THE MORAL HAZARD OF ANTI-TERRORISM FINANCING MEASURES: A POTENTIAL TO COMPROMISE CIVIL SOCIETIES AND NATIONAL INTERESTS

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TABLE OF CONTENTS

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I. INTRODUCTION

Radical, fundamentalist Islamic terrorists have targeted civil societies for attack,[1] in the course of which they use and abuse philanthropic structures and charitable institutions. In the wake of the 9/11 tragedies, the global war on terrorism took shape quickly. President George W. Bush issued Executive Order 13,224, in which he declared a national emergency to deal with the threat of future terrorism.[2] Congress responded with a powerful weapon, the USA PATRIOT Act ("Patriot Act"), which provided measures aimed to detect, prevent, and suppress terrorist financing.[3] The United Nations Security Council ("U.N.S.C.") unanimously adopted Resolution 1373 to universally obligate member states to commit to constructing numerous counterterrorism infrastructures.[4] An intergovernmental body established by the G-7 nations, the Financial Action Task Force ("FATF"), after endorsing U.N.S.C. Resolution 1373, released nine Special Recommendations containing

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1. *See, e.g.*, WALTER ENDERS & TODD SANDLER, THE POLITICAL ECONOMY OF TERRORISM 48 (2006); Matthew Levitt, *Stemming the Flow of Terrorist Financing: Practical and Conceptual Challenges*, FLETCHER F. WORLD AFF., Winter/Spring 2003, at 59, 59.

2. Exec. Order No. 13,224, 3 C.F.R. 786 (2001), *reprinted as amended in* 50 U.S.C. § 1701 at 741–43 (Supp. V 2007). For further discussion of Executive Order 13,224 and the authorizations it conferred, see Nina J. Crimm, *High Alert: The Government's War on the Financing of Terrorism and Its Implications for Donors, Domestic Charitable Organizations, and Global Philanthropy*, 45 WM. & MARY L. REV. 1341, 1364–96 (2004) [hereinafter Crimm, *High Alert*].

3. *See infra* notes 153–55 and accompanying text.

4. *See infra* notes 160, 163–68 and accompanying text.

due diligence, disclosure, transparency, and accountability standards on which countries across the globe could model their anti-terrorism financial regulatory schemes.[5]

Although reactive regulatory regimes would be intended to serve the extremely important national interest of protecting security within a country's borders, such legal systems can simultaneously constrain philanthropic aid structures and nongovernmental organizations ("NGOs") crucial to healthy civil societies. In so doing, anti-terrorism finance regulatory regimes ironically may compromise essential national interests, including national security. This effect perhaps may be particularly pronounced within some predominantly Muslim countries.

As Islam places a high value on compassion, wealth redistributions, social justice, and supporting and enhancing fellow humans, both philanthropy and charity play crucial roles for Muslims and their civil societies. This Article begins with an explanation of religious foundations to stress the importance Muslims attach to *zakat* and *sadaqah* as philanthropy and charity. Part II also discusses the intermediary structures typically used for such monetary redistributions to intended recipients. There is considerable evidence that these philanthropic and charitable structures perform not only an economically integral function in Muslim civil societies, but that they also are socially, culturally, and politically institutionalized.

Part III considers the debate surrounding the concept of Muslim civil society and the premise on which the notion is constructed. The discussion reflects on implications of the symbiotic relationship of civil society and the state. Because one such implication is that the state constructs a legal regulatory regime in which civil-society actors and their financial support mechanisms must operate, Part IV addresses a range of regulatory climates that states constructed without counter-terrorism financing as the focus. After presenting some general background information, Part IV highlights the regulatory climate of three select countries in the Middle East and South Asia from which large proportions of Muslim-Americans emigrated. In the past, Muslim-Americans' diaspora philanthropy has flowed to such countries. Therefore, these funds, intended to support civil-society actors and sustain needy Muslims in Muslim-Americans' native lands, are subject to both U.S. and foreign regulatory controls.

Part V reviews post-9/11 measures of the United States, the U.N.S.C., and the FATF to suppress and prevent terrorist financing. It then briefly outlines regulatory measures of the same three countries discussed in Part IV that exist for use within their borders

5. *See infra* note 191 and accompanying text.

to combat terrorism financing. Finally, as one of the only available objective measures of the success of anti-terrorism financing initiatives, Part V focuses attention on the small amounts of money that governments worldwide have frozen as a result of enforcement of anti-terrorism finance laws.

In Part VI, I submit that strict and comprehensive anti-terrorism finance laws modeled on the FATF standards actually might have unfortunate potentials, counterproductive to their goals of preventing and combating terrorism. Such laws could alter the legal landscape for philanthropic and charitable giving by Muslim-Americans, as well as other Muslims, and effectively cut off financial support for needy Muslims and Muslim civil societies' actors. By doing so, the same destabilizing factors that vigorous civil societies work to alleviate—social, economic, and political inequalities within a society, such as structured educational deprivations, relative economic inequities, denial of civil liberties, and political alienation—could be aggravated.[6] Because these are several troubling factors touted as key causes of terrorism, I suggest that their exacerbation could compromise national security interests, as well as other national interests of the United States and other countries around the globe. Such possible costs are high and should not be overlooked as countries are prodded to adopt, implement, and enforce comprehensive and strict counter-terrorism finance legal regimes.

Nearly seven years after the United States, the U.N.S.C., the FATF, and some countries around the world adopted anti-terrorism finance strategies in the first reactive wave to the 9/11 tragedies, it may be time to rethink them. Perhaps more nuanced, targeted, and tailored approaches could be developed to mitigate the moral hazard of the current anti-terrorism finance tactics.

II. ROLES OF ZAKAT, SADAQAH, AND THEIR REDISTRIBUTION MECHANISMS

A. Islam Defines the Value, Roles, and Preferred Recipients of Zakat and Sadaqah

The Qur'an is considered the "fountainhead of all knowledge dealing with human life."[7] Passages throughout the Qur'an emphasize compassion, wealth redistributions, social justice, and sustaining and enhancing fellow humans as important humanitarian and social-political qualities. One Qur'an segment metaphorically likens *zakat*, one of Islam's five pillars[8] that

6. *See infra* note 248 and accompanying text.

7. Abraham I. Katsh, *Judaism and Islam*, 36 J. EDUC. SOC. 400, 401 (1963).

8. *See The Five Pillars of Islam*, BBC RELIGION & ETHICS, Oct. 2, 2002,

obligates Muslims to annually tithe at least 2.5% of their wealth to the needy,[9] to "rain that further nourishes a fertile garden whose yield is doubled."[10] The Qur'an also prosaically speaks to the substantial worth of voluntary charitable giving "in the Cause of Allah," known as *sadaqah*.[11] One such verse notes that "[t]he likeness of those who spend for Allah's sake is as the likeness of a grain of corn, it grows seven ears[,] every single ear has a hundred grains, and Allah multiplies (increases the reward of) for whom He wills, and Allah is sufficient for His creatures' needs, All-Knower."[12] Hadiths, a collection of stories that capture the Prophet Muhammad's life, teachings, and deeds to form a foundation for Muslim *shari'a* (laws), traditions, and culture,[13] indicate the significance Islam assigns to *sadaqah*: "On every bone of the fingers charity is incumbent every day . . . ."[14]

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http://www.bbc.co.uk/religion/religions/islam/practices/fivepillars.shtml (last visited Aug. 28, 2008). The other four pillars, or tenets, of Islam are *shahadah* (reciting the basic statement of the Islamic faith), *salat* (performing the ritual prayer five times daily), *sawm* (fasting during daylight during the holy month of Ramadan), and *hajj* (making pilgrimage to Mecca). *Id.* These pillars are considered compulsory and not merely voluntary acts. *See id.* Indeed, the word "Islam" is Arabic for "submission," and the pillars are submissions to the deity, Allah. James D. Davis, *Five Pillars Are Key to Faith; Responsibility, Prayer, Charity and Forgiveness Are Among Elements of Islam*, SUN SENTINEL (Ft. Lauderdale), Sept. 24, 2006, at 1J.

9. *See* Crimm, *High Alert, supra* note 2, at 1349; Davis, *supra* note 8, at 1J. Shia Muslims are obligated to tithe 20% of their income beyond living expenses. KHALIL JASSEMM, ISLAMIC PERSPECTIVE ON CHARITY 19 (2007).

10. Azim Nanji, *Charitable Giving in Islam*, 5 ALLIANCE 1 (Mar. 1, 2000), *available at* http://www.islam.co.za/awqafsa/sorce/library/Article%209.htm (referencing Qur'an, 2:265).

11. Imam Ghazaali, *Sadaqah – Giving in Charity*, http://www.uwt.org /Sadaqah.asp (last visited Aug. 28, 2008). *Sadaqah* includes monetary as well as nonpecuniary charity, such as performing good deeds. *Id.* Thus, just as a voluntary donation of currency to a needy individual or institution is *sadaqah*, so too is a visit to a sick person, physical assistance given a frail individual, or recitation of a prayer for a dying person. *Id.*

12. *Id.* (quoting Qur'an 2:261).

13. One scholar has described it as "oral law." Katsh, *supra* note 7, at 402.

14. MAULANA MUHAMMAD ALI, A MANUAL OF HADITH 210 (1944) (quoting Habu Hurairah), *available at* http://aaiil.org/text/books/mali/manualhadith /manualhadith.pdf. Another Hadith story reflects the vital importance of *sadaqah*:

> The Prophet (S.A.W.) said: "Charity is a necessity for every Muslim." He was then asked: "What if a person has nothing?" The Prophet replied: "He should work with his own hands for his benefit and then give something out of such earnings in charity." The Companions asked: "What if he is not able to work?" The Prophet said: "He should help poor and needy persons." The Companions further asked "What if he cannot do even that?" The Prophet said "He should urge others

The Qur'an catalogs seven categories of people religiously sanctified and thus entitled to receive *zakat*: "the poor, the deprived, the destitutes [sic], the homeless, the sick, the wayfarer, and others who are in need for help."[15] Muslims widely believe that, according to the Prophet Muhammad, the world's neediest Muslims, rather than persons of non-Islamic faiths, must be the recipients of *zakat* contributions.[16] By contrast, recipients of *sadaqah* need not be Muslims.[17] The Qur'an extols as especially virtuous *sadaqah* given anonymously and without publicity.[18] Indeed, just as it is imperative that a Muslim give *zakat* for his prayers to be accepted by Allah[19] and *sadaqah* so as not to bring irreparable religious deprivation upon the individual, so too disclosure of the giver's identity would be a severe spiritual disgrace.[20]

Thus, with perhaps the exception of remittances to family members, it would be common for Muslims to discreetly direct their charitable and philanthropic monetary contributions through intermediary structures. To this end, Muslims traditionally often channeled their *zakat* and *sadaqah* through Islamic charities, mosques, and other agents. At least before 9/11, Muslim-Americans were no exception. They used such intermediaries to make contributions to their native countries.

> to do good." The Companions said "What if he lacks that also?" The Prophet said "He should check himself from doing evil. That is also charity."

The Tamil Islamic E-Library on the Net, *Zakah & Sadaqah*, http://www.tamilislam.com/ENGLISH/BASIC/zakah_sadaqah.htm (last visited Aug. 28, 2008).

15. Alex Cohen, *Day to Day Show: Muslims Concerned About Donations, Interview of Imam Sayed Moustafa Al-Qazwini* (NPR radio broadcast, July 26, 2007). Islam teaches that the categories of qualified recipients actually have a right or an entitlement to receive *zakat*. *See* JASSEMM, *supra* note 9, at 80.

16. Kathryn A. Ruff, Note, *Scared to Donate: An Examination of the Effects of Designating Muslim Charities as Terrorist Organizations on the First Amendment Rights of Muslim Donors*, 9 N.Y.U. J. LEGIS. & PUB. POL'Y 447, 472 (2005); *see also* Damien Henderson, *Shaking the Pillars of Islam,* THE HERALD (Glasgow), Dec. 7, 2004, at 12.

17. *See* Henderson, *supra* note 16, at 12; *cf.* Timur Kuran, *The Provision of Public Goods under Islamic Law: Origins, Impact, and Limitations of the Waqf System*, 35 LAW & SOC'Y REV. 841, 859 (2001) (stating that freed slaves could be *waqf* beneficiaries).

18. Qur'an 2:271; *see* Nanji, *supra* note 10.

19. *See* Cohen, *supra* note 15.

20. *See* Nina J. Crimm, *Muslim-Americans' Charitable Giving Dilemma: What About a Centralized Terror-Free Donor Advised Fund?*, 13 ROGER WILLIAMS U. L. REV. 375, 378 (2008) [hereinafter Crimm, *Muslim-Americans' Charitable Giving Dilemma*].

B. Intermediary Structures Used to Direct Zakat and Sadaqah to Intended Recipients

Consistent with the Islamic ideals of providing financial security and well-being to others, Muslims consider it their religious obligation to provide for the economic welfare of family members.[21] Especially where family members are located abroad, Muslims have remitted pecuniary support to kin through bank transfers, wire transfers, or networks of informal value transfer systems ("IVTS"),[22]

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21. *See infra* notes 34–35 and accompanying text (discussing family *awqaf*). Muslim-Americans certainly are not alone in contributing significant financial support to families in their native countries in order to reduce their potential economic hardships and deprivations. *See, e.g.*, JERONIMO CORTINA & RODOLFO DE LA GARZA, THE TOMÁS RIVERA POLICY INSTITUTE, IMMIGRANT REMITTING BEHAVIOR AND ITS DEVELOPMENTAL CONSEQUENCES FOR MEXICO AND EL SALVADOR 21 (2004), *available at* http://www.jeronimocortina.com/remit.pdf (indicating that Mexican and El Salvadoran immigrants contribute a portion of their earnings to assist households in their homelands); MANUEL OROZCO, PEW HISPANIC CENTER, THE REMITTANCE MARKETPLACE: PRICES, POLICY AND FINANCIAL INSTITUTIONS 1 (2004) (analyzing costs of remittances by U.S. immigrants to Latin American home countries); Richard H. Adams, Jr. & John Page, *Do International Migration and Remittances Reduce Poverty in Developing Countries?*, 33 WORLD DEV. 1645, 1660 (2005) (noting the important role of remittances in reducing poverty); Catalina Amuedo-Dorantes et al., *On the Remitting Patterns of Immigrants: Evidence from Mexican Survey Data*, FED. RES. BANK ATLANTA ECON. REV., 1st Quarter 2005, at 37, 37, *available at* http://frbatlanta.org/filelegacydocs/BANSAK%20article-final.pdf (analyzing attributes of Mexicans making monthly remittances home while residing in the U.S.); Cecilia Menjivar et al., *Remittance Behavior Among Salvadoran and Filipino Immigrants in Los Angeles*, 32 INT'L MIGRATION REV. 97 (1998) (analyzing factors influencing remittances of Salvadoran and Filipino immigrants).

22. One type of "informal value transfer systems" ("IVTS") is "hawala," which comes from the Arabic word meaning "change" or "transform." J. MILLARD BURR & ROBERT O. COLLINS, ALMS FOR JIHAD: CHARITY AND TERRORISM IN THE ISLAMIC WORLD 71 (2006). An IVTS is an informal remittance system or network that operates largely in Arab countries and South Asia. *Id*. (noting that among Muslims of the Middle East it is known as a *hawala*, and in Bangladesh it is known as "hundi"). It enables the low-cost movement of money across international borders without contact with formal financial institutions or their regulatory structures. *See id*. at 71–73. An IVTS is an anonymous means of transferring and moving funds, and its operations are built on trust. *Id.* at 72–73. An independent money broker, a "hawaladar," gives no receipts and keeps no accounts, except of what he owes or is owed by his correspondent. *Id.* at 73. *Hawaladars* maintain running balances with other *hawaladars* outside their locale. *See id*. at 72–73. An individual may deposit money with a *hawaladar* in one country and request an equivalent amount in gold or some currency be paid to another person in another country. *Id*. Accounts between *hawaladars* are settled periodically through reciprocal remittances, trade invoice transactions, commodity smuggling, bank transfers, or currency

such as *hawala*.[23] Donors who wish their *zakat* and *sadaqah* to reach the neediest Muslims have transferred their funds by IVTS[24] or through intermediaries, such as a mosque or Islamic nongovernmental organization ("NGO").[25] Other religiously-based structures might be used, such as a *zakat* fund or committee (an

movements. FINANCIAL ACTION TASK FORCE ON MONEY LAUNDERING, REPORT ON MONEY LAUNDERING TYPOLOGIES 1999–2000 6 (2000), *available at* http://www.fatf-gafi.org/dataoecd/29/37/34038120.pdf. IVTS is a huge industry. Despite legal restrictions, a large portion of the economy of some countries, such as India, are dependant on IVTS transfers, whether for familial or charitable uses. *See* COMMITTEE ON PAYMENT AND SETTLEMENT SYSTEMS, THE WORLD BANK, GENERAL PRINCIPLES FOR INTERNATIONAL REMITTANCE SERVICES 1 (2007), *available at* http://siteresources.worldbank.org/NEWS/Resources/GeneralPrinciplesforIntRemittances.pdf (indicating that remittances to recipient countries "can account for as much as a third of GDP"); FINANCIAL ACTION TASK FORCE ON MONEY LAUNDERING, *supra*, at 6 (stating that 50% of India's economy uses *hawala* for moving funds as of the year 2000); LORETTA NAPOLEONI, TERROR INCORPORATED: TRACING THE DOLLARS BEHIND THE TERROR NETWORKS 218 (2005) (commenting that in 2002, *hawalas* handled transactions estimated at 40% of India's gross national product). The magnitude of familial and charitable remittances has increased globally over the years for many immigrant groups, including Muslim-Americans. *See* Jason DeParle, *Migrant Money Flow: A $300 Billion Current*, N.Y. TIMES, Nov. 18, 2007, at WK3 (citing two studies). In two different studies the World Bank and the International Fund for Agricultural Development estimated global remittances at approximately $300 billion in 2006. *Id.*; DILIP RATHA ET AL., THE WORLD BANK, GLOBAL ECONOMIC PROSPECTS: ECONOMIC IMPLICATIONS OF REMITTANCES AND MIGRATION xiii (2006), *available at* http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2005/11/14/000112742_20051114174928/Rendered/PDF/343200GEP02006.pdf; INT'L FUND FOR AGRIC. DEV., SENDING MONEY HOME: WORLDWIDE REMITTANCE FLOWS TO DEVELOPING COUNTRIES 2 (Dec. 2007) [hereinafter SENDING MONEY HOME], *available at* http://www.ifad.org/events/remittances/maps/index.htm. The two studies differed widely with respect to specific countries to which the money flowed. DeParle, *supra*, at WK3. The International Fund for Agricultural Development reports that more than $16 billion in remittances went to the Middle East and over $6.2 billion flowed to Pakistan. SENDING MONEY HOME, *supra*, at 10, 16. The World Bank acknowledges that its estimate may be low because "[r]emittances transferred through informal operators or hand carried by travelers are unlikely to be captured in official statistics, although they may represent a substantial addition to remittances sent through official channels." RATHA, *supra*, at 91. Earlier information reported in 2001 indicated that two to five billion U.S. dollars of foreign remittances passed through the *hawala* system in Pakistan alone. NAPOLEONI, *supra*, at 218.

23. *See* sources cited *supra* note 22 (discussing the term "hawala").

24. *See* sources cited *supra* note 22 (discussing IVTS and the estimates of global familial and philanthropic remittances through IVTS).

25. *See* sources cited *supra* note 22 (discussing the terms "hawala" and "hawaladar").

aggregation of *zakat* and *sadaqah* from numerous sources intended to further humanitarian and other charitable purposes),[26] or a "*waqf*"[27] (essentially an endowed perpetual trust justified by *hadiths*, recognized under *shari'a*, and dedicated to charitable, religious, educational, or social welfare purposes).[28]

Historically, *zakat* funds functioned locally, but in relatively recent times some national and international *zakat* funds have materialized.[29] Whether operated on a local, national, or international level, *zakat* funds distribute money directly to needy individuals, nongovernmental social welfare organizations, or other suitable recipients.[30] Other *zakat* funds support and operate schools or hospitals.[31] On an international scale, not only have Muslim individuals given to *zakat* funds, but also "[o]fficial [U.S.] federal foreign aid programs have indirectly channeled money to the occupied territories via the *zakat* committees . . . ."[32] Although relatively little is known about *zakat* funds, they have provided an important structure for funneling philanthropic aid.[33]

The perpetual trusts known as *awqaf* historically have taken one of two forms. First is a family *waqf*, created to preserve family assets as separate from the state to protect against secular taxes and expropriation.[34] Such a *waqf* serves primarily to ensure family

26. *See* Jennifer Bremer, Islamic Philanthropy: Reviving Traditional Forms for Building Social Justice 8 (May 28, 2004) (unpublished manuscript, on file with the Center for Study of Islam & Democracy), *available at* http://www.islam-democracy.org/documents/pdf/5th_Annual_Conference-Bremer_paper.pdf.

27. "Awqaf" is the plural of "waqf."

28. *See* Kuran, *supra* note 17, at 852, 859 (stating that there was no legal barrier to making non-Muslims, including freed slaves, as *awqaf* beneficiaries).

29. Bremer, *supra* note 26, at 9.

30. *Id.* at 8.

31. *Id.*

32. Neil MacFarquhar, *As Muslim Group Goes on Trial, Other Charities Watch Warily*, N.Y. TIMES, July 17, 2007, at A14. The infamous domestic 501(c)(3) organization, Holy Land Foundation for Relief and Development, designated by the U.S. government as a specially designated global terrorist and a specially designated terrorist, allegedly an integral part of the Hamas social structure, donated money to various *zakat* committees throughout the West Bank and Gaza. Holy Land Found. for Relief & Dev. v. Ashcroft, 219 F. Supp. 2d 57, 70 (D.C. 2002).

33. MacFarquhar, *supra* note 32, at A14; *see* William Fisher, *Ramadan Giving Presents Dilemma for American Muslims*, ATLANTIC FREE PRESS, Sept. 7, 2007, http://www.atlanticfreepress.com/content/view/2349/81.

34. *Awaqf* were created and operated under *shari'a*, typically managed without state involvement, and protected from secular taxation by the state. Kuran, *supra* note 17, at 848 n.10. Generally, except in exceptional circumstances, such as war, requiring otherwise unavailable financial support, rulers were hesitant to expropriate the sacredly protected assets for fear of

members' material security, financial well-being, political voice, clout, and leadership in conformity with Islamic obligatory ideals for supporting and enhancing fellow humans.[35] A charitable *waqf*, on the other hand, is established strictly to further more general charitable, educational, religious, humanitarian, and social welfare purposes, such as building and operating mosques, shrines, madrasa (Islamic schools), roads, bridges, libraries, hospitals, shelters, orphanages, and even bazaars and shopping complexes deemed essential to building a community's financial health.[36] Additionally, *awqaf* have supported soup kitchens, paid a neighborhood's taxes, supported retired sailors, underwritten socio-cultural group activities, and furthered innumerable other worthy causes.[37]

Awqaf played a prominent role in civil societies in Islamic cultures for many centuries after the Prophet Muhammad's death in 632.[38] In addition to importantly contributing to Muslims' social welfare, they have served as a means of challenging the power of secular rulers. Charitable *awqaf*, like family *awqaf*, were managed privately[39] by subsidized "*ulama*" (learned religious leaders). The Muslims' belief that *ulama* have a knowledge monopoly over all religious matters—the Qur'an, *hadiths*, and *shari'a*—has placed them in a revered position in the "*umma*" (community of Muslim believers) and conferred on them a legitimacy separate from secular rulers and the state.[40] As a result, *ulama* have been a counterbalancing political power and strongly instrumental in organizing and giving political voice to the *umma*.[41]

In modern times, *awqaf* largely have been repressed or commandeered by rulers of some states,[42] including most Middle

being perceived impious. *Id.* at 847, 854–55. State authorities that confiscated property held in *awaqf* often transferred them into charitable *awaqf* to legitimize the expropriation. *Id.* at 855.

35. Bremer, *supra* note 26, at 9–10; Kuran, *supra* note 17, at 855–58. By design, a family *waqf* provided relatively few social services to the broad community. *Id.* at 856. Most family *awqaf* were established by the elite and ruling class. *Id*. at 857.

36. AbulHasan M. Sadeq, *Waqf, Perpetual Charity and Poverty Alleviation*, 29 INT'L J. SOC. ECON. 135, 140–41 (2002); Bremer, *supra* note 26, at 10; Kuran, *supra* note 17, at 849–51.

37. Kuran, *supra* note 17, at 850.

38. *See id.* at 844–50.

39. *See* Bremer, *supra* note 26, at 12.

40. *See* Masoud Kamali, *Civil Society and Islam: A Sociological Perspective*, XLII ARCHIVES EUROPÈENNES DE SOCIOLOGIE [EUR. J. SOC.] 457, 457–62 (2001) (Eng.).

41. *See id.* at 460.

42. Bremer, *supra* note 26, at 12–13; Kuran, *supra* note 17, at 887–90; Andrew White, *The Role of the Islamic Waqf in Strengthening South Asian Civil Society: Pakistan as Case Study*, 4 INT'L J. CIV. SOC'Y L. 7, 21 (2006).

East countries. The suppression of *awqaf* principally is attributable to rulers' perceptions that *awqaf* and *awqaf* managers threaten their political power and interfere financially with the state.[43] The fact that *awqaf* are sheltered from secular taxation also has played a part in rulers' repression of them.[44] Because *awqaf* are excluded from the state's revenue base, their assets have been confiscated to finance governmental institutions, state initiatives, oil enterprises, and military endeavors.[45] Nonetheless, *awqaf* currently exist or even flourish in other countries, such as India, Iran, Bangladesh, and Pakistan.[46]

C. Summary

In sum, American-Muslims and other Muslims around the globe regard their philanthropic and charitable wealth redistributions to family members and non-kin as indispensable to religious devoutness. They also consider such wealth transfers as essential for the protection and enhancement of the financial, social, and political welfare of Muslim believers, their communities, and their religious, healthcare, and educational institutions. In other words, the flow of funds by means of *zakat* and *sadaqah* contributions, estimated to exceed $200 billion worldwide,[47] is an essential building block for Muslim civil societies. Thus, the various mechanisms by which, or through which, such assets are channeled are core to, and a critical part of, those civil societies.[48] There is much evidence that these philanthropic and charitable structures perform not only an economically integral function in Muslim civil societies, but that they also are socially, culturally, and politically institutionalized.

43. Kuran, *supra* note 17, at 887–90.

44. *Id.* at 887–90.

45. *See* Bremer, *supra* note 26, at 12–13; Kuran, *supra* note 17, at 888–89; Sadeq, *supra* note 36, at 140–41. Because some *awqaf* were poorly managed, some states used this reason as an excuse to seize and nationalize the assets. White, *supra* note 42, at 21.

46. *See* Bremer, *supra* note 26, at 14–15; Sadeq, *supra* note 36, at 140–41.

47. *See* Ian Wilhelm, *Muslim Philanthropists Discuss Ways to Raise Profile of Islamic Giving*, CHRON. PHILANTHROPY, Apr. 3, 2008, at 14.

48. CIVICUS, the World Alliance for Citizen Participation, is "an international alliance of members and partners which constitute an influential network of organisations [sic.] at the local, national, regional and international levels, and span the spectrum of civil society. . . ." CIVICUS—What/Who is CIVICUS, http://civicus.org/who-we-are? (last visited Aug. 28, 2008). CIVICUS accepts that in traditional Muslim societies, civil society encompasses various structures, including nongovernmental organizations, civil-society organizations, community based organizations, and philanthropic trusts. *See* Carmen Malena, *Does Civil Society Exist?*, *in* 2 CIVICUS GLOBAL SURVEY OF THE STATE OF CIVIL SOCIETY 183, 186 (V. Finn Heinrich & Lorenzo Fioramonti eds., 2008).

III. MUSLIM CIVIL SOCIETIES

A. The Concept and the Debate

From the days of the Enlightenment, when the abstract concept of civil society arose as a political theory to reflect relations between the state and society, particularly with respect to politics and governance, its substantive parameters and its relevance to non-Western societies have been contentiously debated.[49] Scholars have continued to argue about the notion's relevance as an analytical tool, both historically and currently, to Islam and to the political realm of countries predominantly Muslim or with significant Muslim minority populations.[50] Scholars who argue that "civil society" is relevant consider civil society as a protector of the rights of members "by anchoring these rights in a conception of universally binding

49. *See* John Kelsay, *Civil Society and Government in Islam*, *in* CIVIL SOCIETY AND GOVERNMENT 284, 284–85 (Nancy L. Rosenblum & Robert C. Post eds., 2002); Petr Kopecky & Cas Mudde, *Civil or Uncivil? Civil Society's Role in Promoting Values, Norms, and Rights*, *in* 2 CIVICUS GLOBAL SURVEY OF THE STATE OF CIVIL SOCIETY, *supra* note 48, at 307, 308–10; Mark Levine & Armando Salvatore, *Socio-Religious Movements and the Transformation of "Common Sense" Into a Politics of "Common Good," in* RELIGION, SOCIAL PRACTICE, AND CONTESTED HEGEMONIES 29, 29–53 (Armando Salvatore & Mark LeVine eds., 2005); Armando Salvatore & Mark LeVine, *Reconstructing the Public Sphere in Muslim Majority Societies*, *in* RELIGION, SOCIAL PRACTICE, AND CONTESTED HEGEMONIES, *supra*, at 1, 5–6, 10–13; Mahmood Sariolghalam, *Prospects for Civil Society in the Middle East: An Analysis of Cultural Impediments*, *in* CIVIL SOCIETY DEMOCRACY AND THE MUSLIM WORLD 55, 55–61 (Elisabeth Özdalga & Sune Persson eds., 1997); Jillian Schwedler, *Introduction: Civil Society and the Study of Middle East Politics*, *in* TOWARD CIVIL SOCIETY IN THE MIDDLE EAST? 1, 3, 17–18, 23 (Jillian Schwedler ed., 1995); Bassam Tibi, *The Cultural Underpinning of Civil Society in Islamic Civilization: Islam and Democracy – Bridges Between the Civilizations*, *in* CIVIL SOCIETY DEMOCRACY AND THE MUSLIM WORLD, *supra*, at 23, 23–31.

50. *See* OMAR IMADY, THE RISE AND FALL OF MUSLIM CIVIL SOCIETY 8–14 (2005); NAWAF SALAM, CIVIL SOCIETY IN THE ARAB WORLD: THE HISTORICAL AND POLITICAL DIMENSIONS 8–10 (2002), *available at* http://www.law.harvard.edu/programs/ilsp/publications/salam.pdf; Farhad Kazemi, *Perspectives on Islam and Civil Society*, *in* CIVIL SOCIETY AND GOVERNMENT, *supra* note 49, at 317, 317–31. One recent question is whether radical Islamist groups should be considered a part of civil society. SALAM, *supra*, at 13–14. In responding, one could draw upon the values connoted by, and incorporated into a definition of, civil society. *See infra* note 51 and accompanying text. Essential values include civility and pluralism. Schwedler, *supra* note 49, at 1, 10–11. Consequently, the concept arguably would preclude inclusion of a violent, militant group intent on imposing its will on a population and on rupturing a state's governance. This value orientation would mean that such "dual" groups – those with militant and humanitarian arms—as Hamas and Hezbollah would not be considered civil-society actors.

duties or obligations" under the laws of Allah, which represent inviolable values.[51] Despite that theologically-connected model, the failure to create a historical or contemporary consensus remains. Scholars therefore descriptively characterize civil society by combining its functional traits, the values it incorporates, and its purposes.[52]

The lack of a singular view has engendered proposals for a fuzzier analytical concept, labeled by scholars as the "public sphere."[53] This notion abstractly looks at rulers' relation with "societal and cultural life that has relevance to the social and political order."[54] Several scholars suggest that because the Qur'an,

51. Hasan Hanafi, *Alternative Conceptions of Civil Society: A Reflective Islamic Approach*, *in* ISLAMIC POLITICAL ETHICS: CIVIL SOCIETY, PLURALISM, AND CONFLICT 63, 65–67 (Sohail H. Hashmi ed., 2002); *see* Kelsay, *supra* note 49, at 285–312. One scholar suggests that there are four main values promoted by those laws, and hence by Muslim civil society. Hanafi, *supra*, at 66–67. First is the protection of life against hunger, disease, drought, and other deprivations. *Id*. at 66. This battle is closely connected with the government's responsiveness and effectiveness. *Id*. The right of individuals to knowledge that enables them to reason, a "glue that binds individuals into a whole," is the second value. *Id.*; *see* Sariolghalam, *supra* note 49, at 56. Next is the human honor and dignity of each individual and of the community of individuals. Hanafi, *supra*, at 67. The final value is the preservation of wealth against usurpation. *See id*. According to Hasan Hanafi the state, as well as NGOs, mosques, professional associations, and other civil-society representatives are agents obligated to promote and effectuate the four values underlying the laws of Allah. *Id.*

52. For example, in suggesting that civil society is necessary for democracy, Larry Diamond stated:

> [Civil society is the] realm of organized social life that is voluntary, self-generating, (largely) self-supporting, autonomous from the state, and bound by a legal order or set of shared rules. It is distinct from "society" in general in that it involves citizens acting collectively [beyond the individual and family] in a public sphere to express their interests, passions, and ideas, exchange information, achieve mutual goals, make demands on the state, and hold state officials accountable. *Civil society* is an intermediary entity, standing between the private sphere and the state.

Larry Diamond, *Rethinking Civil Society: Toward Democratic Consolidation*, 5 J. DEMOCRACY 4, 5 (1994) (emphasis added). Many scholars have suggested norms and characteristics of civil society to include participation, cooperation, equality, tolerance, legal order, civility, and political inclusion. *Cf.* Augustus Richard Norton, *Introduction*, *in* 2 CIVIL SOCIETY IN THE MIDDLE EAST 1, 11 (Augustus Richard Norton ed., 1996) (describing the role of Islamist movements in civil society); Schwedler, *supra* note 49, at 1–30 (discussing civil society in the Middle East). S*ee also supra* note 51 and accompanying text.

53. *See* Miriam Hoexter, *The Waqf and the Public Sphere*, *in* THE PUBLIC SPHERE IN MUSLIM SOCIETIES 119, 119 (Miriam Hoexter et al. eds., 2002).

54. *Id.* at 119; *see also* Cecelia Lynch, *Public Spheres Transnationalized: Comparisons Within and Beyond Muslim Majority Societies*, *in* RELIGION,

hadiths, and *shari'a* indicate that Islam is not a religion of individual and civil rights, but rather of individual obligations to fellow humans and the *umma*, the "public sphere" for Muslims is where contests occur "over the definition of the obligations, rights, and especially notions of justice that members of society require for common good to be realized."[55]

Comparing the two constructs, one scholar noted "[c]ivil society entails a public sphere, but not every public sphere entails a civil society, whether of the economic or political variety."[56] Regardless, both concepts are accepted as tools for connoting people's participation in decision-making affecting certain aspects of their lives collectively.[57]

B. The Premise and Its Implications

The premise that both concepts—a civil society and the public sphere—symbolize the public's involvement, with the state's tacit approval, in decision-making that impacts its members lives mutually, implicitly permits incorporation of diverse elements. These include a heterogeneous range of actors,[58] institutional structures with assorted degrees of informality and formality, intersecting interests, values (shared by some actors but clashing with values of others), power sharing mechanisms, and interactions of actors among themselves and with decision-makers.[59] The complex arena that brings these elements together has the potential for fluidity and evolution over time in order to give actors voice, to acknowledge and ensure at least some limited ability of actors to counterbalance economic and political policymakers and decision-makers (usually the governmental officials), and to permit actors and state authorities to function in some climate of tolerant engagement, if not cooperation.

SOCIAL PRACTICE, AND CONTESTED HEGEMONIES, *supra* note 49, at 231, 237.

55. Armando Salvatore & Mark LeVine, *Conclusion; Reconstructing the Public Sphere in Muslim Majority Societies*, *in* RELIGION, SOCIAL PRACTICE, AND CONTESTED HEGEMONIES, *supra* note 49, at 1, 6.

56. Shmuel Eisenstadt, *Concluding Remarks: Public Sphere, Civil Society, and Political Dynamics in Islamic Societies*, *in* THE PUBLIC SPHERE IN MUSLIM SOCIETIES, *supra* note 53, at 139, 141.

57. *See id.* at 141 (noting that public sphere and civil society are concepts used to both contest and legitimize civilizations).

58. Civil-society actors can include many different groups and organizations, such as humanitarian organizations, social advocacy groups, social service agencies, anti-poverty groups, development agencies, professional and trade groups, unions, community-based organizations, religious bodies, cultural organizations, political parties, etc.

59. Malena, *supra* note 48, at 192, 197; Jude Howell, *The Global War on Terror, Development and Civil Society,* 18 J. INT'L DEV. 121, 122 (2006); Eisenstadt, *supra* note 56, at 139, 141; Schwedler, *supra* note 49, at 18–23.

As a result, where a state permits such a symbiotic relationship, it will subject that realm (hereinafter "civil society") to a legal regime regulating the formation and operations of the various civil-society actors. Despite the debates, the core notion of civil society exists within predominantly Muslim countries and those with significant Muslim minority populations. The extent to which their civil-society actors flourish could be beneficially or adversely impacted by the policies, laws, and regulations of the state.

IV. STATES' GENERAL REGULATORY CLIMATES FOR THEIR CIVIL SOCIETIES

A. General Background

Depending on a state's fear of empowering civil society, its policies, laws, and regulations might be constructed to produce an overall legal climate that is hostile to, neutral toward, or encouraging of civil-society actors and support structures. The governance of the state is likely to affect its repressive or enabling legal structures controlling civil society. Thus, in general, countries that are ruled as totalitarian autocracies are the least tolerant of civil society, partial autocracies are more lenient, illiberal democracies are more indulgent, and liberal democracies are the most willing to empower their civil societies.[60]

Numerous other factors impact the strength or weakness of civil-society actors and their necessary financial supporting structures.[61] A country's economic stability, the population's economic stratification, the governmental economic and social welfare policies, the domestic and international financial support structures of civil-society actors, and the nature of the interaction of civil-society actors and the state are fundamental elements.[62] Also,

60. *See, e.g.*, Daniel Brumberg & Larry Diamond, *Introduction* to ISLAM AND DEMOCRACY IN THE MIDDLE EAST ix (Larry Diamond et al. eds., 2003).

61. In addition to those on which this Article focuses, important contributing components include a population's and a state leader's acceptance of ethnic and religious diversity and their broadmindedness toward human rights. Also significant are their tolerance for, and willingness to accommodate, the resulting variety and composition of potential civil-society sectarian and nonsectarian actors. *See* Iftikhar H. Malik, *Between Identity-Politics and Authoritarianism in Pakistan*, *in* CIVIL SOCIETY IN THE MUSLIM WORLD: CONTEMPORARY PERSPECTIVES 273, 274–75, 285 (Amyn B. Sajoo ed., 2002) (noting that even those individuals who challenge authority are important actors in civil society). Even a country's international political relations and regional politics can be critical, as can be leaders' respect for rule of law. *Id.* at 275.

62. For example, where the state tacitly permits civil society, Islamic movements may protest violently in opposition to the state. In that event, the

the restrictiveness or permissiveness of relevant domestic laws and regulations is key. With respect to the legal system, especially significant are the laws and regulations that impose registration requirements on civil-society actors, affect allowable advocacy and other political activities of civil-society actors, give civil-society actors rights to function continuously without the government's harassment or ability to unilaterally dissolve them, and provide tax benefits for them and their financial supporters.[63] Of final importance are the degrees of complexity, burdensomeness, and vagueness of applicable laws and administrative rules and procedures, the singularity or multiplicity of authorities with overlapping regulatory jurisdiction, the extent of governmental cooperation and support with civil-society actors' activities, and the like.[64]

Thus, each country's governance system, economic position, and the details of its regulatory framework together yield its particular legal climate for civil society and civil society's formal and informal structures.[65] The United States and other liberal democracies, such as Great Britain, are considered to provide enabling environments. Most, if not all, Muslim-majority countries are not liberal democracies, and their legal climates for the actors and support structures of their civil societies vary in their restrictiveness.[66]

B. Muslim-Americans and Diaspora Philanthropy

Muslims have immigrated to the United States from many of

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nature of the relationship of the state leader with Islam and the interaction between the movements and the state can shape outcomes. Berna Turam, *The Politics of Engagement Between Islam and the Secular State: Ambivalences of 'Civil Society'*, 55 BRIT. J. SOC. 259, 259–62 (2004).

63. V. Finn Heinrich & Catherine Shea, *Assessing the Legal Environment for Civil Society Around the World: An Analysis of Status, Trends, and Challenges*, *in* 2 CIVICUS GLOBAL SURVEY OF THE STATE OF CIVIL SOCIETY, *supra* note 48, at 255, 255–69. *See generally* Mahi Khallaf & Ozlem Tur, *Civil Society in the Middle East and Mediterranean: An Exploration of Opportunities and Limitations*, *in* 2 CIVICUS GLOBAL SURVEY OF THE STATE OF CIVIL SOCIETY, *supra* note 48, at 127, 127–140 (providing an overview and history of civil society in the Mediterranean/Middle East region).

64. *See* Heinrich & Shea, *supra* note 63, at 255–69 (giving an overview of the impact of the legal environment on a civil society). *See generally* Khallaf & Tur, *supra* note 63, at 127–40 (providing an overview and analysis of civil society in the Mediterranean/Middle East region).

65. Empirical studies show that in countries with restrictive governance systems, whether totalitarian or a lesser authoritarian structure, 70% of civil-society organizations consider the legal framework a major impediment. *See* Ziad Abdel Samad, *Civil Society in the Arab Region: Its Necessary Role and Obstacles to Fulfillment*, 9 INT'L. J. NOT-FOR-PROFIT L., Apr. 2007, at 3, 17.

66. Brumberg & Diamond, *supra* note 60, at x.

the forty-three Muslim-majority countries around the world, as well as from countries with significant Muslim minority populations.[67] According to a 2007 Pew Research Center survey, these immigrants are from at least sixty-eight different countries, with more than thirty-seven percent arriving from the "Arab region" and a large proportion from South Asia.[68] Reflective of this profile, the largest percentage of foreign-born Muslim-Americans who emigrated from one country came from Iran (12%) and Pakistan (12%).[69] Thirty-two percent arrived from Bangladesh (5%), Bosnia and Herzegovina (4%), India (7%), Iraq (4%), Lebanon (6%), and Yemen (6%) combined.[70]

A definitive population count of foreign-born Muslim-Americans and their native-born offspring has proved elusive, but estimates currently range from two million to seven million.[71] Nearly one-half of all Muslim-Americans perceive their personal financial situations to be good or excellent.[72] Some of these Muslim-Americans continue to have familial ties to the countries from which they emigrated, and anecdotal evidence suggests that many consider that the neediest

67. *See id.*

68. PEW RESEARCH CENTER, MUSLIM AMERICANS: MIDDLE CLASS AND MOSTLY MAINSTREAM 15 (2007) [hereinafter PEW RESEARCH CENTER, MUSLIM AMERICANS], *available at* http://people-press.org/reports/display.php3?ReportID=329. The Arab region is based on a UNDP classification, which defines the region as including twenty-two Middle Eastern and North African countries. *Id.* The United States Department of State has also published demographic information on Muslim-Americans, with estimates fairly similar to those of the Pew Research Center survey. U.S. DEPARTMENT OF STATE, VARIETIES OF WORSHIP, http://usinfo.state.gov/products/pubs/muslimlife/demograp.htm (last visited Aug. 28, 2008).

69. PEW RESEARCH CENTER, MUSLIM AMERICANS, *supra* note 68, at 15.

70. *Id.*

71. *See* THE CHICAGO COUNCIL ON GLOBAL AFFAIRS, STRENGTHENING AMERICA: THE CIVIC AND POLITICAL INTEGRATION OF MUSLIM AMERICANS 23 (2007) [hereinafter STRENGTHENING AMERICA], *available at* http://www.thechicagocouncil.org/taskforce_details.php?taskforce_id=8; PEW RESEARCH CENTER, MUSLIM AMERICANS, *supra* note 68, at 10. One reason for the difficulty in accurately estimating the number of Muslim-Americans is that neither the Census Bureau nor the U.S. Citizenship and Immigration Services collects information on religious affiliation. STRENGTHENING AMERICA, *supra*, at 24. Another reason is that studies have relied on telephone calls to households that have landline service. PEW RESEARCH CENTER, MUSLIM AMERICANS, *supra* note 68, at 9. There has been no way to include in the studies those households that have no telephone service or only cell phone service, which includes an estimated 13.5% of the public. *Id.* Finally, language skills of Muslims have proved challenging for researchers. *Id.* at 12. The 2.35 million estimate is that of the Pew Research Center. *Id.* at 10. The seven million estimate is the result of a 2001 survey by the Hartford Institute for Religious Research. *Id*. at 13.

72. PEW RESEARCH CENTER, MUSLIM AMERICANS, *supra* note 68, at 18–19.

Muslims in those countries should be the ultimate recipients of their *zakat* and *sadaqah*.[73] The amount of such wealth redistributions by Muslim-Americans cannot be determined.[74] Nonetheless, demographics, educational and income levels, and the recent immigration patterns of Muslim-Americans suggest that many Muslims in the U.S. have directed substantial amounts of *zakat* and *sadaqah* to their countries of origin.[75] This diaspora philanthropy is subjected both to U.S. laws and the legal regimes of the recipient countries. Therefore, to illustrate the character of the legal climates for Muslim civil societies, the discussion here concentrates specifically on several predominantly Muslim countries from which significant numbers of Muslim-Americans emigrated.

C. Select Countries' Background Legal Regulatory Environment for Civil Society and Its Structures

A discussion of each country from which a significant portion of Muslim-Americans emigrated easily could consume a book. This Article therefore concentrates on three Muslim-majority countries as examples representing degrees along a continuum of more inhospitable to more favorable legal regulatory environments for civil society and its supporting financial structures. Nonetheless, an exhaustive and detailed analysis of each of these three countries is beyond this Article's possible scope. In this section, therefore, are brief synopses of the background nature of the legal regulatory environment for civil societies' formal and informal actors and their philanthropic support mechanisms in the Islamic Republic of Iran, Pakistan, and Lebanon.[76] The order in which the three countries are presented begins with the country having the harshest legal regulatory climate and ends with the country having the most accommodating environment of the three. The accounts are based

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73. *See* Crimm, *Muslim-Americans' Charitable Giving Dilemma*, supra note 20 (noting the impossibility of determining the total amount of *zakat* and *sadaqah* giving by Muslim-Americans, but one researcher has suggested it may exceed $5.3 billion annually). The significance of *zakat* cannot be overstated. Muslims believe *zakat* is essential for their prayers to be accepted by Allah. *See id.* (citing Cohen, *supra* note 15).

74. *Id.*

75. *Id*.

76. Significant numbers of Muslim-Americans emigrated from other countries in the Middle East, Eastern Europe, South Asia, and Africa, including Iraq, Lebanon, Saudi Arabia, Bangladesh, Yemen, Bosnia-Herzegovina, and India. Currently, there are draft laws to regulate NGOs being considered by Iraq and Saudi Arabia. Numerous other countries have existing laws relevant to civil-society actors, but exploring them is beyond the scope of this Article. Nonetheless, this Article could influence policymakers and drafters of laws as new regulations or periodic reformation are considered.

on the countries' laws, regulations, and procedures not adopted specifically as anti-terrorism financing laws. Part V below will then address anti-terrorism finance measures these countries have been encouraged to embrace since 9/11 and their responses.

1. Islamic Republic of Iran

Since the 1977 revolution in Iran, its government has been an autocratic, totalitarian, religiously-based regime.[77] Striving for total control, the government has assumed power over the media and internet providers.[78] While some professional associations, workers unions, mutual aid societies, and trade guilds manage to exercise a limited amount of autonomy, government dominance over all forms of associational groups and their activities has increased.[79] The state created its own governmental-NGOs ("gNGOs") to place political pressures on, and establish circles of dominance over, NGOs not affiliated with government.[80] The government awarded clerics guardianship over political processes and conferred on them controls over the media.[81]

In this atmosphere, NGOs unaffiliated with the government nonetheless began to evolve. In response, the government constructed a legal regulatory framework criticized as overly complicated and cumbersome, but not comprehensive or effective.[82] NGOs specifically have faced laws and regulations developed and implemented by many different departments within government,[83] and thus, an NGO may need approvals for its operations from multiple agencies or ministries.[84] In practice, implementation of laws and regulations by governmental agencies and ministries has

77. Interview by Bernard Gwertzman with Daniel Brumberg, Assoc. Professor, Georgetown Univ., *Mideast Expert Brumberg: Bush Mistakes Arab 'Autocracies' for Soviet 'Totalitarianism*,' COUNCIL ON FOREIGN REL. (Nov. 7, 2003) *available at* http://www.cfr.org/publication/6516/mideast_expert_brumberg.html [hereinafter Interview by Bernard Gwertzman].

78. *See* Posting of Jadi to inside Iran, http://jadi.civiblog.org/blog/_archives/2007/5/29/2984229.html (May 29, 2007, 11:02 PDT).

79. Farhad Kazemi, *Civil Society and Iranian Politics*, *in* 2 CIVIL SOCIETY IN THE MIDDLE EAST, *supra* note 52, at 119, 147–49.

80. Jadi, *supra* note 78.

81. Amyn B. Sajoo, *Ethics in the Civitas, in* CIVIL SOCIETY IN THE MUSLIM WORLD, *supra* note 61, at 214, 226. After the revolution, patrimonial authority of clerics increased. Kazemi, *supra* note 79, at 133–34. For example, the Constitution conferred unlimited powers on Ayatollah Khomeini, who united political and religious authority in himself. *Id*. at 134.

82. Negar Katirai, *NGO Regulations in Iran*, INT'L J. NOT-FOR-PROFIT L., Sept. 2005, at 28, 28, 41 (2005); Zahra Maranlou, *A Synopsis of Law Reform for Iranian NGOs*, INT'L J. NOT-FOR-PROFIT L., July 2002, at 4, 4.

83. Katirai, *supra* note 82, at 28; Maranlou, *supra* note 82.

84. Katirai, *supra* note 82, at 34.

differed from the written rules, making compliance challenging for NGOs.[85] Moreover, judicial review of the arbitrariness of the processes has proved inadequate.[86]

Iran's laws authorize several types of NGOs. Among those recognized are guild associations of a trade or profession; Islamic associations to educate non-believers about Islam and to advance the goals of the Islamic cause; associations of religious minorities to address religious, cultural, and social issues facing such minorities; and political organizations and associations.[87] The latter, however, must promote the ideals of the Islamic government or political policy "related to the rules of administration and general policy of the Islamic Republic of Iran."[88] Organized and formal political parties are prohibited.[89] Groups seeking reform of women's rights are permitted, have challenged some government policies and pronouncements restricting women's rights, and purportedly have been instrumental in persuading the government to modestly alter certain strictures.[90]

The Iranian laws restrict the formation of authorized NGOs by requiring that each of the founders (minimally two) of an NGO has expertise in the area in which the NGO seeks to engage.[91] These are the only stated criteria for approval, which enables the government to arbitrarily approve or reject NGOs' registration applications.[92] From approved NGOs, the government can require periodic and annual reports.[93] Yet, the laws are vague on the specifics required in such reports.[94] Punishment for noncompliance nonetheless is severe, including revocation of approval.[95] Tax laws exempt certain types of NGOs from taxation as long as annual tax returns are filed.[96]

Several years ago the Iranian parliament declared support for shifting some governmental duties and services to NGOs.[97] In the face of strict controls on NGOs, a cynic could suggest the parliament's declaration is hollow and symbolizes nothing more than a dream for those who hope for a vibrant civil society. On the

85. *Id.* at 28.
86. *Id.*; Maranlou, *supra* note 82.
87. Katirai, *supra* note 82, at 30–31.
88. *Id.* at 31.
89. Kazemi, *Civil Society and Iranian Politics*, supra note 79, at 136.
90. *Id.* at 131–33.
91. Katirai, *supra* note 82, at 33.
92. *Id.* at 32–34.
93. *Id.* at 37.
94. *Id.*
95. *Id.*
96. *Id.* at 39.
97. *Id.* at 40.

other hand, an optimist might see parliament's act as an attempt to find a means of liberalizing the civil-society environment and legitimizing a role for NGOs.[98] Nonetheless, commentators consider the state unsupportive of NGO activities[99] and generally inhospitable toward these organizations.

Apart from NGOs, private foundations also exist. Private foundations ostensibly serve special worthy segments of society.[100] In reality, they are strongly self-serving structures of the rich and elite, and their true role as civil-society actors is unclear.[101] The legal regime governing private foundations also is unclear.[102]

Awqaf are a key structure in Iran.[103] Because many *awqaf* are under the control of clerics, *awqaf* have been essential for supporting religious institutions, schools, shrines, and the like.[104] Because the government largely has been religiously based since the revolution, such *awqaf* do not serve to foster a separate political voice. Some *awqaf* have been utilized to promote the government's own social welfare agenda.[105] Thus, it appears that *awqaf* have been commandeered by the Iranian government and clerics and do not fulfill a civil society role outside of them. It is not apparent that *awqaf* are subjected to any laws other than *shari'a*.

2. Pakistan

Scholars generally consider civil society in Pakistan as "struggling due to its somewhat 'symbiotic relationship' with a powerful state, in which a weak civil society remains in many ways merely another branch of the monopolistic and interventionist state structure."[106] Despite the relatively large number of NGOs,[107] such as social welfare agencies, professional associations, and other groups that comprise Pakistan's civil society formal institutions, civil society in Pakistan has difficulty in defining and establishing

98. *See, e.g.*, Interview by Bernard Gwertzman, *supra* note 77. A cynic might surmise that, facing a troubled economic environment, the legislature might be giving the government an excuse for abdicating responsibilities for citizens' social welfare by shifting some of these problems and solutions onto the NGO sector.

99. Katirai, *supra* note 82, at 41.

100. Kazemi, *Civil Society and Iranian Politics*, *supra* note 79, at 142–45.

101. *Id.* at 145.

102. *Id.* at 142–45.

103. *Id.* at 142.

104. *Id.* at 142–43.

105. *See id.* at 143–45.

106. White, *supra* note 42, at 22; *see* Malik, *supra* note 61, at 280 (noting some of the economic, social, and political problems in Pakistan).

107. *See* White, *supra* note 42, at 24 (stating that 45,000 NGOs existed as of 2000).

its place in the socio-political arena.[108] Pakistan has been riddled with struggles between legal institutions and the state leader, and with tensions over the rule of law. Gaining autonomy from the state's authoritarian rule has been challenging, as demonstrated by lawyers' organized protests against President Pervez Musharraf's dismissal of former Supreme Court Chief Justice Iftikhar Muhammad Chaudhry.[109]

The country's legal regulatory framework for civil-society organizations may reflect the intentions of a ruler to control a realm in which opposition can build and economic and political disenchantment can be expressed. The laws, regulations, and procedures governing NGOs are complicated, confusing, conflicting, and ambiguous. They cover registration matters, internal governance and accountability of organizations, financial regulation and management, the relationship between the organizations and the government with respect to operations and treatment of employees, and tax matters.[110]

Registration by NGOs is not required,[111] and there is evidence that many do not do so.[112] Registration, however, confers a number of advantages. It permits civil-society organizations to have recognized legal status, open a bank account and sign contracts in the entity's name, receive financial assistance from governmental agencies, obtain financial support from local, national, and international donors, and qualify for tax exempt status.[113] Counts differ depending upon the study or information base, but at least five different sets of laws exist under which civil society's organizations can register,[114] and some NGOs actually register

108. *Id.* at 22.

109. *See, e.g.*, Salman Masood, *Bomber Attacks Police, Killing 23 in Pakistan,* N.Y. TIMES, Jan. 11, 2008, at A8; Somini Sengupta, *For Now, Musharraf Has Muzzled Legal Critics in Pakistan,* N.Y. TIMES, Jan. 5, 2008, at A6.

110. Zafar H. Ismail, *Law and the Nonprofit Sector in Pakistan* 3 (Soc. Policy and Dev. Ctr., Working Paper No. 3, 2002), *available at* http://www.pcp.org.pk/pdf/John%20Hopkins%20-%20Law%20and%20the %20nonprofit%20sector%20in%20Pakistan.pdf.

111. Net-NGO.com, Frequently Asked Questions: Why Should One Go for Registering an NGO?, http://www.net-ngo.com/faq/faqdetail.cfm (last visited Aug. 28, 2008).

112. *See* White, *supra* note 42, at 24 (indicating that in 2000, at least 34% of NGOs did not register under any law).

113. Net-NGO.com, Frequently Asked Questions: What Are the Benefits of Registering an NGO?, http://www.net-ngo.com/faq/faqdetail.cfm (last visited Aug. 28, 2008).

114. The five registration options are:
(1) Voluntary Social Welfare Agencies Registration and Control Ordinance of 1961, which requires a registering organization to have ten members and a

under more than one set of federal laws.[115]

In 2005, Pakistan adopted tax regulations that affect all NGOs, regardless of the set of federal laws under which they registered.[116] The conferral of tax-exempt status comes with limitations. For example, NGOs' cash holdings are limited to twenty-five percent of their yearly income.[117] Additionally, among the grounds enabling

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mission of providing welfare to population sub-groups, including women, children, disabled, or elderly persons;

(2) Societies Registration Act of 1860, which permits registration of a society composed of seven people not permitted to profit from the society and the purpose of which is for

> the promotion of science, literature, or the fine arts for instruction, the diffusion of useful knowledge, the diffusion of political education, the foundation or maintenance of libraries or reading rooms for general use among the members or open to the public, or public museums and galleries of paintings and other works of art, collections of natural history, mechanical, and philosophical inventions, instruments or designs;

(3) Cooperative Society Act of 1925, which permits five types of cooperative societies:

> [(1) a] resource society formed to obtain credit, goods or services by its members; [(2) a] producers society formed to collectively produce and dispose of goods; [(3) a] consumers society to obtain and distribute goods or provide services for its members as well as for other consumers and to divide the profits accruing in a proportion prescribed by the rules or bye-laws [sic] of the society; [(4) a] housing society formed to provide its members with dwelling houses on conditions set out in the bye-laws [sic]; [(5) a] general society which does not fall under the [other categories];

(4) Companies Ordinance of 1984, which allows organizations to form for commerce, charity, social services, religion, sports, arts or sciences, "or any other useful object"; and

(5) The Trust Act of 1882, which permits the creation of a revocable or irrevocable trust for any lawful purpose.

FARIDA SHAHEED & SOHAIL WARRAICH, LEGAL FRAMEWORK FOR NGOS IN PAKISTAN (2006), *available at* http:www.icnl.org/knowledge/library /download.php?file=Pakistan/framework.pdf (login required); *see also* ISMAIL, *supra* note 110, at 5 (listing eighteen laws that pertain to the nonprofit sector, including *awaqf*); White, *supra* note 42, at 23 (referencing various studies that suggest that between six and eighteen federal acts exist for registration of NGOs).

115. *See* White, *supra* note 42, at 24 (stating that more than 55% of civil-society organizations registered under two laws).

116. ASIA PACIFIC PHILANTHROPY CONSORTIUM, PHILANTHROPY AND LAW IN SOUTH ASIA: RECENT DEVELOPMENTS IN BANGLADESH, INDIA, NEPAL, PAKISTAN, AND SRI LANKA 44 (Agarwal et al. eds., 2007), *available at* http://www.icnl.org/knowledge/library/download.php?file=Regional:%20Asia/Phil_LawAsia.pdf (login required).

117. *Id.* at 45.

the Regional Commissioner of Income Tax to withdraw an NGO's tax exempt status is the organization's engagement in the "propagat[ion] of political or sectarian dogma."[118] This stricture certainly does not facilitate, and likely is intended to stifle, political advocacy or activity, as well as curb political sectarian-based groups in a country in which the government staunchly defends political secularism.[119] This approach is a clear indication of an unsupportive legal environment for civil society's politically-interested groups and of the state's fearfulness of sharing political power with them.

Awqaf have received continued recognition as philanthropic and charitable institutions in Pakistan for centuries.[120] In 1923, Pakistan adopted the Mussalman Wakf Act to provide legal parameters under which these pious, charitable, or religious trusts operate. If a *waqf* supports politically inclined civil society organizations, the Mussalman Wakf Act permits the government to take over the *waqf's* control and assume the management and maintenance of its assets.[121] *Awqaf* are not registered under the Mussalman Wakf Act, but one can register under the Trusts Act of 1882 if it can be classified as established for the advancement of religion, knowledge, or other purposes beneficial to mankind.[122] Scholars suggest that laws and regulations that supplement the Mussalman Wakf Act basically are unaccommodating to *awqaf*.[123] Many of these regulatory provisions are considered broad, provide numerous arbitrary powers to the government over *awqaf* assets and their management, and disadvantage contributors to family *awqaf* by, for example, denying them tax deductions for their donations.[124]

3. *Lebanon*

Lebanon is a parliamentary democracy[125] with a confessional legal framework, which provides for a sharing of power, spread among the highest governmental offices, among individuals of specified religious groups.[126] That confessional system was adopted

118. *Id.*

119. *See* Malik, *supra* note 61, at 284 (noting that the political regimes serve to stifle civil liberties).

120. *See* White, *supra* note 42, at 24 (tracing the roots of *awqaf* in Pakistan to the beginning of Muslim rule, between the 8th and 18th Centuries).

121. *See id.* at 28–31 (stating that after the Mussalman Wakf Act the government was permitted such arbitrary and non-justiciable powers).

122. ISMAIL, *supra* note 110, at 14.

123. *See* White, *supra* note 42, at 26–31.

124. *Id*.

125. Although considered a confessional democracy, the Lebanese Constitution was twice modified—in 1995 and 2004—to extend the Maronite Christian president's term. Samad, *supra* note 65, at 10 n.4.

126. The 1943 National Pact, an unwritten agreement setting the

for expediency purposes upon Lebanon's independence in 1943 to overcome philosophical differences between Christians and Muslims.[127]

Conflict, corruption, and polarization have shaped the effectiveness and overall character of the NGO environment in Lebanon.[128] Two recent periods were filled with conflict between religious groups, and the polarity of the general populace is reflected in its civil-society actors.[129] The government's confessional political structure also reflects religious polarities and its consequent distribution of power and wealth.[130] With these various splits, there is a general distrust of the government and civil-society actors.[131] Nonetheless, there is widespread acknowledgement that civil society can be effective in reducing poverty, delivering health and educational services, and protecting the environment.[132]

Although exact information on the size and scope of Lebanon's civil-society actors is unknown, Lebanon appears to have a large civil-society sector.[133] Its size stems from the major role NGOs played during the 1975–1990 civil war, when NGOs fulfilled such typical state responsibilities as delivering education, healthcare, and emergency relief. Thus, Lebanon has been characterized as one of the most active and least restrained civil societies in the Middle East.[134]

According to the Lebanese embassy in Washington, D.C., the government takes a hands-off, laissez faire approach to NGOs.[135] Commentators, however, attribute this description largely to the fact that Lebanon's Ministry of Interior, charged with regulating NGOs, is unable to impose new restrictions on existing NGOs.[136] Those same commentators suggest that, in contrast, the Ministry subjects new NGOs to arbitrary declaration requirements under "administrative regulations" not contained in written form, and

foundation for modern Lebanon, allocated the presidency to a Maronite Christian, the position of Prime Minister to a Sunni Muslim, and President of the National Assembly to a Shi'a Muslim. Country Studies, Lebanon, The National Pact, http://www.country-studies.com/lebanon/the-national-pact.html (last visited Aug. 28, 2008); Ghazi, Politics in Lebanon: Lebanon's Government, http://www.ghazi.de/governm.html (last visited Aug. 28, 2008).

127. Ghazi, *supra* note 126.

128. Samad, *supra* note 65, at 19.

129. *Id.*

130. *Id.*

131. *Id.*

132. *Id.*

133. Kareem Elbayar, *NGO Laws in Selected Arab States,* INT'L. J. NOT-FOR-PROFIT L. Sept. 2005, at 3, 17.

134. *Id.* at 17.

135. *Id.* at 17–18.

136. *See id.* at 18; Samad, *supra* note 65, at 19.

these requirements violate NGOs' legal rights.[137] In other words, the 1909 Ottoman Law that formally governs the civil-society sector is ignored.[138]

The legal regime requires newly formed NGOs to declare their existence to the government.[139] The government considers groups that refuse or fail to make such a declaration as secret organizations and subjects them to legal penalties.[140] Once a newly formed group declares its existence, the Ministry of Interior has authority to recognize the group as a legitimate NGO or to refuse acknowledgement.[141] Refusal to acknowledge a group can be based on the government's perception that the group has violated law or "public morals," intends to change the form of the government, aims to disrupt the government or the "integrity of state property," or seeks to be politically discriminatory toward citizens.[142] These broad and ambiguous grounds permit the government arbitrary and controlling authority that can be used to intimidate or deny legitimacy to a range of civil-society organizations, including political advocacy groups, women's rights groups, and others.

D. Summarizing Before the New Millennium Brings Anti-Terrorism Finance Laws

Commentators never characterized the pre-twenty-first century regulatory regimes governing Iran's, Pakistan's, or Lebanon's civil societies and their financial support structures as "enabling," or as fully and unabashedly encouraging of a thriving, engaged, and civil society. At the most unfavorable end of the represented spectrum is the Islamic Republic of Iran. Lebanon is at the most favorable end of the continuum. While these countries largely had adopted their laws and regulations affecting civil-society actors and their financial support structures before the twenty-first century, soon after the new millennium there was new impetus to revisit and reform the laws that govern and impact their civil-society formal and informal actors. That force was the 9/11 terrorist attacks, which motivated and set into motion the adoption of new anti-terrorism financing measures in numerous countries across the globe. Nonetheless, not

137. *See* Elbayar, *supra* note 133, at 18 (noting that permits are not required to form an association); Samad, *supra* note 65, at 19 (noting that even though associations only have to notify the Ministry, the Ministry sometimes mandates a registration procedure).

138. Samad, *supra* note 65, at 12.

139. Marc Markary, *Notification or Registration? Guarantees of Freedom of Association in Non-Democratic Environments: Case Studies of Lebanon and Jordan*, INT'L. J. NOT-FOR-PROFIT L., Dec. 2007, at 77, 79–84.

140. *Id.* at 84.

141. *Id.* at 84–85.

142. *Id.* at 85.

all countries readily or fully embraced a comprehensive anti-terrorism finance legal regime.

V. POST-9/11 MEASURES AIMED SPECIFICALLY AT SUPPRESSING AND PREVENTING TERRORISM FINANCING

A. *General Background*

1. *The United States Responds*

In the wake of the 9/11 terrorist attacks, the global war on terrorism took shape rapidly. On September 23, 2001, President George W. Bush issued an Executive Order[143] in which he declared a national emergency to deal with the threat of future terrorism. The sources of the financial resources of the 9/11 attackers were not then known;[144] nonetheless, President Bush surmised that they were expansive and included individuals, NGOs, and other entities.[145] He provided for the application of future financial sanctions because he considered "dual organizations"[146]—those having both military and charity operations—and other NGOs as attractive targets for terrorists' exploitation and as capable of subsequently funding terrorists.[147] The perceived susceptibility of charities resulted from

143. Exec. Order No. 13,224, 3 C.F.R. 786 (2001), *reprinted as amended in* 50 U.S.C. § 1701 at 741–43 (Supp. V 2007). For further discussion of Executive Order 13,224 and the authorizations it conferred, see Crimm, *High Alert*, *supra* note 2, at 1364–96.

144. The 9/11 Commission Report, issued in 2004, reported that investigations revealed al Qaeda primarily financed the attacks through funds raised by individuals and charitable organizations in Saudi Arabia and other Gulf nations. THE 9/11 COMMISSION REPORT, FINAL REPORT OF THE NATIONAL COMMISSION ON TERRORIST ATTACKS UPON THE UNITED STATES 171 (2004), *available at* http://www.gpoaccess.gov/911/pdf/fullreport.pdf.

145. Exec. Order No. 13,224, 3 C.F.R. 786 (2001), *reprinted as amended in* 50 U.S.C. § 1701 at 741–43 (Supp. V 2007).

146. Such "dual organizations" include the well-established groups of Hamas and Hezbollah. Dual organizations can operate hospitals, schools, and religious institutions, and can provide public services and relief, but can also be fertile grounds to recruit extremists for terrorist activities. *Violent Islamist Extremism: Government Efforts to Defeat It: Hearing Before the S. Comm. on Homeland Sec. & Governmental Affairs*, 110th Cong. (2007) (testimony of Chip Poncy, Director of Strategic Policy, U.S. Treasury Dept's Office of Terrorist Financing and Financial Crimes) [hereinafter testimony of Chip Poncy].

147. *Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism: Message from the President of the United States*, 147 CONG. REC. H5964–65 (Sept. 24, 2001) (message delivered by Hon. Mike Pence on behalf of the President on "Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism"); Remarks by the President, Sec'y of the Treasury O'Neill

their (1) public aura of trustworthiness and unwitting donors; (2) engagement in some legitimate charitable activities; (3) potential access to considerable financial resources; (4) cash-intensiveness; (5) possible global presence; (6) limited governmental oversight, especially abroad; and (7) typically one-directional transferal of donations and other funds.[148] Thus, pursuant to presidential powers under the International Emergency and Economic Powers Act, President Bush froze assets of individuals and groups on an annexed list of designated foreign persons,[149] persons acting on behalf of those on the list, and persons who had committed, or were significant risks for committing, terrorist acts.[150] The entire annexed list contained the names of twenty-seven Muslim and Arab persons, known as specially designated global terrorists ("SDGTs") and specially designated nationals ("SDNs"), twelve individuals and fifteen groups, including three NGOs.[151] Moreover, the Executive Order authorized government officials to identify more SDGTs and to freeze the assets of any foreign or domestic person associated with SDGTs or "determined . . . to assist in, sponsor, or provide financial, material, or technological support for, or financial or other services to or in support of" terrorism.[152]

The U.S. Congress responded with a powerful weapon, the USA PATRIOT Act, which expanded the president's authority and the ability of government agencies to engage in an unconventional war.[153] The Act allows the government to identify, monitor, investigate, regulate, disrupt, and dismantle not only terrorist operatives and their operations, but also their supporters, who may include NGOs and their donors.[154] Aimed at preventing terrorism,

& Sec'y of State Powell on Executive Order: President Freezes Terrorists' Assets (Sept. 24, 2001), http://whitehouse.gov/news/releases/2001/09/20010924-4.html (last viewed Aug. 28, 2008).

148. *Violent Islamist Extremism: Government Efforts to Defeat It: Hearing Before the S. Comm. on Homeland Sec. & Governmental Affairs*, 110th Cong. (2007) (statement of Chip Poncy, Director of Strategic Policy, U.S. Treasury Dep't's Office of Terrorist Financing and Financial Crimes).

149. The term "person" includes individuals, groups, and entities.

150. Exec. Order No. 13,224, 3 C.F.R. 787 (2001), *reprinted as amended in* 50 U.S.C. § 1701 at 741–43 (Supp. V 2007).

151. Exec. Order No. 13,224, 3 C.F.R. 790 (2001), *reprinted as amended in* 50 U.S.C. § 701 at 741–43 (Supp. V 2007).

152. Exec. Order No. 13,224, 3 C.F.R. 787 (2001), *reprinted as amended in* 50 U.S.C. § 1701 at 741–43 (Supp. V 2007).

153. Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001, Pub. L. No. 107-56, § 106, 115 Stat. 272, 277 (2001).

154. 50 U.S.C. § 1702(a)(1) (Supp. V 2007), as amended by the USA PATRIOT Act. The Act expanded the authority of the President under the International Emergency and Economic Powers Act to regulate and impose

the Act enables the government to freeze and confiscate assets it perceives as destined to support terrorists and terrorist activities.[155] Individuals, as well as traditional and nontraditional structures, including § 501(c)(3) charitable organizations, are subject to these laws, which provide civil and criminal sanctions.[156] Since 2001, Congress has extended anti-terrorism laws,[157] some aimed directly at financing,[158] and government agencies have expanded their programs and initiatives to combat terrorism.[159]

2. *The United Nations Security Council Responds*

Responding quickly to the 9/11 tragedies, on September 28, 2001, the United Nations Security Council adopted Resolution 1373 ("UNSCR 1373").[160] Supplementing the United Nations 1999 International Convention for the Suppression of the Financing of Terrorism,[161] UNSCR 1373 was a clear and binding decision to permanently and universally obligate United Nations member states to combat terrorists and terrorist groups by incorporating counterterrorism infrastructures in their legal and administrative systems.[162] To suppress financing of terrorists, the Resolution called for states to commit to numerous counter-terrorism measures, including: (1) criminalizing active and passive support for terrorists;[163] (2) freezing and confiscating assets of terrorists and entities and people supporting terrorists;[164] (3) prohibiting the provision of assets or financial resources or services to terrorists or

sanctions with respect to a wide range of transactions.

155. *Id*.

156. For a broader discussion of the various laws, penalties, and their applications, see Crimm, *High Alert*, *supra* note 2, at 1354–1437.

157. USA PATRIOT Improvement and Reauthorization Act of 2005, Pub. L. No. 109-177, 120 Stat. 192 (2006).

158. *Id.* §§ 401–410.

159. *See* testimony of Chip Poncy, *supra* note 146 (noting several initiatives taken by various offices to counter terrorism).

160. S.C. Res. 1373, U.N. Doc. S/RES/1373 (Sept. 28, 2001).

161. *See* JAE-MYONG KOH, SUPPRESSING TERRORIST FINANCING AND MONEY LAUNDERING 60–79 (2006); Mark Pieth, *Criminalizing the Financing of Terrorism*, 4 J. INT'L CRIM. JUST. 1074, 1079–85 (2006). Before the 9/11 attacks, only four countries had ratified the United Nations 1999 Convention for the Suppression of Terrorist Financing. By November 2006, there were 132 signatories and 160 countries had ratified the Convention. Center for Nonproliferation Studies, International Convention for the Suppression of the Financing of Terrorism, http://cns.miis.edu/pubs/inven/pdfs/finterr.pdf (last visited Aug. 28, 2008).

162. KOH, *supra* note 161, at 83–85.

163. S.C. Res. 1373 , ¶ 1(b), 2(a), U.N. Doc. S/RES/1373 (Sept. 28, 2001).

164. *Id.* ¶ 1(c).

their supporters;[165] and (4) sharing information on funds frozen.[166] UNSCR 1373 also mandated that countries establish procedures to prevent the use of NGOs to finance terrorism, share operational information, provide technical assistance to enhance multilateral cooperation, and sign the 1999 UN Convention for the Suppression of the Financing of Terrorism.[167] Finally, it required countries to ensure compliance with UNSCR 1373 and other Security Council resolutions by supporting and reporting to a monitoring mechanism it established, the Counter-Terrorism Committee.[168]

3. *The Financial Action Task Force Responds*

The Financial Action Task Force ("FATF"), an intergovernmental body established by the G-7 Summit in Paris in 1989, took additional action.[169] FATF's initial objective was the development and promotion of recommended measures to assist governments in fighting money laundering.[170] To pursue this mission, it had developed a working relationship with the World Bank ("W.B.") and the International Monetary Fund ("I.M.F.") to counteract or prevent terrorist financing. In 1999, the W.B. and the I.M.F. had jointly initiated an effort, the Financial Sector Assessment Program, to administer expert assessments of individual countries' financial systems, to identify strengths and vulnerabilities in them, to determine how risks were being managed, to provide technical assistance, and to help prioritize policy responses.[171] Thus, at the time of the 9/11 attacks, the three entities were already poised to invoke their working relationship. On October 29–30, 2001, FATF met, endorsed UNSCR 1373 (among other United Nations initiatives) and formally expanded its mission to include the development and advancement of standards and policies to suppress terrorist financing.[172]

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165. *Id.* ¶ 1(d).

166. *Id.* ¶ 3(b).

167. *Id.* ¶ 3(a)–(d).

168. *Id.* ¶ 6; KOH, *supra* note 161, at 86–89; *see* Thomas J. Biersteker et al., *International Initiatives to Combat the Financing of Terrorism*, *in* COUNTERING THE FINANCING OF TERRORISM 234, 236–39 (Thomas J. Biersteker & Sue E. Eckert eds., 2008); Pieth, *supra* note 161, at 1079–85.

169. FATF-GAFI, About the FATF, http://www.fatf-gafi.org/pages/0,3417,en_32250379_32236836_1_1_1_1_1,00.html (last visited Aug. 28, 2008).

170. FATF-GAFI, THE FORTY RECOMMENDATIONS Introduction (2004), *available at* http://www.fatf-gafi.org/dataoecd/7/40/34849567.pdf [hereinafter FATF FORTY RECOMMENDATIONS]. FATF initially created forty recommendations of measures for governments to combat money laundering within their borders. *Id.*

171. International Monetary Fund, Financial Sector Assessment Program, http://www.imf.org/external/np/fsap/fsap.asp (last visited Sept. 3, 2008).

172. FATF FORTY RECOMMENDATIONS, *supra* note 170.

Acting on its new directive, FATF created eight Special Recommendations on Terrorist Financing ("Special Recommendations") aimed specifically at combating financing of terrorist groups.[173] The Special Recommendations complemented FATF's earlier forty recommended money laundering principles ("Forty Recommendations"), which primarily proposed appropriate due diligence, disclosure, transparency, and accountability standards for financial institutions and suggested sanctions for non-complying institutions.[174] The Special Recommendations, along with their Interpretive Notes, some of which are detailed in this Article's footnotes, created specific guidance for states' imposition of legal and administrative controls over "alternative remittance systems,"[175]

173. *Id.*

174. *Id.* The original Forty Recommendations were adopted in 1990. FATF-GAFI.org, About the FATF, *supra* note 169. They were subsequently revised in 1996. *Id*. The Forty Recommendations provide principles regarding greater due diligence, transparency, and accountability of countries' financial institutions with regard to their customers, business relationships, connections with cross-border correspondent banks, and internal records. FATF FORTY RECOMMENDATIONS, *supra* note 170, at 2–8. They propose adoption of measures providing supervisory powers to governmental authorities and sanctions for noncompliance by financial institutions. *Id.* at 7. They present a role for Financial Intelligence Units ("FIUs") as centers for receiving, analyzing, and disseminating information on possible money laundering and terrorist financing. *Id.* at 5–6, 8.

175. FATF produced Interpretive Notes to several Special Recommendations, including alternative remittances. By suggesting that states impose consistent anti-money laundering and counter-terrorist financing measures, Interpretive Note to Special Recommendation VI: Alternative Remittance (the "Note") attempts to increase the transparency of payment flows by all formal and informal forms of money or value transfer systems, including *hawala*. The Note defines the term "money [or] value transfer service" as including:

> [A] financial service that accepts cash, cheques, other monetary instruments or other stores of value in one location and pays a corresponding sum in cash or other form to a beneficiary in another location by means of a communication, message, transfer or through a clearing network . . . . A money or value transfer service may be provided by persons (natural or legal) formally through the regulated financial system or informally through non-bank financial institutions or other business entities or any other mechanism either through the regulated financial system . . . or through a network or mechanism that operates outside the regulated system.

FAFT-GAFI, INTERPRETIVE NOTE TO SPECIAL RECOMMENDATION VI: ALTERNATIVE REMITTANCES 1 (2003), *available at* http://www.fatf-gafi.org/dataoecd/53/34/34262291.pdf.

The Note lists three key regulatory components recommended for inclusion in a country's regulation of alternative remittance systems: (1) licensing or registration of persons that provide money/value transfer services; (2) ensuring wire transfers,[176] and nonprofit organizations.[177] These systems and

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the alternative remittance services are subject to all regulatory progeny of the FATF Forty Recommendations and Special Recommendations; and (3) imposing sanctions on such transfer services that operate without a license or registration and that fail to comply with relevant legal regulations. *Id.*
Some scholars consider the term "Alternative Remittance Systems" as too narrow, too ethnocentric, and connoting other conventional systems. Nikos Passas & Samuel Munzele Maimbo, *The Design, Development, and Implementation of Regulatory and Supervisory Frameworks for Informal Funds Transfer Systems*, *in* COUNTERING THE FINANCING OF TERRORISM, *supra* note 168, at 174, 175. Therefore, one critic introduced the term "informal value transfer systems" and defined it as "mechanisms or networks of people facilitating the transfer of funds or value without leaving a trail of entire transactions or taking place outside the traditionally regulated financial channels." *Id*. at 175–76.

176. Revised Interpretive Note to Special Recommendation VII: Wire Transfers attempts to prevent terrorists from electronically transferring funds and to ensure detection of terrorists' misuse of the electronic systems employed by financial institutions. FATF-GAFI, INTERPRETIVE NOTE TO SPECIAL RECOMMENDATION VII: WIRE TRANSFERS (2003), *available at* http://www.fatf-gafi.org/dataoecd/16/34/40268416.pdf. As defined in the Glossary to the FATF Forty Recommendations, the term "financial institution" means:

> [A]ny person or entity who conducts as a business one or more of the following activities or operations for or on behalf of a customer: . . . Acceptance of deposits and other repayable funds from the public [including private banking]; . . . [t]he transfer of money or value [including formal or informal operations, such as alternative remittance activity]; . . . portfolio management; . . . safekeeping and administration of cash or liquid [assets] on behalf of other persons; . . . [o]therwise investing, administering or managing funds or money on behalf of other persons; [and] [m]oney and currency changing.

FATF-GAFI.org, Key Topics, 40 Recommendations Glossary, http://www.fatf-gafi.org/glossary/0,3414,en_32250379_32236889_35433764_1_1_1_1,00.html (last visited Sept. 3, 2008). The Interpretive Note on wire transfers focuses on gathering basic information on the originator of those wire transfers that transmit in excess of a de minimis amount (initially currency equivalent to 1000 Euros—thus, permitting lesser amounts electronically transferred to escape such regulation) and ensuring its immediate availability to law enforcement, FIUs, and beneficiary financial institutions. FATF-GAFI, REVISED INTERPRETIVE NOTE TO SPECIAL RECOMMENDATION VII: WIRE TRANSFERS, *supra* at 1, 2. It recommends that an ordering financial institution of domestic or cross-border electronic transfers be required to transmit wire transfers containing complete originator information, an intermediary financial institution retain that information, and the beneficiary financial institution identify wire transfers lacking complete originator information. *Id.* at 3.

177. Interpretive Note to Special Recommendation VIII: Non-Profit Organizations suggests a diverse range of approaches in identifying, preventing, and combating terrorist misuse of nonprofit organizations ("NPOs"). FATF-GAFI, INTERPRETIVE NOTE TO SPECIAL RECOMMENDATION VIII: NON-PROFIT ORGANIZATIONS (2003), *available at* http://www.fatf-gafi.org/dataoecd/43/5/38816530.pdf. The Interpretive Note on NPOs considers an

organizations, along with banks, had been identified by numerous sources as particularly susceptible to exploitation by terrorists.[178]

Most of the initial response concentrated on formal sectors' financial controls and improving worldwide regulation of sector members. In 2003, FATF updated and adopted a revised set of Forty Recommendations.[179] The updated 2003 Forty Recommendations added a new bridging structural concept, the Financial Intelligence Unit ("FIU"),[180] to facilitate information flow and interaction between a state and institutions regulated by its anti-terrorism financial legal regimes.[181] The FIU effectively is a central repository and bilateral service provider, monitoring money transactions, filtering information, selecting suspicious cases deemed worthy of investigation by authorities, and generally encouraging a climate of mutual trust between the state and the regulated parties.[182]

effective approach as including systems for: (a) outreach to the sector, including the development of "best practices" standards for the NPO sector and of encouraging nonprofits to conduct transactions through regulated financial channels; (b) supervision or monitoring of NPOs' financial resources and activities, including adoption of registration or licensing requirements for NPOs, periodic reviews of NPOs' financial records, NPOs fulfilling a standard of "know your beneficiaries and associate NPOs" by confirming their "identity, credentials, and good standing," requiring NPOs to maintain records of domestic and international transactions for at least five years, and ensuring that appropriate authorities monitor NPOs; (c) effective investigation and information gathering about NPOs to ensure funds are not diverted to terrorists and nonprofits are not used as terrorist conduits; and (d) effective international cooperation, including the creation of procedures for responding to requests for information on particular NPOs. It highlights the importance of "transparency, integrity, and public confidence in the management and functioning of all NPOs," and the adoption of measures by states to identify and take action against NPOs supporting terrorists and those abused by terrorists. *Id.* at 3–4. The Interpretive Note on NPOs defines an NPO as a "legal entity or organization that primarily engages in raising or disbursing funds for purposes such as charitable, religious, cultural, educational, social or fraternal purposes, or for the carrying out of other types of 'good works'." *Id.* at 2.

178. *See* FINANCIAL ACTION TASK FORCE ON MONEY LAUNDERING, REPORT ON MONEY LAUNDERING TYPOLOGIES 2000-2001 18–22 (2001), *available at* http://www.fatf-gafi.org/dataoecd/29/36/34038090.pdf; FINANCIAL ACTION TASK FORCE ON MONEY LAUNDERING, 1998-1999 REPORT ON MONEY LAUNDERING TYPOLOGIES 12 (1999), *available at* http://www.fatf-gafi.org/dataoecd/29/38/34038177.pdf.

179. FATF-GAFI, About the FATF, *supra* note 169.

180. FATF FORTY RECOMMENDATIONS, *supra* note 170, at 8.

181. KOH, *supra* note 161, at 141.

182. ENDERS & SANDLER, *supra* note 1, at 155; KOH, *supra* note 161, at 141; *see* INTERNATIONAL MONETARY FUND, FINANCIAL INTELLIGENCE UNITS: AN OVERVIEW (2004), *available at* http://www.imf.org/external/pubs/ft/FIU/fiu.pdf

Informed by an earlier joint project with the W.B. and I.M.F. to produce methodologies for assessing anti-money laundering and anti-terrorism financing initiatives,[183] in 2004 FATF developed and began implementing assessment criteria by which to evaluate a country's compliance with all FATF Forty Recommendations and its Special Recommendations.[184] In that same year, FATF added a ninth Special Recommendation and Interpretive Note to address an area on which it previously had been silent: cash couriers.[185]

(discussing the functions of the FIU); Egmont Group, Information Paper on Financial Intelligence Units and the Egmont Group, www.egmontgroup.org/info_paper_final_092003.pdf (last visited Sept. 3, 2008). The Egmont Group is an association created by Financial Intelligence Units ("FIU") to link the FIUs internationally, set up guidelines for countries' FIUs by which to act as a central repository of financial information, undertake analysis of collected information, and facilitate dissemination of the results. KOH, *supra* note 161, at 54; *see also* U.S. Dep't of Treasury, Financial Crimes Enforcement Network, Egmont Group of Financial Intelligence Units, http://www.fincen.gov/international/egmont/ (last visited Sept. 3, 2008). Nonetheless, critics suggest that because the Egmont Group is not a globally connected network, terrorists can escape FIUs' surveillance. ENDERS & SANDLER, *supra* note 1, at 155. Also, the Egmont Group's effectiveness is diluted because it cannot compel worldwide participation or cooperation. *Id.*

183. IMF.org International Monetary Fund, Standard Setting Agencies, http://www.imf.org/external/standards/agency.htm#2a (last visited Sept. 3, 2008).

184. FINANCIAL ACTION TASK FORCE ON MONEY LAUNDERING, METHODOLOGY FOR ASSESSING COMPLIANCE WITH THE FATF 40 RECOMMENDATIONS AND THE FATF 9 SPECIAL RECOMMENDATIONS 1 (2006), *available at* http://www.fatf-gafi.org/dataoecd/45/15/34864111.pdf.

185. The purpose of the ninth FATF recommendation is to ensure that countries regulate physical cross-border transportation of currency and bearer negotiable instruments. FINANCIAL ACTION TASK FORCE ON MONEY LAUNDERING, SPECIAL RECOMMENDATIONS ON TERRORIST FINANCING 2 (2004) (Recommendation IX. Cash Couriers), *available at* http://www.fatf-gafi.org/dataoecd/8/17/34849466.pdf [hereinafter FATF TERRORIST FINANCING RECOMMENDATIONS]. Interpretive Note to Special Recommendation IX: Cash Couriers aims to ensure that countries institute measures:

> (1) to detect the physical cross-border transportation of currency and bearer negotiable instruments, (2) to stop or restrain currency and bearer negotiable instruments that are suspected to be related to terrorist financing or money laundering, (3) to stop or restrain currency and bearer negotiable instruments that are falsely declared or disclosed, (4) to apply appropriate sanctions for making a false declaration or disclosure, and (5) to enable confiscation of currency or bearer negotiable instruments that are related to terrorist financing or money laundering.

FINANCIAL ACTION TASK FORCE ON MONEY LAUNDERING, INTERPRETIVE NOTE TO SPECIAL RECOMMENDATION IX: CASH COURIERS 1 (2004), *available at* http://www.fatf-gafi.org/dataoecd/5/48/34291218.pdf.

It suggests two systems that countries should implement, both of which are

4. Other Responses

None of the FATF Forty Recommendations or Nine Special Recommendations are binding law, but rather constitute discretionary "soft law" because the FATF has no formal authority to issue more than broad standards.[186] Nonetheless, as a result of pressure by FATF-style regional bodies to promote adoption and implementation of FATF recommendations,[187] other diplomatic initiatives,[188] and the occurrence of post-9/11 terrorist attacks,[189]

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applicable to all persons physically transporting currency or bearer-negotiable instruments cross-border. First is a declaration system that requires a courier to submit a truthful declaration to designated competent authorities if the value of the transported currency or financial instruments exceeds $15,000. *Id.* at 2. Second is a disclosure system that requires a courier to truthfully disclose to designated competent authorities, upon their request (even if the inquiry is made on a targeted basis, whether random or based on intelligence or suspicion), that cash or a financial instrument is being transported. *Id.* at 2. Elements common to both systems are: (1) their applicability to both incoming and outgoing transportation; (2) "competent authorities should have the authority to request and obtain further information from the carrier" if they discover false declarations, disclosures, or a failure to declare or disclose; (3) disclosed or declared information should be made available to the FIU; (4) sufficient coordination among customs, immigration, and other authorities; (5) where authorities suspect connection with money laundering or terrorist financing, determine a courier to make a false declaration or disclosure, authority to stop or restrain cash or financial instruments for a reasonable period to ascertain connection with money laundering or terrorist financing, if any; and (6) sanctions for persons who make a false declaration or disclosure. *Id*. at 2–3.

186. KOH, *supra* note 161, at 120–21. Koh defines "soft law" by its absence of characteristics elemental to "hard law." *Id.* at 120. Those characteristics are having binding force, precision, and compulsory binding dispute resolution. *Id*.

187. Modeled after FATF, there currently are five regional FATF-Style Regional Bodies ("FSRBs"). PAUL ALLEN SCHOTT, WORLD BANK, REFERENCE GUIDE TO ANTI-MONEY LAUNDERING AND COMBATING THE FINANCING OF TERRORISM IV-1 (2d ed. 2006), *available at* http://siteresources.worldbank.org/EXTAML/Resources/396511-1146581427871/Reference_Guide_AMLCFT_2ndSupplement.pdf. Open voluntarily to jurisdictions within defined geographic areas, FSRBs assist countries in identifying weaknesses in their regulatory systems and provide information on developments. *Id.* at IV-2. Some FSRBs have issued their own conventions or instruments on anti-money laundering standards. *Id.* at IV-3.

188. *See, e.g.*, Moyara de Moraes Ruehsen, *Arab Government Responses to the Threat of Terrorist Financing*, *in* TERRORISM FINANCING AND STATE RESPONSES: A COMPARATIVE PERSPECTIVE 152, 155–60 (Jeanne K. Giraldo & Harold A. Trinkunas eds., 2007); JOHN ROTH ET AL., NATIONAL COMMISSION ON TERRORIST ATTACKS UPON THE UNITED STATES, MONOGRAPH ON TERRORIST FINANCING 45–47, 124–28 (2004), *available at* http://govinfo.library.unt.edu/911/staff_statements/911_TerrFin_Monograph.pdf.

189. *See* Daniel L. Byman, BROOKINGS INST., CONFRONTING PASSIVE

numerous countries have endorsed and accepted them as "international best practices."[190] Moreover, in accord with UNSCR 1373, relying on the FATF Forty Recommendations and Special Recommendations,[191] such countries transformed "soft laws" into "hard laws." Countries designed national level anti-terrorism financial regulatory schemes, including disclosure rules and sanctions for noncompliance. They also established monitoring and evaluation systems[192] that target formal and informal entities, persons, and financial transmission and transportation processes considered vulnerable to abuse by terrorists and in need of greater transparency and accountability. And yet, despite diplomatic pressures after 9/11, certain countries' laws aimed at suppressing and preventing the financing of terrorists and terrorist organizations are still not compliant with all of the rigorous and comprehensive FATF recommendations.

SPONSORS OF TERRORISM 9–10 (2005), *available at* http://www.brookings.edu /~/media/Files/rc/papers/2005/0201middleeast_byman/byman20050201.pdf (commenting that a major stimulus for Saudi Arabia's adoption of legal measures was the May 12, 2003, bombing of a Riyadh residential compound).

190. Part of the success of corralling countries' agreement to develop regulatory systems may well be attributable to FATF's "name-and-shame" approach of maintaining and publicizing a list of non-cooperating countries and territories. FATF currently has thirty-four member countries. For a list, see FATF-GAFI.org, FATF Members and Observers, http://www.fatfgafi.org /document/52/0,3343,en_32250379_32237295_34027188_1_1_1_1,00.html (last visited Sept. 3, 2008).

191. The nine Special Recommendations sequentially provide that countries should: (1) ratify and implement United Nations ("UN") instruments relating to the prevention and suppression of terrorist financing, especially Security Council Resolution 1323; (2) criminalize the financing of terrorism, including related money laundering; (3) freeze and confiscate terrorists' assets; (4) provide for financial institutions, businesses, and other entities to report to governmental authorities suspicious transactions considered potentially connected to terrorism; (5) establish mechanisms to provide other countries information exchange and legal assistance cooperation; (6) ensure the licensing and registration of alternative remittance systems; (7) ensure that financial institutions and money remitters scrutinize, monitor, and collect information on originators of domestic and cross-border wire and fund transfers carried out electronically; (8) adopt measures to protect the nonprofit sector against abuse by terrorists, and identify and act against nonprofit organizations that actively support or are exploited by terrorists or terrorist organizations; and (9) regulate couriers' physical cross-border transportation of currency and bearer-negotiable instruments. FATF TERRORIST FINANCING RECOMMENDATIONS, *supra* note 185.

192. FATF has thirty-two member countries and territories, two member international organizations, two countries with "observer" status, three FATF-style regional bodies, and numerous observer regional bodies. FATF-GAFI.org, FATF Members and Observers, *supra* note 190. FATF-Style Regional Bodies have functions similar to that of FATF *Id.*

B. States' Specific Regulatory Responses

1. Islamic Republic of Iran

The United States and the international community believe that Iran's state-owned banks funnel money to terrorists, and there have been efforts to reduce Iran's banks' integration in the international financial system.[193] Not surprisingly, the Islamic Republic of Iran is a country whose anti-terrorist financing legal framework is considered extremely weak, despite the external pressures on Iran.[194] An I.M.F. Country Report, released in spring 2007, indicated that although Iran has taken some action to create an anti-money laundering legal framework, important areas in both anti-money laundering and combating terrorism financing remain untouched or weak.[195] The I.M.F. reported that Iran's wire transfer regulations contain no requirement that originator-identifying information be attached to wire transfers, although they do impose some type of "know your customer" rules regarding reporting suspicious activities.[196] The I.M.F. found that although "not specifically designed for CFT [combating the financing of terrorists], there is a declaration system in place for cross-border cash movements, a regulatory system for remittances, and a legal framework for nonprofit organizations."[197] It also reported "important shortcomings," such as not conferring authority for freezing or blocking accounts at banks and non-financial institutions, failing to criminalize terrorism financing as an offense, not requiring financial institutions to report suspicious transactions, and not authorizing an FIU.[198] Accordingly, FATF released a statement on October 11, 2007 expressing "the Islamic Republic of Iran's lack of a comprehensive anti-money laundering/combating the financing of terrorist ("AML/CFT") regime represents a significant vulnerability within the international financial system" and finding Iran virtually non-compliant with FATF standards.[199] Basically,

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193. *Anti-Terrorism Financing, Hearing Before the S. Comm. on Finance,* 110th Cong. (2008) (statement of Stuart Levey, Undersecretary, Terrorism and Fin. Intelligence, U.S. Dep't of Treasury).

194. INTERNATIONAL MONETARY FUND, COUNTRY REPORT NO. 07/100: ISLAMIC REPUBLIC OF IRAN 19 (2007) [hereinafter COUNTRY REPORT ON IRAN], *available at* http://www.imf.org/external/pubs/ft/scr/2007/cr07100.pdf.

195. *Id.*

196. *Id.*

197. *Id.* Nonetheless, with the exception of a cap on the amount of Iranian currency permitted to be imported and exported by travelers, exhaustive research has failed to find details of these systems.

198. *Id.*

199. FINANCIAL ACTION TASK FORCE, FATF STATEMENT ON IRAN (2007), *available at* http://www.fatf-gafi.org/dataoecd/1/2/39481684.pdf.

Iran is non-compliant with FATF standards.

2. Pakistan

Pakistan is a member of the Asia-Pacific Group ("APG") on money laundering, an FATF associate member body.[200] APG was formed by Asian-Pacific countries to ensure assistance by member countries in the "adoption, implementation and enforcement" of the FATF Forty Recommendations and Special Recommendations.[201]

Pakistan's laws appear to comply with some, but not all, of the main FATF anti-terrorism finance standards. Pursuant to banking laws dating back to 1962,[202] Pakistan imposes on its financial institutions "know your customer" disclosure rules, including required verification of customer's identification, business/risk profiles, and the like.[203] These laws allow financial institutions to share client information.[204] Where domestic and cross-border transfers of money occur by wire, the financial institution must gather and retain basic information on the originator.[205] Updated post-9/11 commercial banking regulations now provide that all financial institutions in the transmission chain must retain information on the originator.[206] Other than licensed banks, licensed "money exchanges" ("IVTS") are now the only authorized means for

Undersecretary of Treasury for Terrorism and Financial Intelligence, Stuart A. Levey, has reported that the "world's leading financial institutions have essentially stopped dealing with Iran, especially Iranian banks, in any currency" due to the risks that result from the country's failure to have sufficient laws in place. Stuart A. Levey, Undersec'y of Treasury, Terrorism and Fin. Intelligence, Remarks as Prepared for Delivery Before the American Bar Association's 22nd Annual National Institute on White Collar Crime (Mar. 6, 2008) (transcript available through States News Service, LEXIS).

200. FATF-GAFI.org, Asia Pacific Group ("APG"): Members, http://www.fatfgafi.org/document/19/0,3343,en_32250379_32236869_34354899_1_1_1_1,00.html (last visited Sept. 3, 2008).

201. *Id*. A.P.G.'s documents indicate a recognition that regional factors impact the construction and implementation of legal regimes adopting FATF standards. *Id*.

202. Banking Companies Ordinance, § 27 (1962) (Pak.), *available at* http://www.sbp.org.pk/publications/prudential/ordinance_62.pdf.

203. *Id*. at §§ 43A, 93C.

204. *Id.* at § 93C.

205. Payment Systems and Electronic Funds Transfer Act , Chapter II, § 7, (Pak.), *available at* http://www.sbp.org.pk/psd/2007/EFT_ACT_2007.pdf; Prudential Regulations for Corporate/Commercial Banking, Banking Policy and Regulation Department, State Bank of Pakistan, Regulation M2(c), *available at* http://www.sbp.org.pk/publications/prudential/PRs-Corporate.pdf.

206. BANKING POLICY & REGULATION DEP'T, STATE BANK OF PAKISTAN, PRUDENTIAL REGULATIONS FOR CORPORATE/COMMERCIAL BANKING, 43 (2007) (Regulation M-2(c)), *available at* http://www.sbp.org.pk/publications/prudential/PRs-Corporate.pdf.

transferring funds.[207] The State Bank of Pakistan has authority to inspect the records of a person or firm believed to be operating a money exchange without a license and to publish its findings.[208] It is not clear that Pakistan has any declaration or disclosure rules or other regulatory provisions in place applicable to cash courier transfers other than those that establish maximum amounts of cash and notes that can be imported and exported.[209]

For purposes of terrorism financing prevention and suppression, Pakistan has no special statutes with respect to NGOs. The same acts and ordinances discussed in Part IV that control nonprofit societies, nonprofit companies, trusts, and social welfare agencies provide the only parameters for registration and licensing; periodic reviews of financial records are relied upon.[210] Rules also require that all funds received by nonprofit sector organizations from abroad must be reported to the Bank of Pakistan with a statement of their source and intent for their use.[211] The Bank of Pakistan is the guardian of such documentation, which reportedly is supplied by the majority of NGOs.[212] The question being asked, perhaps with some justification, is "why should the larger body [of compliant NGOs] suffer [with more burdensome disclosure, transparency, and accountability laws] for the sake of a few organizations which do not comply with the law?"[213]

3. Lebanon

Lebanon is a member country of the Middle East and North African Region ("MENAFATF"), a FATF associate member body.[214] MENAFATF is independent of other international bodies, but it cooperates with FATF to achieve the same objectives.[215]

207. Nadeem Malik, *Short Change for Pakistan's Money Changers*, ASIA TIMES ONLINE, Oct. 17, 2001, *available at* http://www.atimes.com/ind-pak/CJ17Df01.html ("The State Bank of Pakistan ("SBP") has constituted a special committee to convert the currently authorized money changers into fully legally established exchange companies, working under strictly enforced prudential regulations.").

208. BANKING COMPANIES ORDINANCE, *supra* note 203, at §§ 43A–B.

209. State Bank of Pakistan Notification No. F.E. 4/92–SB, (Dec. 28, 1992), http://www.sbp.org.pk/Epd/1993/c26Annex.htm; Notification No. F.E. 5/92–SB, (Dec. 28, 1992), http://www.sbp.org.pk/Epd/1993/c26Annex.htm.

210. *See* Ismail, *supra* note 110, at 3 (discussing the legal framework for registration of NPOs in Pakistan).

211. *Id.* at 41.

212. *Id.*

213. *Id.*

214. FATF-GAFI.org, Middle East and North Africa Financial Action Task Force ("MENAFATF"), http://www.fatf-gafi.org/document/11/0,3343,en_32250379_32236869_34864395_1_1_1_1,00.html (last visited Sept. 3, 2008).

215. MENAFATF.org, About MENAFATF, http://www.menafatf.org

Lebanon's laws have evolved in recent years, and the legal regime now appears to comply with some, but not all, of the FATF standards. Regulatory measures covering its financial institutions require "know your customer" accountability compliance for all transaction purposes.[216] More specifically, as of 2005, for cross-border wire transfers, including those initiated through debit and credit cards, the originator's full name, address, and account or reference number must be recorded and should remain with the transfer through its transmission chain.[217] For domestic wire transfers, the rules are less rigorous, requiring only that the originating financial institution maintain a means of tracing the transaction and identifying the originator to authorities or to the beneficiary financial institution within three days of a request.[218]

Last year, Lebanon adopted rules covering *hawala* and their intermediaries and brokers (*hawala dar*).[219] Although it is unclear whether the government imposes registration or licensing requirements on *hawala* or *hawala dar*, they are required to notify the Central Bank of Lebanon about all pending transfers and to maintain records on clients for five years, including the originator's name, nationality, passport or identification card number, amount transferred, transfer's purpose, destination of outgoing transfer or country of origin of incoming transfer, and beneficiary's identification.[220]

Lebanon does not appear to impose FATF-style restrictions on cash couriers.[221] Current disclosure, transparency, and

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/categoryList.asp?cType=about (last visited Sept. 3, 2008). Member countries of MENAFATF commit to adopt and implement the FATF Forty Recommendations and Nine Special Recommendations, implement UN Security Council resolutions to counter terrorism, cooperate and share information, and work to build legal systems in accord with particular cultural values. MENAFATF.org, About MENAFATF: Objectives, http://www.menafatf.org /topiclist.asp?ctype=about&id=426 (last visited Sept. 3, 2008).

216. *See infra* notes 217–18 and accompanying text.

217. BANK OF LEBANON, INTERMEDIATE CIRCULAR NO. 99: INTERMEDIATE DECISION NO. 9217, (Dec. 23, 2005), *available at* http://www.sic.gov.lb/circular99.shtml.

218. *Id*.

219. BANK OF LEBANON, BASIC CIRCULAR NO. 111: BASIC DECISION 9708, CASH TRANSFERS IN ACCORDANCE WITH THE HAWALA SYSTEM, (Sept. 24, 2007), *available at* http://www.sic.gov.lb/basicbdl.shtml.

220. *Id*.

221. Information on Lebanon's currency exchange does not state restrictions on the import and export of foreign and domestic currency, nor provide other information relevant to cash couriers. *See* Lebanon Currency Exchange, Currency Code, Currency Import and Export Restrictions, http://www02.tiglion.net/scripts/travdb/currency/exe/curr.asp?country=LB (last visited Sept. 3, 2008) (stating that import and export restrictions are generally

accountability rules applicable to NGOs appear to be the same as those discussed in Part IV, imposed for purposes not specific to anti-terrorism financing.

4. Brief Evaluation of Three Countries' Compliance with FATF Standards

None of the three countries—the Islamic Republic of Iran, Pakistan, and Lebanon—is fully compliant with the comprehensive panoply of FATF standards. The Islamic Republic of Iran is unremarkable in its virtually non-existent response. Pakistan and Lebanon clearly have added new laws that require some types of disclosure, transparency, and accountability measures promoted by the FATF These latest requirements, however, do nothing to transform the legal regimes of these countries into more accommodating, facilitative, or enabling environments that encourage a thriving and engaged civil society with strong financial support structures.

C. Measuring the Effectiveness of Anti-Terrorism Financing Laws: Resulting Frozen Funds

One objective measure of the effectiveness of anti-terrorism finance laws is the magnitude of terrorist-related funds that governments have frozen.[222] Even with the great worldwide emphasis placed on preventing and suppressing terrorism financing, only a relatively small amount has received that treatment.[223] The U.S. government reported that, as of September 30, 2004, "over $200 million of terrorist-related funds" had been frozen.[224] Anti-terrorism

"[i]n any form to an unlimited amount").

222. Considering the cost-benefit effectiveness of anti-terrorism financing laws is difficult due to a lack of measurable metrics. For example, focusing on the U.S., no one really knows whether the benefits of the U.S. anti-terrorism finance measures actually have significantly outweighed the tangible and intangible costs. Other than the relatively small amount of terrorist-related funds frozen by the U.S. government since 9/11, there is no way to calculate the amount of cash flow to terrorists *prevented* by the U.S. initiatives. There also is no way to determine whether the U.S. initiatives truly have causally curtailed terrorist acts. We do know that terrorist attacks have continued to occur outside the U.S. since 9/11.

223. As stated in the staff monographs of the 9/11 National Commission on Terrorist Attacks Upon the United States, "U.S. efforts have shown that detecting and disrupting the terrorist money among the billions is extremely difficult, even with the best capabilities and intentions." ROTH ET AL., *supra* note 188, at 49.

224. *International Terrorist Financing: Hearing Before the Subcomm. on Domestic and International Monetary Policy, Trade and Technology, H. Comm. on Financial Services*, 108th Cong. 3 (2004) (statement of Juan Carlos Zarate, Assistant Secretary, U.S. Dep't of Treasury) [hereinafter statement of Juan

finance laws of countries across the globe now cover not only highly regulated financial institutions, but also NGOs, IVTS,[225] wire transfers, and cash couriers.[226] Still, more recent reports on the amounts of frozen funds appear rather modest. Reports indicate the amounts of terrorist-related funds frozen by the following countries: $13,793,102 and $16,413,733 by the U.S. in 2005 and 2006,[227] respectively; $10,334,614 by Bahrain as of 2006;[228] $3,101,186 by the United Kingdom as of 2007;[229] $11,000,000 by Saudi Arabia as of

Carlos Zarate].

225. Approximately $2–5 billion annually is transmitted through *hawala* in Pakistan alone. NAPOLEONI, *supra* note 22, at 128, 218. A Pakistani *hawaladar* was behind the 1998 attack on the American embassies in Africa. *Id*. at 128. Worldwide, about $200 billion could be diverted for terrorism through *hawala* transmissions. *Id*. U.S. GENERAL ACCOUNTING OFFICE, GAO-04-163, TERRORIST FINANCING: U.S. AGENCIES SHOULD SYSTEMATICALLY ASSESS TERRORISTS' USE OF ALTERNATIVE FINANCING MECHANISMS 24 (2003), *available at* http://www.gao.gov/new.items/d04163.pdf. Two recent studies estimated approximately $300 billion in diaspora remittances take place annually. DeParle, *supra* note 22, at WK3.

226. *See* statement of Juan Carlos Zarate, *supra* note 224.

227. OFFICE OF FOREIGN ASSETS CONTROL, U.S. DEP'T OF THE TREASURY, TERRORIST ASSETS REPORT 8 (2005), *available at* http://www.treas.gov/offices/enforcement/ofac/reports/tar2005.pdf; OFFICE OF FOREIGN ASSETS CONTROL, U.S. DEP'T OF THE TREASURY, TERRORIST ASSETS REPORT 8 (2006), *available at* http://www.treas.gov/offices/enforcement/ofac/reports/tar2006.pdf. The total reflects funds blocked by the Office of Foreign Assets Control relating to SDGT, SDT, and FTO programs. The funds belonged to the following organizations: Al-Qaida, Hamas, Mujahedin-E Khalq Organization, New People's Army, Palestinian Islamic Jihad, Kahane Chai, Taliban, and Hizballah. *Id.* According to the Financial Action Task Force Report on the United States, the U.S. has frozen/blocked a total of $281,372,910 worth of assets as of 2005; however, $264,935,075 of the assets was unblocked after the removal of the Taliban Government from control in Afghanistan. FINANCIAL ACTION TASK FORCE, THIRD MUTUAL EVALUATION REPORT ANTI-MONEY LAUNDERING AND COMBATING THE FINANCING OF TERRORISM: UNITED STATES OF AMERICA 58 (2006), *available at* http://www.fatf-gafi.org/dataoecd/44/9/37101772.pdf. In addition, the U.S. has seized $37,314,379 pursuant to "investigations with possible terrorist links." *Id.*

228. MIDDLE EAST & NORTH AFRICA FINANCIAL ACTION TASK FORCE, MUTUAL EVALUATION REPORT OF THE KINGDOM OF BAHRAIN 42 (2006), *available at* http://www.menafatf.org/images/UploadFiles/MutualEvaluationReportOfBahrain.pdf. The total refers to accounts frozen in accordance with the UN Resolution terrorist list. *Id.*

229. FINANCIAL ACTION TASK FORCE, THIRD MUTUAL EVALUATION REPORT ANTI-MONEY LAUNDERING AND COMBATING THE FINANCING OF TERRORISM: THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND 73–74 (2007), *available at* http://www.fatf-gafi.org/dataoecd/55/29/39064399.pdf. The total reflects "[f]igures for the amounts of money frozen, seized and confiscated under terrorism-related powers since 2001." *Id.* It includes $1,090,000 in seized funds

2007;[230] and $2,000,000 by Turkey as of 2007.[231] (For the countries above discussed—the Islamic Republic of Iran, Pakistan, and Lebanon—the specific amounts of funds blocked, if any, in connection with terrorist financing are unavailable.)

Consequently, the question becomes whether adding comprehensive stringent anti-terrorism financing measures to previously-existing regulatory regimes is otherwise fruitful. There is no certain answer. On the other hand, it does appear that unintended counterproductive potentials exist if wide-ranging strict FATF-style anti-terrorism finance laws were adopted, implemented, and enforced fully by the Islamic Republic of Iran, Pakistan, and Lebanon.

VI. COUNTERPRODUCTIVE POTENTIALS OF THE ANTI-TERRORISM FINANCING MEASURES

The anti-terrorism financing measures adopted by countries worldwide aim to prevent and combat terrorism, a national security interest for all countries. Nonetheless, for some foreign countries, adoption, implementation, and enforcement of strict laws modeled on the FATF standards ironically may have counterproductive potentials for aggravating problems touted as key causes of terrorism.[232] Exacerbating them could therefore compromise the

and $500,000 in frozen assets. *Id.* The dollar amount is based on the exchange rate as of February 18, 2008. The report states that $78 million in "assets belonging to the former Taliban Government of Afghanistan were frozen . . . [but] these funds were released in 2002 in accordance with UN [Security Council] agreements." *Id.*

230. CHRISTOPHER M. BLANCHARD & ALFRED B. PRADOS, CRS REPORT FOR CONGRESS, SAUDI ARABIA: TERRORIST FINANCING ISSUES 25 (2007), *available at* http://www.fas.org/sgp/crs/terror/RL32499.pdf. According to the authors, Saudi "security forces had seized $4.5 million through raids on terrorist safe houses and operatives [in March 2005], along with $6.5 million in 11 separate bank accounts since early 2003." *Id.*

231. FINANCIAL ACTION TASK FORCE, THIRD MUTUAL EVALUATION REPORT ANTI-MONEY LAUNDERING AND COMBATING THE FINANCING OF TERRORISM: TURKEY 40–41 (2007), *available at* http://www.fatf-gafi.org/dataoecd/14/7/38341173.pdf. The report states that approximately $2 million in assets belonging to "one natural person and two legal persons" listed in the enclosure to UN Security Council Resolution 1267 were "frozen under the decrees of the Council of Ministers." *Id.* at 40.

232. Such potential is noted by a FATF member country, the United Kingdom, in the government's August 2007 review of its Charity Commision's anti-terrorism regulatory approach over its charitable sector. The Home Office & HM Treasury's Review of Safeguards to Protect the Charitable Sector (England and Wales) from Terrorist Abuse, The Charity Commission's Response to the Consultation (Aug. 2007), http://www.charity-commission.gov.uk/supportingcharities/terror.asp. The review noted the impact

national security interests of the United States and other countries.

A. *Muslim-Americans' Wealth Redistributions*

The chilling effect of Executive Order 13,224 and the USA Patriot Act on Muslim-Americans' philanthropic and charitable wealth redistributions and on operations of U.S.-based Islamic charities is well documented. The government's enforcement of counter-terrorism laws has led well-intentioned, law-abiding Muslim-Americans to feel inappropriately targeted as threats to domestic security and to fear prosecution as material supporters of terrorism for transmitting their diaspora charitable and philanthropic giving through U.S.-based Islamic NGOs, mosques, and other channels.[233] Some Muslim-Americans have suffered long-term or permanent stains on personal and business reputations, harassment, or even civil or criminal sanctions as a result of links to charities that allegedly provided "material support" to terrorists and terrorist organizations.[234] Muslim leaders of domestic Muslim

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that charities have around the world in addressing "many underlying causes of disaffection that may lead people to turn to extremism or terrorism," and suggested the complete undesirability of causing the "unintended consequence of a counter-terrorist strategy" of making it impossible for legitimate charities to operate "in areas of high risk" because of its "negative impact on genuine beneficiaries." *Id*. at §§ 2.1, 3.13. It commented that to limit the risks to public trust and confidence in charities, the Charity Commission's response must be effective, proportionate, and evidence-based "in relation to both the nature and the scale of the threat." *Id*. at § 3.12. More specifically, the review stated that "[r]egulatory action inhibiting the flow of [charitable] funds must be justified by evidence that this is an appropriate step to take." *Id*. at § 3.16. In noting that the Charity Commission's model of risk factors for charities included entities "closely aligned to particular religious or cultural movements," the review cautioned that "[c]are needs to be taken to ensure that, in highlighting this as a risk factor, damage is not done to the credibility of the whole of the faith-based charity sector or parts of it, and to recognize that the vast majority of these charities undertake legitimate and essential work." *Id*. at § 3.18.

233. *See* Crimm, *Muslim-Americans' Charitable Giving Dilemma, supra* note 20; LOUISE CAINKAR, SOCIAL SCIENCE RESEARCH COUNCIL, US MUSLIM LEADERS AND ACTIVISTS EVALUATE POST 9/11 DOMESTIC SECURITY POLICIES 4–6, *available at* http://programs.ssrc.org/gsc/publications/gsc_activities/migration/cainkar.pdf.

234. *See, e.g.*, ROTH, ET AL., *supra* note 188, at 80–86; Crimm, *High Alert*, *supra* note 2, at 1349 n.16 (listing numerous 2001-2004 news articles reporting donors' fears); Alan Cooperman, *Muslim Charities Say Fear is Damming Flow of Money*, WASH. POST, Aug. 9, 2006, at A3; Audrey Hudson, *CAIR Concedes Membership Down; Blames U.S. for Linking it to Charity on Trial for Terrorist Ties*, WASH. TIMES, Aug. 22, 2007, at A1; Gregg Krupa, *Muslims Seek 'Safe' Charities for Giving*, DETROIT NEWS, Oct. 5, 2007, at 1A; MacFarquhar, *supra* note 32, at A14; Caroline Preston, *Donations Trickle in to Charities Providing Middle East Aid*, CHRON. PHIL., July 27, 2006, http://philanthropy.com/free/update/2006/07/2006072701.htm; Alex Cohen,

charitable organizations, who publicly have expressed vehement consternation at the chilling effect the incidents have had on Muslim-Americans' fundamental religious obligation of giving *zakat*, have documented a substantial decline in contributions received by their charities, and have struggled to maintain their charities' levels of commitment to global philanthropy.[235] Muslim-Americans have seen the widely disseminated media reports on the government's actions toward U.S.-based Islamic NGOs[236]—the designation of forty-

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Marketplace: Some U.S. Muslim Charities Find Fundraising Is More of a Challenge Since 9/11 (Minn. Pub. Radio broadcast, Oct. 4, 2005); *Talk of the Nation: Arab Americans Hesitant to Donate to Lebanese Charities* (NPR radio broadcast, Aug. 9, 2006). Since 9/11, Muslim-Americans have been encouraged to give not only voluntary contributions but also their obligatory *zakat* domestically rather than overseas. Jane Lampman, *U.S. Muslims in a Quandary Over Charities*, CHRISTIAN SCI. MONITOR, Nov. 17, 2004, at 11–12. Some Muslim-Americans have followed this suggested approach. *Id.;* Laurie Goodstein, *Since 9/11, Muslims Look Closer to Home*, N.Y. TIMES, Nov. 15, 2004, at F1, F13. This does not resolve, however, the tension most feel as a result of the Islamic beliefs that Muslims must give *zakat* to the neediest, with priority to Muslims, and these people reside in developing and underdeveloped countries abroad. *See supra* note 16 and accompanying text.

235. *See* JOHN TIRMAN, SOCIAL SCIENCE RESEARCH COUNCIL, REFRAMING THE CHALLENGE OF MIGRATION AND SECURITY (Sep. 2004), *available at* http://programs.ssrc.org/gsc/publications/gsc_activities/migration/abstract.pdf; Cooperman, *supra* note 234 (reporting that Muslim charities, fearful of recrimination from the U.S. government, sought guidelines from the Department of the Treasury for steps they should take before giving funds to groups abroad); Shabina S. Khatri, *Muslims Wary About Charity: But Raids Don't Stop Generosity at Ramadan*, DETROIT FREE PRESS, Sept. 26, 2006 at 1; Ian Wilhelm, *Muslim Charities Accuse Government of Harming Their Fund Raising*, CHRON. PHIL., Jan. 9, 2003, at 25 (reporting that donations to domestic Muslim charities have fallen by twenty percent since the government has pursued Muslim nonprofit groups for material support of terrorists); Robert Siegel & Greg Allen, *All Things Considered: Muslim Charities and Donors Attempt to Adapt to New Level of Scrutiny Since 9/11* (NPR radio broadcast, May 12, 2003) (reporting that the Islamic monthly, The Mineret, survey indicated donations to mosques and charities across the country are down 20%-30%); Tess Vigeland & Sara Harris, *Marketplace Morning Report: U.S. Government Action to Seize Funds Allegedly Tied to Terrorists Has Also Affected Some American Muslim Charities* (NPR radio broadcast, Dec. 26, 2001) (reporting Muslim charities expect lower donations). Government officials have taken the position that the government's actions in its financial war on terrorism should engender donor confidence rather than fear. *See Terrorism: The Threat of Terrorist Financing: Hearing Before the Subcomm. on Terrorism, Technology & Homeland Sec. Before the S. Comm. on the Judiciary*, 108th Cong. (2003) (written testimony of David D. Aufhauser, General Counsel, U.S. Dep't of the Treasury).

236. *See infra* notes 238–41.

five as specially designated terrorist organizations,[237] closure of several,[238] freezing or seizing assets of some,[239] suspending the tax-exempt status of several without an opportunity for prior challenge,[240] and naming more than 300 as unindicted co-conspirators in a federal district court case.[241] They have considered them real, albeit often inappropriate, counterproductive,[242] and unwarranted,[243] generalized anti-Muslim

237. U.S. Dep't of the Treasury, Protecting Charitable Organizations, http://www.treas.gov/offices/enforcement/key-issues/protecting/fto.shtml (last visited Sept. 3, 2008). Some are considered al-Queda-related; a few are listed as Hamas-related; several are designated as Hezbollah-related; and one is listed as Palestinian Islamic Jihad-related. *Id*.

238. *See* Robert Barnes, *Case Against Islamic Charity Opens; Now-Shuttered Organization Funneled Money to Militants, Prosecutors Say*, WASH. POST, July 25, 2007, at A6 (noting certain charities that have been closed in the wake of 9/11); MPAC.org, Muslim Public Affairs Council, Muslim Groups Form National Council of American Muslim Non-Profits, http://www.mpac.org/article.php?id=74 (last visited Sept. 3, 2008) (commenting that as of 2005, the government had shut down twenty-five Muslim-American nonprofit organizations).

239. In July 2007, the government designated Goodwill Charitable Organizations as a Specially Designated Nationalist and froze its assets, asserting that the organization was a fundraising arm for the Martyrs Foundation, which allegedly funnels money to Hezbollah. Paul Egan, *Feds Raid Charity Suspected of Aiding Hezbollah*, DETROIT NEWS, July 25, 2007, online edition; Suzanne Perry, *Federal Authorities Raid Two Mich. Muslim Charities*, CHRON. PHIL., Aug. 9, 2007, at 26. Prior to July 2007, the government froze assets of numerous other Muslim nonprofits. *See, e.g.*, Glenn Kessler, *U.S. Freezes Assets of Hezbollah Unit, Donations to Militant Group Banned*, WASH. POST, Aug. 30, 2006, at A13.

240. *IRS Suspends Tax-Exempt Status of Michigan Charity for Terrorist Activities*, DAILY TAX REP., July 31, 2007. 26 U.S.C. § 501(p), added by the Military Tax Family Relief Act of 2003, permits the I.R.S. to suspend the tax-exempt status of designated terrorist organizations without challenge. Military Family Tax Relief Act of 2003, Pub. L. No. 108-121, § 108, 117 Stat. 1335, 1339–41 (2003). Suspension of tax-exempt status does not preclude the entity from continuing operations. For further discussion of this statute, see Crimm, *High Alert*, *supra* note 2, at 1424–26.

241. *See* Neil MacFarquhar, *Muslim Groups Oppose A List of 'Co-Conspirators,'* N.Y. TIMES, Aug. 16, 2007, at A19 (reporting that the Department of Justice named as co-conspirators in the Texas trial of Holy Land Foundation for Relief and Development foreign and U.S.-based organizations, including the Council on American-Islamic Relations, Islamic Society of North America, and the North American Islamic Trust).

242. *See* Cainkar, *supra* note 234, at 11–12, 14.

243. The 9/11 National Commission on Terrorist Attacks Upon the United States confirmed that in some instances, such as the government's actions against al-Barakaat, a money remitter based in Somalia with a worldwide network, Abdullahi Farah, the owner of a Minneapolis wire remittance

profiling and anti-Islam tactics based on merely a "few bad apples." As a result, many Muslim-Americans have felt socially, culturally, and religiously fragmented from the rest of U.S. society and politically alienated.[244] Their feelings of alienation are made all the worse by the severe spiritual offense they face if unable to anonymously fulfill their *zakat* obligations to the neediest Muslims as the Qur'an wills.[245]

In the event that countries from which many Muslim-Americans emigrated (such as Iran, Pakistan, and Lebanon) adopt, implement, and enforce strict, comprehensive anti-terrorism finance laws styled on FATF recommendations, Muslim-Americans' sense of disenfranchisement and isolation could be exacerbated. Religiously devout Muslim-Americans effectively could be forced to disobey their inviolable religious duty of discreetly providing financial support to the neediest Muslims. In other words, not only might they be unable to utilize U.S.-based NGOs and mosques as intermediaries for their diaspora *zakat* and *sadaqah*, but they also may find it impossible to anonymously direct their philanthropic and charitable cross-border giving directly through alternative means, such as foreign IVTS and foreign-based NGOs.

The repercussions could be immense, much broader than the "mere" impact on Muslim-Americans. Diaspora philanthropy would not reach the neediest Muslims and deserving Muslim causes in some countries from which Muslim-Americans emigrated. The lack of funding could result in greater economic deprivation and social welfare needs of poor Muslims in these countries, perhaps especially those in rural areas. Diminished financial support also could reduce the numbers, types, activities, and strength of indigenous NGOs, including those that are politically inclined, deliverers of humanitarian aid and healthcare, supporters of education, and providers of a plethora of other social welfare needs of the public. The problems could become all the more acute if a government were to shift some of its "typical responsibilities for citizens" to NGOs, as Iran's parliament has threatened.[246]

Such outcomes would transform many Muslim lives and would aggravate a number of the problems touted as key causes of terrorism, including social, economic, and political inequalities within a society, such as structured educational deprivations, relative economic inequities, denial of civil liberties, and political

company, and Garad Nor, another Minneapolis money remitter, aggressive investigations by the Federal Bureau of Investigation found insufficient evidence to definitively tie them to supporting terrorists. ROTH ET AL., *supra* note 188, at 80–86.

244. Tirman, *supra* note 236.

245. *See supra* notes 16, 19–20 and accompanying text.

246. *See supra* note 97 and accompanying text.

alienation.[247] The alteration also would further weaken fragile civil-society actors that endure under already unfavorable and unaccommodating legal regimes. Such a result would further constrict the potential for civil society to act beneficially in Muslims' interests and as a counterweight to the state, thereby enabling governments to operate with even greater unchecked power.

B. Wealth Redistributions By Foreign Muslims

Similar problems and outcomes are possible where Muslims outside of the U.S. attempt cross-border *zakat* and *sadaqah* giving directed to the neediest Muslims and deserving Muslim causes, if such predominantly Muslim countries as Iran, Pakistan, and Lebanon apply stringent anti-terrorism finance legal regimes to their nonprofit sectors, IVTS, and other intermediary financial channels. Moreover, the FATF model applies not only to cross-border financial transfers but also to intra-country transfers.[248] So, if laws are not adapted to permit anonymity, like Lebanon's wire transfer rules,[249] well-intentioned Muslims would face the significant conundrum of how to legally transmit *zakat* and *sadaqah* funds without violating a panoply of rigorous laws and regulatory controls on the flows of money. Yet again, failure to succeed at such wealth transfers could have devastating impacts on Muslims suffering impoverishment and other deprivations, and on civil-society actors, perhaps especially for small, often rural, community-based indigenous NGOs that play such a crucial role in many predominantly Muslim countries.

C. Summary

Alteration of Muslim-majority countries' legal landscape by adoption, implementation, and enforcement of rigorous, comprehensive, and institutionally burdensome anti-terrorism finance measures modeled on the FATF standards could create financial difficulties for civil-society actors and needy Muslims, thereby exacerbating troubling societal problems and weakening civil society. In doing so, potential to compromise national interests of the United States and other countries around the globe arises.

247. *See* THE INTERNATIONAL SUMMIT ON DEMOCRACY, TERRORISM AND SECURITY, *supra* note 25, at 20; WALTER LAQUEUR, NO END TO WAR: TERRORISM IN THE TWENTY-FIRST CENTURY 11–29 (2003) (investigating terrorism and its roots); Jeroen Gunning, *Terrorism, Charities and Diasporas: Contrasting the Fundraising Practices of Hamas and al Qaeda Among Muslims in Europe*, *in* COUNTERING THE FINANCING OF TERRORISM, *supra* note 168, at 93, 104–09; Alan B. Krueger, *Cash Rewards and Poverty Alone Do Not Explain Terrorism*, N.Y. TIMES, May 29, 2003, at C2.

248. *See supra* note 176 and accompanying text.

249. *See supra* note 218 and accompanying text.

Such commonly-held national interests as protecting the collective welfare of citizens through economic stability and poverty reduction,[250] promotion of stable governance,[251] and ensuring national security[252] may be imperiled. Thus, the very anti-terrorism finance regimes intended to enhance national security ironically could endanger it, as well as other national interests.

These costs are significant. When weighed exclusively against the amount of funds frozen worldwide, as documented above, one might wonder whether the costs are worth the benefits. Of course, it is impossible to know the full extent, or calculate the amount of potential cash flows to terrorists and terrorist organizations that have been prevented by the adoption, implementation, and enforcement of anti-terrorism finance laws. Nonetheless, the counterproductive potentials of each country adopting, implementing, and enforcing FATF-style comprehensive and strict counter-terrorism finance regimes should not be overlooked.

VII. CONCLUSION

This Article posits that state anti-terrorism finance responses to the global war on terrorism could reframe the environment within which Muslims'—particularly Muslim-Americans'—philanthropy flows through informal and formal structures. It discusses an altered legal landscape in which charitable, humanitarian, and other NGOs would operate and the potentially resulting weakened nature of civil society. Weakening civil society can have the unfortunate potential to aggravate the same destabilizing factors that vigorous civil societies work to alleviate: significant disparities in relative economic, social, and political inequalities in a society, such as structured educational deprivations, lack of civil liberties, and political alienation. By exacerbating these troubling problems, national interests of the United States and other countries could be compromised. Ironically, the very anti-terrorism finance regimes

250. *See, e.g.*, USAID, FOREIGN AID IN THE NATIONAL INTEREST 3 (2003), *available at* http://www.usaid.gov/fani/ch04/guidingprinciples02.htm; Sabri Z. al-Saadi, *Iraq's National Vision, Economic Strategy, and Policies,* STRATEGIC INSIGHTS, Mar. 2006, http://www.ccc.nps.navy.mil/si/2006/Mar/saadiMar06.pdf; CURT TARNOFF & LARRY NOWELS, CRS REPORT FOR CONGRESS, FOREIGN AID: AN INTRODUCTORY OVERVIEW OF U.S. PROGRAMS AND POLICY 3 (2005), *available at* http://fpc.state.gov/documents/organization/45939.pdf; U.S. DEP'T OF STATE, PROGRAM PERFORMANCE REPORT FISCAL YEAR 2001 47–49 (2002), a*vailable at* http://www.state.gov/documents/organization/9814.pdf.

251. *See, e.g.*, USAID, FOREIGN AID IN THE NATIONAL INTEREST, *supra* note 251, at 3; U.S. DEP'T OF STATE, PROGRAM PERFORMANCE REPORT FISCAL YEAR 2001, *supra* note 250, at 47–49.

252. *See, e.g.*, U.S. DEP'T OF STATE, PROGRAM PERFORMANCE REPORT FISCAL YEAR 2001, *supra* note 250, at 47–49.

intended to enhance national security could endanger it.

It is nearly seven years after the United States, UN, FATF, and numerous countries around the globe initially, and perhaps imprudently, without fully considering the gamut of possible consequences, constructed responses to the 9/11 tragedies. Their effects on curtailment of terrorism financing seems quite modest, yet the anti-terrorism financing measures adopted in the wake of the trauma may have unfortunate, unintended, and costly potentials. It may be time to rethink and reform these counter-terrorism strategies based on full and prudent consideration of the potential costs to humans, civil societies, and countries' national interests. Currently, while FATF associate member bodies, such as MENAFATF and APG, are supposed to consider cultural values as ideals that may affect countries' adoption, implementation, and enforcement of anti-terrorism finance laws, perhaps more nuanced and targeted approaches could be developed. In particular, some method of accounting for religious values of devout Muslims should be considered. Most pious Muslims are not radical fundamentalists inclined toward terrorism or supporting terrorists.

With this in mind, anti-terrorism finance laws should be sufficiently fine-tuned to respect and enable the vast majority of Muslims to exercise their religious beliefs without undue impediment. It is time to consider more nuanced, targeted, and tailored designs for anti-terrorism finance strategies in order to mitigate the potential moral hazard of the current tactics. Rather than effectively debilitating civil-society actors, anti-terrorism finance measures should be designed to strengthen them and their financial support systems. Accomplishing this goal would give civil-society actors opportunities not only to counterbalance state power but also to improve socio-economic conditions that are contributing causes of terrorism.