidelines available online at <http://www.ombwatch.org>, and the Muslim Advocates website accessed on 13 July 2006 at <http://www.muslimadvocates.org>.

⁹³ “Comments on the U.S. Department of the Treasury Anti-Terrorist Financing Guidelines: Voluntary Best Practices for U.S.-Based Charities,” Muslim Advocates, 2, <http://www.muslimadvocates.org/docs/MA-Comments-020106-final.pdf> (accessed 24 July 2006).

⁹⁴ John Mintz, “Muslim Charity, Officials Indicted,” *Washington Post* 28 July 2004, 2, <http://www.washingtonpost.com/ac2/wp-dyn/A18257-2004Jul27> (accessed 10 April 2006). Scholar cited was interviewed by a journalist from the Washington Post.

Much of the speculation on the effects of ATF policies on Islamic charities have been in regard to donor fear as a result of the seize, freeze and shutdown of certain charities within the United States and the pressure on other states to take action as well.

Once a charitable organization is so designated, all of its materials and property may be frozen. The charity is unable to see the government's evidence and thus understand the basis for the charges. And it has only limited right of appeal to the courts. So the government can target a charity, seize its assets, shut it down, obtain indictments against its leaders, but then delay a trial almost indefinitely.⁹⁵

The fact that there is no legal recourse for these charities to defend their position or prove their innocence increases donor fear since donors as well as charity employees can fall under scrutiny. According to an article posted in the Yemen Observer, "Post-September 11, many Muslim charities say they operate in a climate of fear and suspicion that borders on persecution."⁹⁶ In addition, the article states that approximately 30 Islamic NGOs have been blacklisted as fronts for terrorist organizations. Yet, although this article and others not cited here show that Islamic organizations have come under scrutiny Post 9/11, they do not depict the government's case. Even so, there is foundation to the fears based on the U.S. government's track record with respect to blacklisted charities and those shutdown or frozen. While lack of criminal convictions does not necessarily indicate innocence, it does show that the evidence collected was not sufficient to prove guilt.

While some of the speculation regarding the effects of ATF policies on Muslim charities tends to be one-sided without empirical evidence, one report that does have credibility is the report produced by OMB watch, an independent watchdog organization. The report was compiled in response to the U.S. Treasury guidelines for charitable organizations and enumerated the top 10 concerns by Islamic charities in the United States. The top 10 concerns are as follows:⁹⁷

⁹⁵ William Fisher, "Muslim Charities in the Crosshairs," Truthout, 1, http://www.truthout.org/docs_2006/printer_041906B.shtml (accessed 25 September 2006).

⁹⁶ Elham Hassan, Global policy forum, 29 October 2005, 1.

⁹⁷ Kay Guinane, Amanda Horowitz and Anna Oman, "Muslim Charities and the War on Terror: Top Ten Concerns and Status Update" (Washington D.C.: OMB Watch, [2006]), 2, http://www.ombwatch.org/pdfs/muslim_charities.pdf (accessed 13 July 2006). The following 10 concerns can be accessed in the full OMB watch report.

- Drastic sanctions in anti-terrorist financing laws are being used to shut down entire organizations, resulting in the loss of badly needed humanitarian assistance around the world and creating a climate of fear in the nonprofit sector
- Despite sweeping post-9/11 investigative powers, authorities have failed to produce significant evidence of terror financing by U.S.-based charities.
- Questionable evidence has been used to shut down the largest U.S.-based Muslim charities.
- Anti-terrorist financing policies deny charities fundamental due process.
- There are no safe harbor procedures to protect charities acting in good faith or to eliminate the risk of giving to Muslim charities or charitable programs working with Muslim populations.
- Government action has created the perception of ethnic profiling and negatively impacted Muslim giving.
- Organizations and individuals suspected of supporting terrorism are guilty until proven innocent.
- Charitable funds have been withheld from people in need of assistance and diverted to help pay judgments in unrelated lawsuits, violating the intentions of innocent Muslim donors.
- There is unequal enforcement of anti-terrorist financing laws.
- Treatment of Muslim charities hurts, not helps, the war on terrorism

The report details the civil rights concerns involved in the seizure of assets and closing of charities. In addition, the report states that ATF investigations rely on secret evidence not available to the charities for their defense or explanation. Finally the report concludes that the nature of the closures has caused a decline in donations especially during Ramadan. Even those donations that do continue to come in have changed to cash anonymous donations which are virtually impossible to trace further hindering the governments ATF capabilities.⁹⁸

Recent research accomplished by the Center on Philanthropy at Indiana University and published on Charity Navigator's website shows that overall charitable giving has risen over the past year as compared to previous years. Researchers conducted a survey of fundraisers, the current giving environment, and future giving expectations to produce a Philanthropic Giving Index (PGI). Based on the survey data, they showed that

⁹⁸ Guinane, Horowitz and Oman, "Muslim Charities and the War on Terror: Top Ten Concerns and Status Update," 2.

on a scale from 0 to 100 “...the overall PGI was 88.9, increasing from 86.3 in December 2005 and up from 85.2 in Summer 2005.”⁹⁹ The researchers attributed the increase of charitable giving on the rising economy, and better fundraising methods such as internet solicitations. This statistical information is contrary to the arguments being made by Islamic charities. While the research was conducted over a cross-section of the U.S. charitable sector, the numbers do not necessarily indicate higher giving in the Muslim charitable sector. In fact, although donations collected for earthquake relief in Pakistan were projected to exceed 20 million dollars and are shown as a large figure out of U.S.-based Islamic charities, the donation potential for Muslims in the U.S. is projected to be roughly one billion dollars.¹⁰⁰ The reason given for not reaching the full giving power was fear from donor persecution from the government.¹⁰¹

E. CONCLUSION

Charitable giving in Islamic and non-Islamic states is important. While charitable giving has different roots and implications in Islamic versus non-Islamic states, the protection of these institutions from nefarious groups is also important. Yet, the regulatory frameworks have served to hinder charitable giving, causing the donor communities to fear prosecution and alienation. The regulatory frameworks should work to protect and guard the apparatus that allows charitable giving, but in practice, the system offers little protection and even less understanding for the communities that support these charities. The fight to stem the flow of terrorist financing is having the opposite affect on the communities that fear government action. The ATF war has alienated the hearts and minds of the international Islamic communities and thus has created the opposite strategic affect (of creating communities that will support terrorist groups and causes).

Based on the information discussed in this chapter, it seems that there are significant differences in state interests with regard to Islamic charities. Due to the

⁹⁹ “Climate for Charitable Giving Better than Last Summer, Fundraisers Say Percent Reporting Success with Internet Fundraising Growing but Still a Minority,” The Center on Philanthropy at Indiana University, 1, <http://www.charitynavigator.org/index.cfm/bay/content.view/cpid/491> (accessed 26 September 2006).

¹⁰⁰ Ghazali, “American Muslims Donations Likely to Exceed US Administration's Aid for Quake Relief,” 2. These estimates are from Zahid Bukhari of Georgetown University who was interviewed for the article cited.

¹⁰¹ Ibid. 2.

divergence in interests, it stands to reason that a blanket approach to charity regulation is not appropriate; however, collective action that takes into account the needs of the Muslim communities could produce positive results. It seems that the overly inclusive regulatory regime alienated the Muslim communities both in the United States and elsewhere. The ATF regulatory policies have negatively impacted the hearts and minds of the very communities that could have provided useful information in the overall fight against terrorism. Yet, this assessment is premature. A look at the ATF regulatory guidelines across five different states will examine their effectiveness in general and any implications for Islamic charities in particular before any conclusions can be drawn.

III. COMPARATIVE STUDY OF REGULATING CHARITIES ACROSS FIVE STATES

A. INTRODUCTION

Since Islamic charities are an important component of Islamic states as well as an important element of the charitable framework of non-Islamic states, and since ATF regulatory frameworks have negatively affected Islamic charities due to donor fear, there is value in examining the ATF regulatory frameworks to determine how or if they can be modified to minimize the negative consequences while still remaining effective. While the regulatory frameworks evolve from legislation, and legislation stems from policy, sometimes the frameworks produce results that the policies did not intend. Yet, sometimes the results are intentional to allow policy to rule the day; however, in general policies and strategies are generated in response to a perceived threat.¹⁰² Governments implement policy and create regulatory frameworks to produce an effective security environment. Yet, the policies can produce negative unintended results for the strategic interests of a state. For instance, in the United States an overly inclusive financial regulatory framework may stem the flow of funds to terrorists but it may also stem the flow for legitimate purposes and alienate a sector of society. This outcome may in turn affect the hearts and minds and affect the political atmosphere and affect its overall strategic security goals.¹⁰³

Although there are few ATF regulatory frameworks that specifically deal with the non-profit sector, the nonprofit sector must operate through the formal and informal financial sector. Since the nonprofit sector must use the financial sector, the financial regulatory frameworks can be used to analyze their effectiveness and the negative consequences to the nonprofit sector. The ATF regulatory frameworks are divided into three categories: prohibition, detection/monitoring, and prosecution.¹⁰⁴ Although some of the frameworks were constructed prior to the 9/11-attacks, that specific day in history

¹⁰² Amos A. Jordan, Michael J. Mazar and William J. Taylor, *American National Security*, 5th ed. (Baltimore and London: The Johns Hopkins University Press, 1999), 64.

¹⁰³ Donohue, "Anti-Terrorist Finance in the United Kingdom and the United States," 306, 407.

¹⁰⁴ Davis, "The Financial War on Terrorism," 181.

has influenced the regulatory environment that exists today.¹⁰⁵ On that day, the United States was directly attacked on a large scale by an international terrorist organization with far reaching capabilities due to their financial network and system of supporters. It was clear that although ATF regulatory frameworks were already in place in several countries, the regulatory frameworks were not far reaching enough and had not evolved sufficiently enough.¹⁰⁶ The United Nations expanded the Resolutions already in place to encompass all terrorism rather than solely focusing on Al Qaeda and the Taliban. The most significant change, which prompted the legislative actions in specific states, was UN Resolution 1373 which "...bound all of the member states to 'prevent and suppress the financing of terrorist acts', to implement the Financing of Terrorism Convention and to cooperate with other countries in this regard."¹⁰⁷

The regulatory frameworks that are currently in place have taken different forms across states and regions. The focus of the framework reflects the interests of the state and attempts to maximize effectiveness and minimize negative consequences. While this chapter will not cover each states framework in depth, it will cover aspects of the framework which deal directly with charitable giving in an effort to determine whether the regulatory frameworks are appropriate to deal with terrorist financing through Islamic charities. The end result of these frameworks should be to stem the flow of funds to terrorist organizations while protecting the mechanisms that allow charitable giving. The following section will outline the selection of the cases and the aspects of the regulatory frameworks selected to capture the tension that exists. Although international political economic principles are important drivers in why states choose to pursue certain economic and political actions, this chapter will not discuss the merits of one theory over another. Rather, the chapter will accept the theories proposed by Robert Gilpin in his book *Global Political Economy*, that "the nature of international affairs is anarchic" and that for the international economy to work, there needs to be a free flow of "goods,

¹⁰⁵ Davis, "The Financial War on Terrorism," 180.

¹⁰⁶ Steve Kiser, "Financing Terror: An Analysis and Simulation for Affecting Al Qaeda's Financial Infrastructure" (Doctoral Degree in Public Policy Analysis, Pardee RAND Graduate School), 133, http://www.rand.org/pubs/rgs_dissertations/2005/RAND_RGSD185.pdf (accessed 25 April 2006).

¹⁰⁷ Davis, "The Financial War on Terrorism," 180.

services, people and capital across international boundaries.”¹⁰⁸ Although the international political economy thrives on liberalism, regulatory frameworks bring some type of order to the anarchic political environment and states act in their own interests for security.¹⁰⁹

1. Case Selection

This chapter will compare the ATF regulatory frameworks across five states in an effort to examine their effectiveness in stemming the flow of money to terrorist organizations through Islamic charities. The states selected for the study were the United States, Great Britain, Russia, Saudi Arabia, and Sudan. The cases were selected due to their relative importance in the financial and political world as well as their strategic role in the fight against terrorist financing. The United States and Great Britain have historically held an important role in regulating financial markets; have been leaders in establishing financial mechanisms, and have pushed for international financial norms. In addition, as the primary target of the 9/11-attacks, the United States has pressured the international community to implement added regulatory financial mechanisms. Russia, who has a large Muslim population and has had political problems with the Chechen population, has recently enacted financial regulatory frameworks in an effort to monitor charitable giving both in domestic and international organizations. In addition, Russia has recently been taken off of the list of uncooperative states and has agreed to join in the international effort to stem the flow of funds to terrorist organizations. Saudi Arabia was selected as a case since the majority of Islamic charities either were created by the Saudi state, or are sponsored by Saudi citizens. Finally, Sudan harbored Osama bin Laden and was on the list of uncooperative states. In addition, Sudan is currently dealing with a humanitarian crisis with numerous charities and radicalized groups present in the country either helping with the situation, a cause of the situation or taking advantage of the situation.

2. Selection of Regulatory Factors

While a direct comparison of states is not recommended since their structures and legal mechanisms are too different to render a direct comparison, a comparison of

¹⁰⁸ Robert Gilpin, *Global Political Economy: Understanding the International Economic Order*, Vol. 1 (Princeton and Oxford: Princeton University Press, 2001), 14.

¹⁰⁹ *Ibid.*, 16.

regulatory factors is appropriate within each states legal structure to measure their effectiveness and ineffectiveness in stemming the flow of funds to terrorist organizations while studying the specific aspects of regulatory mechanisms that either directly or indirectly cause negative consequences for Islamic charities. The first factor examined in this chapter is the degree of governmental oversight manifested through compliance with UN Resolutions and FATF guidelines. In addition, the cases will be examined for additional internal legislation that is adopted as a result of international resolutions. Another factor is the transparency of financial transactions made possible through monitoring and reporting requirements internal to each case. The third factor is penalty for noncompliance either manifested through arrests and convictions or through investigations. Some of the cases will only have a vague reference to investigations and assets frozen, while others have actual numbers for arrests and convictions. Because a quantitative comparison is not possible, the analysis will weigh a state's intent for implementation by comparing past actions to current track record. Finally, the fourth factor is an examination of the environment that either limits or does not limit donations to charitable organizations and the methods employed to monitor donations and donors.

B. COMPARATIVE ANALYSIS OF CASES: SIMILARITIES, DIFFERENCES AND CAPABILITY FOR CROSS APPLICATION

The following discussion of the cases and comparison of the regulatory frameworks will first be described separately and then assembled into a matrix to show similarities, differences and to attempt to show areas for change or improvement. The separate discussions will also briefly discuss their success in tackling terrorist financing through charities. While it is important to note the success of the frameworks in terms of implementation, some of the success is not measurable since deterrence is a component of each framework which can only be speculated on rather than qualitatively analyzed.

1. United States

The United States' regulatory framework is complex, with a number of agencies at both the state and national level taking part in monitoring, investigating, and prosecuting violations. While the regulatory framework creates a mechanism, the American legal system provides the teeth. The legal system focuses on prevention through laws that designate people and groups of people as terrorists and make it illegal to deal with them when the relationship proves to be in "preparation for, or in carrying

out” terrorist acts.¹¹⁰ As a result, investigations entail monitoring the interaction between entities to discover fault yet becomes difficult when the people and organizations under surveillance have both legitimate and illegitimate purposes. “It is not uncommon for organizations suspected of sponsoring terrorist acts to have official purposes that encompass poverty relief and peaceful political engagements.”¹¹¹ The following breakdown of the regulatory framework will give a clearer picture of how the regulatory framework is applied within the United States, and discusses the successes and failures in the system.

a. Degree of Governmental Oversight

The U.S. regulatory framework is designed around a combination of governmental oversight and self-monitoring requirements. While governmental oversight is a key component of the framework, the structure of the framework impedes the ability for the government to provide the necessary oversight to monitor the system. The framework post-9/11 was fashioned in accordance with previous money-laundering regimes. The two most important legislations that impacted the regulatory framework were the USA Patriot Act and the expanded powers under the IEEPA.¹¹² The U.S. in coordination with the UK and the UN has pushed for implementation of a coordinated international framework. The UN Resolutions have resulted in the designation of people and groups as terrorist organizations. The United States has designated terrorist organizations and created their own lists that are used in various ways. The lists prohibit financial dealings with these groups, and are used as flags for investigations. The problem with the lists is that there are approximately six lists that the United States uses. While, Steve Kiser in his doctoral dissertation defends the lists because they have become more useful since they encompass not only names but also aliases, they are difficult to use and difficult to access for groups who want to avoid financial transactions with designated people and organizations.¹¹³ In fact, according to Laura Donohue in her article titled “*Anti-Terrorist Financing in the United Kingdom and the United States*” the

¹¹⁰ Davis, “The Financial War on Terrorism,” 182.

¹¹¹ *Ibid.*, 184.

¹¹² Donohue, “Anti-Terrorist Finance in the United Kingdom and the United States,” 370-371.

¹¹³ Kiser, *Financing Terror: An Analysis and Simulation for Affecting Al Qaeda's Financial Infrastructure*, 119. Steve Kiser has published a table on the various terrorist-related lists and shows that not only does OFAC publish lists but so does the State Department.

cumbersome lists provide little assistance to allow the financial sector to use due diligence in checking transactions. As a result the requirement for financial institutions to produce suspicious activity reports floods the system with thousands of reports that make it difficult for the government to sift through and provide useful oversight.¹¹⁴ Although the ATF regulatory framework is designed to provide a high degree of governmental oversight, it results in an inefficient and costly system that does not provide significant oversight of the charitable sector.

b. *Transparency of Financial Transactions*

The financial structure of the United States in theory has a high degree of transparency. First and foremost, the Internal Revenue Service (IRS) is charged with certifying tax exempt status for charitable organizations.¹¹⁵ In addition, each state within the union is required to monitor the non-profit sector and the financial transactions within their purview; however, the IRS system has allowed charities to be used as fronts for terrorist organizations. In addition, the free-flow of funds between states and between countries made it difficult for monitoring agencies to follow suspicious activity once the funds left its jurisdiction. The USA PATRIOT ACT expanded the scope of the ATF regulatory framework that requires reporting requirements not only for formal financial institutions but also for informal value transfer systems that many charities use to transfer funds to areas without a formal banking structure.¹¹⁶ U.S. laws require financial institutions to submit suspicious activity reports and have set up financial intelligence units to investigate suspicious activities. Although the system should produce a high degree of transparency, the effectiveness of this factor is dependent on the lists mentioned above and the ability of financial institutions to cross-check lists and identify suspicious

¹¹⁴ Donohue, "Anti-Terrorist Finance in the United Kingdom and the United States," 392.

¹¹⁵ John W. Adams, "Global Assignment Americans Abroad: The Adams Report," *Global Assignment*, 9, no. 1 (2002), 1, <http://www.globalassignment.com/ga9.1.pdf> (accessed 7 August 2006).

¹¹⁶ James F. Sloan, "FinCEN Advisory: Informal Value Transfer Systems" (Washington D.C.: United States Department of the Treasury, [2003]), 10, <http://www.fincen.gov/advis33.pdf> (accessed 10 April 2006).

activity. Since the monitoring apparatus is inefficient, this results in thousands of suspicious reports rather than strategically targeted suspicious reports as previously mentioned.¹¹⁷

c. Penalty for Noncompliance

The United States has frozen over \$130 million worth of assets, shutdown five charities, conducted investigations on over 400 people, designated 41 charities worldwide of terrorism, and convicted 39 people of crimes associated with either terrorist financing or some other related crime.¹¹⁸ Conversely, the result of the investigations and asset seizures in connection with Islamic charities have not turned out as successful as the figures mentioned above suggest. Although assets remain frozen and these charities remain out of operation, the convictions and deportations were on non-terrorism grounds, which either calls into question their terrorist links, or calls into question the capability of the legal system for proving support for terrorism through charities. The Monograph submitted to the 9/11-Commission reported that the federal investigations into two Illinois-based charities resulted in a conviction for the leader of Benevolence International Foundation (BIF) and deportation for a Global Relief Foundation, Inc. (GRF) fundraiser. The conviction and deportation though were justified on non-terrorism related charges, and the charities themselves were not charged. However, their assets remain frozen, and their groups blacklisted with little recourse for altering this outcome.¹¹⁹ Another example is the Holy Land Foundation which is still out of operation, and is appealing the decision to freeze their assets and award monetary compensation from those funds to U.S. families of victims of terrorist attacks in Palestine.¹²⁰ The “government’s loose standards” and zealous prosecutions/asset

¹¹⁷ This information was taken from a lecture in Jacob Shapiro’s Terrorist Financing class at NPS, Spring 06. The discussion resulted from the analysis of the FATF Typologies 2003-2004 report given as part of class materials.

¹¹⁸ Data gathered from several sources. Steve Kiser’s dissertation supplied the dollar amount (previously cited), OMB watch report supplied the number of the number of charities designated (previously cited), and a Boston Globe article supplied the number of investigations and convictions, accessed online at http://www.boston.com/news/globe/editorial_opinion/oped/articles/2006/07/21/the_terrorist_batting_average/ (accessed on 25 September 2006).

¹¹⁹ Roth, Greenburg and Wille, “Monograph on Terrorist Financing: Staff Report to the Commission,” 10-11.

¹²⁰ Guinane, Horowitz and Oman, “Muslim Charities and the War on Terror: Top Ten Concerns and Status Update,” 8-9.

seizures have led to a “drop in contributions to Islamic charities” and alienated Islamic communities which in turn hinders any voluntary assistance that these communities may offer to the government.¹²¹

d. Restriction on Donations

The final factor is the ability of people to give to causes of their choice without restriction or limitation. Although the United States boasts an open system supported by the Constitution under Freedom of Speech and Expression, material support for terrorism is prohibited under U.S. code. As a result, donors as well as fundraisers can be prosecuted, which places limitations and responsibilities on the donors to make sure that the causes that they support are not connected in any way with terrorism. While no donors have been successfully convicted of material support for terrorism, the fear of prosecution puts psychological limits on donors. “Many in the Muslim community fear that their donations might land them on a list of suspected terrorist sympathizers and supporters, even if they are completely unaware of any wrongdoing or if the charity comes under suspicion years later.”¹²² Since the United States does not limit donations in support of religious and/or political projects, the framework in theory allows for a certain amount of donor flexibility, but at the same time there are “...significant risks currently accompany any contribution to an Islamic charity or any dealing with Islamic or Arab businesses.”¹²³ Logically, donors should be more aware of charities and what their money is used for, but in practical terms, it is almost impossible for donors to have full visibility into a charity’s projects and their personnel.

Although the United States ATF regulatory framework is not entirely ineffective in designating target groups and in the investigation of suspected groups and individuals, there are drawbacks to the regulatory framework from the perspective of charities and donors. The drawbacks appear to be the lack of an all-inclusive and readily accessible list of foreign terrorist organizations and blacklisted individuals, suspicious and “classified” evidentiary procedures, and vague policies with regard to due process

¹²¹ Donohue, “Anti-Terrorist Finance in the United Kingdom and the United States,” 379.

¹²² Guinane, Horowitz and Oman, “Muslim Charities and the War on Terror: Top Ten Concerns and Status Update,” 5.

¹²³ Donohue, “Anti-Terrorist Finance in the United Kingdom and the United States,” 406.

and the appeal process for blacklisted individuals.¹²⁴ The Al Haramain case is an example of good interagency response along with international cooperative actions between the United States and Saudi Arabia in an effort to stem the flow of funds through Al Haramain to Al Qaeda and other terrorist organizations formally designated both by the United States and the United Nations.¹²⁵ Yet, Al Haramain is an isolated case that does not necessarily prove that the framework achieves the desired result. In fact, a Department of Justice analysis of the ATF regulatory framework acknowledged that the framework is designed to be “overinclusive” in an effort to prevent terrorism.¹²⁶ The intent behind the framework therefore is to be broad enough to catch terrorist financing and/or prevent terrorist financing by establishing donor culpability. While this may work from a states perspective, a legal review of the costs and benefits show that “Legislation designed to counter the financing of terrorism threatens to impose significant costs upon legitimate economic (charitable) activities.”¹²⁷

2. United Kingdom

The United Kingdom (UK), similar to the United States, has a complex system for monitoring financial transactions. In addition, the United Kingdom has transparent financial structures, and has instituted laws and policies to regulate the financial system to stem the flow of funds to terrorist organizations. Yet, unlike the United States, the UK has established one agency whose sole purpose is to monitor the charitable sector. In addition, the UK operates under the philosophy of legislating intent as well as action. In this sense, the United Kingdom attempts to prevent even the intention of financing terrorism.¹²⁸

a. Degree of Governmental Oversight

Governmental oversight into the financial sector for the purpose of stemming the flow of funds not only to criminal organizations but also to terrorist

¹²⁴ Guinane, Horowitz and Oman, “Muslim Charities and the War on Terror: Top Ten Concerns and Status Update,” 3-5.

¹²⁵ Roth, Greenburg and Wille, “Monograph on Terrorist Financing: Staff Report to the Commission,” 117.

¹²⁶ Jeff Breinholt, “Terrorist Financing,” *United States Attorney's Bulletin* 51, no. 4 (2003), 6, http://www.usdoj.gov/usao/eousa/foia_reading_room/usab5104.pdf (accessed 23 October 2006).

¹²⁷ Davis, “The Financial War on Terrorism,” 197.

¹²⁸ *Ibid.*, 184.

organizations took form long before the United States and took its cue from anti-money laundering regimes. The recent initiatives that the United Kingdom has implemented such as the Terrorism Act 2000 where in conjunction with the United Nations Resolutions and in accordance with other international efforts to establish legislative provisions to combat terrorist financing. The UK took proactive steps to establish legislation to build the framework for stemming the flow of funds to terrorist organizations. The Act “forbids the financing of proscribed organizations.”¹²⁹ Subsequent Acts and reviews have expanded the terrorism legislation but the main financial aspects of the legislation were implemented with the 2000 Act. The UK has established a list of terrorist organizations, and the EU and UN have also established lists of people and organizations who have been implicated with terrorism.¹³⁰ The UK list, unlike the lists produced by the United States only name organizations and are produced by one agency and approved through Parliament. There have been 40 groups, not including 14 groups from Northern Ireland, named as terrorist organizations as of October 2005. The list is easy to use and easily accessible. However, the lists do not guarantee that funds will not flow to terrorist organizations because it is the coordination among government agencies, and the implementation of policies that increase the effectiveness of the governmental tools. “While the Charity Commission could monitor Islamic charities in the UK, the authorities had less success in keeping track of dubious individuals who took advantage of the ease with which Islamists from Egypt, Saudi Arabia, Pakistan, Kashmir, and India obtained political asylum in Britain.”¹³¹ One aspect of governmental oversight that has been lauded internationally as the most efficient and effective government agency in managing the non-profit sector is the Charity Commission. Yet, although the commission has established a process to certify, monitor and audit the charitable sector, their ability to prevent funds from flowing to terrorist organizations is dependent on political will.¹³²

¹²⁹ Davis, “The Financial War on Terrorism,” 184.

¹³⁰ These lists are available online through statewatch.org at the following site, <http://www.statewatch.org/terrorlists/thelists.html> (accessed on 31 October 2006).

¹³¹ Burr and Collins, *Alms for Jihad*, 258.

¹³² *Ibid.*, 261. See the Finsbury Park Mosque example outlined in the book *Alms for Jihad* for an analysis of poor political backing of the Charity Commission.

b. *Transparency of Financial Transactions*

The UK has a well established financial system. The transparency is similar to the United States in that there are financial standards and requirements that are managed by the formal financial sector, regulated through legislation, and monitored by governmental agencies. The primary focus of the legislation, which results in an increase in transparency of the system and minimizes criminal infiltration of the system, is on anti-money-laundering. This focus goes hand-in-hand with the EU focus on money laundering. Specifically, the UK and EU have implemented procedures to impose identification requirements and collection of information on sender and receiver for “wire transfers”.¹³³ In addition, the UK now requires “...all British charities with incomes over 10,000 pounds per annum ...to submit its audited accounts to the (Charity) Commission.”¹³⁴ Yet, like the problems faced in the U.S., the system in the UK is only as good as the ability for designated government agencies to handle massive amounts of information efficiently while minimizing the costs to the government as well as the financial sector. FIUs have also been established and the UK and EU have established a forum to share intelligence gathered through financial as well as criminal investigations. The effectiveness of this group is as yet untested, but could prove to be a step in the right direction.

c. *Penalty for Noncompliance*

The penalty for noncompliance with the ATF regulatory framework is the seizure of assets, investigation, prosecution, conviction, deportation, and the closure of any charity within the UK’s jurisdiction. According to the operational guidance publicized by the Charity Commission, “It is against the law to be a member of a proscribed organization and it is also illegal to assist, raise money for, or send money to one, or anyone who is a member of one.”¹³⁵ As such, the UK has established a regulatory framework that is capable of regulating charities and creating a financial

¹³³ “Proposal for a Regulation of the European Parliament and of the Council on Information on the Payer Accompanying Transfer of Funds” (Brussels, Belgium: Commission of the European Communities, [2005]), 2, http://ec.europa.eu/internal_market/payments/docs/transfers/proposal_en.pdf (accessed 31 October 2006).

¹³⁴ Burr and Collins, *Alms for Jihad*, 262.

¹³⁵ “Operational Guidance: Charities and Terrorism” (Charity Commission Operational Guidance, internet, 2003), 1, <http://www.charity-commission.gov.uk/supportingcharities/ogs/g096.asp> (accessed 2 November 2006).

environment that is safe from terrorist and/or criminal organizations. Unfortunately, a good framework does not necessarily ensure the desired result. In the case of the UK, “By 2004 the UK had frozen the assets of more than 100 organizations, mostly charities, and 200 individuals.”¹³⁶ Yet, a survey of available information shows that only a few charities have been closed as a result of terrorist financing in the UK, and those that have been shutdown have been due to either pressure from or in reference to US investigations. Another issue facing the enforcement of penalties is willingness to take definitive action.¹³⁷ Until London was attacked by terrorists, the British seemed reluctant to enforce the regulatory framework, yet the attacks have changed the environment, and charities run the risk of similar “overinclusive” enforcement consequences as in the U.S. It is a catch-22, if the UK takes action, then they are “overinclusive”, but if they do not take action, they are not asserting their political will. There does not seem to be a middle ground. The danger in state action lies in how it is taken and whether there is any burden of proof on the states’ part. According to Laura Donohue, the shift from “criminal to civil standards, divorcing financial forfeiture provisions from conviction of any underlying offense” has expanded the government’s capability of seizure of assets without having to prove its case in a criminal court with the required evidentiary processes.¹³⁸ Although there are few criminal investigations in the non-profit sector, assets have been seized and frozen through this new shift in policy which effectively impedes a charity’s capability to operate without proof of criminal behavior. While these expanded governmental capabilities are touted as positive, this brings the state into “...conflict with well-established religious beliefs” and obligations further affecting the hearts and minds of the Muslim community.¹³⁹

d. Restriction on Donations

Unlike the right of free speech and association in the U.S., the UK has placed restrictions on intentions and associations as well as actions. As such, it is illegal to belong to or support an organization that has stated violent intentions whether or not

¹³⁶ Burr and Collins, *Alms for Jihad*, 262.

¹³⁷ *Ibid.*, 262.

¹³⁸ Donohue, “Anti-Terrorist Finance in the United Kingdom and the United States,” 309.

¹³⁹ *Ibid.*, 407.

they have taken actions to that effect.¹⁴⁰ This is damaging for charities that may have both legitimate and illegitimate purposes. Although there are enough charities and groups to choose from and a few commingled groups can disappear with minimal impact to the receiver communities, the restriction on association limits the ability of Muslim communities to express them-self and offer non-violent opposition. In addition, while intentions are difficult to prove, the threat of legal action against intentions may be enough to negatively affect legitimate charities for fear that they have been infiltrated by persons or groups of people affiliated with terrorist organizations. Yet, unlike the U.S., there is no question about the legitimacy of a charitable organization if they pass the requisite screening and registration and yearly auditing process. While, legislating intentions is difficult, when successful, it provides a safer charitable environment. In this sense, the restrictions placed on intentions actually assist the legitimate charities.

The UK ATF regulatory framework has a long history based on the government's experience in fighting the war against terrorism in Northern Ireland. In addition, the regulatory regime has taken its structure from previously established anti-money laundering regimes which may not be as effective and appropriate in stemming the flow of funds to terrorist organizations through charities. It has been noted that there are more hoops to go through in the normal course of financial transactions, but the end result is a flood of suspicious activity reports that prohibits the government from "ferreting out real threats."¹⁴¹ Yet, the most important point to take away from the UK ATF regulatory framework for the purposes of this thesis is that the regulatory framework attempts to minimize negative affects to charitable donations through the work of the Charity Commission; however, Laura Donohue points out that although domestic efforts are important, an effective multilateral effort would gain dividends over the current separate and unequal state responses to ATF. She states that,

¹⁴⁰ "Operational Guidance: Charities and Terrorism," 1.

¹⁴¹ Donohue, "Anti-Terrorist Finance in the United Kingdom and the United States," 395.

...each state tends to view its regulatory system as preferable: the United Kingdom sees its Charity Commission as ‘superior to anything in America, where charities are overseen chiefly for tax purposes.’ In contrast, Americans brag that they are ‘light years ahead of the rest of the G7’ in regulating their financial sector.¹⁴²

3. Russia

The regulatory framework in Russia is less evolved than in the U.S. and UK. In addition, the charitable sector is much more “homegrown” with only a few international organizations active within its jurisdiction.¹⁴³ This environment makes it simpler for governmental oversight and at the same time has different implications for Islamic charities. Islamic charities are the predominant support for the refugee population as a result of the Chechen separatist movement. In addition, Islamic charities support the large Muslim population that exists in Russia. While other western states have a wide variety of practicing religions within their borders, according to the CIA fact book Russia only has three: Christian, Russian Orthodox, and Muslim. Of the three, the second most prevalent religion is Islam.¹⁴⁴ The regulatory framework must balance enforcement with the risk of alienating a significant portion of the population with unpopular and overly discriminatory policies.

a. Degree of Governmental Oversight

Although Russia was initially on the FATF list of non-cooperative states, it has since taken an active role in implementing anti-money laundering legislation to regulate its financial sector.¹⁴⁵ In addition, Russia has created its own list of blacklisted organizations. Considering that Russia’s efforts are still in its early stages, the degree of governmental oversight is similar to the U.S. and UK. One point of divergence though has to do with Russia’s formula for determining jurisdiction for blacklisted organization.

¹⁴² Donohue, “Anti-Terrorist Finance in the United Kingdom and the United States,” 380.

¹⁴³ *Russia Country Report on Terrorism - 2005* (Moscow: US Department of State and the National Counterterrorism Center, [2006]), 3, http://www.usembassy.ru/embassy/print_section.php?record_id=report_terrorism_2005 (accessed 31 October 2006). The term homegrown was taken from the Russia country report submitted by the US Embassy in Moscow.

¹⁴⁴ The CIA world fact book for Russia and other states is available online at <https://www.cia.gov/cia/publications/factbook/geos/rs.html#People> (accessed on 31 October 2006).

¹⁴⁵ Ira Sohn, “Combating International Financing Crime: Recent Developments in Europe” (Vaasa, Finland, Berkeley Electronic Press, May 2003), 16, <http://services.bepress.com/itfa/15th/art49> (accessed 24 July 2006).

According to commentary from the International Relations and Security Network, “Russia’s newly unveiled terrorism blacklist only includes groups that pose a direct threat to Russia.”¹⁴⁶ Since much of the terrorism that Russia faces is homegrown or Islamist in nature, its focus is understandable. Yet, the regional and domestic focus of their blacklist could pose problems if and/or when Russia requires Western assistance with their ATF efforts.¹⁴⁷ The international trend is to start consolidating lists and efforts to stem the flow of funds to terrorist organizations. In addition, the new Russian legislation will increase government oversight of charities. The bill seeks to control the presence of foreign NGOs “...and restrict Russian organizations’ ability to accept foreign cash or employ non-Russian workers.”¹⁴⁸ While critics of the bill are concerned that this is a move by the Russian government to control all aspects of civil society, this bill actually seeks to control foreign political influence that would protect its homegrown charitable organizations.¹⁴⁹

b. Transparency of Financial Transactions

Russia’s tumultuous political history created an environment that upon the fall of the Soviet Union opened up a political and economic vacuum that criminal organizations took advantage of. “As a result, the Financial Action Task Force on money laundering put Russia on the black list of tax havens in 2000.”¹⁵⁰ Since then, Russia has taken steps to increase the transparency into the financial sector to stem the flow of funds primarily to criminal organizations but also to terrorist organizations. According to the Russian banking industry in a consolidated commentary released in 2004, they will seek to take seven measures to comply with all legislation and secure legitimate funds.¹⁵¹

¹⁴⁶ Simon, Saradzhyan, International relations and security network, 1, 22 August 2006.

¹⁴⁷ Ibid., 1.

¹⁴⁸ Oliver Bullough, “NGOs Say New Russian Bill Threatens Freedom,” *The San Diego Union Tribune*, sec. World, 22 November 2005, 1, <http://www.signonsandiego.com/news/world/20051122-0855-rights-russia.html> (accessed 19 October 2006).

¹⁴⁹ Nikolas K. Gvosdev, “Russia’s NGOs: It’s Not so Simple,” *International Herald Tribune*, sec. Opinion, 8 December 2005, 1, http://www.iht.com/bin/print_ipub.php?file=/articles/2005/12/08/opinion/edgvosdev.php (accessed 7 August 2006).

¹⁵⁰ Nina Kulikova, Russian news and information agency, 1, 22 February 2006.

¹⁵¹ “Banks are against Money Laundering,” Vnesheconombank, 1-2, <http://www.veb.ru/eng/bank/press/news/newsitem.wbp?newsid=a894bad5-9a1b-4ab3-9b77-341d3c8c7402> (accessed 2 November 2006). The consolidated statement includes a list of measures that the banking industry is taking. For the specifics on the list go to the online commentary.

Although these measures impose significant operating costs to the financial sector, the terrorist and criminal problem is serious enough for the industry to absorb the cost. While transparency is essential in a states ability to monitor the sector, the states capability is only as good as the lists mentioned above as well as their will to impose penalties for noncompliance; however, since Russia experienced a large money laundering problem in the 1990s, any steps will negatively impact terrorist financing. It is unclear how transparency in the Russian framework will affect Islamic charities since the measures are quite recent.

c. Penalty for Noncompliance

The penalty for noncompliance with anti-money laundering regulations and charitable financial regulations are seizure of assets and prohibition for the use of Russian financial markets. In addition, any groups or people found noncompliant with the regulatory framework runs the risk of investigation, arrest and conviction through the Russian legal system. While specific information regarding the implementation of penalties for noncompliance in conjunction with the ATF regulatory framework, there is publicly available information regarding terrorism-related convictions in general. According to the US Embassy in Moscow Russia country report there were "...28 terrorism-related convictions and 50 pending terrorism trials in Russia."¹⁵² The apparent extent of ATF regulatory enforcement in Russia is the black listing of organization and the prohibition of foreign financial transactions with Russian NGOs. One analysis of the capability of the Russian government to enforce the regulatory regime states that, "Russia's central government remains weak and often ineffective in ensuring compliance with Russian law."¹⁵³ While this analysis was conducted in 2003 and recent legislation indicates that the Russian government intends to take more direct enforcement of the ATF regulatory framework, further analysis and review in the future will be required to determine any negative effects on Islamic charities.

¹⁵² *Russia Country Report on Terrorism - 2005*, 4.

¹⁵³ Geoffrey Kemp and Paul Saunders, *America, Russia, and the Greater Middle East* (Washington D.C.: The Nixon Center, 2003), 49, http://www.nixoncenter.org/publications/monographs/US_Russia_ME.pdf#search=%22america%20russia%20and%20the%20greater%20middle%20east%22 (accessed 14 July 2006).

d. Restriction on Donations

A number of the charities that operate in Russia have political purposes. The regulatory restrictions on the non-profit sector are intended to suppress the political competition that the charities pose with the Russian government. A search of the groups that are present in Russia showed that the charities support Jihadist and Separatist movements within Russia. The limitation on the ability to support such causes accomplishes two things, one intentional and one unintentional. The first is it ensures the survival of the Russian government in its present state. The second is it unintentionally alienates a large sector of the Russian population. Due to the large amount of NGOs currently operating in Russia (450,000) with a number of them supporting Islamic causes and communities, the Russian government both fears the increasingly popular Jihadist movement and acknowledges the need to incorporate the Muslim communities rather than alienate them. A balance in the application of policies that is required is not yet evident.

4. Sudan

In comparison to the other three cases discussed above, the anti-terrorist financing regulatory framework of Sudan is much less evolved and even less effective. The Constitution and legislative framework has been suspended a number of times due to the long history of political instability.¹⁵⁴ The regulatory framework is complicated even more by the existence of two different legal systems in North and South Sudan. North Sudan operates off of Shari'a (Islamic) law. Southern Sudan operates off of a more western legal system.¹⁵⁵ In addition, the continuing humanitarian crisis guarantees the presence of foreign humanitarian organizations and the political situation is vulnerable to foreign influence. Sudan has been listed as a safe haven for terrorism by the United States, although recently has been taken off the list of non-cooperative states.¹⁵⁶

¹⁵⁴ Bernard J. Hibbitts, "Constitution, Government and Legislation of Sudan," University of Pittsburgh School of Law, 1, <http://jurist.law.pitt.edu/world/sudan.htm> (accessed 3 November 2006).

¹⁵⁵ *Country Profile: Sudan*, 12.

¹⁵⁶ Ted Dagne, "Sudan: Humanitarian Crisis, Peace Talks, Terrorism, and U.S. Policy" (Washington D.C.: Congressional Research Service, [2006]), 15.

a. Degree of Governmental Oversight

There is a low degree of governmental oversight in regard to the ATF regulatory framework because the framework is not fully formulated and implemented throughout Sudan. Since the state vacillates between democratic ideals and authoritarian regime, the policies and regulatory frameworks will not fully evolve. Sudan needs to achieve a level of stability to be able to create and implement a framework that is appropriate to the interests of the state. Sudan has focused on “...ending the long-standing civil war...” as an important step in the war on terrorism.¹⁵⁷ While Sudan has pledged to take active steps in the international fight against terrorism, government corruption and civil war limit the chances of instituting an effective ATF regulatory framework. Sudan has not established a list of blacklisted organizations, but accepts the UN lists to be able to operate in the international financial sector. However, analysis on the use of those lists by the government and banking sector is not available.

b. Transparency of Financial Transactions

Sudan’s financial sector is not as transparent as the international community would like, but there are some controls present that are necessary in order to receive IMF and World Bank loans and assistance.¹⁵⁸ According to the 2006 Index of Economic Freedom the “...majority of financial institutions adhere to Islamic financial principles...and there are 25 commercial banks in Sudan.”¹⁵⁹ The presence of banks and financial institutions does not necessarily imply a high degree of financial sophistication. Yet, even though a majority of the Islamic financial transactions are cash-based, the Islamic banking institutions still attempt to adhere by ATF regulatory principles set forth by FATF and IMF/World Bank. In fact, Sudan sent government officials to an IMF led training conference that promoted “...adoption of harmonized terrorism financing

¹⁵⁷ David H. Shinn, “Fighting Terrorism in East Africa and the Horn,” *Foreign Service Journal* 81, no. 9 (2004), 40, <http://www.afsa.org/fsj/sept04/Shinn.pdf> (accessed 24 July 2006).

¹⁵⁸ “IMF Executive Board Concludes 2005 Article IV Consultation with Sudan,” International Monetary Fund, 1-2, <http://www.imf.org/external/np/sec/pn/2005/pn0567.htm> (accessed 3 November 2006).

¹⁵⁹ Marc A. Miles and others, “Sudan,” The Heritage Foundation, 2, <http://www.heritage.org/research/features/index/country.cfm?id=Sudan> (accessed 3 November 2006).

legislation...and assist the attending countries in the drafting of their laws.”¹⁶⁰ The publicly accessible information regarding the transparency of the financial sector and anti-terrorist financing is scant. The majority of the articles talk about Sudan’s intentions for implementing anti-money laundering and anti-terrorist financing regulations; however, there has not been an assessment of the success of the measures taken. Another aspect hindering the full implementation of the international regimes is Sudan’s reliance on the need for an international definition of terrorism. Sudan has advocated for an international agreement on the definition of terrorism for use in their domestic legislation and regulatory framework.¹⁶¹ Without this definition, they have argued that proper ATF efforts cannot be made to identify terrorist organizations.

c. Penalty for Noncompliance

Since information regarding the governmental oversight and financial sector transparency is not available, there is nothing written in regard to penalties for noncompliance with ATF regulations. Other than the seizure of Osama bin Laden’s assets and his deportation along with his associates, there are no other accounts of government action. In addition, the actions taken against bin Laden and his Al Qaeda associates were taken prior to the new ATF regulatory initiatives. Since there are no formally documented penalties, charities face a different negative consequence. They can fall prey to terrorist organizations, and/or they can be accused of terrorist financing and expelled from Sudan without legislative recourse.

d. Restriction on Donations

Sudanese citizens are afforded the right to freedom of speech and association. These rights are similar to the United States but not applied equally, and non-citizens are not afforded these rights in the Constitution. Regardless, these rights imply that the right to associate with and support groups is not limited; however, different

¹⁶⁰ “IMF Promotes Anti-Terrorism Financing Legislation in the Eastern Horn of Africa” (Washington D.C.: International Monetary Fund, 2005), 1, <http://www.imf.org/external/np/sec/pr/2005/pr05185.htm> (accessed 3 November 2006).

¹⁶¹ United Nations General Assembly, “Statement of H.E. Dr. Mustafa Osman Ismail, Minister of Foreign Affairs, Sudan, before the High-Level Plenary Meeting of the 60th Session of the General Assembly,” 60th sess., 2005, 3, <http://www.un.org/webcast/summit2005/statements16/sud050916eng.pdf> (accessed 3 November 2006).

regions within Sudan may have different practical applications of this legislation.¹⁶² This discussion though has little relevance to support for Islamic charities, because the charities that are present within Sudan are foreign and are present in the country to alleviate the humanitarian crisis and foster sustainable development. There is no publicly available information regarding the local charitable sector.

In either case, with an opaque financial sector and un-assessed regulatory framework, terrorist organizations have the opportunity to thrive. Any charities that operate in this environment run the risk of being implicated with a terrorist organization, yet the humanitarian crisis and armed political struggle make it very difficult for charities to stay away. In fact, the Sudanese population needs the assistance that charities can provide since the government is incapable of providing assistance to the large refugee populations and those injured and left homeless by civil strife. Increased governmental oversight and banking standards can increase security for charities; however, the regulatory framework is too young to form a proper assessment.

5. Saudi Arabia

The analysis on Saudi Arabia's ATF regulatory framework was saved for last because a large majority of the Islamic charities have links to Saudi Arabia. Along with this logic, a strong regulatory regime in Saudi Arabia would go a long way to securing the Islamic charitable sector. The previous chapter discussed Saudi Arabia's role in the creation of Islamic charities, and the charities' importance within Islam. In addition, the previous chapter briefly touched on the regulatory measures that Saudi Arabia has taken in an effort to regulate the charities and charitable donations. The following is a more comprehensive analysis of that framework post-2003.

a. Degree of Governmental Oversight

Saudi Arabia has taken steps to implement anti-money laundering and counter-terrorism financing reforms after a FATF evaluation sited their failure to implement appropriate legislation. The report, in addition to the 2003 Riyadh bombings was enough impetus to cause Saudi Arabia to take necessary steps to increase

¹⁶² "Sudan: Memorandum to the National Constitutional Review Commission" (internet: Amnesty International, [2005]), 4, <http://web.amnesty.org/library/Index/ENGAFR540492005?open&of=ENG-SDN> (accessed 3 November 2006).

government oversight into the financial sector.¹⁶³ According to a study conducted by the Watson Institute for International Studies at Brown University, which conducted a comparative assessment of Saudi Arabia with other Islamic countries in their implementation of legislation and enforcement of ATF regulatory frameworks discovered that comparatively speaking, Saudi Arabia has established a strong legal framework and a moderate corresponding regulatory framework.¹⁶⁴ Although Saudi Arabia has made the appropriate changes to the legislation and regulatory framework, Saudi Arabia has failed to regulate finances from the royal family which accounts for the majority of funds within Saudi Arabia and governmental oversight is only as good as the personnel in charge of the monitoring programs.¹⁶⁵ As far as government oversight into the non-profit sector, Saudi Arabia has established one agency to oversee donations to Islamic charities. This effort approaches the intent of the U.K.'s Charity Commission; however, since it was only created in 2004, its success has not been fully evaluated. Although data on enforcement of the charity regulatory regime is only speculative, on paper charities are required to use one bank account; are restricted from cash transactions, and are heavily monitored for overseas transfers.¹⁶⁶ Finally, similar to Sudan, Saudi Arabia has disagreed with the U.S. definition of terrorism and has advocated donations to groups such as the Palestinian Liberation Organization although the U.S. has listed them as a terrorist organization. According to a CRS report, "...many Saudis identify strongly with the Palestinian people and view support for Palestinian causes as a religious, cultural, or, in some cases, political obligation."¹⁶⁷ Without an internationally agreed upon definition and list of terrorist organization that all states abide by, collective action is difficult if not impossible. Currently states acknowledge the UN lists and also create their own as an added measure; however, since terrorist financing is a cross-border issue, cooperative

¹⁶³ Ruehsen, "Arab Government Response to the Threat of Terrorist Financing," 8-9.

¹⁶⁴ Thomas J. Biersteker and Sue Eckert, "A Comparative Assessment of Saudi Arabia with Other Countries of the Islamic World" (Brown University: Watson Institute for International Studies, [2004]), 7-8, http://www.cfr.org/content/publications/attachments/Revised_Terrorist_Financing_AppendC.pdf (accessed 3 May 2006).

¹⁶⁵ Ruehsen, "Arab Government Response to the Threat of Terrorist Financing," 12.

¹⁶⁶ *Ibid.*, 12.

¹⁶⁷ Prados and Blanchard, "Saudi Arabia: Terrorist Financing Issues," 9.

action is necessary to pursue the funds and prosecute the offenders. Agreement on terrorist groups is an essential component of the international ATF effort.

b. Transparency of Financial Transactions

The Saudi banking system and due diligence requirements are fairly transparent. The Saudi government has established banking standards and requirements that are comparable to western banking standards. According to a report from the Saudi Arabian Monetary Agency (SAMA), "...the Kingdom of Saudi Arabia required all Saudi Commercial Banks to identify accounts in the names of all individuals and entities on the (UN) lists."¹⁶⁸ In addition, according to SAMA, Saudi Arabia has reformed banking rules that govern the "...opening of bank accounts and general operational guidelines...to further strengthen the implementation of 'know your customer' policies."¹⁶⁹ The independent study conducted at Brown University agreed with the report submitted by SAMA. It states that Saudi Arabia, "...is one of only one of three (Arab-Islamic) countries that have taken steps to notify domestic banks of their obligations (under ATF regulations), to impose reporting requirements on banks, to extend these requirements to non-bank financial institutions, and to provide assistance to banks and financial institutions in implementing new legal and administrative measures."¹⁷⁰ Yet, not all experts agree that these measures operate across all spheres of Saudi society. According to Moyara de Moraes Ruehsen, "One criticism that has been voiced repeatedly is that many wealthy financiers with alleged ties to terrorist finances, have close connections to the royal family, and are therefore immune from prosecution."¹⁷¹ Although a transparent banking system has taken shape in Saudi Arabia, the wealthy Saudis that have ties to the royal family may escape penalties for any infractions in the financial sector.

¹⁶⁸ "A Report on Initiatives and Actions Taken by Saudi Arabia to Combat Terrorist Financing and Money Laundering" (Saudi Embassy: Saudi Arabian Monetary Agency, [2004]), 5, <http://www.saudiembassy.net/ReportLink/SAMA%20INITIATIVES%20BY%20KSA%20UP%20DATED%20APRIL%202004.pdf> (accessed 3 May 2006).

¹⁶⁹ Ibid., 6.

¹⁷⁰ Biersteker and Eckert, "A Comparative Assessment of Saudi Arabia with Other Countries of the Islamic World," 11.

¹⁷¹ Ruehsen, "Arab Government Response to the Threat of Terrorist Financing," 12.

c. *Penalty for Noncompliance*

Saudi Arabia's penalties for noncompliance are similar to the penalties in the U.S. and U.K. According to SAMA, Saudi Arabia was one of the first countries to implement UN Resolutions 1267 and 1333 by freezing Osama bin Laden's assets in 1994, and to date has frozen "...42 accounts belonging to eight individuals and entities that total about US\$5,403,404.92."¹⁷² While this amount may seem significant, the international community has frozen more than \$112 million in assets, which implies that these were token efforts to show cooperation rather than earnest efforts to stem the flow of funds to terrorists.¹⁷³ In addition, SAMA states that the penalties for noncompliance include seizure of assets, severe financial fines, and could also include imprisonment.¹⁷⁴ Yet, there are no specific accounts of convictions, fines or people imprisoned for terrorist financing. Without a proven track record of successful investigations and convictions, the success of the regulatory measures comes into question. Conversely, all Islamic charities supported by Saudi Arabia run the risk of guilt by association due to Saudi Arabia's selective enforcement of the regulatory regimes and subsequent penalties if implicated for terrorist financing.

d. *Restriction on Donations*

Saudi Arabia has not placed rights-based restrictions on the charitable sector as the U.S., UK and Russia have; however, there are restrictions on the Saudi population. For instance, freedom of speech is limited to anything that educates or boosts "national unity" yet anything that causes political unrest is banned.¹⁷⁵ These restrictions do not necessarily affect the charitable sector. What have positively affected the charitable sector are the significant restrictions that the other states have not established. Cash-based donations to charities outside of the country are prohibited.¹⁷⁶ In addition, there are significant restrictions on how charities operate through the formal financial

¹⁷² "A Report on Initiatives and Actions Taken by Saudi Arabia to Combat Terrorist Financing and Money Laundering," 5.

¹⁷³ Burr and Collins, *Alms for Jihad*, 49.

¹⁷⁴ "A Report on Initiatives and Actions Taken by Saudi Arabia to Combat Terrorist Financing and Money Laundering," 17.

¹⁷⁵ "Saudi Arabia: Country Reports on Human Rights Practices" (internet: U.S. Department of State, [2004]), 5, <http://www.state.gov/g/drl/rls/hrrpt/2003/27937.htm> (accessed 3 November 2006).

¹⁷⁶ "A Report on Initiatives and Actions Taken by Saudi Arabia to Combat Terrorist Financing and Money Laundering," 5.

sector. These steps have helped Islamic charities increase their credibility and can only pay more positive dividends as long as the regulatory framework can be equally and consistently applied across all pockets of Saudi society.

C. CONCLUSIONS

At the beginning of this comparative study, it was noted that each states' interests mold the direction that the regulatory frameworks will take. Most states seek to maximize their security first and foremost. The 9/11-attacks had a significant impact on most states' security outlook and resulted in over-inclusive policies in an effort to gain a foothold on security; however, not all states were quick to take action in the financial fight. The previous discussion points out that Russia, Sudan, Saudi Arabia and even the U.K. were slower in certain respects to assist the U.S. on tracking terrorist finances, especially through Islamic charities. Terrorist attacks within each state galvanized the governments to take proactive steps in the ATF fight. Logically, states were not motivated to impose significant costs on their financial and private sectors since their immediate interests were not affected. The attacks and subsequent government actions show that very few states are immune to terrorist attacks, and that the ATF regulatory regimes can only work with cooperative and consolidated international action. Yet, not all states within the study were willing to be entirely cooperative and adopt an international outlook on the fight against terrorist financing. In fact, most the states in the study adopted their own list of banned groups. In addition, some of the states refused to take action against certain "terrorist" groups that the U.S. had designated because they did not agree that those groups fit into their own definition of terrorism. Finally, although the penalties for noncompliance were similar across most states in the study, enforcement of those penalties were spotty, and depended on political will and the capability of their legal/investigatory framework to properly investigate and prosecute the groups in question.

The following table illustrates the specific similarities and differences in the ATF regulatory frameworks. The methodology used to construct the table was based off of the methodology used to construct the table in the comparative study conducted by the

Watson Institute for International Studies at Brown University.¹⁷⁷ While the Watson Institute measured the strength of a states ATF regulatory regime according to how far they have gone “beyond the United Nations’ list of individuals or groups associated with the use of terrorism,” the following analysis acknowledges these efforts and goes a step further by assigning significance to the effectiveness of the measures.¹⁷⁸ Effectiveness was based on the information gathered in the previous sections of this chapter. An explanation of the analysis follows the table below.

Relative degree of compliance and implementation			
← Strongest		Weakest →	
Governmental Oversight	United Kingdom Saudi Arabia	Russia United States	Sudan
Transparency of Financial Transactions	United States United Kingdom	Russia Saudi Arabia	Sudan
Penalty for Noncompliance	United States	United Kingdom Russia	Saudi Arabia Sudan
Restriction on Donations	United Kingdom Russia	United States	Saudi Arabia Sudan

Table 2. Comparative Assessment of States’ ATF Regulatory Framework

The United Kingdom and Saudi Arabia received the strongest marks for governmental oversight due to the presence of one agency whose sole purpose is to regulate the charitable sector and specifically monitor these organizations. While the United States has several agencies whose role it is to monitor the charitable sector, its effectiveness is minimized by the lack of specific focus on the charitable sector. Russia is not as strong in government oversight as the UK and Saudi Arabia since it has not designated a specific agency to monitor charities and its ATF regime is so new. Finally, Sudan is the weakest of the cases since its central government is weak and incapable of fully implementing any regulatory framework regardless of their intentions.

¹⁷⁷ Biersteker and Eckert, “A Comparative Assessment of Saudi Arabia with Other Countries of the Islamic World,” 7.

¹⁷⁸ *Ibid.*, 7-8.

The UK and U.S. were strongest in the transparency of the financial sector. Their strengths were due to the implementation of strong financial standards and equal enforcement of financial regulatory regimes; however, although they were the strongest in the study, one area that experts have noted is a drawback of the U.S. and UK ATF efforts is their reliance on anti-money laundering standards.¹⁷⁹ The U.S. and UK could increase their ATF efforts even more by reevaluating the link between government oversight and financial transparency with regard to money-laundering regimes that do not result in effective ATF efforts. Russia and Saudi Arabia do not have as transparent a financial sector, yet they have made an effort to implement and criminalize money-laundering and terrorist financing. Finally, Sudan has taken steps to secure their financial sector in an effort to fuel development; however, these efforts have not specifically focused on anti-money laundering and anti-terrorist financing yet and are not mature enough to evaluate their effectiveness, hence the lowest rating.

The two most important factors affecting Islamic charities are the last two. The United States received the strongest rating for penalty for noncompliance because of the active efforts taken to seize assets, close suspected charities and prosecute those involved. Although the U.S. was given a high rating for these measures, the outcome of investigations and prosecutorial actions do not necessarily yield the desired results. Although the score is high compared to the others in the study, there are clear negative drawbacks that need to be addressed. The UK and Russia received a moderate rating for the attempted actions taken to impose penalties; however, the Russian government has been labeled weak and the UK did not take action until attacked by terrorists in 2005. The political will of both of these states affected their ability to properly respond regardless of the ATF regulatory framework in place. Finally, Saudi Arabia and Sudan received the weakest rating because neither country has demonstrated a willingness to convict groups and/or people for terrorist financing. While the Saudis have instituted legislation, they have not exercised this portion of the legislation. In addition, Saudi Arabia has not publicly investigated any suspicious activity when connected with the royal family.

¹⁷⁹ Donohue, "Anti-Terrorist Finance in the United Kingdom and the United States," 393.

The last factor reflects the unique characteristics and cultural aspects of the cases in the study. The UK and Russia received the strongest rating for restriction on donations not because they have impeded civil rights but because these two countries have attempted to legislate intentions. By legislating intent, these two states have attempted to create a charitable environment free from association with violent political groups. The U.S. received a moderate rating because while the U.S. does not limit association with groups reflecting the American values of unalienable rights under the Constitution, they do take action against people and groups who support terrorism. The U.S. approach minimizes rather than increases the protection of legitimate groups. The last two cases received the lowest rating for restrictions placed on donations; however, the lowest rating does not necessarily indicate a weak or unprotected environment for charitable giving. Sudan received a low rating since they do not restrict donations into the country, yet a weak central government and politically charged atmosphere make the charities that are present in the country vulnerable to terrorist infiltration. Saudi Arabia on the other hand has and will continue to advocate charitable giving through Islamic charities. Yet they have placed restrictions on how donations are made and how charities operate within the financial sector. As such, Saudi Arabia advocates a free-flow of funds to Islamic charities through a regulated system. This can have positive rather than negative effects for Islamic charities and increase their credibility in other states.

While there are some similarities in the regulatory frameworks owing to the UK and U.S. lead on the ATF fight, the differences stem from the political interests of the states. Yet, although the differences in approaches have yielded moderate results in each case, there are some lessons learned that could be applied to each case to increase the ATF regulatory results while minimizing the negative effects to Islamic charities. The following chapter will examine these lessons learned more fully but briefly they are:

- One charity regulatory agency achieves better oversight over the sector.
- One overall list of internationally agreed upon terrorist organizations that operate and/or raise funds across borders is more effective in gaining collective action and cooperation.
- A well regulated financial system is costly to both the public and private sector yet properly applied can protect the charitable sector from terrorist infiltration.

- Penalties for noncompliance are effective tools when fairly applied across all sectors of society and when due process is afforded to the accused. By allowing due process, the donors and charities do not perceive that they are being persecuted or guilty by association, but rather are given the right to face their accuser and argue their case.

Since the regulatory frameworks are predominantly created to increase security, it makes sense that certain aspects of civil rights have been impeded. This is not an endorsement of these actions but rather a logical statement that needs to be addressed properly in the next chapter. Finally, since there are cultural aspects to charitable giving in Islam there should be due consideration given within the frameworks to protect these organizations rather than to put the majority of the burden on them to prove their innocence.

IV. LESSONS LEARNED, POLICY PROPOSAL AND OVERALL CONCLUSIONS

A. LESSONS LEARNED FROM THE COMPARATIVE ANALYSIS

The lessons learned from the comparative analysis are based on a review of the ATF regulatory frameworks in the U.S., UK, Russia, Sudan and Saudi Arabia and their effect on Islamic charities. While there are other lessons that can be gleaned from each experience, the specific ones mentioned in this thesis can be applied collectively as well as individually and are particularly important in the policy options analysis for U.S. policy makers. Before discussing the lessons learned though it is worth examining the international ATF efforts and their effectiveness, since the lessons learned suggest that collective international action is the most effective method for tackling terrorist financing through Islamic charities so as to minimize the negative consequences.

The primary international agency charged with the creation of a collective ATF regime is the Financial Action Task Force (FATF) which was created in 1989 by the G7 as "...a multilateral government organization focused on setting international standards to prevent the laundering of criminal proceeds."¹⁸⁰ The FATF has researched terrorist financing, created typologies for Financial Intelligence Units (FIUs) to use in their role as investigators and monitors, and submitted a set of standards and recommendations for states to follow. In addition, the FATF submitted a second set of special recommendations that included a provision for the regulation of NGOs.¹⁸¹ Finally, the FATF conducted and published peer evaluations and based on those evaluations made a case for imposing certain restrictions and sanctions on a state for noncompliance. According to Laura Donohue in regard to the measures taken by the FATF, "What gives the measures teeth is the enforcement mechanism in the agreement: the FATF can recommend economic sanctions against non-cooperating states and territories."¹⁸² The sanctions are used a carrot and stick, in other words as a penalty or incentive for future compliance. According to the Institute for International Economics, "While economic

¹⁸⁰ Donohue, "Anti-Terrorist Finance in the United Kingdom and the United States," 385.

¹⁸¹ *Ibid.*, 386.

¹⁸² *Ibid.*, 386.

sanctions alone may not dissuade terrorist groups, they may cause states that harbor and support terrorist groups to reconsider the extent of their support.”¹⁸³ Yet, although the FATF measures and sanctions have been analyzed as successful and appropriate, the fear of sanctions can drive a state to adopt over-inclusive measures that have negative consequences as seen with Islamic charities. Based on the comparative analysis and brief discussion on FATF measures, the following are the lessons learned which can be converted into options for policy makers.

1. Single Agency vs. Multiple Agency Approach

Chapter III covered the effectiveness of the single agency approach employed by the UK and Saudi Arabia. The Charity Commission in the UK and the single agency in Saudi Arabia are more effective systems for monitoring and protecting charities than the U.S. system which relies on a number of agencies and standards that charities must abide by. Although the U.S. Department of the Treasury is responsible as the primary agency for creating standards for NGOs, other agencies are responsible for auditing, registering, and monitoring their projects.¹⁸⁴ Yet, the success of the single agency approach is dependent on their authority and enforcement capability and the political will to act when necessary.¹⁸⁵ The single agency versus multiple agency approach consolidates and streamlines efforts and clarifies standards for charities to operate in. In addition, a single agency that properly certifies and audits charities approaches the problem proactively rather than reactively; however, this single lesson learned is not the only answer to properly regulating charities while minimizing the negative effects.

2. One Blacklist of International Terrorist Organizations

Collective action on the blacklist of international terrorist organizations would yield better results than the current patchwork lists that each state creates in addition to the UN lists. Each state and international organization entrusted with ATF has created

¹⁸³ Gary Clyde Hufbauer, Jeffrey J. Schott and Barbara Oegg, “Using Sanctions to Fight Terrorism: Policy Brief” (internet: Institute for International Economics, [2001]), 2, <http://www.iie.com/publications/pb/pb.cfm?ResearchID=79> (accessed 27 March 2006).

¹⁸⁴ Barnett F. Baron, “Deterring Donors: Anti-Terrorist Financing Rules and American Philanthropy,” *The International Journal of Not-for-Profit Law* 6, no. 2 (2004), 3, http://www.icnl.org/JOURNAL/vol6iss2/ar_baron.htm (accessed 7 August 2006).

¹⁸⁵ Ian Fisher, “Airplane Terrorism Case Prompts Questions about the Work of Islamic Charities in Britain,” *The New York Times*, sec. World, 24 August 2006, 3, <http://www.nytimes.com/2006/08/24/world/europe/24charity.html?ei=5088&en=831265e9083effbf&ex=1314072000&partner=rssnyt&emc=rss&pagewanted=print> (accessed 25 September 2006).

their own list of organizations that are labeled as terrorists and sanctioned from the formal financial sector. Each state's list is based on internal as well as external threats. While states may believe that this is an appropriate approach, the international terrorist threat requires cross-border cooperation. If one state supports an organization that another considers a terrorist organization that does not necessarily pose a threat to the listing state, then cooperation issues arise. For instance, the U.S. has listed Interpal as a "specially designated global terrorist" with direct ties to Hamas, yet the UK did not consider them a terrorist organization. In fact, "...two investigations by the British Charity Commission, in 1996 and 2003, gave Interpal a clean bill of health."¹⁸⁶ In addition, "...the EU found the issue of charitable giving to Palestinian causes a difficult problem to resolve...[because]...the EU could not decide if it was possible to disassociate the humanitarian from the political activities of a charitable organization."¹⁸⁷ The more the U.S. pressures other states to take action against groups associated with Hamas (which is not necessarily a threat to the continental United States), the less assistance the U.S. is likely to get later on. A better approach would be to operate off of one internationally recognized blacklist for those organizations that cross borders. Internal lists should only include those organizations that operate within the borders of the listing state.

3. Well Regulated and Transparent Financial Sector

The analysis showed that although costly, a well regulated financial sector can protect the financial sector at a significant cost. The success is not based on actual figures of terrorists caught through the financial sector; rather, NGOs are protected by increasing the probability that illegal/criminal entities will be caught through the financial sector. In addition, Islamic charities that operate through the formal financial sector leave an audit trail that if monitored properly can flag regulators to illegal transactions. Yet, the system has been flooded by suspicious activity reports because banks have been forced to absorb the majority of the cost of monitoring the system and fear under-reporting consequences. In addition, the typologies submitted by the FATF indicate that

¹⁸⁶ Fisher, "Airplane Terrorism Case Prompts Questions about the Work of Islamic Charities in Britain," 1.

¹⁸⁷ Burr and Collins, *Alms for Jihad*, 222.

it is extremely difficult to discern terrorist financing from legitimate transactions.¹⁸⁸ Finally, a well regulated and over-inclusive monitoring system may drive terrorist out of the formal sector into the poorly monitored informal system. Between the polar opposites of highly suspicious behavior and ordinary business, "...it is possible to design intermediate measures that target only a narrow range of transactions that are unusually amenable to the purposes of terrorists."¹⁸⁹ For instance, the public and private sector can work together to share information through a system of incentives such as tax breaks, etc.; however, this will require increased public involvement in the private sector, increasing the cost for small returns.¹⁹⁰ This lesson is difficult because a well regulated system is essential in securing legitimate transactions, but if done correctly is quite costly. According to expert analysis, an increase in human intelligence and cooperation with other states can yield the best results given this probability.¹⁹¹

4. Equally Applied Penalties for Noncompliance and Due Process

The final lesson learned from the comparative analysis is that states such as Saudi Arabia, that have not publicly taken action against suspected terrorist financiers due to their ties to the royal family, have decreased the confidence from international partners that the Saudis are serious about terrorist financing.¹⁹² As a result, ATF measures are ineffective since a sector of Saudi society is above reproach.¹⁹³ Yet, it is important to note that western pressure that discounts the cultural and religious aspects of charitable giving in Islam may be a part of the problem. In fact, "King, Crown Princes, and princess (of Saudi Arabia) have taken their responsibility to spread Islam throughout the world very seriously."¹⁹⁴ The use of blanket policies causes a conflict of interest for the Saudi royal family when it comes to punishment or imposition of penalties.¹⁹⁵ One

¹⁸⁸ "Report on Money Laundering Typologies: 2003-2004" (Paris, France: Financial Action Task Force Secretariat, [2005]), <http://www.fatf-gafi.org/dataoecd/19/11/33624379.PDF> (accessed 31 May 2006).

¹⁸⁹ Davis, "The Financial War on Terrorism," 193.

¹⁹⁰ Donohue, "Anti-Terrorist Finance in the United Kingdom and the United States, 394. See also Davis, *The Financial War on Terrorism*," 197.

¹⁹¹ *Ibid.*, 406.

¹⁹² Frontline, PBS, 6 November 2001.

¹⁹³ Ruehsen, "Arab Government Response to the Threat of Terrorist Financing," 12.

¹⁹⁴ Burr and Collins, *Alms for Jihad*, 29.

¹⁹⁵ Ruehsen, "Arab Government Response to the Threat of Terrorist Financing," 8.

possible solution to this conflict of interest is an international standard for state responsibility regarding legal culpability for actions of a charity supported by a state and operating in other countries. For instance, Islamic Relief which has its headquarters in the UK also has offices in ten other countries. At the beginning of their annual report they states that “The offices [in the other countries] are established as separate independent legal entities in their own jurisdictions.”¹⁹⁶ By requiring the UK to impose legal standards on the charity and its subsidiary offices in other countries, equal enforcement is enhanced.

Equally applied due process is also an essential component that is necessary for an effective ATF regulatory framework. For instance, the U.S. has conducted investigations and prosecuted people based on secret evidence. As a result, assets have been frozen and Islamic charities have been closed without the possibility for redress. U.S. Courts have upheld the government’s position, and as such, charities must operate in an environment that is hostile rather than protective.¹⁹⁷ Equal enforcement is an aspect of policy that can be monitored and implemented with only small costs. Yet, political issues and rights-based concerns are also important and should be considered during policy reformulation.

B. POLICY OPTIONS FOR U.S. POLICY MAKERS BASED ON COMPARATIVE ANALYSIS

The comparative analysis showed that some of the tools employed by states to stem the flow of funds to terrorists were directly derived from anti-money laundering regimes. In addition, the analysis showed that while terrorist financing has similar aspects of money-laundering, the regimes are not sufficient to identify and track terrorist financing. Finally, the analysis showed that the regimes actually have a negative strategic effect on Muslim communities due to the negative effects felt by Islamic charities. The lessons learned from the comparative analysis can be translated into options that U.S. policy makers can adopt to improve the ATF regulatory framework and their results and effects on Islamic charities. Some of the policy options may be

¹⁹⁶ Hany El-Bana, “Islamic Relief: Financial Statements for the Year Ended 31st of December 2004” (internet: Islamic Relief, [2005]), <http://www.islamic-relief.com/submenu/pdf/IR%20Financial%20Statements%20Dec%202004.pdf> (accessed 31 May 2006).

¹⁹⁷ Donohue, “Anti-Terrorist Finance in the United Kingdom and the United States,” 415.

unrealistic and others can be implemented without significant controversy. Yet, none of the proposed policy changes will work optimally if implemented separately. They work as an overall plan rather than as singular changes. There are four proposed policy changes, each followed by a discussion on their viability.

1. Increase U.S. Department of the Treasury Resources and Personnel for ATF Efforts

The first policy change is based on the overall comparative analysis that showed that the current ATF efforts have been somewhat ineffective in stemming the flow of funds to terrorist organizations and at the same time have alienated Islamic communities and Islamic charities. There needs to be a reevaluation of Treasury's capability for setting standards, training financial officials, and taking a proactive approach with Islamic charities to assist them in protecting themselves based on the fact that Treasury seems to be overwhelmed. For instance, you can see this through the hard-to-use blacklists that are simply a laundry list of people and aliases without the capability of electronically searching the list.¹⁹⁸ Another example is Treasury's reliance on the private banking sector for monitoring and reporting which floods the system with suspicious reports that they have no hope of being able to sift through with any reliability. There were over 12,000 suspicious activity reports in 2002, and they continue to climb as the Federal government continues to impose penalties for under-reporting which in turn drives over-reporting.¹⁹⁹

One explanation for Treasury's inefficiency is that there are only four dedicated members of Treasury who are responsible for the entire ATF effort.²⁰⁰ While increasing the number of personnel can be costly, the added personnel might produce better results and allow Treasury to take a more proactive approach. This suggestion does not necessarily agree with the lesson learned that one dedicated agency is better than multiple agencies for monitoring charities. Yet, for the U.S. it is unrealistic to dismantle the entire system and create a new institution that is singularly dedicated to monitoring charities.

¹⁹⁸ See US Treasury website for the list of special designated nationals to show that the list is not easy to use. The lists are available online at <http://www.ustreas.gov/offices/enforcement/ofac/sdn/> (accessed 1 November 2006).

¹⁹⁹ *Ibid.*, 399.

²⁰⁰ This figure of Treasury professionals dedicated to the ATF efforts is based on information given by Jacob Shapiro in his Terrorist Financing course given Spring 2006 at the Naval Postgraduate School.

The current system though can be augmented to increase its capability for providing not only crucial government monitoring but also provide charities with assistance and protection. The down side is that increasing the amount of personnel without establishing incentives for proper suspicious activity reports or disincentives for over-reporting will only increase the number of personnel that sift through the thousands of reports. Treasury's personnel issues and the quality of suspicious activity reports have been the subject of Congressional Hearings, and as such, has the most probability of further U.S. policy-maker attention.²⁰¹

2. Build Partnership between Muslim Community and U.S. Government

A second policy change involves a partnership between the Muslim community and U.S. policy makers in an effort to build understanding and cooperation. This partnership could take shape by building a central clearing house that operates as a certifying agency similar to the UK Charity Commission. Treasury has indicated interest in working with a Muslim umbrella group. For instance,

Treasury sponsored a gathering that included individuals from the Better Business Bureau's Wise Giving Alliance and the Evangelical Council on Financial Accountability to encourage Muslims to follow their models in forming an umbrella group under the auspices of an organization like ISNA which ultimately would provide some sort of 'seal of approval' for member groups. At ISNA's annual convention in Chicago in the fall 2004, the representatives of Muslim charities doing work in the US and abroad raised concerns about which groups could best lead this effort and questioned whether Muslims needed to organize separately in the first place.²⁰²

Yet, to date, there has not been a formal pact to work together or form a formal partnership between Treasury and Muslim groups. In contrast, Treasury seems to have submitted a list of Muslim groups associated with ISNA to the IRS for investigation, rather than work with the group to implement auditing and certifying processes.²⁰³

²⁰¹ Michael G. Oxley, et. al., Financial Services, U.S. House of Representatives, "Starving Terrorists of Money: The Role of Middle Eastern Financial Institutions," 1st sess., 2005, 6-7, 33, <http://www.mipt.org/pdf/Starving-Terrorists-Money.pdf> (accessed 3 November 2006).

²⁰² Laila Al-Marayati, "American Muslim Charities: Easy Targets in the War on Terror" (internet: The Muslim Public Affairs Council, 2004), 7, http://mpac.org/home_article_display.aspx?ITEM=755 (accessed 31 May 2006).

²⁰³ Guinane, Horowitz and Oman, "Muslim Charities and the War on Terror: Top Ten Concerns and Status Update," 15.

Another aspect of the partnership would include a white list of cleared charities to rival the blacklisted organizations. A white list would be a good faith gesture to the Muslim community as well as reassure donors that their funds will go to legitimate causes. In essence, a white list in conjunction with blacklists that already exist would provide donors and charities with a ‘safe haven’. Treasury officials argue that they are not in the business of policing the charitable sector and would prefer that the charitable sector police themselves. In addition, although Treasury officials maintain that a white list would signal to terrorist groups which groups have been cleared and give terrorist insight into the government’s intelligence methods, in actuality a white list would do the opposite.²⁰⁴ There is no question that terrorist groups shift tactics in step with and ahead of investigations, yet a white list would not give them additional information that they would not already be able to get elsewhere. In contrast, a white list would reassure donors and charitable groups that the government is willing to work with them rather than against them in the protection of charitable funds. Although a white list would require constant attention and recertification, the humanitarian community would benefit greatly from this effort. Of course, this would add to Treasury’s already large workload and would require more manpower and resources. A third party umbrella group could provide the top cover as long as Treasury validates the certification process.

3. Transform U.S. Policy in Regard to Groups that Do Not Pose a Direct Threat to the U.S. to Facilitate Collective International Action

The third policy suggestion is two-fold. It requires a shift in U.S. foreign policy with regard to groups that do not necessarily pose a direct threat to the U.S., and an understanding of cultural and political aspects of states in an effort to build collective action. Since a majority of the ATF efforts depend on international collective action, it is unproductive for U.S. policy makers to pressure other states to impose penalties on groups that have no direct impact on U.S. interests. For instance, in the case of charitable donations to Palestinian groups and causes in Saudi Arabia, a better U.S. approach would

²⁰⁴ Oxley, et. al., “Starving Terrorists of Money: The Role of Middle Eastern Financial Institutions,” 23.

have been to work with Saudi officials on suspected terrorist connections and ask for information rather than pressure Saudi Arabia to take action which would cause a conflict of interest.²⁰⁵

An examination of Congressional Hearings indicated that U.S. policy makers are concerned with the negative effects of ATF policies on the humanitarian sector and the Islamic humanitarian sector in particular. In fact, they acknowledged that better partnerships and collective action are needed to be successful; however, the hearings included generalizations on *wahhabism*, extremism, *madrassas*, and other Islamic institutions and ideologies.²⁰⁶ Chapter II illustrated the disconnect between western understanding of these terms and their meaning in Islam. In addition, repeated generalizations will not increase Saudi cooperation with U.S. policies. The suggested solutions included the creation of FATF regional bodies, and more rigorous ATF laws. Yet, the comparative analysis showed that even the U.S. and UK that have strong ATF regulatory regimes, are not entirely effective in stemming the flow of funds to terrorists.

Experts agree that collective action would strengthen the current regimes.²⁰⁷ One possible action that would assist in forming these collective bonds would be to actively work on an agreed upon definition for international terrorism that can assist states in the formulation of policies in line with that definition.²⁰⁸ Yet, even the United Nations "...is not able to come up with a definition of terrorism, because much of the world will not accept the definition of terrorism that does not exclude all Palestinian extremists from the definition."²⁰⁹ In the absence of an agreed upon definition, states should be required to work off of one blacklist of organizations for collective action rather than pressuring states to work off of a blacklist formulated by the U.S. that discounts their own interests. By working with rather than against other states, the U.S. may increase the quality of information and form better partnerships in the ATF fight. Although this suggestion

²⁰⁵ Ruehsen, "Arab Government Response to the Threat of Terrorist Financing," 12. See also Oxley, et. al., "Starving Terrorists of Money: The Role of Middle Eastern Financial Institutions," 2-3.

²⁰⁶ Ibid. 1-2.

²⁰⁷ Clunan, "Collective Action Problems in the Fight against Terrorist Financing," 2-3.

²⁰⁸ Oxley, et. al., "Starving Terrorists of Money: The Role of Middle Eastern Financial Institutions," 9.

²⁰⁹ Ibid., 9.

works against rather than with the current U.S policy of banning all forms of terrorism, it would increase the amount of international support for securing charities.

4. Implement Clear Lines of Authority among U.S. Agencies to Advocate Clear ATF Policy and Affect Political Will of Developing States

Finally, one last policy suggestion is based on the analysis which showed that the states that are most vulnerable to terrorist infiltration are those that have weak governments and poor ATF regulatory regimes. These in turn cause a problem for the stronger states since funds cross borders and jurisdictions; thus, their ATF efforts are not as successful. The policy suggestion requires U.S. State Department participation in affecting the political will of foreign governments such as Sudan. Yet, the analysis shows that the current efforts are not enough. In reality, charitable groups that have dual humanitarian and terrorist missions cannot gain a foothold in a country without the explicit or implicit permission of the host government. This can be given either directly or indirectly through formal permission or official disregard for the groups operating in a region.

The current method of enforcing sanctions and imposing significant penalties through the formal financial sector have yielded some success but additional diplomatic efforts would increase the success of those economic tools. The U.S. State Department has made diplomatic strides; however, their efforts are separate from those made by the Treasury department.²¹⁰ Since the two agencies work independently of each other, their ability to successfully affect the political will of foreign governments is diminished.²¹¹ A better approach to affecting the political will of weak states along with the imposition of sanctions and financial sector penalties would be a collective offer of assistance in building the proper laws, regimes, and infrastructure to properly monitor the financial sector. Positive steps along with the negative disincentives may increase political will and participation.²¹²

While this policy suggestion is the most logical and positive, it is the least likely to be implemented since bureaucratic politics tends to affect the ability for domestic

²¹⁰ Oxley, et. al., "Starving Terrorists of Money: The Role of Middle Eastern Financial Institutions," 14.

²¹¹ Clunan, "Collective Action Problems in the Fight against Terrorist Financing," 28.

²¹² Ibid., 35.

organizations to operate collectively. In fact, “Officials at the State Department, FinCEN, and Treasury’s Office of Foreign Asset Control suggested that cooperation on counterterrorist financing was eroding in the area of international technical assistance because of interagency problems, particularly with Treasury’s Office of Technical Assistance, and a number of personalities.”²¹³ Yet, this policy suggestion comes with the least amount of cost and the most impact to collective international efforts. In addition, this suggestion although it has no direct impact on charitable organizations, could influence the implementation of the tools internationally to protect the formal financial sector and increase charitable security.

C. OVERALL CONCLUSIONS

The information in the previous chapters have demonstrated that Islamic charities, although they have been associated with terrorist organizations, hold an important role in Islam and are a cultural hot-spot that affect the hearts and minds of millions of people and numerous states. Although finding and stopping funds from flowing to terrorist organizations are important steps in the fight against terrorism, there are clear implications for charitable organizations. The tension that exists between government action to stem the flow of funds to terrorist organizations and charitable Islamic organizations are significant and have been the subject of Congressional Hearings, nonprofit watchdog organizations, scholars, and the media. An examination of the ATF regulatory regimes in five different states showed that the current individual efforts are insufficient in stopping funds from reaching terrorist organizations; the international efforts are a reflection of U.S. and UK interests and methods which may be inappropriate for the informal financial sector and insufficient for the Arab banking sector; and, the implementation of the regulatory regimes create the opposite result from the intended strategic goals by alienating the Muslim community from the mainstream charitable sector.

The initial hypothesis regarding the solution to the tension that exists between regulatory regimes and Islamic charities was that increased collective international action, with an expanded understanding of the role of Islam in governance and charitable donations, would go a long way to mitigating the negative consequences to legitimate

²¹³ Clunan, “Collective Action Problems in the Fight against Terrorist Financing,” 28.

Islamic NGOs. The subsequent analysis showed that individual efforts within states have had some degree of success in stemming the flow of funds to terrorist organizations, but could be much more successful with collective action in certain areas such as blacklisting, information sharing, and enforcement of standards and penalties for noncompliance. Yet, the success of the ATF efforts in protecting charities from terrorist infiltration while keeping humanitarian efforts open for operation are less successful. The significance of this conclusion was discussed in Chapter II. Essentially, Islamic charities hold an important role in both Islamic and non-Islamic states by providing an outlet for religious obligations and enhancing personal satisfaction. In developing states, Islamic charities create and support health systems, schools, sustainable development projects, and provide support to refugees and victims of violent political conflict. Yet, the ATF regulatory efforts have primarily focused on stopping funds from reaching terrorist organizations without regard to their effect on legitimate organizations. The intended result was to create a “safe” environment for charities to operate in; however, the results of these efforts actually achieved the opposite effect. The ATF regimes have alienated Muslim communities by negatively affecting the hearts and minds of millions of people. In addition, there is a possibility that future intelligence efforts will not yield successful results since the trust and confidence of Muslim communities with governments has decreased as a result of ATF efforts.

As a result of the tensions and problems discussed in Chapter II, Chapter III analyzed the regulatory regimes of five states to determine its effectiveness and discover weak points that can translate into improvements in the ATF regulatory efforts. Yet, there are obstacles to the implementation of the recommendations both internationally and domestically. In addition there are potential drawbacks that policy makers need to be aware of if the suggested changes are implemented. As previously stated, the most important take-away from the analysis is that collective international action is much more effective than individual state actions. Although there are differences in state interests with regard to Islamic charities, basic monitoring and auditing standards applied collectively could yield positive results. In addition, increased legal state responsibility for entities headquartered in their borders and operating in other countries would increase the standards by which charities operate in unregulated and developing states such as

Sudan. Finally, equally enforced penalties for noncompliance would show good faith among states and increase confidence in legitimate charities that pass the monitoring tests.

While the suggested changes could yield positive results, there are obstacles to implementation of the suggested changes/enhancements. The UN, as an international enforcement institution, lacks the will to enforce standards. The reason for this is that the UN is a reflection of individual state interests rather than an impartial and authoritative international organization. The collective action analysis conducted by Clunan suggests that "...the existence of a hegemon or a small group of powerful states that is both willing and able to promote and underwrite an international counter-terrorist regime is often essential for such a regime to form when states have an incentive to pass the costs of the regime off to others."²¹⁴ The current structure resembles the international regime theory illustrated by Clunan, yet the result of actions taken by the U.S. and UK have demonstrated that powerful states have demonized and alienated important groups that would be helpful for anti-terrorist efforts; and, collective action has been slow to evolve due to diverging interests. The Saudi Arabia case illustrated this point. The previously suggested tactical collective action through enforcement of standards and monitoring regimes is a compromise to the larger and difficult to achieve international collective action through an international institution such as the UN.

Another obstacle that has affected collective international action is the cost-benefit analysis that governments undertake when weighing which actions to take. Additional political and monetary costs can deter governments from taking the steps necessary to change their policies. For instance, most governments are typically reluctant to absorb responsibility for the actions of a private institution established in that country but operating outside of their borders. In addition, charitable institutional actions are below the scope of state-on-state interactions where other factors are present in the strategic relationship between states. Yet, regardless of the additional political and monetary costs to a government and the legal restrictions that go along with public interest in private business actions, governments should adjust their outlook and consider

²¹⁴ Clunan, "Collective Action Problems in the Fight against Terrorist Financing," 8.

Islamic and other charities as multi-national corporations. In this respect charities can “...link nations more tightly to one another...” and increase collective action.²¹⁵ Although this would cause more state interest into charitable institutional actions and increase collective action, a more likely scenario which is exhibited in the current ATF effort with regard to charities is that governments impose penalties on private institutions if caught engaging in criminal activity. The responsibility is shifted to the private rather than the public sector. The final and most important obstacle to collective international action, which ultimately affects the cost-benefit analysis of states, is the lack of a common definition of terrorism and material support for terrorism. Without a common definition, the end result is an unequal and subjective enforcement of standards and penalties across states and individual cases. The common definition is hampered by domestic interests, which prohibit the formation of an international agreement on the definition of terrorism and material support for terrorism.²¹⁶

Domestic obstacles have prohibited states from making changes to the ATF regulatory regimes. Specifically for the U.S., the interagency process and reaction from domestic constituencies has dominated policy formulation. While the recommendations would require a change in direction for the Treasury Department, an increase in resources, and a streamlining of responsibilities for the ATF effort specifically for charitable actions, “...domestic agencies are likely to pursue their bureaucratic interests at the expense of the collective effort.”²¹⁷ Since Treasury is overwhelmed by suspicious activity reports and other ATF efforts, they are unable and unwilling to monitor charities and certify their legitimacy. In addition, other U.S. agencies are involved in auditing and investigating charities while Treasury is primarily responsible for ATF efforts. Bureaucratic politics further affects the ability for all agencies to work together to properly offer a safe environment for charities to operate in.

An increase in resources and expansion of government’s role in private institutions could spark a negative reaction from the private sector. Most private institutions want less government involvement rather than more government

²¹⁵ Gilpin, *Global Political Economy: Understanding the International Economic Order*, 290.

²¹⁶ Clunan, “Collective Action Problems in the Fight against Terrorist Financing,” 17.

²¹⁷ Clunan, “Collective Action Problems in the Fight against Terrorist Financing,” 26.

involvement; however, more government regulation and involvement in the private sector would provide the needed top-cover for charities that would reassure donors that their money is used for legitimate humanitarian purposes. While a formal partnership between government and the Muslim community would resolve some of the tension, there are additional domestic drawbacks to this partnership. This partnership would entail a third party Muslim umbrella group that would monitor and audit charities for the government to certify their legitimacy. In conjunction with this certification, the government could produce a 'white list' of certified Islamic charities that would further reassure the donor population. The 'white list' would need to be reevaluated on a continual basis to prevent terrorist infiltration to certified and cleared charities. While U.S. policy makers have showed interest in a partnership with the American Muslim community, they have rejected the 'white list' suggestion; however, this analysis has shown that a white list would provide more benefits for donors, charities and the overall ATF effort.

Other suggestions for U.S. policy makers included a reevaluation of U.S. policy in regard to groups that have cultural and political ties to ATF partner states and have no direct impact to U.S. security. This recommendation is dependent on the political outlook of the policy makers. In other words, if the policy makers are realists that are purely concerned with U.S. security interests in the narrowest sense, then a reevaluation is possible. Yet, if policy makers are idealists who both believe in a broader security definition for the U.S. and its allies and are backed by an equally idealistic constituency base, then a reevaluation is not possible.²¹⁸ In either case, the reevaluation is dependent on the personalities and constituencies present. The recommendation that states should operate off of one consolidated international blacklist for groups that operate internationally, while maintaining their own domestic lists for purely domestic actors would facilitate the reevaluation of domestic policies. This suggestion is a realistic approach to ATF. It acknowledges that not all states have equal interests and that the U.S. should focus on efforts that directly increase U.S. security without alienating international partners that are essential in the collective effort. This suggestion above all

²¹⁸ This reference is based on class discussion in the introduction to International Relations class taken at the Naval Postgraduate School Fall 2005.

others does not require an expansion of government agencies, nor require additional resources and would actually have the greatest impact on the collective effort.

Further study regarding the suggested solutions is required to examine whether the intended results are achievable; however, the analysis showed that Islamic charities have been negatively effected; donor confidence is down due to ATF efforts; states' efforts have not yielded optimal results; and, collective action is essential in both stemming the flow of funds to terrorist organizations and securing the charitable environment. The U.S. can lead the effort by reexamining the results of their efforts, not based on assets frozen but rather on amount of groups protected from terrorist infiltration due to ATF regulatory regimes. A reevaluation is the first step in a good faith effort to protect Islamic charities both from terrorists and unintentional consequences from government action.

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