

COUNTERTERRORISM AND HUMANITARIAN ENGAGEMENT PROJECT

Enterprise Risk Management: A New Approach to Managing the Risks Posed by Counterterrorism Regulations

Research and Policy Paper

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I. INTRODUCTION¹

Counterterrorism regulations are increasingly perceived to have the capacity to impede humanitarian organizations' ability to effectively respond to humanitarian crises.² This perception holds particular force in regions where armed groups, designated as "terrorist" organizations, control access to civilian populations.³ The ratcheting up of counterterrorism regulations over the past decade has increased compliance burdens as well as the consequences for noncompliance; humanitarian organizations and their personnel may face significant fines, criminal sanctions and public scandal for a single misstep.⁴ Moreover, these regulations are surprisingly complex, frustrating traditional attempts to identify and attenuate the risks they pose.

Over this same period, a surprising number of donors have adopted new risk management practices to improve organizations' ability to identify and coordinate responses to complex risks. At least four major government donors and fifteen United Nations programs have adopted enterprise risk management over the past five years.

These seemingly unrelated shifts in risk management practices might prove serendipitous; by coordinating risk management strategies and proactively identifying emerging risks, enterprise risk management may prove to be a potent tool by which humanitarian organizations can identify and respond to the risks posed by counterterrorism regulations. Given the recent shifts in donor risk management practices, and hints that these practices may be pushed onto humanitarian organizations, the time is ripe to reassess the way that humanitarian organizations manage risk.

This brief examines the risks posed by counterterrorism regulations before exploring enterprise risk management and its recent adoption by part of the donor community. This brief suggests that humanitarian organizations

should expect increasing emphasis on organization-wide risk management practices, and that enterprise risk management may offer improvements on existing processes to manage the risks associated with counterterrorism regulations.

II. THE RISKS ENTAILED IN COUNTERTERRORISM REGULATIONS

Counterterrorism regulations increasingly impose complex requirements on humanitarian organizations. As the complexity of these regulations has increased over recent years, so too has the risk that humanitarian organizations will inadvertently find themselves facing a government regulator, prosecutor or television camera. The consequences of such an encounter are significant; humanitarian personnel may be imprisoned, and organizations may face steep fines, frozen assets and scandal.

Counterterrorism risks are particularly difficult risks to manage because the risks associated with counterterrorism regulations are complex and unpredictable. This complexity renders traditional risk management practices ill equipped to properly identify and manage these risks. In order to reach that conclusion, and to appreciate the significance of the risks posed by counterterrorism regulations, the following section provides an overview of the risks associated with these regulations.⁵

A. An Overview of the Risks associated with Counterterrorism Regulations

Legal Risks

Material-support statutes criminalize the provision of support to certain "terrorist" organizations. Humanitarian personnel who knowingly provide support to a designated terrorist organization may face criminal prosecution.⁶ The same goes for humanitarian personnel who provide material support to an organization knowing that the support will contribute to "terrorist" activities.⁷

While these restrictions may seem fairly straight forward, they often are not. Material-support statutes cast a

1. This publication is part of a research and policy project and reflects academic research and consultations carried out by the commissioned author. This publication does not constitute legal or professional advice or legal services, and should not be used for decision-making purposes. Organizations and individuals should consult their own counsel prior to making decisions regarding compliance with the law and responses to regulatory requirements.

2. See, e.g., Elizabeth Bloodgood & Joannie Tremblay-Boire, *NGO Response to Counterterrorism Regulations After September 11th*, INT'L J. OF NOT-FOR-PROFIT L. Vol. 12 (Nov. 2010); Victoria Metcalfe et al., *Risk in Humanitarian Action: Towards a Common Approach?* 4, Humanitarian Policy Group Policy Brief 39 (2011); Sara Pantuliano et al., *Counter Terrorism and Humanitarian Action: Tension, Impact and Ways Forward*, Humanitarian Policy Group Policy Brief 43, 1-2 (2011); Jem Bendell, *NGLS Development Dossier: Debating NGO Accountability*, 56 (United Nations 2006).

3. See, e.g., Pantuliano et al., *supra* note 1.

4. See, e.g., Sara Pantuliano et al., *supra* note 1.

5. For an in-depth analysis of the specific challenges posed by counterterrorism regulations for humanitarian organizations, see Kay Guinane et al., *Collateral Damage: How the War on Terror Hurts Charities, Foundations and the People They Serve*, 6 INT'L. CIV. SOC'Y L. 78 (2008).

6. See, e.g., 18 U.S.C. §§ 2339A, 2339B (United States); Suppression of the Financing of Terrorism Act 2002 (Austl.); Terrorism Act, 2000 (U.K.).

7. See, e.g., *id.*

deceptively wide net that captures a surprising amount of behavior. Nowhere is that net wider than with respect to the United States.⁸ There, the material-support statute is so broad that humanitarian personnel who train members of a “terrorist” organization on the use of international law to peacefully resolve disputes may face fifteen years’ imprisonment and up to \$50,000 in fines.⁹ This law concerns U.S.-based and foreign organizations alike—even a citizen of a foreign state may be prosecuted under this statute if he or she later sets foot into the United States.¹⁰

In addition, humanitarian organizations and their personnel may be criminally liable for violating sanctions regimes. In the United States, for instance, willful violations may result in fines up to \$10,000,000 and thirty years’ imprisonment for each willful violation.¹¹ In some Western European jurisdictions, such as the U.K., even inadvertent violations may result in criminal prosecution.¹²

Compliance Risks

Grant agreements, state sanctions, and domestic laws all require that humanitarian organizations take significant steps to ensure that program funds do not reach certain designated persons and organizations.¹³ Even unintentional transgressions may result in severe reprisal. As a result, humanitarian organizations must closely administer and monitor policies and procedures that vet local partners and ensure that program funds do not inadvertently reach these individuals and organizations.

The stakes are high. Even innocent breaches of domestic sanctions may result in costly fines.¹⁴ As previously

discussed, material-support statutes in many jurisdictions carry severe criminal sanctions. Humanitarian organizations may also be required to compensate donors for funds that have inadvertently reached sanctioned entities, and donors may terminate the grant agreement in these cases.¹⁵ In addition, compliance may require that organizations vet local partners—an activity that humanitarian organizations warn may jeopardize their neutrality and put their personnel at risk.¹⁶

The high stakes encourage organizations to plan compliance programs intelligently. Even when functioning well, however, these programs require a significant commitment of resources.¹⁷ Best practices suggest that humanitarian organizations should use a risk-based approach to target compliance resources in order to control costs and improve results.¹⁸

Reputational Risks

Perhaps the biggest threat posed by counterterrorism regulations is that to an organization’s reputation. Reputational risks are particularly threatening to humanitarian organizations because humanitarian organizations rely heavily on their reputation to attract public donations as well as government and institutional grants. A scandal may severely impact their ability to attract future funding.¹⁹

The risk of scandal is particularly high when counterterrorism regulations are involved. The public is increasingly aware and sensitive to the issue, and scandal often follows legal or regulatory sanctions related to terrorism.²⁰ Indeed, even bare allegations of misconduct can invite unwanted attention, whether or not they are well founded or accurate. As a result, humanitarian organizations must guard not only against prosecution but also against rumor of impropriety.

8. For instance, the U.S. material-support statute defines “support” broadly to include services, training, and expert advice. 18 U.S.C. § 2339A(b)(1). In addition, statutory exceptions for medicine and religious materials are narrowly construed. *See, e.g., United States v. Shah*, 474 F.Supp.2d 492 (S.D.N.Y. 2007); *United States v. Farhane*, 634 F.2d 127 (2d Cir. 2011).

9. *See, Holder v. Humanitarian Law Project*, 130 S. Ct. 2705 (2011); 18 U.S.C. § 2339B(a)(1).

10. 18 U.S.C. § 2339B(b)(1)(C).

11. Office of Foreign Asset Control, *OFAC Fines*, <http://www.treasury.gov/resource-center/faqs/Sanctions/Pages/answer.aspx> (last visited Mar. 21, 2013).

12. *See, e.g.,* Financial Services Authority, *Financial Services Firms’ Approach to UK Financial Sanctions* (Apr. 2009).

13. For an example of a grant term, see USAID, *Standard Provisions for U.S. Nongovernmental Organizations: A Mandatory Reference for ADS Chapter 303* (June 2012), available at <http://transition.usaid.gov/policy/ads/300/303maa.pdf>.

14. At least in the United States. *See* Office of Foreign Asset Control, *OFAC Fines*, <http://www.treasury.gov/resource-center/faqs/Sanctions/Pages/answer.aspx> (last visited Mar. 21, 2013). In Australia, fines may reach \$100,000, and there is no upper

bound on potential fines in the United Kingdom. Suppression of the Financing of Terrorism Act 2002 (Aust.). *See also*, Terrorism Act, 2000 (U.K.).

15. *See, e.g.,* 22 C.F.R. § 226.62 (USAID)

16. *See, e.g.,* Sara Pantuliano et al., *supra* note 1, at 5; Partner Vetting in USAID Acquisitions, 77 Fed. Reg. 8170 (U.S. Agency for Int’l Development Feb. 14, 2012).

17. *See, e.g.,* Sara Pantuliano et al., *supra* note 1, at 7.

18. *See, e.g.,* U.S. Dep’t of Treasury, *Anti-terrorism Financing Guidelines: Voluntary Practices for U.S.-Based Charities* (2005), available at <http://www.treasury.gov/press-center/press-releases/Documents/0929%20finalrevised.pdf>.

19. Victoria Metcalfe, *supra* note 1, at 4.

20. For instance, the investigation and prosecution of the Holy Land Foundation was particularly well publicized. *See, e.g.,* Gretel C. Kovach, *Five Convicted in Terrorism Financial Trial*, N.Y. TIMES, Nov. 24, 2008, available at <http://www.nytimes.com/2008/11/25/us/25charity.html?ref=holylandfoundationforreliefanddevelopment>.

Operational and Programmatic Risks

Humanitarian organizations must be prepared to act quickly in order to respond to emerging humanitarian crises. However, recent evidence suggests that counterterrorism regulations impede humanitarian response in regions controlled by “terrorist” organizations. These impediments take several forms: reduced donor funding, inaccessible civilian populations, and increased administrative burdens.

Perhaps unsurprisingly, donors are reluctant to fund humanitarian responses to crises in areas controlled by “terrorist” organizations. Recent reports conclude that counterterrorism regulations significantly reduce donor funding in these regions. For instance, humanitarian assistance declined in the run up to the 2011 Somalia famine.²¹ Reportedly, this stemmed from donors’ fear of criminal liability stemming from the operations of Al-Shabaab, a designated terrorist organization that controls regions of south-central Somalia.²² The decline was substantial; U.S. funding of humanitarian aid during the period to the country dropped by eighty-eight percent.²³ Unfortunately, this chilling effect is not limited to Somalia—a study recently found similar declines in funding to the Gaza Strip and Islamic charities generally.²⁴

Counterterrorism regulations also hinder humanitarian engagement with civilian populations located in regions controlled by “terrorist” organizations. In the first place, material-support statutes make humanitarian engagement in these regions risky, forcing some organizations to cease operations altogether.²⁵ In the second, state sanctions prohibit transactions with certain designated individuals and organizations unless they first obtain a license. When licenses are unavailable, civilian populations located within regions controlled by “terrorist” organizations are often off limits. Even when licenses do become available, regulators are typically slow in issuing them. Obtaining a license may take months, significantly slowing humanitarian response times.²⁶

B. Counterterrorism Risks are Not Amenable to Traditional Risk Management Practices

21. See, James Darcy et al., *Real Time Evaluation of the Humanitarian Response to the Horn of Africa Drought Crisis*, 6.5 (IASC, May 2012).

22. *Id.*

23. *Id.* at 1.4.4.

24. Sara Pantuliano et al., *supra* note 1, at 7.

25. *Id.* at 11.

26. See, e.g., James Darcy et al., *supra* note 20, at 6.2.1.

The risks related to counterterrorism regulations differ substantially from more traditional risks facing humanitarian organizations. First, counterterrorism risks are interdependent; the risk that one occurs depends on the others. For instance, a humanitarian organization under investigation for violating a material-support statute is at a heightened risk of attracting the attention of both the news media and regulators. Similarly, news reports alleging that an organization supports “terrorists” will increase the chances that regulators and prosecutors will scrutinize their operations. In both examples, the heightened scrutiny erodes donor confidence, threatening an organization’s finances.²⁷

In addition, the risks associated with counterterrorism regulations span several business units.²⁸ Unlike more traditional risks that are easily managed by a single department, counterterrorism risks require simultaneous management by legal departments, finance departments, compliance departments and operations managers. Moreover, because these risks are interrelated, miscalculation by one department may have impacts that ripple across the organization as a whole. For instance, if the compliance team fails to adequately vet local partners, the consequences extend beyond mere fines—the threat of criminal prosecution, negative media attention, and the erosion of donor confidence are all far more likely.

Traditionally, humanitarian organizations manage risks at the business-unit level. However, traditional organizations cannot properly identify or assess counterterrorism risks because each business unit sees only a portion of the overall risk posed by counterterrorism regulations. While an organization’s programs department proactively acquires grants ahead of a pending humanitarian crisis in AQIM-controlled regions of Mali in order to minimize the risk that funding will later disappear, it simultaneously increases the organization’s legal and compliance risks.²⁹ Alternatively, new partner vetting requirements issued by an organization’s legal department to reduce its exposure to material-support statutes may slow the organization’s response to rapidly unfolding crises.

In both cases, traditional risk management practices fail to effectively manage counterterrorism risks. This is because counterterrorism risks span multiple business units and because the business units do not regularly communicate

27. See generally Victoria Metcalfe et al., *supra* note 1.

28. See, *infra*, Section II

29. There are reasons to think that this happens not infrequently. Donors interviewed for this brief noted that their organizations regularly offer grants to humanitarian organizations when they feel that an environment is too risky to enter themselves.

or coordinate their risk management efforts. This suggests that improvements in an organization's ability to coordinate risk management strategies across multiple business units will help organizations better manage the risks associated with counterterrorism regulations.

Counterterrorism risks differ from traditional risks in that they shift more frequently, and with less predictably than traditional risks do.³⁰ Whether it is the listing of a local partner, a new partner vetting system, or heightened due diligence requirements, counterterrorism regulations often leave humanitarian organizations unprepared, struggling to adapt, and at a heightened risk of noncompliance during periods of adjustments.

Seen in aggregate, these differences suggest that the risks associated with counterterrorism regulations require a different management approach. The approach should account for the fact that the risks are mutually reinforcing and span several business units, and it should attempt to coordinate risk management efforts between departments. It should also account for the fact that counterterrorism regulations shift rapidly and place emphasis on techniques that help organizations proactively identify and plan responses to anticipated shifts.

The following section discusses an emerging best practice in risk management: enterprise risk management. Enterprise risk management offers a new approach to managing complex risk, and it recognizes the need for integrated, forward-thinking risk management strategies. It improves on traditional risk management techniques in many of the ways suggested above—offering a promising new strategy for managing the risks associated with counterterrorism regulations.

III. NEW PRACTICES IN RISK MANAGEMENT

Risk management practices have evolved rapidly over recent years, and risk management is increasingly seen as a means of creating a proactive culture capable of identifying emerging threats to an organization.³¹ Enterprise risk management (“ERM”) emerged out of this period of rapid development as a forward-looking framework capable of managing risk in a variety of environments.³²

More recently, the humanitarian sector has begun to

30. For an discussion of the frequent, rapid shifts in U.S. regulations, see Kay Guinane, *U.S. Counterterrorism Developments Impacting Charities*, INT'L J. OF NOT-FOR-PROFIT L. Vol. 10 (Dec. 2007).

31. UNESCO, *Risk-Based Evolution of UNESCO's Capacity to Deliver*, UN Doc. IOS/EVP/PI/17 REV., ¶ 2.3 (Feb. 2009) (Internal Oversight and Service Evaluation Section).

32. *Id.*

reassess the role that risk management plays in their humanitarian response, and donors have begun adopting new risk management techniques.³³ Over the past five years, a relatively large number of donors and multilateral organizations have coalesced around ERM. Recently, there are hints that humanitarian organizations will feel increasing pressure to adopt similar practices. The following section provides a brief overview of ERM and then discusses its increasing influence in the humanitarian sector.³⁴

A. Enterprise Risk Management

Enterprise risk management begins by noting that, traditionally, organizations assign responsibility for risk management to individual business units, but those risks are rarely confined to one division of an organization. This situation was illustrated in the discussion above: while the compliance department may be responsible for partner vetting, a misstep in that department has effects that ripple across an entire organization. In addition, ERM notes that strategies taken to manage one particular risk may heighten others, or create new risks.³⁵ ERM suggests that, because risks are interrelated, responsibility for their management should rest with an organization's senior leadership as a whole.

To that end, ERM suggests that organizations should make two changes to the way that they manage risk. First, organizations should measure risk using a single metric: the potential impact on the their long- and short-term goals. Second, organization should communicate risk to senior leadership so that they may coordinate risk management strategies. By creating a common “language of risk,” senior leadership can easily compare and prioritize risks from disparate parts of their organization. By centralizing this information, senior leadership can consider the relationship between risks, coordinate a response, and ensure that sufficient resources are allocated for that purpose.

ERM also places emphasis on identifying new and emerging risks.³⁶ It suggests that employees at every level of the organization catalog emerging threats, and that managers communicate the most important threats to

33. See, e.g., Victoria Metcalfe et al., *supra* note 1.

34. By necessity, this overview is brief. For additional information on enterprise risk management, see *id.*; United Kingdom Charity Commission, *Charities and Risk Management*, p. 9-11 (2011); Robert Kaplan & Anette Mikes, *Managing Risks: A New Framework*, HARVARD BUSINESS REVIEW (June 2012).

35. See, e.g., Victoria Metcalfe et al., *supra* note 1.

36. A good discussion of risk-identification strategies appears in PricewaterhouseCoopers, *Extending Enterprise Risk Management (ERM) to Address Emerging Risks* (2009).

senior leadership. In doing so, ERM proactively identifies risks, and communicates them to those positioned to respond.

The end result is a more proactive risk management framework that communicates risk throughout the organization to senior leadership in easy-to-understand terms. It places senior leadership in a better position to identify, prioritize and coordinate a response to the greatest risks facing the organization. It thereby helps alleviate the reactionary, compartmentalized approach to risk management that is common in many organizations.

Demonstrating ERM's improvements over traditional risk management practices, there have been a relatively larger number of humanitarian donors and multilateral programs that have adopted ERM in recent years. Notably, the OECD has suggested that the humanitarian sector consider its application to their sector. The following section explores these developments and suggests that humanitarian organizations should expect the pressure to adopt similar practices to increase.

B. A Growing Emphasis on Enterprise Risk Management in the Humanitarian Sector

A number of humanitarian donors and multinational organizations have adopted ERM over the past five years. At the same time, there is a growing awareness of risk and emphasis on risk management in the humanitarian sector generally.³⁷ Combined, these factors suggest that humanitarian organizations may see growing pressure to adopt ERM. In any event, this growing awareness of risk management and emphasis on ERM indicates that the time is ripe for humanitarian organizations to revisit the ways in which they manage risk.

Research conducted for this report has uncovered that a large number of donors, humanitarian organizations, and multinational bodies have adopted ERM. A review of publicly available documents reveals that the following donors and humanitarian organizations have adopted the practice:

- U.K. Department for International Development

37. This point was reiterated by several donors in interviews conducted for this brief. Also telling of this growing emphasis on risk management, the World Bank's *World Development Report 2014* is devoted to risk and risk management. See, World Bank, *World Development Report 2014: Managing Risk for Development – Concept Note* (Oct. 2012), available at https://blogs.worldbank.org/developmenttalk/files/developmenttalk/wdr_2014_concept_note.pdf. See also OECD, *Aid Risk in Fragile and Transitional Contexts: Improving Donor Behavior* (2011).

(“DFID”);³⁸

- Australian Agency for International Development;³⁹
- Canadian International Development Agency;⁴⁰
- International Fund for Agricultural Development;⁴¹
- The Global Fund;⁴²
- American Red Cross;⁴³ and
- Save the Children.⁴⁴

Even the United States Agency for International Development made use of ERM to develop its risk assessment procedures.⁴⁵

The United Nations has also embraced ERM, referring to it as “an essential element of good organizational governance and accountability.”⁴⁶ The UN began implementing ERM frameworks in fifteen programs between 2008 and 2012, including the United Nations Development Program, World Food Program, and the United Nations Population Fund.⁴⁷

The OECD's Development Assistance Committee (“DAC”) is helping to move donors in this direction as well. DAC has suggested that donors improve risk management processes and develop a common approach to risk management. It has also commended donors on their adoption of ERM, which has helped in these efforts.⁴⁸

Donors' growing commitment to ERM and the humanitarian sector's growing awareness of risk suggest that humanitarian organizations may see increasing pressure to adopt similar practices. Regulators in the U.K., for instance, have begun strongly urging U.K.-based charities, including humanitarian organizations, to adopt

38. Great Britain Parliament House of Commons International Development Committee, *Department for International Development Annual Report and Resource Accounts 2010-11 and Business Plan 2011-2015* 16 (2012).

39. Australian Agency for International Aid, *AusAID Annual Report 2011-12* 232 (2012).

40. Canadian International Development Agency, *Risk Management*, <http://www.acdi-cida.gc.ca/acdi-cida/ACDI-CIDA.nsf/eng/CAR-61410464-KBU> (last visited Mar. 21, 2013) (referring to ERM as “integrated risk management”).

41. International Fund for Agricultural Development, *An Overview of Managing for Development Results of IFAD* 15 (2011).

42. United Nations Joint Inspection Unit, *Review of Enterprise Risk Management in the United Nations System: Benchmarking framework* (2010).

43. The American Red Cross Governance Reform: Hearing before the House Comm. on Foreign Affairs, 110 Cong., Sess. 1 (2007).

44. Save the Children, *About Us*, <http://www.savethechildren.net/about-us> (last visited Mar. 21, 2013) (referencing an “organisation-wide risk management process”).

45. USAID, *Fiscal Year 2010: Agency Financial Report*, 150 (2010).

46. See United Nations Joint Inspection Unit, *supra* note 41 at iii.

47. See *id.*

48. OECD, *Aid Risks in Fragile and Transitional Contexts: Improving Donor Behavior*, 1 (2011).

ERM-like processes.⁴⁹ In addition, a document recently made publicly available indicates that DFID will make ERM “a requirement of funding” for United Nations implementing agencies operating in Somalia under certain grants agreements.⁵⁰

Given this emphasis on ERM and the pressing need to find new techniques to manage the risk associated with counterterrorism regulations, the following section considers whether ERM is well suited to lower the risks associated with counterterrorism regulations.

IV. ENTERPRISE RISK MANAGEMENT AND COUNTERTERRORISM REGULATIONS

As previously discussed, counterterrorism regulations pose risks to humanitarian organizations that cut across traditional domains: the regulations affect multiple business units, are interdependent, and shift rapidly. These characteristics blunt the effectiveness of traditional approaches to managing counterterrorism risks. These characteristics also highlight the need to coordinate risk management practices across business units and improve an organization’s ability to anticipate shifts in counterterrorism regulations.⁵¹

ERM likewise recognizes the shortcomings of traditional risk management practices, and improves on them in several respects. First, ERM vests responsibility for risk management at the highest levels of the organization and develops mechanisms to meaningfully communicate information about risk to senior management. If ERM is fully and effectively implemented, an organization should be better positioned to coordinate a consistent approach to managing these risks. The approach marks a significant shift from traditional risk management practices, which require individual business units to pursue their own risk management strategies without guarantees that the strategies align with one another or form a meaningful whole.

ERM also emphasizes risk identification, and creates channels of communication through which emerging risks are identified and addressed. This proactive approach offers hope to humanitarian organizations that often find themselves unprepared for shifting counterterrorism

regulations and vulnerable during transitions. If, for instance, in-country personnel have clear channels through which to report a growing presence of a local armed group, then the organization is better positioned to anticipate potential regulatory shifts related to that armed group and to plan ahead of official announcement.⁵² Similarly, if members of the compliance team hear rumors of new partner vetting requirements, an organization would already have processes in place that would encourage them to investigate the rumors, and, if proved true, respond to them effectively.

ERM may offer humanitarian organizations additional benefits. As discussed above, there is considerable momentum within the donor community to adopt ERM, as well as hints that donors may soon require humanitarian organizations to adopt similar practices. Early adoption by humanitarian organizations may help shape the discussion by establishing norms and best practices, and by demonstrating a sincere desire to improve the sector’s risk management practices. Early adoption may also avoid the need for that conversation altogether. Additionally, individual organizations that adopt the practice ahead of their peers may find themselves in the good graces of donors who are increasingly concerned with risk management practices. ERM is also proving itself a vital tool of good nonprofit governance, and organizations may benefit from its improvements over traditional risk management techniques in other areas of their operations.⁵³

Whether or not ERM can deliver on its promises depends in part on organizational commitment—implementation often requires significant time and effort. Several organizations, for example, have reported that embedding ERM in regional offices is particularly challenging.⁵⁴ The United Nations made much the same point, noting that “implementation has proved to be a real challenge, arising from the fact that effective [ERM] implementation is a function of a whole organization, not just one unit or group.”⁵⁵

49. See, U.K. Charity Commission, *Charities and Risk Management* 17 (2010); Charities (Accounts and Reports) Regulation §§ 40(2)(b)(ee), 41(2)(c) (2008) (U.K.).

50. DFID, *Business Case and Intervention Summary -- Enabling Better Delivery of Aid in Somalia: October 2011 – December 2014*, available at <http://projects.dfid.gov.uk/iati/Document/3717472>.

51. See, *supra* Section I.B.

52. Improved communication and a risk-aware culture may have helped humanitarian organizations anticipate and react to the recent listing of M23 rebel groups in the Democratic Republic of Congo. For background on this listing, see Johnnie Carson, Assistant U.S. Secretary of State, Bureau of African Affairs, *Finding a Lasting Solution to Instability in the Democratic Republic of Congo* (Feb. 11, 2013), available at <http://www.state.gov/p/af/rls/rm/2013/204511.htm>.

53. As mentioned previously, the United Nations referred to ERM as “an essential element of good organizational governance and accountability.”

54. Office of the Auditor General of British Columbia, *The Status of Enterprise Risk Management in the Government Ministries of British Columbia* 29 (2011).

55. United Nations Joint Inspection Unit, *Review of Enterprise Risk Management in the United Nations System: Benchmarking framework*, para. 41 (2010).

V. CONCLUSION

The risks posed by counterterrorism regulations are significant, and humanitarian organizations will soon need to identify means to better address them. ERM may present an opportunity to identify solutions. By coordinating risk management efforts across an organization and placing emphasis on identifying emerging risks, ERM may better address the risks associated with these regulations and improve compliance. Reasons to consider ERM are made stronger by its adoption within the donor community, and by hints that humanitarian organizations may soon be asked to adopt similar practices.

Regardless of whether humanitarian organizations ultimately adopt ERM, several important points emerge from this analysis. First, humanitarian organizations would be well served by mechanisms that help to coordinate their response to counterterrorism risks across their entire organization. Counterterrorism regulations affect multiple business units simultaneously, and effectively managing these risks requires that the organization's strategy as a whole is aligned. Most organizations' risk management practices, however, still manage risk within separate business units; rarely are systems in place that allow two disparate business units to discuss risk and coordinate their response to counterterrorism risks. Discordant internal strategies to manage counterterrorism risk may result in inefficient or poor management of counterterrorism risks.

Second, potential solutions will need to be quick to adapt to changing circumstances. Counterterrorism regulations shift rapidly, and an organization will need to anticipate and react to emerging as well as existing regulations in order to launch an effective and timely humanitarian response.

ABOUT

The Project on Counterterrorism and Humanitarian Engagement (CHE Project) is an initiative of the Harvard Law School. The CHE Project undertakes legal research, policy analysis, and engagement initiatives in order to identify and develop — as well as to facilitate networks to support — sustainable, principled, and practical solutions to the challenges of large-scale humanitarian operations conducted in areas where listed armed groups are active and counterterrorism laws affect humanitarian action.

This publication is part of the CHE Project's Research and Policy Paper series, which is intended to inform the humanitarian community regarding critical issues of law, policy, and practice related to counterterrorism and humanitarian action.

The CHE Project seeks to inform and shape debate regarding the intersecting trajectories of counterterrorism norms and humanitarian action. The Project does so principally by:

- Producing independent analyses of emerging and foundational challenges and opportunities concerning humanitarian engagement in situations involving listed non-state armed actors; and
- Engaging actors across international humanitarian NGOs, intergovernmental agencies, academic centers, and governments to capture, examine, and inform their (sometimes overlapping and sometimes countervailing) perspectives and approaches.

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