

For Firms Donating To Ukraine, Due Diligence Is Key

By Rachel Rippetoe

Law360 (April 5, 2022, 4:20 PM EDT) -- When Russia invaded Ukraine and began raining missiles onto the country's major cities, law firms, like much of the rest of the world, looked for ways to help.

At the start of March, Law360 sent out a call for firms to tell us how they might be supporting Ukraine in its war effort. Nearly 20 firms responded, detailing their pro bono efforts and contributions to various organizations. But if firms aren't careful, they could end up donating to organizations that don't align with their values.

Law360 Pulse talked with firm leaders and charitable giving experts to outline some tips for deciding where to give funds in political conflict.

Consider a Charity's Size and Age

As firms open their wallets, Kevin Scally, chief relationship officer at charity assessment group Charity Navigator Inc., advises to "not just give with your heart, but give with your head."

Donors often reflexively want to give immediately, and in a way that will offer the most direct aid, Scally said, but when a crisis captures the world's attention, donations will be flowing in regardless, so it's OK to take time to do due diligence, he said.

"There's great allure to somebody putting up a GoFundMe page or Facebook personal fundraising page," Scally said. "Charity Navigator, and myself, we're not against personal fundraisers. We think that there's great use there. But typically our recommendation is to only support those if a really trusted source can vouch for how they're presenting themselves."

This extends to nonprofits too, Scally said. Smaller niche organizations that may be in good standing with the IRS still are small enough to evade other kinds of external auditing. Those smaller organizations might also be less equipped to handle a flood of donations.

If an organization is a 501(c)(3) nonprofit, its past yearly revenues are publicly available. Scally recommended taking a look at how much an organization has received in the past in comparison to how much money it's raised in the current spurt of giving.

"If you look at this organization and their fiscal year revenue is \$100,000, and now this is an organization that receives millions of dollars, are they really equipped to be able to operate at that scale, to actually

respond in a large way?" Scally said.

Charities that pop up in the wake of a crisis are also risky, because they don't have a track record of working efficiently in crisis areas, the way larger and older organizations like UNICEF or the Red Cross do.

This isn't to say that firms should rule out donating to newer or smaller organizations.

The BBB Wise Giving Alliance has a guide for spotting charities on the up and up. First, it recommends checking to see who is on a group's board of directors. Do they have experience in the charitable sector or experience with the specific issues being addressed? The guide also suggests checking the charity's website and making sure its activities are clearly explained in detail. Vague language could be a red flag. The same goes for the group's financial plan.

Charity Navigator is also beginning to roll out a set of new metrics for its analysis of nonprofits, Scally said, looking at how charities are engaging with their constituents and their diversity equity and inclusion practices. He said it will hopefully offer a more detailed picture of how a charity operates, helping donors make an even more informed decision.

Jamie Levitt, chair of Morrison & Foerster LLP's charitable foundation, said that having specific goals for how to help is key. In responding to Ukraine, the firm donated to organizations that addressed specific needs. For instance, it gave to the International Rescue Committee because it focuses specifically on assisting refugees, and it donated to the World Central Kitchen because the group provides meals to those affected by humanitarian crises.

It's OK to donate to a more general fund, Levitt said, but giving where their money will make the greatest impact doesn't always mean donating to the largest organization. She said Morrison & Foerster's foundation only has so much to give, so she tries to find charities where a few thousand dollars won't be just a drop in the bucket.

"Our numbers are big, but we're not moving millions and millions, and so we want these to be impactful donations that are treating the core issues," Levitt said. "We want to focus on things that are very much direct aid."

Check for Political Affiliations

Giving in the wake of a war can be trickier than donating in the midst of another kind of humanitarian crisis. There are often politics at play, and in the case of Russia's war with Ukraine, those politics are not always straightforward.

While it's important to check a charity's status with the IRS and its rankings by groups like Charity Navigator, it's worth doing an even deeper dive to make sure the group aligns with your organization's values, Scally said. This may require reading up on the politics of a region.

For instance, Maryland-based nonprofit United Help Ukraine has been on several news sites' lists of recommended charities, and some law firms have announced their donations to the organization. But the group has some ties to far-right groups that wouldn't be obvious to those who are not immersed in Ukrainian politics.

The group's Facebook page and the pages of its leaders include a picture of UHU Vice President Yuri Yankovski with his son at an annual torchlight rally in Kyiv in 2017 to honor nationalist leader Stepan Bandera. Bandera is revered by some Ukrainians for leading the political wing of the anti-Soviet independence movement. But he is seen by others as a Nazi supporter, having led the Ukrainian Insurgent Army to fight alongside Nazi Germany in World War II.

"He is a figurehead of the worst kind of right-wing extremism in Ukraine's history, and really only the hardest of the nationalist hardliners are fans of him," Hans-Jakob Schindler, senior director of the Counter Extremism Project, told Law360 Pulse.

Other pictures show Yankovski in a T-shirt produced by SvaStone, a brand with a stylized swastika logo. The website Reporting Radicalism, a project of Freedom House, said that "the logo and name are exclusively used as a brand that targets far-right consumers."

The UHU has donated to the Azov Regiment, the military arm of Ukraine's most prominent far-right movement. The militia was founded in 2014 by the Patriot of Ukraine gang and the neo-Nazi Social National Assembly. Both groups have engaged in xenophobia and professed neo-Nazi beliefs, and have physically assaulted migrants, Romas and people opposing their views, according to reporting from Al Jazeera.

UHU publicly announced several times in 2015 that their fundraising would go toward the Azov volunteer army, among many other groups, likely a sign of "sympathies for what the Azov Regiment stood for," Schindler said.

"It was very clear at that time that support for the Azov Regiment meant support for an extreme right-wing militia, which essentially also meant indirectly adding fuel to the fire of Russian propaganda ... that Ukraine is run by Nazis," Schindler said.

United Help Ukraine did not respond to requests for comment. Law360 Pulse's roundup of firms' donations and pro bono efforts found both Orrick Herrington & Sutcliffe LLP and Seyfarth Shaw LLP had donated to the group.

Orrick told Law360 Pulse last week that it had not yet sent funds to the group, and in review of UHU's affiliations and history, it decided to redirect the funds to other organizations.

Seyfarth, which had already sent the funds, said it had followed recommendations from news outlets and other organizations.

"In the days following the invasion of Ukraine, the firm followed the recommendations of major news organizations in identifying ways to quickly assist those impacted," the firm told Law360 Pulse. "We remain committed to providing humanitarian support in Ukraine through other relief organizations best qualified to serve those in need."

UHU isn't the only group aimed at supporting Ukraine's war effort that raises red flags. Dmytro Shatrovskyi, a director at Florida-based group Revived Soldiers Ukraine, a registered nonprofit aimed at providing medical and humanitarian help to Ukraine, is a veteran of the Azov Regiment and a leader of the Azov paramilitaries.

Azov isn't recognized formally outside Ukraine as an extremist organization, but U.S. lawmakers have

been careful to exclude it from foreign aid. A bill passed on March 15 allotting \$300 million to the Ukraine Security Assistance Initiative specified that the funds could not provide arms or training to the Azov Regiment. And a former FBI agent wrote in a New York Times op-ed in 2020 that several of the men responsible for inciting violence at the Unite the Right rally in Charlottesville, Virginia, in August 2017 had trained overseas with Azov.

It can be hard for outsiders to Ukrainian politics to decipher red flags in political alliances, according to Per Anders Rudling, an author on Ukrainian nationalism at Lund University in Sweden. The far right and far left have often found common ground in Ukraine, as a sense of nationalism can often trump more ideological rifts, Rudling said.

The urgency of the moment requires prioritizing international aid over all else, Rudling said.

"At a moment when Ukraine is being under military attack and Russia just launched the greatest war in Europe since 1945, the priority must, in my opinion, be to support and defend Ukraine, the legal, rule-based order, and defend basic human rights," he said.

At least in the last three years, United Help Ukraine has made little mention of right-wing groups and militias. Earlier in March, the group reported spending \$3.8 million on humanitarian aid, detailing the bulletproof vests, electricity generators, oxygen tanks and boots it has helped provide at the front lines of the war in Ukraine. The group has posted videos of U.S. volunteers gathering to put together thousands of care packages to be mailed out to soldiers and refugees alike.

Paul Kiernan, a partner at Holland & Knight LLP and chair of the firm's public and charitable service department, told Law360 Pulse that although the firm didn't donate to either UHU or Revived Soldiers Ukraine, he sympathizes with firms who were looking to help and inadvertently stepped in some messy politics.

"It's kind of hard to jump on somebody," he said. "It's hard to say you shouldn't have given them money when they were raising money to help people getting bombed."

Go With What You Know

To avoid getting scammed or donating to a problematic group, Kiernan said Holland & Knight tries to work with charities it has a history with, including some that are already clients of the firm. He also asks other clients what organizations they're working with.

"If it's somebody that we don't directly have a relationship with, but we have a trusted client who's kind of raised the issue with us, that gives us some comfort," he said. "And as a result, we don't usually run into conflict."

The firm has for many years worked with the Red Cross, and Kiernan sits on its board. Working within existing relationships with charities can facilitate a greater culture of giving and a more long-term investment in humanitarian crises that aren't going away, Kiernan said.

"We're not simply contributing, for example, to the Red Cross, but we're actively engaged with them," Kiernan said. "There's kind of a reinforcing commitment to the issues where we both give money and provide time and talent, to reinforce that this is one of the things we do."

It's important to "keep our eye on the long-term play," Kiernan said. Giving is always a good thing, but sometimes a crisis will get a lot of attention at the onset and then get forgotten about later down the line.

"We have people in Haiti that are still suffering from earthquakes and political disasters," Kiernan said. "You have people in Washington, D.C., who could use our help. I think it's important to try to keep your eye on both the immediate need, as well as the long term needs, and to try to balance that."

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