

Flawed justifications and counterpoints to restrictive counter-terrorism measures



Hostility to civil society and humanitarian assistance

CSOs are high risk for terrorist financing and support. → The old myth that the nonprofit sector is at high risk for terrorist financing (TF) has been debunked by studies and [national TF risk assessments](#) that show TF risk primarily comes from other sources, such as money laundering, crime, drug smuggling and kidnapping for ransom. Diversion of civil society assets to proscribed groups is rare, and national TF risk assessments from several large donor countries have found the risk to be low.

To bring its policy into line with evidence, in 2016 the Financial Action Task Force (FATF) revised its Recommendation 8 on nonprofit organisations (NPOs) to drop language claiming NPOs are “particularly vulnerable” to terrorist abuse, implying the entire nonprofit sector is high-risk. FATF replaced it with a targeted, risk-based approach that requires proportionate measures that do not unduly disrupt civil society activities.

FATF also states that measures to prevent TF should only be applied to the subset of organisations that actually face TF risk, rather than the nonprofit sector as a whole. This is in line with the principle of proportionality. It also requires recognition of risk mitigation measures.

Most civil society organisations (CSOs) have no TF risk factors, as their operations do not occur in proximity to proscribed groups.

CT arguments that reject the premises of humanitarian principles and international humanitarian law and international human rights law (IHL/IHRL). →

Commentary: Arguments that contest or reject fundamental humanitarian and human rights principles are usually put forward by security officials or experts who view the world through a narrow security lens and focus on their immediate bureaucratic concerns. They often lack understanding of how civil society operates. They need to hear from both civil society and colleagues in other government agencies who can widen their view to recognize drivers of violent extremism and the important role civil society plays in addressing those drivers. Humanitarian and human rights values can be championed on their own terms.

Denial of human rights and blocked access to civilians in need of humanitarian assistance can contribute to conflict. Restricting the ability of civil society to address these drivers is counterproductive from a security standpoint as well as being inconsistent with fundamental humanitarian and human rights principles.

CT and IHL/IHRL principles and goals are fundamentally different. While CT has a limited agenda of defeating armed groups, civil society has a broad mission to act for the common good that address drivers of conflict.

Humanitarian organisations are neutral in the conflict, seeking only to protect and assist civilians and those hors de combat. Peacebuilding organisations work to support peace processes and human rights defenders seek to protect against abuses that fuel conflict. Despite these differences, CT and civil society can and should accommodate each other based on their shared interest in human security and sustainable peace.

Humanitarian groups and charities are naïve and are duped by terrorists who take advantage of them. →

Commentary: This is not an evidence-based claim and is often based on flawed assumptions.

Charities and humanitarian groups conduct extensive due diligence when operating programs in places where proscribed groups are present. This includes selecting local partner organisations. They require transparency and accountability to ensure that resources go exclusively to beneficiaries.

By virtue of their work on the ground, CSOs have deep knowledge of local communities and culture. This makes it unlikely they can be duped by bad actors.

Humanitarian groups and charities are well aware of the dangers posed by terrorist groups – aid workers have been attacked, killed and kidnapped.

Humanitarian groups in particular must abide by concrete standards in IHL regarding how they interact with armed groups that control territory where there are civilians in need.

Charities are unregulated and do not have effective oversight or control over their finances, making them subject to terrorist abuse. 

Commentary: Many government officials in agencies responsible for security and CFT are unaware of what rules and regulations govern the nonprofit sector in their country. They wrongly assume that because CSOs do not produce profit that they are not responsible stewards of their money. CSOs must educate them on how their country regulates the nonprofit sector and their compliance efforts.

Brief these officials on sector best practice standards and certification programs that they participate in and donor reporting requirements.

When outlier examples of poorly managed CSOs are used to justify blanket restrictions, CSOs can point to data showing the low number of enforcement cases compared to the sector as a whole, and to the subset of the sector at with CFT risk. This evidence demands a targeted, proportionate response.

The same argument can apply to small businesses and companies which may have high risk of abuse than CSOs but are not as heavily regulated. Holding civil society to a higher standard than business entities is not a risk-based or proportionate approach.

Zero tolerance/no-risk policies

Counter-terrorism measures (CTMs) must ensure that proscribed groups get no benefit, directly or indirectly, from CSO activities. →

This zero-tolerance approach is a no-risk policy that is inconsistent with the risk-based approach required by FATF. They lack proportionality. It is disproportionate, treating minor leakage or incidental, minimal transactions as same as large sums. As a result, it is not in line with the risk-based approach required by FATF.

Zero tolerance measures are impractical, given the realities for any entity operating in a conflict zone. As a result, it creates unrealistic expectations and stifles activities that can relieve suffering and address drivers of violent extremism.

Exemptions must be narrow and limited to very specific situations to avoid inadvertent support to terrorists. →

Commentary: Many government officials are unfamiliar with IHL requirements regarding protected persons. CSOs can explain concepts and definitions, such as neutrality, civilian status and humanitarian access. See the [ICRC website](#) for definitions and resources. CSOs can help government officials understand how they navigate the challenges of operating in these complex environments, including the ways in which their independence and neutrality help them so do.

Measures to prevent inadvertent support to terrorists must be proportionate, so as not to unduly infringe on legitimate civil society activities and deny aid to eligible persons in need. When too narrowly tailored, they can deny aid to people protected by IHL (civilians and those hors de combat) and lead to other negative impacts.

Overly narrow exemptions can (and often do) result in discrimination against protected persons, including civilians, those hors de combat, children and others.

A useful quote from experts: “[T]he humanitarian imperative is based on normative commitments to provide– in all armed conflicts – impartial aid and protection to all civilians in need and fighters hors de combat irrespective of affiliation.” Naz Modirzadeh and Dustin Lewis, [Humanitarian values in a counterterrorism era](#), IRRC, 2021

The risk of inadvertent support to terrorists can be mitigated without discriminating against persons in need. Give examples based on your experience.

The realities of operating on areas of armed conflict mean that some leakage of resources may occur. While proportionate steps to prevent this are permissible, zero tolerance policies are inconsistent with IHRL, IHL, IRL, and FATF standards.

Deviation from IHL and IHRL standards is only allowed under specific circumstances. Blanket restrictions are inconsistent. “[I]n order to be human rights and rule of law compliant any NPO regulatory measures adopted for the purpose of CFT must be narrowly tailored, necessary and proportionate to the empirical reality of the differentiated CFT risk identified and the stated aim of mitigating such risk.” [Human Rights and Rule of Law Implications of Countering the Financing of Terrorism Measures](#) p. 24-23.

Those associated with terrorists are equally guilty.  Definitions of terrorism must be targeted to violent conduct and support for it, and not sweep in conduct that is protected by IHL/IHRL and lacks intent to cause harm.

In areas where a proscribed group controls local government, including institutions such as hospitals and schools, people who provide essential services through those institutions do not meet basic criteria for support of terrorism, including intent to support violent acts against civilian populations.

The type and degree of association must be considered to avoid discrimination. For examples, family members, such as children, should not be denied humanitarian aid based on a relationship- this violates the humanitarian principle of impartiality.

Sham/front organisations pose as legitimate charities but funnel resources to terrorists.  The risk-based approach requires that measures be targeted to risk. Blanket restrictions that disrupt the work of legitimate CSOs due to concerns about sham organisations are not appropriately targeted.

Sham / Front organisations need to be addressed through the criminal enforcement regime and cannot be fully captured via nonprofit sector oversight and rules.

Regulatory oversight of the nonprofit sector in [country] requires [insert re registration, reporting, compliance, etc.] Organisations that meet these requirements are not fronts or shams.

The country's risk assessment must identify evidence that sham organisations are set up and used for terrorist financing so that countermeasures can be designed in an effective and targeted way.

Without these restrictions something bad might happen. → The risk-based approach requires measures to be based on actual, not hypothetical, risk. It requires consideration of mitigation and preventative measures that reduce risk but allow an activity or transaction to go forward.

Legalistic Excuses

FATF requires these steps. → *Commentary: For specific disproportionate restrictions, CSOs should check to see if their country has done a national CFT risk assessment and conducted outreach to the nonprofit sector regarding a risk assessment specific to NPOs, as required by FATF. (See [ECNL's Learning Center module of risk assessment](#))*

When a risk assessment has been conducted:

- *Show that the restriction either does not address a specific risk in the RA and/or that it more than is needed to address the risk, making it disproportionate and disruptive to legitimate nonprofit activities*

When no risk assessment or outreach to the NPO sector has been conducted:

- *Educate government officials on the FATF requirements*
- *Offer to actively participate in risk assessment of the NPO sector and ways to revise unduly restrictive measures to make them consistent with FATF standards*

FATF updated R8 on NPOs in 2016. It now emphasises an approach to CFT that does not unduly disrupt the activities of legitimate NPOs. It requires that rules and regulations be risk-based and proportionate to that risk.

FATF has published guidance on proper implementation of R8. Because many states have been slow to adopt the new approach and maintain unnecessarily restrictive measures, FATF is currently updating its guidance.

FATF released a [report](#) in late 2021 that said, “there continue to be countries that incorrectly implement the Standards and justify restrictive legal measures to NPOs in the name of “FATF compliance”, both unintentionally and, in some cases, intentionally.”

We must comply with UN Security Council CT sanctions resolutions.  The UN’s comprehensive counterterrorism sanctions resolution specifically requires that states ensure that their CT measures are consistent with IHL/IHRL and refugee (IRL) law. Measures that unduly infringe on such rights are inconsistent with UN requirements.

Since adoption of Security Council Resolution 2462 to “Combat, Criminalize Financing of Terrorists, Their Activities” in 2019 member states are required to take international humanitarian, human rights and refugee law into account when implementing measures to counter the financing of terrorism. In other words, CT efforts must be consistent with these existing legal obligations. Specifically, paragraphs 23 ,6 ,5 and 24 include these requirements.

The importance of civil society and protections afforded by human rights law is acknowledged and FATF’s Recommendation 8 is cited with approval.

See background on UNSCR 2462 [here](#).

Overly broad definition of terrorism includes protected CSO activity.  *Commentary: Because there is no universally agreed upon definition of terrorism, the definition varies from country to country. Often these definitions are so vague and broad that they sweep in civil society activities that are protected by IHL/IHRL. In some cases, autocratic governments use these broad definitions for political purposes, to suppress dissent and avoid accountability.*

When the definition of terrorism is broad or vague it should be interpreted to apply only to activities and transactions that are not protected by IHL/IHRL. It should never be used for political purposes, as that violates basic rights and weakens the credibility and effectiveness of genuine CT efforts.

Overly broad definitions of terrorism and support for terrorism should be revised to make it clear they do not apply to activities protected by IHL/IHRL.

Government cannot tell banks who to keep as customers. → The government should recognise that it influences banks' behavior by its regulatory requirements, enforcement policy and the cost of compliance. If these policies lead to derisking, whether intended or not, government must address the problem. There are many resources for all stakeholders on how to approach the problem. (See [ECNL's Learning Center module on bank derisking.](#))

Political Excuses

It is too politically risky to "relax" CT measures, officials fear being accused of being "soft on terrorism." → *Commentary: CSOs can take steps to reduce the actual or perceived political risk. For instance, CSOs can build public awareness of the good work civil society does and its values to help create political safe space for action.*

Highlight public support for civil society's work and its role in saving lives and addressing drivers of conflict.

Cite shared values of protecting human life and sustainable peace as non-risky. Draw on the concept of 'human security' and recast "security" as more than absence of terror attacks to include respect for basic rights and human dignity.

Recruit validators (religious leaders, former high-level government officials, etc.) to publicly support civil society positions and proposals. This helps reduce the perceived political cost of supporting changes in CT restrictions. Cite studies and commentary by experts the officials will see as credible.

Explain how unduly restrictive CTMs undermine other official goals and initiatives with broad support, such as the Sustainable Development Goals, democracy building and programs to assist fragile states.

Note that restrictions are sometimes politically motivated by actors pushing discriminatory or other negative agendas. These must be confronted as they undermine legitimate goals of both civil society and CT policies.

If you press for change things could get worse.  *Commentary: This argument assumes that hard line security advocates will use any movement for change to make CTMs even more restrictive. CSOs need to do a risk assessment of the political environment that looks at specific questions before making a determination on when or how to seek change.*

Identify what specific negative outcomes may be against the impact of current restrictions. What is the balance? What measures can you take to reduce the risk or influence of opposition?

Weigh support to determine if it is stronger than opposition.

Analyse who would be opposed to your position and how their legitimate concerns may be addressed or how their flawed assumptions can be corrected.

Assess past experience engaging with those who support restrictions and identify any existing common ground. Determine if further engagement would be constructive and if incremental changes can be made.

Encourage forums for dialogue so that stakeholders and improve communication, concerns can be aired, and potential solutions identified.

Foreign policy goals supersede humanitarian and human rights goals.  Sustainable peace requires respect for human rights. It is unlikely conflict can be resolved if human rights violations are ongoing and humanitarian need is not addressed.

Civil society enjoys protections for its work in the rights of assembly, association and expression. These rights cannot be cancelled to suit foreign policy goals.

Fungibility Theory

Fungibility theory - any support frees up resources a terrorist group will use to pay for its terrorist activities. → This frequently quoted theory is based on faulty logic and is not supported by evidence.

It wrongfully assumes that a proscribed group will prioritise its resources to provide aid over its terrorist activities. It then claims that any civil society funds spent on aid to civilians frees up funds for violent activities.

This ignores the fact that aid, development and other civil society groups work hard to make sure their resources benefit people in need, and not terrorist groups. Donors require financial and operational accountability. IHL recognises that incidental payments to a group controlling territory in order the access civilians in need are allowed.

There is no statistical evidence to support this theory. For example, [testimony](#) in the U.S. Congress in 1995 claimed any funds going to a proscribed group free up an equal amount to be used for terror attacks. However, the testimony provided no examples and no data to support it. Despite that, it is frequently cited as “proof” of this theory.

Specific arguments against humanitarian assistance

Humanitarian aid supports terrorism - in areas controlled by terrorist groups or to relatives of listed terrorists. →

When independent humanitarian providers aid civilians and those hors de combat in areas controlled by a proscribed group, there is no direct benefit to the terrorist group. Claims that this relieves the terrorist group of the responsibility for caring for those who live under its control and frees up resources for their terrorist agenda makes two false assumptions:

- The proscribed group would assume the responsibility of providing such aid and on an equal scale; and
- The proscribed group would prioritise aid delivery over its violent agenda.

Rules that restrict independent humanitarian aid providers from accessing civilians in need create a “vacuum” that benefits terrorist groups because:

1. The proscribed group can claim credit for providing essential aid and services; and
2. The proscribed group can use aid as leverage for recruiting fighters or distribute it in a discriminatory manner.

IHL has built in standards and protections to ensure that aid provided by independent humanitarian organisations is provided on the basis of need alone.

Aid providers have decades of experience in providing aid in conflict zones in a manner that prevents diversion of resources.

Specific arguments against peacebuilding projects

Terrorist groups use negotiations to gain legitimacy and skills, which facilitates the organisation’s ability to recruit, raise money and ultimately persist in its terrorist activities.  Risk mitigation strategies by peacebuilding groups/professionals can avoid these negative outcomes.

The actual danger that this might happen is low. The evidence points to the opposite: Negotiation more often leads to laying down arms, or at least reducing the level of violence. See Development Dialogue Part 1 – [Inclusive Peace Processes, An Introduction](#) by Thania Paffenholz and Nicholas Ross, 2015

Skills needed to participate in conflict resolution dialogue are the opposite of violence: active listening, communication and more. For example, negotiations training includes information on the need to deal with the <<other side.>>

When members of proscribed group feel they are being listened to, one of the push factors of violent extremism is directly addressed.

Conflict resolution talks that exclude proscribed groups are unlikely to achieve lasting peace.

Resources gained by participation in peacebuilding processes frees up other resources to use for violence. →

When peacebuilding groups provide training for proscribed groups to participate in conflict resolution talks, they are supporting a peace process, not the violent objectives of the group. This training and support actually increases the chances for a successful outcome to the process.

Participation in peace processes does not provide armed groups with resources outside of ideas and learning how to participate in nonviolent efforts.

Participation in peacebuilding programs diverts time and resources of armed groups away from violent action.

It is unlikely the incidental costs of proscribed group participation in a peace process (such as meals or lodging) would be substantial. Providing that support is unlikely to free up funds for violent activities to a degree that outweighs the benefits of participation in conflict resolution.

There is no data to support the “fungibility” argument.

Terrorists can pursue peaceful negotiations as a means of buying time to recover from setbacks, lulling opponents into complacency, and ultimately preparing for renewed attacks. →

when armed groups are engaged; talks are generally more likely to lead to peace.

Risk is low

This is a hypothetical objection that should be subject to a risk analysis. If such negative factors are present and cannot be mitigated the time for talks may not be right.

Programs of peacebuilding groups can constrain government's relationships with its allies, undermining cooperative efforts between nations to prevent terrorist attacks. → Civil society can gain access and engage with proscribed groups in ways that governments cannot, often improving communications and increasing opportunities for dialogue.

Governments must respect the speech and associational rights of peacebuilding groups. They are independent, non-governmental entities. Their work is carried out by highly skilled CSOs that are guided by professional standards, including “Do No Harm” policies. (See the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights)

This document was prepared by the European Center for Not-for-Profit Law Stichting.
January 2023.

European Center for Not-for-Profit Law Stichting
5 Riviervismarkt, 2513 AM The Hague, Netherlands
www.ecnl.org twitter.com/enablingNGOlaw



European Center for
Not-for-Profit Law

This document is available under the Creative Commons license:
[CC-BY SA 4.0 Attribution ShareAlike 4.0 International](https://creativecommons.org/licenses/by-sa/4.0/)

