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Political Activities of NGOs: International Law and Best Practices

International Center for Not-for-Profit Law[1]

I. Introduction

In many countries around the world, government leaders are speaking out against the engagement of non-governmental organizations (NGOs) in "political activities" and thereby seeking to justify legal restrictions imposed on the NGO sector. In recent years we have witnessed restrictive laws and regulations proposed or enacted in several countries including Azerbaijan, Belarus, Ecuador, Ethiopia, Kazakhstan, Uzbekistan, and Venezuela, among others.[2]

This trend is not new. Since 2005, former Russian President Vladimir Putin has commented on several occasions about how inappropriate it is for NGOs to engage in political activities. Many of these statements were made in conjunction with the drafting and enactment of the Federal Law of the Russian Federation # 18-FZ "On Introducing Amendments to Certain Legislative Acts of the Russian Federation" ("Russian NGO Law"), dated January 10, 2006, which substantially expanded the Russian Government's authority to audit NGOs, amongst other restrictions on NGOs' activities. In his statements, Mr. Putin expressed special concern regarding foreign funding of any political activity in Russia, and insisted that any such funding must come under state control:

I object categorically to foreign funding of political activity in the Russian Federation. I object to it categorically. Not a single self-respecting country allows that and neither will we.[3]

The ongoing funding of political activity in Russia from abroad, I think, must be on the state's radar screen, especially if this funding ... comes through the state channels of other countries, and ... organizations operating here and involved in political activity are, in essence, used as foreign policy instruments by other states.[4]

Notably, in June 2009, the newly elected Russian President Medvedev supported amendments to the NGO Law, removing several restrictive provisions, including some aiming to restrict the political activities of NGOs.[5] Nonetheless, recently proposed legislation in neighboring countries seems to reflect ongoing uncertainty regarding NGO engagement in "political" activities. To cite but two examples from recent months:

- In March 2009, the Kyrgyz Parliament began consideration of the draft Law "On Amendments to Several Legislative Acts of the Kyrgyz Republic" ("Kyrgyz draft NGO Law"). The Kyrgyz draft NGO Law sought to prohibit NGOs from engaging in any "political activities." The term was not defined, and, therefore, NGOs were concerned that it would be interpreted broadly so as to prohibit an individual from participating in a town hall meeting on behalf of an NGO, or even bringing to the public's attention alleged corruption by a government official. Fortunately, just prior to the draft being scheduled for consideration by Parliament, the Kyrgyz President withdrew support of the draft Law, and we hope that it will eventually be withdrawn from the Parliament's agenda.[6]
- In June 2009, the Azerbaijani Government introduced amendments to the Law on Non-governmental Organizations (Public Associations and Foundations) (hereinafter, "Azerbaijani NGO Law").[7] The amendments to the Azerbaijani NGO Law stated that "the charters of NGOs shall not contain functions which belong to state or municipal authorities, allow interference into the activities of these authorities, or provide for engaging in state control or supervision," effectively preventing NGOs from performing

watchdog functions over public offices, criticizing the government, or performing other "political activities."

Of course, many NGOs operating in the former Soviet Union are troubled by governmental efforts to restrict their activities, because they fear that these restrictions might prevent them from implementing their core statutory activities, such as representing the interests of members, participating in public debates on various issues, or serving as watchdogs over the government's actions. As a result, ICNL has been requested to provide comparative information on the issue of NGO engagement in political activities. We have reached out to some of the world's leading experts to assemble a compilation of reports on how the legal framework in other countries addresses the question of NGO engagement in political/legislative/advocacy activity. The goal of the paper is to enable our colleagues and partners to analyze regulatory restrictions, whether proposed or in force, against a broader background of international practice.

This paper consists of five sections. Following Section I (Introduction), Section II contains a brief overview of international law and its applicability to the issue. Section III presents a comparative perspective on regulatory approaches toward political activities, in summary form. Section IV then contains a series of brief reports on NGO engagement in political activities from six countries: Canada, England and Wales, France, Germany, Hungary, and the United States – all countries with recognized democratic traditions, but with very different legal traditions and diverse regulatory approaches towards NGOs and their activities. Section V concludes by identifying some common regulatory approaches or "best practices" relating to this sphere, and based on Anglo-American-European practice.

II. International Law

The Universal Declaration of Human Rights[8], a U.N. General Assembly resolution, and the International Covenant on Civil and Political Rights (ICCPR)[9], a treaty ratified by more than 150 countries around the world, recognize that all individuals possess the rights to freedom of opinion and expression, and freedom of peaceful assembly and association. According to these widely respected international pronouncements, both rights may be limited in conformance with the "interests of national security or public safety, public order, the protection of public health or morals, or the protection of the rights and freedoms of others"[10] in a democratic society.

The European Convention on Human Rights and Fundamental Freedoms (ECHR), which is applicable to all members of the Council of Europe – including Russia, Ukraine, Moldova, Georgia, Azerbaijan, and Armenia – also protects the freedoms of expression (Article 10) and association (Article 11). The European Court of Human Rights, in considering the scope of Article 11, has expressly held that Article 11 applies to individuals and their right to form political parties and associations, and that once formed, these organizations are deserving of the Convention's protections.[11] Like the ICCPR, the European Convention also defines a limited list of legitimate government interests that may justify restrictions on fundamental freedoms. A government that restricts the exercise of these freedoms must demonstrate why interference is 'necessary in a democratic society' to achieve legitimate state interests, which include the interests of national security or public safety, the prevention of disorder or crime, the protection of public health or morals, or the protection of the rights and freedoms of others.[12]

Restrictions imposed against NGOs for reasons of limiting "political activity" are not clearly and necessarily justified as supporting a legitimate government interest under the ICCPR or ECHR. If defined to include criticism of governmental policy, for example, then the restrictions on political activity would likely be impossible to justify. The freedom of expression articles include the right to make opinions known and to join public debate, and to provide and receive information; it protects not only inoffensive ideas but also those that "offend, shock and disturb", since pluralism is essential for "democratic society."[13] The issue turns, of course, on what is meant by "political activity." Vague, ill-defined restrictions against political activity, however, are almost certainly in violation of international law.

III. Political Activities: A Comparative Perspective

The term "political activity" is subject to multiple interpretations and meanings. In the broadest sense, most NGO activities have implications for public policy. Depending on the context, "political activity" could be defined narrowly or broadly to include supporting or opposing candidates for public office, supporting particular political parties, lobbying for or against specific laws, engaging in public advocacy, pursuing interest-oriented litigation, or engaging in policy debate on virtually any issue.

Restrictions on political activities of NGOs depend to a certain extent on the *system* of law in each country. Countries with a **common-law** tradition tend to classify NGOs on the basis of charitable or public benefit purposes. For those NGOs classified as charitable, common-law countries tend to restrict their ability to engage in public policy or political activities because such activities are perceived to be inherently partisan, and thus in actual or potential conflict with the public benefit purposes of the NGO. Furthermore, public policy activities should not be improperly subsidized so that they undermine the justification for tax and other related benefits. Where public benefit is not the primary purpose of the NGO, common-law countries tend to be less restrictive.

In **England & Wales**, for example, a charity can never be formed for the primary purpose of engaging in political activities and can never support a political party or candidate. A charity may, however, engage in some political activities (such as lobbying activities), if the activities relate to the charity's specific purposes or to the well-being of the sector generally, and if these political activities are not the main reason for its existence. Other NGOs (that is, non-charitable NGOs) are free to engage in political activities. **Canada** and **Ireland** have both adopted similar regulatory approaches. Limits on political activities apply only to charities (and *not* to non-charitable NGOs). In the case of Canada, a charity may engage in political activities, provided that they are "ancillary and incidental" to the organization's charitable activities and "do not include the direct or indirect support of, or opposition to, any political party or candidate for public office." In Ireland, charities may undertake ancillary political activities, such as advocacy or consultation on law reform, in order to further their primary charitable purpose.

In the **United States**, the scope of permissible public policy activities for NGOs is directly related to their statutory purposes and actual activities. Charitable organizations falling under the reach of the Internal Revenue Code 501(c)(3) cannot dedicate a substantial part of their activities to carrying on propaganda or otherwise attempting to influence legislation, and are prohibited from becoming involved in political campaigns for public office. Within the boundaries of this limitation, 501(c)(3) charities are allowed to spend a limited amount of money to influence legislation, and can always publicize the results of nonpartisan research or provide technical assistance to legislative bodies. Other categories of NGOs, such as civic leagues or business leagues, regulated through other I.R.C. sections, face no such limitations.

In sum, in most common-law countries, the boundaries of allowable "**political activities**" are defined based on the same general regulatory approach. First, the restrictions apply only to charities or tax-exempt organizations (and not to all categories of NGOs). Second, certain kinds of activities, including the direct or indirect support of, or opposition to, any political party or candidate for public office, are strictly prohibited. Third, other kinds of activities, perhaps better phrased as public policy activities, which include attempting to influence legislation or lobbying, are permissible within certain limits (e.g., must be ancillary to the organizational purposes, must not be a substantial part of the activities, etc.). The precise contours of what is permissible and what is not can be controversial within any national context. For example, the courts in Canada have consistently expanded the notion of what is meant by the term "political activities," making it difficult to distinguish between education, advocacy, and political statements.[14] Moreover, in the United States, the Internal Revenue Service's (IRS) approach to enforcing the ban on partisan activities by charities and religious organizations has raised serious questions about the agency's interpretation of the law.[15]

Civil law countries typically follow a more permissive regulatory approach regarding political activities. As a general rule, there are no specific provisions regarding political activities of NGOs in the civil codes. Countries including France, Belgium, Holland, Finland, Italy, Spain, Germany, Switzerland, and Denmark place no restraints upon the public policy activities of NGOs. In fact, some civil law countries actively encourage NGOs' political activities. In **Belgium**, for example, there is an explicit right entitled "droit de critique" (right to criticize) which permits associations to use all legal means to

defend interests and ideas of organizational objectives. Political parties in **Germany** set up foundations specifically for the purpose of channeling resources into partisan activities. And in **Switzerland**, associations mobilize and represent citizens in the political decision-making process.

Against the background of this permissive approach, **restrictions** are sometimes imposed through the tax or administrative law to limit the scope of political activities, especially where the NGO is pursuing public benefit or tax-privileged purposes. In **Germany**, for example, tax-privileged purposes do not include political activities. Tax-exempted organizations may not act as direct supporters of political parties; they are not allowed to support or campaign for political parties or their political representatives.[16] In **France**, while nothing in the codified law prevents a public benefit organization (public utility association or public utility foundation) from engaging in political activities, a decision of the *Conseil d'Etat* clarifies that organizations with a primarily political purpose, such as engaging primarily in political advocacy, cannot be recognized as public benefit organizations.

EU Member States, the regulatory framework for NGOs and political activities is similarly permissive, with restrictions typically linked either to direct financing of political parties, or applicable only to those NGOs receiving state support. **Poland** presents perhaps the most permissive framework: Polish law explicitly gives associations the right to engage in almost any political activity, even participation in electoral campaigns (through special elective committees). In **Slovakia**, associations are similarly free to engage in a range of political activities, including endorsing candidates, lobbying, and even contributing to political campaigns; foundations, however, are restricted from financing political parties. In the **Czech Republic**, while associations cannot be founded for political purposes, they can lobby, endorse candidates, provide information and advocate; foundations, as in Slovakia, cannot provide financial support to political parties but can lobby, endorse candidates, provide information, and advocate. In **Hungary**, NGOs are free to lobby, nominate or endorse candidates, and provide information and financial support to political parties. Restrictions arise only for public benefit organizations (that is, those NGOs with public benefit status and preferential tax benefits), which are prohibited from engaging in direct political activity, such as nominating candidates for national elections or funding political parties.

Thus, in the **European civil-law context**, legislation generally recognizes NGOs as key participants in framing and debating issues of public policy, and like individuals, they have the right to speak freely on all matters of public significance, including existing or proposed legislation, and state policy and actions. Likewise, NGOs generally have the right to criticize or endorse state officials and candidates for political office. They also usually have the right to carry out public policy activities, such as education, research, advocacy, and the publication of position papers. In some cases, however, NGOs (or at least certain categories of NGOs, such as foundations or public benefit organizations) are prohibited from engaging in "party political" activities, such as nominating candidates for office, campaigning, or funding parties or political candidates. As compared to common-law countries, therefore, civil law countries take a more permissive approach, restricting NGOs from engaging in only a narrowly defined range of political activities.

IV. Country Reports

NGOs and Political Activity: The Canadian Rules

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The purpose of this paper is to give an overview of Canadian law and administrative practice as they pertain to "political activities" of NGOs in Canada. Even the term political activities is subject to some interpretation in Canada given that many organizations, which view themselves as being "educational," have in fact been categorized as being involved in what might be called propaganda activities, which in turn falls within the rubric "political." The tipping point is whether information presented is "balanced," or whether it puts forward a particular viewpoint.

As is the case in the United Kingdom, the term NGO is not an identifiable legal term but is shorthand

for various types of non-commercial organizations. In Canada, as in the U.K., there are two distinct categories of organizations that have to be considered and have very different rules. The first of these is the nonprofit organization and the second is the registered charity.

I shall first set out the definitional differences and then deal with the very different rules that apply to their carrying on political activities.

Nonprofit Organizations
A "nonprofit organization" is exempt from income tax and is defined by paragraph 149(1)(l) of the Income Tax Act (Canada), which reads:

149. (1) No tax is payable under this Part on the taxable income of a person for a period when that person was…

(l) a club, society or association that, in the opinion of the Minister, was not a charity within the meaning assigned by subsection 149.1(1) and that was organized and operated exclusively for social welfare, civic improvement, pleasure or recreation or for any other purpose except profit, no part of the income of which was payable to, or was otherwise available for the personal benefit of, any proprietor, member or shareholder…."

The above definition constitutes virtually the entire legislative tax system for nonprofit organizations. It should be noted that these organizations:

- are not registered in any way by the government under the Income Tax Act and have minimal reporting requirements[17];
- cannot be charitable at common law according to the Minister of National Revenue[18]; cannot give receipts for donations which provide tax relief to the donors;
- can be funded in any legal way,[19] whether from within Canada or from outside but no registered charity can distribute funds to a nonprofit; and
- membership need not be limited to Canadians nor need the directors be Canadian.[20]

The definition of a "nonprofit organization" goes on to list various approved nonprofit purposes, but all can be subsumed under the basket clause of "any other purpose except profit." Furthermore, in order to meet the definition of a nonprofit organization in the **Income Tax Act**, the organization must not make any of its income available to its members. This is consistent with the well-known international concept of a "non-distributing organization," a virtual hallmark of NGOs in almost all countries.

The extremely broad definition means that aside from organizations that are created to make profits, almost any other type of activity engaged in by organization falls under the definition. This extraordinary range encompasses amateur sports clubs, social clubs, literary societies, and professional organizations,[21] as well as political parties.

In the context of this paper, the rules regarding political activity are extremely simple: there are none. Given that many of these organizations actively lobby for the interests of their members and given that all political parties fall within this category of organization, this is not surprising. Of course, there are laws of general application that may apply, such as the requirements that lobbyists (whether paid by the organization or employees of the organization) must register with a central registry. And when a federal general election is called, there are limits on all persons and organizations (other than the political parties themselves) that deal with campaign financing.

The ability of nonprofits to legally engage in just about any form of lobbying and political activity obviously makes them attractive vehicles for such work. Many groups have created both a nonprofit organization to carry on political activity (bearing in mind getting funding may be difficult[22]) and a separate charity that cannot and does not engage in extensive political activity but carries on purely "charitable" work.

Having looked at the nonprofits, we shall now turn to the much more complex issue of political

activities and registered charities.

Registered Charities:
The Income Tax Act also provides a specific tax exemption for a "registered charity." Subsection 248(1) defines a registered charity as "a charitable organization, private foundation, or public foundation ... that has applied to the Minister in prescribed form for registration and that is at that time registered." Thus, only a charity registered with the Canada Revenue Agency (CRA) is exempt from income tax under this provision.[23] We have previously seen that the other third-sector income tax exemption of general application, the exemption for "nonprofit organizations," applies only to organizations that in the opinion of the Minister could not be registered as charities.[24]

The 82,000 registered charities must meet the common-law definition of "charity" as is interpreted by officials; the definition is probably narrower than in the U.K. and is considerably narrower than the definition of a 501(c)(3) organization in the United States. But as in the U.K., a charity cannot have a political purpose as its main focus.

The most important aspect of getting registered as a charity in Canada is that the registration allows the charity to issue receipts for donations, which are needed to generate tax credits (deductions in the case of corporations) to donors. Given that Canada has one of the most generous levels of tax relief for charitable donations in the world, this ability to issue receipts is the driving force for most charitable registrations.

Interestingly, while a Canadian charity can receive donations from any source including foreign individuals, corporations, and NGOs, it need not issue tax receipts to non-residents[25] and, in terms of annual payout requirements by charities[26], such donations are not factored in. This means that foreign donations offer advantages to Canadian charities that are not available for domestic donations.

The **quid pro quo** of being able to give tax relief for donations is a highly regulated regime. The requirements include:

- filing annual returns which are made available to the public;
- meeting minimum annual payouts or expenditures on charitable activities; and,
- being subject to audit to ensure that the charity's activities continue to meet the definitional requirement.

It is not the purpose of this paper to look at the Canadian charitable sector in any detail, but under this last point, one of the most common purposes of charity audits is to ensure that the organizations are not involved in inappropriate political activity. If they are found to be "political," charitable status can be revoked and the assets distributed to other charities.

The question of what is political and what activities are acceptable or not acceptable has been a problem for decades. While on the face of it, the definition of a "registered charity" requires that all its resources be devoted to charitable activity, in fact there has always been a recognition that at least some "political" activity had to be allowed. To this end, the Income Tax Act was amended many years ago to allow, within certain constraints, some level of political activity. While the legislation generally distinguishes between charitable organizations and charitable foundations (whether public or private), the rules relating to political activity are the same for all registered charities and for that reason we will simply refer to registered charities.

149.1 (6.2)[27] "For the purposes of the definition "charitable organization" in subsection 149.1(1), where an organization devotes substantially all of its resources to charitable activities carried on by it and (a) it devotes part of its resources to political activities, (b) those political activities are ancillary and incidental to its charitable activities, and (c) those political activities do not include the direct or indirect support of, or opposition to, any political party or candidate for public office, the organization shall be considered to be devoting that part of its resources to charitable activities carried on by it."

The final clause, in conjunction with the overall definition of registered charities which includes the requirement that all its resources be devoted to charitable activities carried on by it, means that to the

extent that resources are devoted to "acceptable" political activities, the charity is deemed to be devoting its resources to charitable works. As a general rule of thumb, this provision has been interpreted as meaning that approximately 10% of a charity's "resources" can be devoted to acceptable political activity.[28]

The key elements of the provision are the prohibitions on the support of political parties or candidates and the requirement that any qualifying political activity be linked to the organization's objects. Thus, while a charity which works to preserve the environment might get involved in "green" issues, it could not get involved in a debate on same-sex marriage.

The significance of this provision is that it established that some level and types of political activities could be carried on by charities. However, there has been no case law on the subject and as a consequence, charities have had to discern from CRA pronouncement what would or would not be acceptable. There have been a number of short "rulings." For example:

The attendance by registered charity officials, in their official capacity, at a fundraising dinner for a politician is not acceptable because it conveys the impression of partisan political activity by a registered charity. Registered charities are not permitted to carry on partisan political activities. Therefore, they cannot devote any resources to such activities.[29]

Or this one:

A charity can charge fair market rent to a political party for occasional meetings. This, in itself, does not always indicate a charity's support of such a party, especially in rural areas where sometimes a registered charity may have the only hall that can accommodate such meetings.

This support can manifest itself in other ways. The charity could, for example, charge fair market rent to one political party, but be reluctant to rent the premises to all others. Similarly, a frequent and continued association of the charity with the same political party could lead to the conclusion that the charity favours this party to the exclusion of others. For example, where a party's local headquarters are in a building owned by a registered charity.

While renting premises to a political party at fair market value is not necessarily prohibited, the issue will depend on the facts of each case. Charities are cautioned against engaging in this form of behaviour to the extent that it could be interpreted not only by the Canada Revenue Agency but also by the public-at-large as a prohibited political activity."[30]

In September 2003, the CRA issued CPS-022,[31] which is the most lengthy and discursive of their pronouncements on the subject of political activity and the balance of this paper will look at the highlights of that document. The examples given of both acceptable and unacceptable activities would answer most if not all of the questions originally posed to be considered in this series of papers.

The Policy Statement announced a major shift in CRA policy with regard to the advocacy activities of charities. The basic thrust of the document is encapsulated in the following passages, which are taken verbatim from CPS-022 but with some editing for length and clarity. The highlighted parts are in fact highlighted in the original.

The Government of Canada recognizes the need to engage the voluntary sector in open, informed, and sustained dialogue in order that the sector may contribute its experience, expertise, knowledge and ideas in developing better public policies and in the design and delivery of programs.

... Through their dedicated delivery of essential programs, many charities have acquired a wealth of knowledge about how government policies affect people's lives. Charities are well placed to study, assess, and comment on those government policies. Canadians benefit from the efforts of charities and the practical, innovative ways they use to resolve complex issues related to delivering social services. Beyond service delivery, their expertise is also a vital source of information for governments to help guide policy decisions. It is therefore essential that charities continue to offer their direct

knowledge of social issues to public policy debates.

... When charities choose to contribute to public policy debates, they are required by law to do so in a way that considers certain constraints. A charity cannot be established with the aim of furthering or opposing the interests of a political party, elected representative or candidate for public office. Also a charity cannot be formed to retain, oppose, or change the law, policy or decision of any level of government in Canada or a foreign country. **However, charities may choose to advance their charitable purposes by taking part in political activities if they are connected and subordinate to those purposes.**

The Policy Statement continues to acknowledge the supremacy of the common law in regard to the definition of charity. A charity must have objectives that are exclusively charitable in the common law sense. As with common law, and therefore under the Policy and under the Act, an organization that is established for purely political purposes cannot be a charity. Political purposes include furthering the interests of a particular political party ("partisan politics") and advocating for the retention or change in the law, policy, or decision at any level of Government in Canada or in a foreign country. The Policy Statement advises that CRA will look at an organization's purposes and activities in order to determine whether it is organized exclusively for charitable purposes.

When a charity focuses substantially on one particular charitable activity so that it is no longer subordinate to one of its stated purposes, we may question the legitimacy of the activity at law. This is because when an activity is no longer subordinate to a charity's purposes, it may indicate that the charity is engaging in an activity outside its stated objects, or pursuing an unstated:

- collateral political purpose; or
- non-charitable purpose; or
- charitable purpose.

In such circumstances, rather than just considering the explicit purpose of the activity in question, we will consider all the facts and determine whether it is reasonable to conclude that the charity is focusing substantially on a particular activity for an unstated political purpose.

The Policy Statement recommends that whenever a charity wants to go beyond the purposes permitted in the Act, it establish a "separate and distinct organization that will not be a registered charity". Where such a body is established, no limitation on its political activities is contemplated under the Act. The charity may not, however, fund that separate organization or make resources available to it for otherwise impermissible political activity.

The Policy Statement divides a charity's activities into three categories: (a) prohibited, (b) political, and (c) charitable. Under prohibited activities, the document mentions engaging in partisan political activity that is directly or indirectly supporting or opposing any political party or candidate for public office. Where a charity wants to engage in a public awareness campaign, it must be careful not to explicitly connect its views with the views of any political party and its views must be well reasoned. Where it wants to provide information to its supporters or the public on the voting behavior of elected representatives, it must be careful not to single out the voting record of a particular individual or party. These clarifications are helpful.

An activity is presumed to be political if the charity (a) explicitly communicates a call to political action; (b) explicitly communicates to the public that the law, policy, or decision of any level of Government in Canada or foreign country should be retained, opposed, or changed; or (c) explicitly indicates in its materials that the intention of the activity is to incite or organize, to put pressure on an elected representative or public official to retain, oppose, or change the law, policy, or decision of the Government. The Policy Statement provides, in this regard:

A charity may take part in political activities if they are non-partisan and connected and subordinate to the charity's purposes. We presume an activity to be political if a charity:

a. explicitly communicates a call to political action (i.e., encourages the public to contact an elected representative or public official and urges them to retain, oppose, or change the law, policy, or decision of any level of government in Canada or a foreign country);
b. explicitly communicates to the public that the law, policy, or decision of any level of government in Canada or a foreign country should be retained (if the retention of the law, policy or decision is being reconsidered by a government), opposed, or changed; or
c. explicitly indicates in its materials (whether internal or external) that the intention of the activity is to incite, or organize to put pressure on, an elected representative or public official to retain, oppose, or change the law, policy, or decision of any level of government in Canada or a foreign country.

The Policy Statement contains extensive guidance on what sorts of activities in the context of communication campaigns are charitable *per se*, and therefore permitted.

When a registered charity seeks to foster public awareness about its work or an issue related to that work, it is presumed to be taking part in charitable activity as long as the activity is connected and subordinate to the charity's purpose. In addition, the activity should be based on a position that is well-reasoned…

Provided a communication with an elected representative or public official is subordinate to a charity's charitable purpose, it will be considered charitable. The representation should:

- relate to an issue that is connected to the charity's purposes;
- be well-reasoned…or based on a well-reasoned position; and,
- not contain information that the charity knows or ought to know is false, inaccurate or misleading.

If the communication, however, concludes with an explicit call to political action, it will be considered to be political, and not charitable.

The policy document contains detailed guidance about education as a charitable purpose and how it differs from public awareness campaigns. Essentially, the Policy adopts the language of the Supreme Court of Canada in *Vancouver Society*. Education, in short, is not biased and is not based on incomplete information or an emotional appeal.

There is an extensive discussion of the provisions of the Act governing the expenditure limits imposed by the concept "substantially all." There is, in this regard, recognition of the difficulties faced by smaller charities.

However, we recognize that this may have a negative impact on smaller charities. In an effort to alleviate this hardship, we will exercise our discretion and not revoke the registration of smaller charities for the excessive use of their resources on political activities as long as they meet the following administrative guidelines:

- Registered charities with **less than $50,000** annual income in the previous year can devote up to 20% of their resources to political activities in the current year.

- Registered charities whose annual income in the previous year was **between $50,000 and $100,000** can devote up to 15% of their resources to political activities in the current year.

- Registered charities whose annual income in the previous year was **between $100,000 and $200,000** can devote up to 12% of their resources to political activities in the current year.

The Policy Statement permits the test to be met over a number of years where there are unique one-time conditions causing the charity to expend a larger sum in one year. There is discussion of disbursement quotas, political service contracts, record-keeping requirements, and filing requirements.

Finally, the Policy Statement sets out a number of scenarios in which the rules and administrative views are applied. The discussions are illuminating and we have reproduced in Appendix A the full set taken from CPS-022. The following is short guide to the topics covered in the Appendix.

The following scenarios illustrate allowable charitable activities:
Scenario 1 — Distributing the charity's research
Scenario 2 — Distributing the research report to election candidates
Scenario 3 — Publishing a research report online
Scenario 4 — Presenting the research report to a Parliamentary Committee
Scenario 5 — Giving an interview about the research report
Scenario 6 — Distributing the research report to all Members of Parliament
Scenario 7 — Participating in an international policy development working group
Scenario 8 — Joining a government advisory panel to discuss policy changes

The following scenarios illustrate prohibited activities:
Scenario 1 — Supporting an election candidate in the charity's newsletter
Scenario 2 — Distributing leaflets highlighting lack of government support for charity goals
Scenario 3 — Preparing dinner for campaign organizers of a political party[32]
Scenario 4 — Inviting competing election candidates to speak at separate events

The following scenarios illustrate permitted political activities:
A charity that devotes **substantially all** of its resources to charitable activities may carry on political activities within the allowable limits.
Scenario 1 — Buying a newspaper advertisement to pressure the government
Scenario 2 — Organizing a march to Parliament Hill
Scenario 3 — Organizing a conference to support the charity's opinion
Scenario 4 — Hiring a communications specialist to arrange a media campaign
Scenario 5 — Using a mail campaign to urge supporters to contact the government
Scenario 6 — Organizing a rally on Parliament Hill[33]

Recapitulation
As noted at the beginning of this paper, there are two broad categories that NGOs can operate within in Canada. For those that choose to be "nonprofit organizations", there are virtually no limits on the political activities that can be undertaken.

But for those that qualify as registered charities, they must adhere to significant limitations when it comes to political activity. The rules are primarily administrative but as we have noted, CPS-022 offers wide-ranging guidance and also shows that within the statutory limits, the Canadian government wants to allow a fair level of political activity.
On a subjective note, I might add that while there was a period where the sector chafed under rules which were not clear, the major problems of determining what can and cannot be done have mostly disappeared in Canada with the publication of CPS-022.

Appendix A
The following are the detailed examples of acceptable and prohibited activities for a registered charity as set of in CPS-022 and referred to in the body of this paper.

14. Examples of activities undertaken by a charity
In the following hypothetical examples, the charity involved is called Healthy Retirement and was formed to promote the health of seniors in Canada. It has received a lot of media attention on its recently released, well-reasoned position on the hazards for seniors of using marked crosswalks. Its findings conclude that a senior is four times more likely to be involved in a fatal accident with a car at a marked crosswalk than at an intersection with a stop sign or a light.

14.1 Charitable activities

The following scenarios outline allowable charitable activities.

14.1.1 Scenario 1 — Distributing the charity's research
Healthy Retirement distributes the results of its research to the media, its members, other charities that specialize in promoting the health and welfare of seniors, the general public, and anyone interested in its findings. It also publishes its report in medical association journals and on its Web site, and highlights its release in a newsletter sent to subscribers. In these cases, all the resources devoted to the research and distribution of the findings are considered resources devoted to charitable activities because:

- the activities are connected and subordinate to the charity's purposes;
- they do not contain a call to political action; and
- they are based on a well-reasoned position.

This is information that seniors can use to improve their safety and that decision-makers can use when deciding where and whether to use crosswalks or other traffic controls when considered in combination with other issues.

14.1.2 Scenario 2 — Distributing the research report to election candidates
Healthy Retirement decides to send its report to all candidates in a municipal election to inform them about the hazard marked crosswalks pose for seniors. This is a charitable activity because it is connected and subordinate to the charity's purpose. In addition, no one candidate is favoured over another.

14.1.3 Scenario 3 — Publishing a research report online
A major finding of the report was that many motorists fail to respect the right-of-way at marked crosswalks. When Healthy Retirement publishes its report online, it highlights this fact and urges motorists to observe the law. This is still a charitable activity because it is encouraging people to respect the existing law on an issue that relates to its purposes.

14.1.4 Scenario 4 — Presenting the research report to a Parliamentary Committee
The research director of Healthy Retirement presents the charity's findings to a Parliamentary Committee formed to hear representations on whether there should be stiffer penalties in the *Criminal Code* for dangerous operation of a motor vehicle. She ends her representation with a recommendation (based on a well-reasoned position) that a driver failing to observe the pedestrian right-of-way at a marked crosswalk should be automatically subject to a charge of dangerous operation of a motor vehicle, as a deterrent.

Even though the charity explicitly proposed a political solution to the problem, this activity is charitable because it is a communication to an elected official based on a well-reasoned position.

14.1.5 Scenario 5 — Giving an interview about the research report
Following her representation, as the research director of Healthy Retirement is leaving Parliament, she is stopped by the media and interviewed for television and radio about what she said and the report. She outlines her representation and repeats the conclusion that on the basis of the research the charity has done, the charity thinks that the number of pedestrian deaths involving seniors might be reduced if drivers that failed to recognize the right-of-way of pedestrians at marked crosswalks faced stiffer penalties. This interview is not a political activity because the research director did not arrange a media campaign to publicize the charity's conclusion that the law should be changed; she simply explained what she said to the elected representatives.

14.1.6 Scenario 6 — Distributing the research report to all Members of Parliament
A bill is being debated in Parliament. The bill proposes a change to the *Criminal Code* that would allow a driver who fails to observe the pedestrian right-of-way at a marked crosswalk to be charged with dangerous operation of a motor vehicle. Healthy Retirement gives Members of the House, for use in

debate, a relevant well-reasoned position regarding how such a charge may encourage drivers to uphold the law and thereby save lives. This is a charitable activity because Healthy Retirement is informing elected representatives about its work on an issue that is connected and subordinate to the charity's purposes and based on a well-reasoned position.

14.1.7 Scenario 7 — Participating in an international policy development working group
The research director of Healthy Retirement is asked to join a working group of the World Health Organization that is gathering together government policy makers, academics, and voluntary sector representatives from around the world to develop a charter to promote the health of senior citizens. Such an activity is connected and subordinate to the charity's purpose. Although the director is taking part in an initiative organized by an international body, this kind of activity is considered to be like communicating with a public official because government policy-makers are also invited (whether or not they actually attend). Therefore, as long as the director's contribution is based on a well-reasoned position, the resources of the charity devoted to developing such a charter are viewed as resources devoted to a charitable activity.

14.1.8 Scenario 8 — Joining a government advisory panel to discuss policy changes
A provincial government launches a Health Sector Initiative to look at ways of improving its service delivery to residents of the province. Healthy Retirement is asked to join an advisory panel with other health charities and public officials to discuss possible policy changes. Based on a well-reasoned position, Healthy Retirement suggests that the province should increase its number of long-term hospital care beds for the elderly. Although the charity is recommending a change in provincial health policy, the charity's involvement in the advisory panel is a communication to a group of public officials based on a position that is well-reasoned. Therefore, the resources devoted to the activity are resources devoted to a charitable activity.

14.2 Prohibited activities
The following scenarios outline prohibited political activities.

14.2.1 Scenario 1 — Supporting an election candidate in the charity's newsletter
Healthy Retirement sends a newsletter to all its members that contains an editorial from the managing director of the charity conveying his views on the main issues it is currently facing. Just before an election, the director uses the column to give his personal support to the re-election of a candidate who happens to endorse a policy that the charity also supports. The director uses his personal funds to pay for that edition of the newsletter. In this case, the charity is engaging in a prohibited partisan political activity because although the director paid for that edition of the newsletter, it is an official publication of the charity and is being used to promote a candidate for an election.

14.2.2 Scenario 2 — Distributing leaflets highlighting lack of government support for charity goals
Healthy Retirement decides to distribute leaflets to members of the public during a federal election campaign. The leaflets highlight its research findings that drivers do not respect the pedestrian right-of-way at marked crosswalks. It also states that a private members bill that proposed to increase the penalties imposed on drivers failing to give the right-of-way to pedestrians at marked crosswalks did not become law because government-side Members of Parliament voted against it. In this case, the distribution of the leaflets is a prohibited partisan political activity because it could mobilize public opinion against the current government for failing to enact the private members bill.

Whatever the issue, a charity is not permitted to directly or indirectly support or oppose any political party or candidate for public office, at any level of government. Had the charity merely published a leaflet that showed how **all** the Members of Parliament voted on the private members bill, we would not have viewed this to be a partisan political activity.

14.2.3 Scenario 3 — Preparing dinner for campaign organizers of a political party
During a provincial election campaign, Healthy Retirement invites, to one of its monthly "heart smart" dinners, all those involved in organizing the campaign for a political party that promotes policies targeted at increasing health spending on respite care for seniors. The campaign team is treated to a delicious three-course meal that is low in fat and salt, and they receive information about the charity's programs. This is a prohibited partisan political activity because the charity is providing direct support, by way of a free meal, to campaign organizers of a political party.

14.2.4 Scenario 4 — Inviting competing election candidates to speak at separate events
Healthy Retirement invites a candidate in a municipal election, who is in favour of increasing the money available to deliver hot meals to seniors in poor health, to talk about a particular issue on the candidate's electoral platform that is consistent with the charity's goals at its well-attended annual fundraising dinner. At a later date, it invites the other candidate in the election to speak at its poorly attended annual general meeting. The charity does not endorse either candidate at either meeting and no political fundraising occurs. Nevertheless, as the charity is not giving an equal opportunity for candidates seeking the same office to speak, it is possible to infer that the charity is indirectly supporting a particular candidate for public office and is therefore engaged in a prohibited partisan political activity. To avoid this assumption, a charity must ensure that in such circumstances, they invite all the candidates in an election to speak at the same time. Furthermore, the charity must give the candidates an equal amount of time to speak on their general platform.

14.3 Permitted political activities
A charity that devotes **substantially all** of its resources to charitable activities may carry on political activities within the allowable limits.

14.3.1 Scenario 1 — Buying a newspaper advertisement to pressure the government
Healthy Retirement takes out a full-page "Save Our Seniors" advertisement in a national newspaper to promote the well-reasoned position it has taken in its recent research. The advertisement states that the federal government is devoting proportionately less resources to senior health care now than ever before, and urges it to reverse this trend.

This is political activity because it is an explicit communication to the public that federal government policy on an issue that relates to Healthy Retirement's purposes should be changed.

14.3.2 Scenario 2 — Organizing a march to Parliament Hill
Parliament is debating the possibility of increasing the level of the Old Age Security benefits as a result of increases in the cost of fuel. Healthy Retirement has just published its research that sets out the well-reasoned position that 10% of seniors are malnourished because, once they have paid for fuel, they have little money to spend on food.

The executive director of Healthy Retirement sends an email to the charity's staff asking them to organize a march to Parliament Hill to coincide with the debate. He indicates that the purpose of the march is to highlight the charity's recent findings and to put pressure on Members of Parliament to vote for increases in the level of the Old Age Security Pension. On the day of the march, Healthy Retirement gives participants placards that state, "Seniors cannot afford to eat" and the address of the web site of the charity where the report can be downloaded.

As the executive director's internal email explicitly indicates that the purpose of the march is to put pressure on the government to change its policy on this issue, it is a political activity.

14.3.3 Scenario 3 — Organizing a conference to support the charity's opinion
Healthy Retirement organizes conferences and workshops to gain support for its point of view that penalties for motorists failing to observe the right-of-way or pedestrians at marked crosswalks need to be increased as a deterrent. It also advocates its well-reasoned position that all marked crosswalks should be updated to include a stop sign or light.

A charity that organizes a conference or workshop that explicitly promotes its point of view on an existing or proposed law, policy, or decision of any level of government, in Canada or a foreign country, that relates to the way it achieves its purposes is engaged in a political activity.

14.3.4 Scenario 4 — Hiring a communications specialist to arrange a media campaign
A driver that failed to observe the right-of-way at a marked crosswalk accidentally kills three seniors from the same seniors' residence. There is a public outcry about the accident and the safety of marked crosswalks.

The provincial government where the accident occurs reviews its policy on marked crosswalks and

holds consultations with stakeholders to get their views on the issue. Healthy Retirement is asked to present its well-reasoned position on the matter. The presentation is a charitable activity because Healthy Retirement is informing elected representatives about its work on an issue that is connected and subordinate to the charity's purposes and based on a well-reasoned position.

However, following its representation, Healthy Retirement concludes that the elected representatives were not enthusiastic about its well-reasoned position that marked crosswalks should be banned. The charity therefore decides to hire a communications specialist to arrange a media campaign to highlight its view that marked crosswalks should be banned. Note that this is not the same as saying that crossing at a crosswalk is four times as dangerous as crossing at a traffic light. From this point onwards, we will view the activity to be a political activity because the media campaign will explicitly communicate to the public that the law should be changed so that crosswalks are banned.

14.3.5 Scenario 5 — Using a mail campaign to urge supporters to contact the government
Healthy Retirement organizes a mail campaign by giving its supporters and members of the public a summary of its well-reasoned position on the dangers of marked crosswalks. The charity also encourages them to write to their municipal councilor and ask them to update the municipal marked crosswalks to include a stop sign or a light.

Whatever level of government the charity is urging its supporters and members of the public to contact, on whatever issue, such a communication is a call to political action and therefore a political activity.

14.3.6 Scenario 6 — Organizing a rally on Parliament Hill
Parliament is debating the possibility of increasing the penalties for offences in the *Criminal Code*. Healthy Retirement decides to organize a rally on Parliament Hill to coincide with the debate. When Healthy Retirement advertises the rally it invites the public to join it in sending a message to Ottawa that Canadians want drivers who fail to stop at marked crosswalks should be charged under the *Criminal Code* with the offence of dangerous operation of a motor vehicle. Explicitly communicating to the public that the law should be changed in this way is a political activity. It is also a political activity to organize a rally with the explicit purpose of pressuring any level of government in Canada, or a foreign country, to change the law.

Political Activities and NGOs in England and Wales

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1. Overview
In England and Wales there is a fundamental difference between the legal treatment of non-charitable, not-for-profit organizations and charities (public benefit organizations).The legal treatment, both for tax and regulation, is the same for membership and non-membership bodies.

Non–charitable, not-for-profit organizations are not subject to any regulation with respect to their status. They may be established and operate without any requirement for registration, and many do. If they wish to have the benefits of incorporation, they may register as companies limited by guarantee and they are then subject to the same light-touch regulation as commercial companies of an equivalent size.

Charities are generally subject to compulsory registration if they are above the income threshold of £5000 pa but there is no sanction for failure to register. All charities are entitled to very generous tax advantages.

2. Political Activities of Non-Charitable, Not-for-Profit Organizations
Non-charitable, not-for-profit organizations are not subject to any additional restrictions on their political activities beyond those imposed on individuals or other organizations. The main restrictions which apply to everyone are those imposed under Electoral law, mainly with regard to the maximum

expenses allowable for a candidate, those imposed by the Communications Act 2003 which restricts political broadcasting, and some criminal offences under the Public Order Act, including trespassing and harassment offences, which apply equally to everyone.

3. Political Purposes and Activities of Charities
3.1 Definition
Under charity law, a political purpose is defined as, "any purpose directed at furthering the interests of any political party; or securing or opposing any change in the law or in the policy or decisions of central government, local authorities or other public bodies, whether in this country or abroad."[34]

Political activities have a similar meaning. The law on political activities is based in case law and there is no statutory law applicable. The rules relating to political activities are essentially part of the rules on public benefit. Every charity must exist for the public benefit, and since the courts have held that they are unable constitutionally to determine whether a change in the law or Government policy would or would not be for the public benefit, an organization with a political purpose cannot be a charity.

The Charity Commission for England and Wales, the regulator of charities, publishes guidance on political activities.[35] The Charity Commission is a quasi-judicial body and is independent from Government in the exercise of its functions.[36]

3.2 Charities cannot have a political purpose
A charity cannot be set up to pursue **purposes** which are party-political or aimed at a change in the law or Government policy (e.g., a charity could not be set up to campaign for a change in the law). However, as noted above, an organization which wanted to do this could always be set up as a non-charitable, not-for-profit organization and be free from the restrictions. It is also common to have a charity to carry out the charitable activities (and obtain the tax advantages) linked to a not-for-profit that carries out the political activities (e.g., Amnesty, Green Peace, Campaign against Arms Trade, etc.).

3.3 Political Activities
A charity can engage in some political activities to support charitable purposes (e.g., a charity set up to relieve poverty could campaign for a change in the welfare benefit laws). There are no absolute restrictions on the types of activities a charity can undertake: an individual could testify on behalf of a charity at a public hearing on a law or policy; an organization could advocate for changing a law or regulation; it could organize a petition or letter writing campaign of its members or supporters to Members of Parliament, Ministers, or Government officials asking them to join a protest; or, it could organize a demonstration. In this last case the general law on public order would apply.

There is also no absolute limit on the level of resources that can be spent on political activities. The test is that the political activities must not become the reason for the charity's existence. The latest version of "CC9 - Speaking Out – Guidance on Campaigning and Political Activity by Charities" states that it would be possible for the Board members to decide to spend all the resources of the charity on political activities for a limited period if they thought that this would be the most effective way of carrying out the purposes.

There are no restrictions on the foreign funding of charities or other not-for-profit organizations, so that the source of funding does not affect the legality of political activities in any way.

3.4 Party Political Activities
There are special rules with regard to party-political activities. A charity cannot provide financial support or support in kind to a political party. It could not send its staff or volunteers to distribute leaflets for or against a candidate. It cannot organize a campaign against or in support of any candidate to a public office or a political party before an election. It can, however, engage with a political party in ways that support its charitable purposes and can advocate support for particular policies of a political party (e.g., an environmental charity could support the green policies of a particular political party). It could also invite politicians to address its conferences, although it should maintain balance and neutrality and should not always invite speakers from the same party. It could hire out its premises to a political party for the full charge. In the context of an election, restrictions are imposed by electoral law that apply to charities in the same way as to any other body.

3.5 Awareness Raising Activities
Awareness-raising activities and efforts to educate the public by mobilizing their support on a particular issue or changing public attitudes are not generally treated as political activities and therefore there would not be any restriction on them. However, there are fine lines between mobilizing support and campaigning for change in a government policy. Conducting a workshop or conference on an issue of importance where both views are expressed would clearly not be a political activity. Taking a position at a workshop would also not, by itself, be a political activity, although further action may fall within this category. Criticism of government policy or officials, either in a domestic forum or at an international forum, would also generally not be treated as a political activity. Monitoring election results, if undertaken in furtherance of a charitable purpose, is likely to be permissible, but the issue has not been raised and clearly decided upon. [To be clear, non-charitable, not-for-profit organizations are free to engage in election monitoring and all of these awareness-raising activities.]

3.6 Consequences of engagement in political activities
As these rules are a matter of charity law, the Charity Commission investigates any breaches of the matter. In most cases, they will simply give robust advice as to how to avoid a similar issue in future. However, in very extreme cases, they could take regulatory action, although this is very rare. The Charity Commission is a civil regulator, so no criminal offence would be committed and there is no concept of penalties.

3.7 Notification
There is no requirement for notification, and no specific requirement for reporting, although there would normally be some mention in the description of activities in the Annual Report.

4. Conclusion
To reiterate, the limitations relating to political purposes and activities described in section 3 apply only to charities. There would be no restrictions on any of these activities for non–charitable, not-for-profit organizations other than the restrictions imposed by the general law, particularly electoral law, on all individuals and organizations.

5. Further Reading
CC9 Charity Commission: This contains very full guidance on the charity law rules, the regulations under the general law and electoral law.

Advisory Group on Campaigning and the Voluntary Sector 2007: This includes recommendations for reform. The Charity Commission has amended their guidance to take account of this.

NGOs and Political Activities in France

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I. General Legal and Fiscal Framework
French law recognizes two primary legal forms of not-for-profit, non-governmental organizations ("NGOs"): associations and foundations. Associations may serve either a private or public benefit. An association is defined under the *Law of 1901 Relating to the Contract of Associations* ("Law on Associations") as the "convention by which two or several people share, in a permanent way, their knowledge or their activity with a different aim than to share benefit. It is governed, as for its validity, by the general principles of the duty applicable to the contracts and obligations." Public benefit associations fall into one of two categories: (1) general interest, and (2) public utility.

French law also recognizes three primary forms of foundations: (1) public utility foundations, (2) sheltered foundations, and (3) corporate foundations. Four other forms of foundations also exist but are not frequently created: research foundations, partnership foundations, university foundations, and scientific cooperation foundations. These foundations are all subject to different regulatory regimes; for example, only commercial entities may found a corporate foundation. All foundations must serve a public benefit purpose.

Trade unions, religious organizations, and political parties also qualify as NGOs. Under French law, there is no clear legal distinction between the notions of association (main form of membership organization) and of political parties. Under Article 4 of the French Constitution, "Political parties and groups shall contribute to the exercise of suffrage. They shall be formed and carry on their activities freely. They shall respect the principles of national sovereignty and democracy." Article 7 of the Law No 88-227 of March 11, 1988 states that political parties have legal capacity; they may choose to be incorporated as an association under the Law on Associations of 1901, and thus be regulated under the provisions of that law.

The main distinction between an association and a political party is rather a practical, operational one: the participation of the latter in political campaigning, at national and local levels. Thus, on the one hand, an association that is not involved in political campaigns (see below under section *4. Partisan Political Activities*) is not a political party. On the other hand, there are no explicit provisions under French law prohibiting the involvement of an association in political activities and political advocacy.

Simply registered associations and public benefit associations may thus engage in political activities.**37** A special category of associations may provide direct financial support to a political party or an election campaign. Such political associations are established for a limited period of time and are restricted to engaging in these stipulated activities only.**38** Public utility associations and public utility foundations may not engage *primarily* in political activities (Opinion of the *Conseil d'Etat* of June 13, 1978, No. 322894). In short, the extent to which NGOs can engage in political activities depends on the nature of their legal and public benefit status.

Public Benefit Status

French law recognizes two forms of public benefit status: (1) general interest, in which the organization's donors are eligible for tax benefits, and (2) public utility, which entitles the organization to the benefits of general interest status as well as additional tax and fiscal preferences. Organizations with public utility status are subject to requirements, such as stricter controls over the use of the organization's funds and over the distribution of assets upon dissolution.

Public utility status is granted by a decision of the *Conseil d'Etat* (highest administrative court), on a voluntary basis, to a very limited number of associations and is required for foundations (except corporate foundations and sheltered foundations). The status is granted under several conditions, one of them being the pursuit of a general interest purpose. A primary benefit of public utility status is to encourage donations (in vivo and post mortem) to the organization.

As mentioned above, public utility associations and public utility foundations may not engage *primarily* in political activities. A public utility association or foundation that engages primarily in political activities could face the withdrawal of its public utility status. The express restrictions imposed under French administrative law relating to the engagement of public utility organizations in political activities do not have a direct equivalent under tax law.
General interest status is regulated by French tax law. Indeed, the tax law refers to the notion of general interest (key for the deductibility of contributions to the nonprofit sector under Article 200 and 238b of the Tax Code) and social utility (key for exemption from VAT and corporate tax, for example). An organization is deemed to be of general interest based on a three-prong assessment relating to the disinterestedness of its governing body (directors and officers), its exemption from commercial taxes, and the fact that the organization is not run for the profit of a limited group of persons.**39**

Campaigning, lobbying, and advocacy are not expressly regulated with regard to general interest status. Hence, the involvement of a general interest association in political activities is not *per se* precluded. It can be inferred from the last of the three prongs that the general interest of an organization involved in political advocacy and lobbying on behalf of a limited group of persons (for example, a targeted category of professionals gathered in a professional association) could rightfully be denied. On the other hand, political advocacy and lobbying to promote issues concerning a wider range of the population would not necessarily undermine the notion of general interest (for example, the promotion of changes in the legislation to promote broader access to social benefits, to culture and education or sport, etc.).

II. Permissibility of Activities

1. Legislative-Regulatory Reform

Under French law, there are no legal barriers or restrictions for a NGO to conduct the following specific activities:

- Testifying on behalf of an NGO in a public hearing on a law or policy.
- Advocating for changing a law or a regulation/decision, for example, through drafting an analysis/recommendations and submitting them to the relevant government/parliament body without receiving an official invitation to submit such analysis/recommendations.
- Sending letters/emails to its members and non-members, asking them to join a protest meeting in front of the Parliament/Government building or asking for their signatures on a letter to be sent to the Parliament/Government on an issue of concern.

2. Awareness-Raising Activity

There are no restrictions under French law for an NGO to organize and participate in any awareness-raising activities. A NGO under French law may therefore:

- Conduct a workshop or conference to educate the public on an issue of importance and take a position on the issue; and
- Criticize government policy or officials either in a domestic or international forum.

3. Non-Partisan Election Monitoring

There are no restrictions under French law relating to NGO involvement in election monitoring. A NGO is permitted to undertake exit polls of voters after elections.

4. Partisan Political Activities

General Restrictions on Funding of Political Parties and on Contributions to Election Funds

France has significantly revised its legal framework applicable to political parties and political campaign activities since 1988 when legislation was adopted, conferring express legal personality to political parties. Notably, legislation was enacted in 1995, which prohibited legal persons, including companies and nonprofit organizations (but excluding political parties), to provide private funding to political parties and political campaign activities.**40** Government funding of political parties in France amounts to more than €70 million each year.

a. *Political parties*
   Political parties are granted legal status under the French Constitution. Their resources come mostly from public funding, which is allocated each year, based on the party's results in the first round of the last legislative election (and if the party presented candidates in at least 50 electoral districts and raised at least 1% of the votes). A lump sum is allocated to new political parties as long as they have collected private funding from at least 10,000 natural persons. Political parties may receive private funding from natural persons (which gives rise to a tax deduction for the donor), but are prohibited to receive such funding from legal entities, regardless of legal form or status (companies, nonprofit organizations, etc.).
b. *Contributions to election funds*
   Private funding of political campaign activities may come only from natural persons and political parties. There is no limit to the amount of private funding from political parties. Funding from natural persons may not exceed €4,600. Within the last three months preceding an election, the use of advertising for purpose of political propaganda through the press or any audiovisual communication is prohibited.**41** In electoral districts exceeding 9,000 people, a cap is placed on political campaign expenditures according to the number of inhabitants. In addition, the candidates must name a financial trustee, which may be either a natural person, or a campaign funding association incorporated as an association under the Law on Associations of 1901. The trustee is the only person authorized to receive funding and pay expenses. The trustee must produce a financial statement for the campaign and have it approved by a certified public accountant. The

statement is submitted to the control of an independent commission (CCFP). Any violation is a criminal offense and may lead to the impeachment and future ineligibility of the candidate. A candidate, who gets at least 5% of the votes in the first round of the election may be reimbursed for up to 50% of political campaign expenditures allowed for the given political district (a candidate, who limits his/her expenditures to 50% of the limit defined by law could therefore end up with a 100% government funded political campaign).

c. *NGOs and contributions to political parties and election funds*
The involvement of NGOs in the funding of political parties and election funds is prohibited, except for associations created specifically for political campaign funding purposes.

Restrictions on Foreign Funding of Political Parties and Campaigns
French law[42] has established a broad prohibition against any foreign financial contribution or material support to political parties and political campaign activities. An electoral funding association or financial trustee of a political party is prohibited from receiving any direct or indirect financial or in-kind contribution from a foreign state or foreign legal person. It should be noted that the prohibition applies to financial contributions from foreign political parties; only French political parties may contribute financially to political activities and campaigns.[43]

There is no definition under French law of what constitutes a foreign financial contribution, or material support under the above-mentioned provision and the only case law on this issue relates to a political party whose funding was mostly coming from a foreign political party.[44] It is therefore not clear, considering the breadth of the definition, whether a French political party would be prohibited from receiving a grant from an international organization, for a purpose that is not linked to an election or political campaign. In addition, it is not clear whether the term "financial contribution" would apply to a quid pro quo relationship such as the implementation of a training session purchased by a French political party for its staff members or volunteers from a foreign legal person (corporation, international organization).

As mentioned previously, French Law prohibits legal persons, including NGOs, from funding political parties or contributing to election funds. Consequently, a French NGO, whatever the source of its funding - domestic or foreign - may not provide financial contributions to political parties or election funds.

Political Activities of NPOs in Germany

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1. Overview
Germany is a federal, civil-law country with three primary forms for not-for-profit, non-governmental organizations (NPOs):

- associations (*Verein*);
- foundations (*Stiftung*); and
- limited liability companies (*Gesellschaft mit beschränkter Haftung, GmbH*).

Exemptions from broad categories of taxation are available to those NPOs, regardless of legal form, that exclusively and directly pursue public benefit, charitable, and church-related purposes.

NPOs in Germany are generally permitted to engage in political activities. Restrictions relating to political activity apply predominantly to tax-exempted NPOs.

Increasingly, since the early 1980s, the German government and public administration have sought and supported cooperation with NPOs. The government sees a strong NPO sector as a prerequisite for

further democratic development and for social cohesion in society. Growing parts of the public budgets are reserved for strengthening the NPO sector and encouraging people to engage in public and social issues, and the government sees NPOs as having a crucial role in the process of political decision-making. Consequently, public hearings in advance of parliamentary decisions on legislation have become routine, as has NPO participation in parliamentary hearings.

1.1. Legal Forms of NPO
An association is a membership organization whose members have come together to permanently pursue a common purpose. Associations can exist without being registered and without legal personality (see *Bürgerliches Gesetzbuch* or "Civil Code"), Article 54). Non-economic associations (*nichtwirtschaftliche Vereine / Idealvereine*), whose main aim and activity must not involve the conduct of business, receive legal personality upon registration at the local court. Both public-benefit and mutual-benefit associations are permitted.

A foundation established under Articles 80-88 of Civil Code (*Stiftungen bürgerlichen Rechts*) is a legal entity whose earnings on assets are used to pursue a specific purpose laid down by the founder. The current Federal legislation in the Civil Code, which was modified in 2002 (Law to Modernize the Foundation Law, July 15, 2002 - *Gesetz zur Modernisierung des Stiftungsrechts*), is not extensive. Foundations are more extensively regulated by the laws of the 16 states (*Länder*). German law permits both public-benefit and private-purpose foundations. In addition, foundations may choose to operate as non-incorporated foundations, established on a trust basis; non-incorporated foundations are assuming growing importance, as they may enjoy the same tax privileges as foundations established under the Civil Code regulations.

NPOs may also take a corporate form, specifically the limited-liability company Gesellschaft mit beschränkter Haftung or GmbH (registered and regulated under a special law). The GmbH is a commercial company in corporate form with legal personality. It has stock, which originates from its shareholders. The shareholders are not liable for the debts of the company. NPOs often choose this legal form when their purpose includes the delivery of services without remuneration.

1.2. The General Tax Code ("Abgabenordnung")
German tax law generally exempts from corporate tax (*Körperschaftsteuer*), commercial tax (*Gewerbesteuer*), and gift and inheritance tax (*Erbschaft-und Schenkungsteuer*) only those NPOs that exclusively and directly pursue public-benefit, charitable, and church-related purposes. The exemption is available to all corporations, regardless of legal form. In order to get and keep tax benefits, the NPO must report annually to the tax authorities on their activities and submit financial reports. Tax privileges require that the NPO does not - either through its statutes or through its actual activity – act against the free democratic basic order of the Federal Republic of Germany.

2. Political Activities
The regulatory approach toward NPO engagement in political activities is dependent on the tax status of the NPO. On the one hand, organizations without tax-privileged status are generally permitted to engage in a wide range of political activities, including support for political parties. On the other hand, organizations pursuing tax-privileged purposes must not spend any of their assets for the direct or indirect benefit of political parties (**AO Article 55 section 1**). [General political education and the general support of democratic development both qualify as tax-privileged purposes.]

The administrative regulations governing the application of the German Tax Code (*Anwendungserlass, AEAO* or ("AO")) in the commentary to Article 52 AO state that political purposes do not qualify as public-benefit purposes. In the discussion of what "political" means, the regulation says that some activities relating to the development of public opinion are acceptable. An organization is allowed to comment on politics related to its public-benefit purpose. In this respect it is also allowed to communicate with legislators about proposed legislation without losing tax-exempt status.

There are, besides the general annual reporting requirements, no specific reporting or notification requirements relating to political activities.

2.1. Legislative-Regulatory Reform
All NPOs, regardless of tax status, are permitted to advocate for further legislative development in

their respective fields of knowledge and experience. The German government considers such engagement as assistance in its efforts to improve the living conditions of the German public and the natural environment, and also in the interest of Germany's reputation abroad. Members of federal, regional, and municipal parliaments often seek closer communication with NPOs, in order to benefit from deeper insights into social and cultural issues and in order to reach out to those who live under less fortunate conditions, and are less able to address public administrations or political representatives.

As mentioned above, even tax-exempted NPOs are allowed to comment on political issues related to their public-benefit purpose. They are also allowed to communicate with legislators in reference to proposed legislation. NPOs may participate in public hearings, which are routinely held in advance of parliamentary review of proposed legislation. Representatives of NPOs regularly take part in parliamentary hearings, based on their specific expertise. Further, tax-exempted NPOs may conduct political campaigns, but only in the framework of their statutory purposes.

2.2. Awareness Raising Activities
All NPOs, regardless of tax status, are permitted and encouraged to organize and participate in awareness-raising activities. Indeed, public administrations welcome NPO activities in this area, as experience has shown that a higher level of communication is likely to lead to better results relating to inevitable and deliberate changes in public policies.

There are no restrictions for NPOs in monitoring elections. Tax-exempted NPOs analyze party programs with regard to policy fields relevant for the purposes they pursue; the NPOs may make the results of their analysis publicly available and in this way try to influence voting decisions. NPOs may also conduct preliminary or exit polls.

2.3. Partisan Political Activities
With regard to partisan-political activities, NPOs (without tax exemptions) may take part in campaigns and may make monetary contributions to political parties. It is, however, incumbent on the political party to make these contributions public. In contrast, tax-exempted NPOs may not act as direct supporters of political parties; they are not allowed to support or campaign for political parties or their political representatives. If they do so, they will face the likelihood of losing their tax benefits.

2.4. Foreign funding of NPOs
Foreign funding of NPOs is not subject to specific regulatory treatment in Germany. Of course, NPOs must comply with regulations against money laundering and the financing of terrorist activities. In the framework of these regulations, "know your customer" principles have to be followed, and financial transactions from countries outside the European Union are subject to notification requirements. But these regulations do not specifically target foreign funding of NPOs and their activities, but instead apply to all natural and legal persons living or having their legal seat in Germany. Aside from these restrictions, the German regulatory framework does not hinder any kind of cross-border giving.

NGOs and Political Activities in Hungary

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Summary Overview
In Hungary, the three main forms of NGOs – associations, foundations and nonprofit corporations – are generally free to engage in all forms of political activities. In fact, NGOs in Hungary are not only allowed, but also encouraged by the legal-institutional framework to take part in the decision-making process of Government and Parliament through a wide range of advocacy, campaigning, and lobbying activities.

Some restrictions apply, however, if the organization is also registered as a public benefit organization (PBO). In this case, the NGO must not pursue direct political activity, but instead must be independent of political parties, and it must not provide financial support to them [Act CLVI/1997, Article 4(d)].

The definition of "direct political activity" is narrow; in fact, even PBOs may nominate and/or support candidates for *local* elections.

There is no clear legal guidance, however, as to when a PBO, which is legitimately involved in campaigning and advocacy, violates the independence requirement. Although there have been scandals involving NGOs that used public funds for illegitimate political party support, there has been no case law yet to help determine "good practice" or the limits of political involvement of PBOs in Hungary.

Basic Legal Framework
There are three main forms of organizations that can be considered NGOs: associations, foundations, and nonprofit corporations.

Associations are one form of the "social organization" established under Act II/1989 (Law on Association), which is the main form of membership-based organizations and includes political parties, trade unions, and professional bodies as well. According to Article 1 (3) of this Act, "a social organization may be created for any purpose that is consistent with the Constitution and is not unlawful." A social organization may not be created for a primarily economic/entrepreneurial purpose, and it cannot be an armed organization (Article 1 (3)). There are no further prohibitions regarding its purposes, i.e. an association may be established for a primarily political purpose [e.g. as Friends of the Socialist Party]. The law does not list the possible forms of social organizations but it refers to other laws that govern some of the forms they may take, including Act IV/1959 (Civil Code), which governs associations and Act XXXIII/1989, which governs the operation of political parties.

The establishment and operation of foundations is regulated in the Civil Code, while the establishment and operation of nonprofit corporations is regulated in the Company Code (Act IV/2006).**45**

None of these three main Acts governing nonprofit organizations in Hungary place any restrictions on legislative or political activities of NGOs. Foundations, associations, and nonprofit corporations may nominate and support candidates and legislation freely.

Some restrictions apply, however, if the organization is also registered as a PBO, as described in the following section.

Public Benefit Organizations
Article 2 (1) of the Law on Public Benefit Organizations (Act CLVI/1997) lists the following legal forms registered in Hungary as eligible to receive a public benefit status (PBO status):

- social organization, except insurance associations, political parties and employer and employee representations;
- foundation;
- public benefit foundation;
- public body association, if the law establishing it allows for this possibility;
- national sports federation; and
- nonprofit corporation.

As can be seen, all three forms of NGOs may be eligible to receive the PBO status, provided they fulfill certain criteria spelled out in the Law on PBOs. The criteria include restrictions to the political involvement of the NGO, namely: its founding documents must state that it does not pursue direct political activity, it is independent of political parties, and it does not provide financial support to them [Act CLVI/1997, Art. 4(d)].

Under Article 26 (d) of the same Act, "direct political activity" includes "political party activity and nomination of candidates for Parliamentary and local governmental elections at the county level, including the city of Budapest." The prohibition does not apply to the nomination of candidates for local elections at the municipal level (including districts of the capital). Furthermore, although PBOs cannot support political parties, political parties may support PBOs.

The main incentive for NGOs to apply for the public benefit status is the possibility to provide a certificate to their donors, which makes the donor eligible for a tax benefit regarding its donation to the PBO. There are also other benefits, e.g. a higher threshold of tax exemption for economic activities than for other NGOs, or the possibility to provide tax-exempt reimbursements to volunteers. About half of the registered NGOs (including all three legal forms) in Hungary also have the PBO status.

Legislative – Regulatory Reform
NGOs in Hungary are not only allowed, but also encouraged by the legal-institutional framework to take part in the decision-making process of Government and Parliament.

Advocating with Government
According to Article 36 of the Constitution of Hungary (Act XX/1949), "the Government, in the course of fulfilling its tasks, cooperates with the social organizations." This constitutional provision translates into concrete legal possibilities as well:

(a) The Act on Legislation (Act XI/1987), which describes the process of law making "contains numerous explicit provisions on the legislative process to be carried out with civil organizations. Under Article 20, civil organizations shall be involved in drafting those regulations which 'pertain to the interests or affect the social conditions which they represent and protect'; under subsection (2) Article 22, their recommendations shall be invited in compiling the legislative program; under provision b) Article 27, civil organizations shall express their opinions on the drafts to be submitted to the government; and under Article 29, a similar procedure shall be followed in the case of drafts of ministerial decrees and ordinances of state secretaries."**46**

(b) The Law on the Freedom of Electronic Information (Act 90/2005) requires every government body (including the central and local levels) to publish legal drafts and concepts on their websites (with limited exceptions relating to classified information), and to ensure that comments can be made by anyone during a period for public consultation (i.e. the website should be able to receive comments).

In addition, several ministries have introduced specific procedures for working with NGOs and have established consultative (advisory) bodies in their respective fields. Thus, NGOs, including PBOs, are permitted to advocate for changing a law, for example, by submitting their analysis and recommendations, even without receiving an official invitation to submit their proposals. In fact, based on Act 90/2005, any citizen may do that now. However, in many fields (culture, environment, labor, social affairs, etc.) there are institutional mechanisms established for NGOs through which they can become well informed, may submit their views on a regular basis, and monitor the government's work in the given field.

Furthermore, though not commonly practiced, it also happens that an NGO representative can appear at a governmental or inter-ministerial meeting, such as when the President of the Hungarian Association of Development NGOs testified at the governmental meeting which discussed the need for a Law on Official Development Assistance, as part of the submissions made by the Ministry of Foreign Affairs.

Advocating with Parliament
Although the abovementioned Constitutional and legislative paragraphs pertain to NGO participation in Government's work, these principles are widely understood to apply to the work with Parliament as well.

The Hungarian Parliament has a so-called Civil Office, which maintains a database of NGOs that have registered (on a voluntary basis) to be notified about the work of certain committees. They receive an email about the work-plan and schedule of committee meetings and can indicate if they would be interested in attending a meeting, either to observe or to speak to a certain agenda point. In this case, they also receive all documentation related to the meeting (except if there are confidential materials), and are allowed to express their views.

Notwithstanding the above, NGOs, including PBOs, may submit position papers, opinions, policy

papers, analyses, and recommendations to members of the Parliament at any time, and they do so on a regular basis. NGOs, including PBOs, may also organize campaigns and protests for or against a legislative initiative, including freely mobilizing their members to write letters, send emails, join a protest event, or any other campaign activity relating to a certain piece of legislation. However, the restriction against PBOs from engaging in activity related to the election of a political party or its candidate applies.

Awareness Raising
NGOs in Hungary are free to conduct a workshop or conference to educate the public on an issue of importance with or without taking a position on the issue. For example, during the government's campaign for EU accession, there were NGOs who campaigned in support of the accession; there were others who held workshops, conferences, and public events about why people should vote against accession; and there were NGOs which aimed to present a fair assessment of the arguments of both sides and organized educational events to discuss advantages and disadvantages of joining the EU.

NGOs can also criticize government policy or officials at any time and at any place, based on the freedom of speech enshrined in the Constitution and in domestic and international law. A recent example: Transparency International Hungary issued a statement in the form of an open letter to the Prime Minister in which it criticized the appointment of the Minister of Economy in the newly formed government, because in the past, his company had been found liable by the Company Court for participating in a cartel. TI Hungary publicly opined that a Minister with such past history could not be expected to battle effectively against corruption. As a consequence the Minister stepped down (or was asked to do so) and a new Minister was appointed. Everyone, including government, opposition, and the media accepted that TI Hungary, as an NGO, had called public attention to relevant information on which they based a professional statement, and thus it was seen as a legitimate criticism aimed at strengthening democracy in the country.

Non-partisan Election Monitoring
NGOs, including PBOs, are allowed to participate in election monitoring and exit polls. However, they must observe the general prohibition of campaign silence laid out in the Law on Elections and Electoral Procedures (Act C/1997), which does not allow any public campaigning activity starting 24 hours before the start of elections and lasting until the close of the polls on Election Day (thus, NGOs are not allowed to communicate the results of the exit polls until the voting is over).

Partisan Political Activities
NGOs in general can make monetary contributions to political parties, provide facilities, endorse party candidates, and conduct similar partisan activities. However, if an NGO holds or aims to hold a public benefit status, they cannot be involved in "direct political activities." This means, according to the Law on PBOs, "political party activities, and nominating a candidate for national, county, and capital city elections." There are two issues to be noted here:

- It is not clear what the law means by "political party activities;" however, it is usually interpreted as those activities which are reserved for political parties according to various laws, especially the Law on Elections, such as holding electoral meetings, promoting the party program, collecting funds for the party, and nominating candidates (which is also spelled out separately).
- This definition of direct political activities also means that even PBOs can nominate a candidate for local elections or district elections within the capital, which they do. NGO candidates often represent the determining vote in a city government, where the votes of their one or two representatives may be decisive among the competing factions.

And, for the first time in 2006, a candidate nominated by a (non-PBO) NGO also was voted into the Parliament (and later became a Minister for Local Self-Government).

Except for "direct political activities," all the above-described forms of "political" engagement are allowed for PBOs in Hungary. At the same time, they must be "independent from political parties" in order to receive the status. Theoretically, if they lose their independence, the PBO status may be revoked by the court. However, there is no clear legal guidance as to when a PBO, which is

legitimately involved in campaigning and advocacy, violates the independence requirement. Although there have been scandals involving NGOs that used public funds for illegitimate political party support[47], there has been no case law yet to help determine "good practice" or the limits of political involvement of PBOs in Hungary.

Foreign funding
According to the Law on Operation and Financing of Political Parties (Act XXXIII/1989), political parties may not accept monetary support from a foreign government (Article 4 (3)). However, such restriction does not apply to NGOs in any form; therefore there are no restrictions for NGOs supporting political parties to accept support from a foreign government and then support the political party as a domestic NGO. (However, PBOs may not support political parties.) At the same time, parties have to report on all donations (including monetary and in-kind support) they receive, listing the name of the donor and the amount. Anonymous donations cannot be accepted; those would have to be paid to the Foundation of the Party (Article 4(3)).[48]

NGOs and Political Activities in the United States[49]

1. Overall Legal Framework
1.1. Legal Organizational Forms
The formation and establishment of not-for-profit organizations in the United States is determined and governed by state law (as opposed to federal law). There are 3 basic types of not-for-profit organization:

1. *Nonprofit Corporations:* The most common legal vehicle for not-for-profit activities in the United States is the nonprofit corporation. Generally, nonprofit corporations, like their for-profit/business counterparts, provide legal-entity status, limited liability, and perpetual duration. They are governed by a board of directors, which usually has broad discretion to decide how best to pursue their objectives. The chief difference from for-profit corporations is that nonprofit corporations – certainly the type that are created for public benefit – must dedicate their assets to their charitable, nonprofit purposes and not distribute assets or profits to members, shareholders, or other insiders (other than paying employees reasonable compensation for services rendered).
2. *Trusts:* The chief alternative to the nonprofit corporation is the trust. While corporations are created pursuant to statute, the law of trusts is largely a creation of the common law (though many states have, to varying extents, passed statutes codifying trust law). Fundamentally, a trust is a device by which one or more legal persons hold legal title to property, but do so for the benefit of some other person, class, or purpose. Thus, the conceptual focus of trust law is not on the trust as a separate legal entity, but rather on the duty of the trustees to use the property as the settlor (creator) of the trust wished, and not for their own private purposes. Trusts can be either private or charitable. It is uncommon nowadays for charities to be formed as trusts; occasionally family-controlled philanthropies that are private foundations under Federal tax law are formed as trusts rather than nonprofit corporations.
3. *Unincorporated Associations:* Groups of individuals can form unincorporated associations governed only by their mutual agreement, and requiring no registration with the state. These membership associations are extremely flexible but possess the drawback of having no legal structure and of exposing all members to potential liability for actions and debts of the association.

1.2. Tax Law Categories
Within the overarching category of tax-exempt organizations (organizations that are formed as nonprofits under state law and include various required provisions in their organizing instruments, such as a charter or certificate of incorporation) US tax law contains several categories. For purposes of this memorandum, the most important categories are "public charities" and "private foundations" (referred to collectively here as "charitable organizations"), and "social welfare" organizations.

1. *Charitable Organizations:* These are often referred to as 501(c)(3) organizations, because this is the key Internal Revenue Code provision governing such entities. Charitable organizations must be both (1) organized, and (2) operated exclusively for one or more public benefit purposes.

   The US tax law distinguishes between two principal classes of charitable organization: the public charity and the private foundation. The difference between these two, in rough terms, has to do with the nature of their funding and their susceptibility to being controlled by private interests because financial support rests in the hands of very few contributors. Certain types of organizations including schools, hospitals, churches, and medical research organizations are automatically public charities. Other organizations must meet one of two support tests designed to measure the extent to which the organization gets its support from a broad section of the public rather than from a few individual donors. Organizations with relatively broad support from a large number of individuals are generally public charities while organizations that depend principally on a few large donors or their own investments are private foundations. Charitable organizations not falling into one of these categories are determined to be private foundations, which are subject to special restrictions. Charitable organizations are prohibited from activities on behalf of or in opposition to a candidate running for elective office. Public charities, however, (not private foundations) may engage in a limited amount of activities supporting or opposing legislative efforts. Contributions to charitable organizations provide donors with advantageous tax benefits.
2. *Social Welfare Organizations:* Social welfare organizations (also called 501(c)(4) organizations) are very similar to charitable organizations. Like charitable organizations, social welfare organizations must keep their assets permanently devoted to their public benefit purposes, and cannot distribute net earnings to individuals or other private interests. Both are subject to the private inurement and private benefit tests. The main difference, and it is an important one, is that social welfare organizations may engage in unlimited amounts of lobbying activity, or activity that is geared to influence legislation in furtherance of their public policy goals. Thus, for example, a social welfare organization dedicated to stopping drunk driving could devote itself to contacting legislators and urging them to enact harsher penalties for that crime. Social welfare organizations also may engage in some political/electoral activity – activity on behalf of or in opposition to a candidate running for election to a public office. The trade-off for being able to undertake these unlimited legislative and limited political/electoral activities is that contributions to 501(c)(4) organizations do not give donors any of the tax benefits provided to donors to charitable organizations.

2. Political Activities and Legislative Lobbying Activities

As noted above, 501(c)(3) public charities (but not private foundations) may not devote any substantial part of their activities to influencing legislation; social welfare organizations — which are not eligible for those tax-deductible contributions, but are still exempt from income tax — may engage in unlimited lobbying activity, so long as it is related to their social welfare purpose.

The restriction on the amount of lobbying/legislative activities is limited to when the organization (1) contacts, or urges the public to contact, members of the legislature regarding a specific legislative proposal; or (2) advocates for the adoption or rejection of specific legislation. The law preserves the government's ability to benefit from nonprofits' experience by (1) allowing nonprofits to *respond* to legislative requests for their views; (2) allowing them to provide nonpartisan analysis on general policy questions; and (3) allowing some amount of lobbying as issues come up, so long as they do not become a substantial part of the organization's activities.

Because the line between substantial and insubstantial activities is not a precise one, charitable organizations historically could not take advantage of their permission to conduct "insubstantial" lobbying activities without running the risk of losing their tax exemption. That changed in 1976, when Congress allowed charitable organizations to elect to apply a very specific expenditure test in lieu of the vague "insubstantial part" test. Electing organizations may spend a certain percentage of their overall purpose-related expenditures on lobbying; that percentage depends on the size of the

organization, ranging from 20% for small organizations to slightly more than 5% (but no more than $1,000,000) for large organizations. Appeals to the public to contact their legislator(s) (known as grassroots lobbying) are subject to a separate cap of one-fourth the size of the restriction on direct lobbying.

2.1. Legislative Regulatory Reform
While a 501(c)(4) social organization may engage in an unlimited amount of lobbying activity, a 501(c)(3) public charity may engage only in a limited amount of lobbying activity. As defined above, lobbying refers to (1) making contact with, or urging the public to contact, members of the legislature regarding a specific legislative proposal; or (2) advocating for the adoption or rejection of specific legislation. In other words, lobbying is a communication that refers to or reflects a position on a pending piece of *legislation*. Lobbying *does not include* communication referring to regulatory actions of the executive branch. For example, an appearance before a government agency arguing that the agency should issue a particular regulation is not lobbying. Appearing before a Congressional committee or meeting with a senator or representative about a bill either already introduced or about to be introduced is generally considered to be lobbying. At the same time, however, testimony provided at the formal written request of a committee holding hearings on a bill or for policy analysis is not considered lobbying. As noted above, private foundations may not lobby at all, but they may be involved in regulatory efforts because regulatory efforts are not considered to be lobbying.

Lobbying limits affect 501(c)(3) public charities in the following ways:

- A public charity may develop model legislation or analysis of an issue, but must be careful about participating in debates relating to legislation that has been or is about to be introduced, unless the organization is able to count that lobbying work within its permitted ceiling.
- Under certain circumstances, a public charity can send letters/emails to its members and non-members, asking them to join a protest meeting in front of the Parliament/Government building or asking for their signatures on a letter to be sent to the Parliament/Government on an issue of concern. The key issue is the nature of the protest. A general protest over an issue (such as the death penalty) that relates to no piece of pending legislation is not considered lobbying, and therefore is permissible. Activity that encourages citizens to urge their representatives to take a particular position on a piece of legislation is considered grassroots lobbying and is therefore subject to a greater dollar limitation than direct lobbying (for example, where the organization leadership directly speaks with legislators). Of course, activity directed toward influencing the Government is not lobbying and is therefore permissible.

2.2. Awareness Raising Activities
Not-for-profit organizations, regardless of tax status, are generally allowed to engage in a broad range of awareness-raising activities. They can:

- conduct a workshop or conference to educate the public on an issue of importance *without* taking a position on the issue, but rather presenting both sides of the issue.
- conduct a workshop or conference to educate the public on an issue of importance *and* take a position on the issue (for example, arguing that a country should accede to the WTO or that it's important to create an enabling environment for civil society). The only restriction for this activity relates to a 501(c)(3) organization taking a position on pending legislation; in this case, the organization's activities would be considered lobbying, and therefore would be subject to special lobbying limits.
- criticize government policy or officials either in a domestic forum or at an international forum (such as the UN Human Rights Council) by, for example, highlighting corruption or complaining about human rights violations.

A public charity is also permitted to engage in non-partisan election monitoring, but only under very tight restrictions.

2.3. Partisan Political Activities
As stated above, charitable organizations are completely prohibited from engaging in partisan political activities. For example, they cannot make a financial contribution to a political party; provide a conference room for a meeting of a candidate to a public office or a political party and the general public or its own members; send staff or volunteers to distribute leaflets for or against any candidate to a public office; or organize a campaign against or in support of any candidate for a public office or a political party before elections.

2.4. Penalties for Non-Compliance
In case of non-compliance with the restrictions described above, available sanctions include penalty taxes and the revocation of tax-exempt status.

2.5. Foreign Funding
US law imposes no limits or restrictions on the receipt of foreign funding by US not-for-profit organizations. For regulatory purposes, the issue of foreign funding is simply not relevant for purposes of the issues raised in this report.

2.6. Applications/Notifications or Reports
The annual tax return form 990 includes a section devoted to accounting for lobbying activities. Public charities that lobby are required to maintain contemporaneous records of lobbying activities by staff and must allocate time and related expenses, including overhead costs.

V. Conclusion

From the foregoing country reports, we can identify several principles or common regulatory practices:

1. NGOs – at least some legal form of NGOs – are generally permitted to engage in the following activities:
    - Testify on behalf of an NGO in a public hearing on a law or policy;
    - Advocate for changing a law or a regulation/decision;
    - Contact its members and non-members, asking them to join a protest meeting in front of the Parliament/Government building or asking for their signatures on a letter to be sent to the Parliament/Government on an issue of concern;
    - Conduct a workshop or conference to educate the public on an issue of importance *without* taking a position on the issue, but rather presenting both sides of the issue;
    - Conduct a workshop or conference to educate the public on an issue of importance *and* take a position on the issue;
    - Criticize government policy or officials either in a domestic forum or at an international forum;
    - Conduct exit polls of voters after elections.
2. Indeed, in some countries, many NGOs – or at least certain categories of NGOs – are permitted to engage in partisan political activity. For example, these NGOs may:
    - Make a monetary contribution to a political party;
    - Provide their conference room to a candidate for public office or to a political party in order that he/she/it may meet with the general public or its own members;
    - Task their staff and volunteers with distributing leaflets for or against any candidate for public office; or
    - Organize a campaign against or in support of any candidate for public office or a political party before elections.
3. Where restrictions are applicable to political activities, these restrictions are applicable only to limited categories of NGOs. In common-law countries, for example, restrictions apply only to charities or tax-exempt organizations. All other categories of NGOs are fully free to engage in political activities. In the civil-law context, restrictions may also be imposed where the NGO is pursuing public benefit or tax-privileged purposes. And in some cases, certain categories of NGOs, such as foundations or public benefit

organizations, are prohibited from engaging in "party political" activities, such as nominating candidates for office, campaigning, or funding parties or political candidates.
4. NGOs are subject to no special restrictions regarding foreign funding, beyond those rules that are generally applicable to all legal entities (e.g., rules relating to money laundering).
5. NGOs engaged in political activities (however defined) are not subject to any specific notification or reporting requirements relating to political activities.

Notes

1 ICNL is the leading source for information on the legal environment for civil society and public participation. Since 1992, ICNL has served as a resource to civil society leaders, government officials, and the donor community in over 100 countries.

A number of prominent lawyers have contributed to this paper. ICNL would like to thank the following persons for their contributions: Arthur B. C. Drache, CM, QC (Canada); Lindsay Driscoll (UK); Fabrice Suplisson (France);Dr. Michael Ernst-Pörksen (Germany), Nilda Bullain (Hungary), and Rochelle Korman (U.S.). ICNL staff members also contributed to this paper.

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Every effort has been made to insure that the information in this paper is current. Nonetheless, the paper may not reflect changes in the laws that have occurred since its compilation. If errors are found, ICNL gladly welcomes notification.

2 Moreover, the restrictive trend against civil society and NGOs has gained momentum globally. For more information, please see Catherine Shea and David Moore, *Civil Society Under Threat: Common Legal Barriers and Potential Responses*, USAID 2005 Sustainability Index.

3 Robert McMahon, *Russia: Putin 'Foreign Funding' Remarks Draw Civil Society Concerns*, Radio Free Europe / Radio Liberty, July 21, 2005.

4 *Putin Stands by Tough NGO Bill*, **http://www.1st-russian-translation.co.uk/russian-translation-news-271105.html**

5 In June 2009, the State Duma adopted amendments to Russian Federal Law No. 7-FZ of January 12, 1996, "On Non-Commercial Organizations" (NGO Law), which will come into force on August 1, 2009.

6 **http://kg.akipress.org/news:74931**

7 The NGO Law was adopted on June 13, 2000 and subsequently amended.

8 The Universal Declaration was adopted and proclaimed by the U.N. General Assembly in 1948.

9 The ICCPR entered into force in 1976.

10 ICCPR, Article 22(2).

11 *United Communist Party of Turkey and Others v. Turkey*, European Court H.R. 133/1996/752/951 (30 January 1998).

12 ECHR, Article 11(2): "No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of public health or morals or for the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State."

13 *Socialist Party and Others v. Turkey*, European Court H.R. 20/1997/804/1007 (25 May 1998).

14 See **http://www.usig.org/countryinfo/canada.asp**

15 Kathryn Clabby, *Overcaution and Confusion: The Impact of Ambiguous IRS Regulation of Political Activities by Charities and the Potential for Change*, November 2007, **http://www.ombwatch.org/files/npadv/paci2rpt.pdf**

16 Even for tax-privileged NGOs in Germany, a certain amount of influencing public opinion is permissible. Thus, German law permits considerable purpose-related advocacy and lobbying.

17 For this reason there is no firm estimate of how many such organizations exist in Canada.

18 An important aspect given that registered charities are much more rigidly regulated.

19 Obviously, legislation which applies to all Canadians such as those which prohibit money laundering or terrorist financing are applicable to these organizations as well.

20 Certain provinces require a majority of directors be Canadian but this is not the case with federal incorporations or a requirement of the Income Tax Act.

21 These would include giant membership organizations such as the Canadian Bar Association, the Canadian Manufacturing Association, Chambers of Commerce and other groups whose main purpose is to work for the betterment of a relatively small group.

22 In the context of professional and trade organizations, this usually is not a problem because members can claim tax relief for payments as "business expenses".

23 The CRA has a web site found at **http://www.cra-arc.gc.ca/tx/chrts/menu-eng.html** which contains an emormous amount of data on all aspects of charity regulation in Canada.

24 In some cases, those creating the organizations "taint" the objects with an overtly non-charitable provision (such as a political/lobbying clause) to ensure that it could not be viewed as a charity.

25 Who by definition could not use the domestic Canadian tax benefits.

26 The annual "disbursement quota".

27 Substantially the same rules apply to charitable foundations and are found in subsection 149.1(6.1) of the Income Tax Act.

28 The term "resources" is not one which can be quantified by accountants and arguably the provision is too vague to be "legal". However, since it is viewed as giving relief to charities, it has never been challenged. See however CIL 2003-001 at **http://www.cra-arc.gc.ca/tx/chrts/plcy/cl/2003/cl-001-eng.html** for the CRA's views.

29 CPC – 001 **http://www.cra-arc.gc.ca/tx/chrts/plcy/cpc/cpc-001-eng.html**

30 CPC-007 **http://www.cra-arc.gc.ca/tx/chrts/plcy/cpc/cpc-007-eng.html**

31 **http://www.cra-arc.gc.ca/tx/chrts/plcy/cps/cps-022-eng.html**

32 Even allowing a representative of a charity to attend (as a representative) a political fundraiser is a prohibited partisan political activity: Charities Policy Commentary CPC-001, February 6, 1990.

33 The locale of the federal Parliament buildings.

34 The definition of charitable purpose is the one used by the Charity Commission and is a *précis* of Mr Justice Slade's dicta in McGovern v. Attorney General [1982] Ch 321.

35 CC9 - Speaking Out - Guidance on Campaigning and Political Activity by Charities **www.charitycommission.gov.uk/publications/cc9.asp**

36 **http://www.charity-commission.gov.uk/**

37 An association may not engage in lobbying efforts for policies that would directly or indirectly benefit a director of that association; to do so would violate the financial disinterestedness requirement of the organization's management.

38 Political associations may receive contributions only from individuals and from the State.

39 *Instruction. du 26 février 1988, BOI 4 C-2-88, et du 8 mars 1988*, BOI 5 B-13-88 (Fr.). According to the tax regulation DB [*Documentation fiscale de Base]* 5B 3311 § 14 are deemed run for the benefit of a limited group of persons organizations which purpose would be to serve the interests of one or several families, persons or companies, to promote the work of a few artists or researchers.

40 The law of 1995 was mostly an anti-corruption law in reaction to several public scandals involving the secret funding of mainstream political parties by private companies.

41 Article L. 52.1-1 of the Electoral Code. The existence of a candidate's website is not deemed advertising, "Communication électronique et règlementation des campagnes électorales" Club Moderniser la vie locale, p.14, see **http://bohbot.typepad.com/mon_weblog/files/CMVL251006.pdf** (fr.) as of August 19.2009

42 Article 11-4 of law n° 88-227 of 11 March 1988 on transparency of political life and Article L.52-8 of the Electoral Code.

43 Conseil d'Etat (highest administrative court), n° 212044, 8 December 2000, *Parti National Basque ERI-PNB.*

44 *Ibid.*

45 It should be noted that while all three of the mentioned legal forms satisfy the general criteria for nongovernmental, not-for-profit organizations as defined in relevant literature internationally, Hungarian legislation tends to regard only foundations and associations as "civil organizations", which is the term closest to defining "NGO" under Hungarian law. "Civil organization" was first defined in the Law on the National Civil Fund (Act L/2003) and included foundations and "social organizations established under Act II/1989 except political parties, foundations of political parties, associations created with the participation of a political party, interest representation organizations of employees, employers, and economic interests, insurance associations and public foundations." (Art 14.b of Act L/2003) This definition excludes nonprofit corporations, which are not even mentioned. Since then the government and several ministries used this term in their regulations pertaining to cooperation with and support of NGOs.

46 Quoted from the publication *Civil organizations in the legislative process***,** Edited by Judit Fridli and Ildi Pasko, a Publication of the Hungarian Civil Liberties Union, Budapest, April 2000; translation: ECNL

47 According to the Law on the Operation and Financing of Political Parties, parties may only receive a certain amount of public funding (calculated based on a quota related to their election results). In the past years, parties tried to circumvent this restriction by "assisting" to channel public funds to NGOs which in turn provided them with monetary support (in a non-transparent manner).

48 Hungary (following the German model) also has a law on "scientific, awareness raising, research and educational foundations supporting operations of political parties", Act 47/2003. They are subject to more rigorous financing rules than general foundations.

49 This section was authored by ICNL staff, with the substantial input of W. Cole Durham, Jr., Brett G. Scharffs, Michael W. Durham, and Rochelle Korman. ICNL would like to express its appreciation to all of them. Sections 1.1, 1.2 and 2 are derived from *The United States Law of Charities: A Summary*, by W. Cole Durham, Jr., Brett G. Scharffs, and Michael W. Durham, March 2005, **http://www.icnl.org/knowledge/pubs/ChinaConference/Law_Regulation_NPOs_US_Overview.pdf**.

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