



# Deadly Combination

**Disaster Conflict and the U.S. Material Support Law**



## **Deadly Combination: Disaster, Conflict and the U.S. Material Support Law**



**Front Cover Photos:** Top; refugees waiting in line to enter the Dolo Ado camp near the Somali and Ethiopian border (Cate Turton / Department for International Development). Bottom; a family attempts to escape flood waters in northwestern Pakistan (Abdul Majeed Goraya / IRIN).

**Acknowledgements:** Supported in part by a grant from the Open Society Foundation, The Catholic Organization for Relief and Development Aid (CORDAID), the Nathan Cummings Foundation, Moriah Fund, Muslim Legal Fund of America, Proteus Fund, and an Anonymous donor. We extend our thanks for your support.

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Thanks to Krista Zimmerman, Senior Policy Advisor for the Lutheran World Relief, Scott T. Paul, Senior Humanitarian Policy Advisor for Oxfam America and Andrea Harrison. Any errors are solely those of CSN, not the reviewers.

**The Charity & Security Network** brings together charities, grantmakers, peacebuilding and civil rights organizations to eliminate unnecessary and counterproductive barriers to legitimate charitable work caused by counterterrorism measures.

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**Published:** April 2012 by the Charity & Security Network

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## Introduction

This paper analyzes how United States national security measures affect the speed and mobility of humanitarian relief in the wake of disaster. Factors include the capacity for local coordination among non-governmental organizations (NGOs) and the political neutrality of aid in the context of deeply divided conflict zones.

Two cases are considered: the 2011 famine in Somalia and the summer 2010 floods in Pakistan (in the latter case, an in-depth case study of the 2005 earthquake is taken into account). In Somalia, the U.S. was slow to ease restrictions in order to get aid to nearly 2.2 million civilians faced with a widespread famine and trapped in al-Shabaab-controlled areas.<sup>1</sup> In Pakistan, the U.S. used humanitarian assistance in its "battle for hearts and minds," isolating not only the intended target of Islamist groups linked to designated terrorists, but also local communities in dire need of aid. In both cases, by giving priority to its Global War on Terror (GWOT) objectives, the U.S. impaired effective aid delivery by humanitarian organizations, exacerbating the extreme conditions of the disasters. The examples of Somalia and Pakistan stand in stark contrast to the U.S. government's response to the 2010 earthquake in Haiti (see box on page 18).

The problems arise from two U.S. counterterrorism laws: first, the broad prohibition on providing "material support" to foreign terrorist organizations listed by the Department of State and second, the Treasury Department's ban on any transactions with them or groups listed as their supporters.<sup>2</sup> Neither law provides legal protection for aid groups that must have contact with listed groups in order to access civilians in need.

*The politicization of disaster response in conflict zones obstructs timely and effective aid delivery and also jeopardizes the safety of aid workers.*

The politicization of disaster response in conflict zones obstructs timely and effective aid delivery and also jeopardizes the safety of aid workers. The current U.S. response to the situation is often to informally turn a "blind eye" to unavoidable NGO contact with listed terrorist groups in these settings. Such a response only reveals how inadequate current standards are in complying with internationally-accepted norms of humanitarian relief. As this inadequacy has been made tragically plain by the famine response in the Horn of Africa in 2011, a bipartisan group of U.S. Members of Congress have joined American NGOs in calling for an expedited process to permit aid delivery to civilians in areas where listed terrorist organizations are active or control the territory, especially during times of conflict or crisis.<sup>3</sup>

## Somalia: Too Little, Too Late

On July 20, 2011, the UN declared a famine in Somalia. Nearly half of the country's population of 10 million was in need of immediate assistance.<sup>4</sup> In southern regions like Bakool and Lower Shabelle where the terrorist group al-Shabaab is in control, tens of thousands of Somalis, the majority of them children, have died of causes related to malnutrition. In November 2011, al-Shabaab banned 16 aid groups, including a half dozen UN agencies, leaving only a handful of international humanitarian groups in central and southern regions to respond to the suffering caused by the drought and famine. Meanwhile, U.S. policy constraints have left remaining aid groups with few options for developing successful strategies to gain access to civilians and provide relief. Between 50,000 and 100,000 Somalis died from starvation and disease since the famine was declared.<sup>5</sup>

### *Context: Extreme long-term instability on GWOT terrain*

When the famine was declared in July 2011, emerging in headlines as “the worst humanitarian crisis in the world,”<sup>6</sup> the conditions that caused the crisis had long been brewing. This section outlines the context of generalized political instability and military conflict in which a severe drought in the Horn of Africa led to a devastating famine for the people of Somalia. These factors shape the difficult reality faced by both aid workers and Somalis in need. The overly broad and restrictive U.S. laws are blind to this reality, creating further obstacles amidst dire circumstances.

The famine emerged in a political situation characterized by long-term instability and conflict that has left Somali citizens in a state of chronic insecurity. Since the fall of the central government in 1991<sup>7</sup> and the rise of armed factions, Somalis have not only lacked basic infrastructure and public services but have also suffered widespread internal displacement and high levels of civilian casualties.<sup>8</sup> This highly volatile political conflict has exacerbated the consequences of the drought and restricted the humanitarian response to the famine.



The UN declared a famine in Somalia in July 2011. (AP Photo/ Department of State Blog)

In recent years, the U.S. government has steadily increased its presence in Somalia as part of its GWOT objectives. The U.S. and its European allies support the Transitional Federal Government (TFG), the internationally recognized Somali government that is also supported by the UN and African Union (AU). Much of this support to the TFG consists of military supplies and training, including mortars, ammunition and cash for the purchase of weapons, all intended to advance GWOT objectives.<sup>9</sup> The GWOT is regarded with suspicion and hostility in Somalia, fueling the fire of entrenched conflicts and blurring the distinction between anti-GWOT sentiment and outright

militancy.<sup>10</sup> The U.S. military presence is a foreign presence that often implicates Western NGOs attempting to distribute much needed aid amidst the hostilities, infringing on humanitarian neutrality and further limiting mobility in Somalia's divided terrain.

Al-Shabaab controls much of southern Somalia and has been waging war against the TFG since 2006.<sup>11</sup> In February 2008, based on the concern that al-Shabaab may be linked to al-Qaeda, the Department of State put the militant group on the Foreign Terrorist Organizations (FTO) list. The Treasury Department's Office of Foreign Assets Control (OFAC) soon followed suit and placed the group on the Specially Designated Global Terrorist (SDGT) list. These listings made it illegal for American individuals or groups to engage in transactions with or provide any form of "material support" to al-Shabaab<sup>12</sup>. The prohibition includes payment of tolls, involuntary or incidental diversion of aid to al-Shabaab members, and negotiating for access to reach civilians.<sup>13</sup>

In this setting of entrenched armed conflict and weakened state infrastructure, there was no domestic organized response to prevent famine. Severe drought had affected Somalia for several years and particularly low levels of rainfall in the winter of 2010 exacerbated the crisis.<sup>14</sup> Neighbors like Ethiopia faced the same extreme drought, but had no listed terrorist groups in their borders. The Ethiopian government was able to avoid famine by implementing a comprehensive response and coordinating with international relief agencies.<sup>15</sup>

Such crisis prevention is the *raison d'être* of the USAID's Famine Early Warning Systems Network (FEWSNET), which predicted the drought in August 2010.<sup>16</sup> Nancy Lindborg, Assistant Administrator for the Bureau for Democracy, Conflict and Humanitarian Assistance for USAID, reported on this evidence in a Senate hearing the next year, while the famine was already taking its toll.<sup>17</sup> Despite this advanced knowledge, U.S. counterterrorism laws prevented a humanitarian response that might have prevented the famine.

After al-Shabaab was placed on U.S. terrorist lists, official government aid from the U.S. dropped drastically, nearly 90 percent. In his testimony before the U.S. Senate in August 2011, Jeremy Konyndyk, MercyCorp's Director of Policy and Advocacy explained that:

The blame for the delays and obstacles ultimately lies with the nature of the restrictions themselves...USAID was seeking an OFAC license for its work in Somalia, but that the Treasury Department was reluctant to grant this. Over the summer of 2009, USAID stopped processing new humanitarian response grants to UN agencies and NGOs while deliberations over a path forward dragged on. In the midst of a serious humanitarian crisis in much of the country, numerous US-funded humanitarian response programs were suspended as grant agreements expired and could not be renewed.<sup>18</sup>

Only a delayed, partial response by USAID implementing partners was permitted. U.S. Senators, including Sen. John Kerry and Sen. Chris Coons, urged the Obama administration to make a comprehensive response, but this pressure failed to materialize into any concrete action until it was too late for many Somalis.<sup>19</sup>

While the U.S. failed to act, the situation was further exacerbated by al-Shabaab. In a power play against Western influence, the group began imposing restrictions on aid, extorting payments, and even banning foreign assistance. By early 2010, many agencies had already ceased operations in Southern Somalia altogether as security concerns hampered aid distribution.<sup>20</sup> When the famine reached full-tilt in the summer of 2011, aid workers faced great danger attempting to deliver aid, as many of the famine-stricken Somalis were effectively held hostage by al-Shabaab.

The broad terms of U.S. law and inflexible implementation policies contributed to the polarized deadlock in which the famine emerged. Somalia was already vulnerable to the disaster, in the context of weak government, absent infrastructure, and ongoing military conflict with high civilian casualties. The GWOT-centric approach provided no guide for aid workers navigating this terrain; instead it served to further restrict humanitarian efforts aimed at civilian relief.

### ***U.S. Policy: No Guarantees***

*"You can call [the legal situation] loopholes, but I would say they're more like gaps in our ability to do things quickly in Somalia."*  
-Robert Laprade, CARE

Despite warnings from FEWSNET and NGOs, no U.S. government action to facilitate aid delivery was taken until Aug. 2, 2011, when the Department of State held a press briefing to assure its grantees that it would not pursue prosecution for aid diverted to al-Shabaab as long as "good faith efforts" are made to prevent it from occurring. The use of the term "prosecution" caused confusion, as it is the Department of Justice, not State, that has ultimate prosecutorial discretion. Officials at the Justice Department remained silent.

The briefing itself provided no specific guidelines to ground this assurance. A subsequent *Frequently Asked Questions* document was released by the Treasury Department on Aug. 4, 2011 in an attempt to give further clarification. It stated that the new policy applied only to groups receiving USAID funds. The FAQ ambiguously addressed the concerns of "incidental benefits" unintentionally reaching al-Shabaab by saying that those benefits are "not a focus for OFAC sanctions enforcement,"<sup>21</sup> stopping short of providing concrete assurances.

The State Department's announcement was welcome news, but it raised many questions of what precisely was implied. First, the mere assurance that the government will not pursue prosecution provides no legal safeguards. One NGO official commented, "The scenario that's in the back of everyone's mind is, let's zoom two years out, we've got a new presidential administration in office and they don't feel at all beholden to some verbal statements by the Obama administration."<sup>22</sup> As Robert Laprade, Senior Director for Emergencies and Humanitarian Assistance for CARE, a large international charity, commented, "You can call [the legal situation] loopholes, but I would say they're more like gaps in our ability to do things quickly in Somalia."<sup>23</sup> A request by InterAction, the largest alliance of U.S.-based international NGOs, for Treasury to grant a general license to those not receiving USAID funds was rejected in November 2011.<sup>24</sup>

Second, the assurances were only directed at USAID and State Department grantees *after* the "expanded licenses" granted to the agencies were issued. It provides no assurances for non-U.S. government funded projects or organizations. This limited the full mobilization of aid deployment across the NGO sector and effectively punished NGOs that operate independently of USAID. Essentially, USAID was encouraging private giving to address hunger in the Horn of Africa at the same time its limited legal protections applied only to NGOs receiving government funds.<sup>25</sup> Limiting use of private donations stifled a significant source of funding. As the 2012 Index of Global Philanthropy points out, U.S. private philanthropy exceeds U.S. government development assistance.<sup>26</sup> It was not until the fall of 2011 that USAID agreed to extend the protections to private funds used to support programs the government was also supporting.<sup>27</sup>

Third, by explicitly linking U.S. government permission to aid, the perceived neutrality of the aid is called into question. Both the capacity and security of relief workers hinges on the perception that their work is independent from foreign policy objectives. Somalia is one of the world's most dangerous places for humanitarian operations.<sup>28</sup> Procedures like the "expanded licenses" make aid workers fear this loss of perceived neutrality will put them and their operations at risk and ultimately prevent them from reaching people in need. "An increase in use of governments and military personnel using development activities for stabilization or counterinsurgency, such as in Somalia, create more confusion about whether aid workers are simply an extension of the military," said Lisa Schirch, a professor of peacebuilding at Eastern Mennonite University. "Aid workers see this shrinking of humanitarian and civil society space as making NGOs the 'soft target' for armed opposition groups."<sup>29</sup>



Somali Islamist insurgents patrol a street in Mogadishu (ABDIRASHID ABDULLE ABIKAR/AFP/Getty Images)

This policy ambiguity has a history in Somalia that has not only impacted NGOs but also the U.S. State Department and the UN. In October 2009, the State Department appealed to the Treasury Department<sup>30</sup> to assure U.S. government employees and grantees that they would not face sanctions if aid were unintentionally diverted to al-Shabaab. Treasury did not lift the prohibition, and only issued an assurance it would not prosecute U.S. employees if they acted in 'good faith.'<sup>31</sup> In this case, the Treasury's GWOT enforcement authority superseded the State Department's humanitarian agenda and even its foreign policy prerogatives, a legal imbalance with dire consequences for civilians living in conflict zones facing disaster. As the humanitarian situation worsened that year, the UN decided it had no choice but to work through al-Shabaab to continue its aid efforts. The U.S. withheld millions of dollars in aid, while it worked to address the conflicting policies. But the UN and U.S. were unable to agree on language<sup>32</sup> and the UN moved forward with its own mechanism of "post-distribution" aid monitoring.<sup>33</sup>



The Somalia case demonstrates how inadequate the current framework for regulating humanitarian aid is to the exigencies of disaster relief in conflict zones. The State and Treasury Departments' steps to redress this are inadequate, have come late and provided little clarity on how humanitarian operations and their beneficiaries can be safeguarded. This has directly contributed to worsening the crisis.

***Effects: Inhibiting humanitarian speed and mobility, local coordination, and neutrality***

In the long-term development of the current crisis, U.S. GWOT policies have continually affected the operations of aid organizations on the ground, limiting resources, restricting mobility, and hampering coordination with local NGOs. Together, these factors have inhibited neutral humanitarian relief from alleviating crisis conditions, worsening tension and desperation in an entrenched conflict zone. The State Department has repeatedly stated that its central objective in Somalia is to save lives, but has only partially relaxed restrictions on humanitarian efforts.

Considering the scale of the disaster, the response from the U.S. has fallen short. Konyndyk's testimony before the Senate Foreign Relations noted an 88 percent decrease in U.S. aid to Somalia from 2008 to 2010, including a region-wide decrease of a half billion dollars when compared to Bush administration levels. He stated, "To put this in perspective, the U.S. contribution towards the drought this year amounts to roughly one sixth of the amount that Congress appropriated for the Haiti response in the 2010 supplemental; this despite the fact that the population at risk in the Horn is greater than the entire population of Haiti."<sup>34</sup> Days earlier, Konyndyk compared the \$14.5 million from USAID in food aid to Somalia in 2011 to an amount ten times that in 2008, when U.S.-ally Ethiopia still occupied southern Somalia. He attributed the massive shortfall to USAID's concerns about violating U.S. laws.<sup>35</sup> "Even in areas controlled by clans who actually oppose the southern militias, such as hard-hit communities of central Somalia, exaggerated USG fears about aid leakage have resulted in the U.S. providing only very limited support." These restrictions have not only hampered NGO response, but have also prevented long-term coordination and planning that might have mitigated the scope of the crisis.

When any coordination or long-term planning does take place, many local groups have been excluded. In July 2011, the Somali Relief and Development Forum, an umbrella group of Somali NGOs, highlighted the need and benefits of collaboration. Mustakim Waid, Public Relations Manager of the Forum, observed, "There are divisions within al-Shabaab and there are Somali NGOs that are able to work around al-Shabaab and bypass them, but there is hardly any international engagement with these local NGOs."<sup>36</sup> The U.S. policy has reinforced the conflict's impact, isolating these Somali NGOs along with its GWOT targets.

Among the handful of groups who continued to operate in al-Shabaab controlled territory was the ICRC. The ICRC assisted about 162,000 Somalis<sup>37</sup> before being expelled by al-Shabaab in January 2012. Unlike other groups who rely on outside forces to provide their security when working in a conflict zone, the ICRC is able to remain neutral and apply its assistance impartially because, as Yves van Loo, an ICRC official based in Somalia said, "ICRC's security was insured by

the ICRC itself. Our main protection is the acceptance by all."<sup>38</sup> In other words, the ICRC does not rely on armed forces for security.

The difficulties al-Shabaab has created for NGOs does not necessarily mean NGOs would not have made an effort to provide famine relief if the "expanded licenses" covered funds from private giving. As one international NGO staff told us,

There was, initially, within our organization, a commitment to try to reach those with the greatest need and enthusiasm for figuring out how to do that in Somalia itself, even though we have existing operations and partners in Kenya and Ethiopia that enable us to, more easily, program famine donations in line with donor intent . This was at the front end of the crisis though. As time went on and OFAC discussions dragged out, the enthusiasm for figuring out Somalia waned significantly. Would it have waned anyway given other operational difficulties in Somalia that had nothing do with OFAC? Maybe. But maybe not.<sup>39</sup>

Neutrality is one of the fundamental principles that guide aid groups providing humanitarian assistance during times of armed conflict or disaster. It means aid distributors do not take sides during hostilities or deny relief to civilians based on geographic, political, ethnic, religious, race or gender reasons.<sup>40</sup> The U.S. government's expansive definition of material support for terrorism and its poorly crafted regulation of terrorism-related national emergencies infringe on this space, limiting how and when aid groups can act. Al-Shabaab has also infringed on this space by demanding tolls, stealing aid supplies and sometimes banning Western groups. U.S. efforts to isolate al-Shabaab by restricting aid groups from working in the regions they control feeds the root causes of violent extremism as conditions worsen, stirring violence and polarizing desperate communities.

Respecting the neutrality of humanitarian relief may not only allow better access to civilians trapped in al-Shabaab territory but also help to de-militarize al-Shabaab recruits. A 2010 report from the Council on Foreign Relations suggests it is possible to "separate pragmatic, locally oriented fundamentalists from their international jihadi counterparts. And by providing youths with alternatives to becoming recruited by militias (something that is actually heavily stigmatized in Somali society and considered a last resort) the goal of disarming, demobilizing, and reintegrating them will be advanced."<sup>41</sup>

### ***Going forward***

In the context of extreme instability in Somalia, humanitarian aid organizations have been forced to negotiate a highly volatile political terrain in order to provide relief. Both sides of the conflict relented somewhat over the summer of 2011 as the situation worsened, with the Aug. 2 State Department announcement and reports from southern Somalia indicating al-Shabaab agreed to let aid reach people trapped in its territory. These developments make some small progress in getting aid to Somalis in need but are only a small step in redressing the inadequacies of the U.S. policy in the long-run. Much more needs to be done.

The humanitarian crisis in Somalia has not gone unnoticed. Several members of Congress, such as Rep. Chris Smith (R-NJ) and Sen. Jonny Isakson (R-GA), among others, have expressed frustration with this state of affairs.<sup>42</sup> Sen. Patrick Leahy (D-VT) has gone a step further and asked the Attorney General to issue guidelines that would remove the uncertainty and establish a process by which humanitarian groups may seek exemptions that would allow them to negotiate for access to civilians. In a Sept. 21, 2011 statement Leahy said, "We need greater clarity in the law so that, in the future, Government officials and reputable humanitarian relief agencies need not delay the delivery of desperately needed aid while they scramble for a license."<sup>43</sup>

The famine in Somalia has been in the making for several years, despite repeated attempts by NGOs to put a spotlight on the brewing crisis. In the future, to act quickly and effectively, NGOs must be allowed to plan, coordinate and implement relief efforts without interference from the U.S. government. Without long-term changes similar crisis are likely to occur again.

## Pakistan: Politicized Aid Mires Effective Distribution

Pakistan has endured two major natural disasters in its period on the front lines of the GWOT—the 7.6 earthquake in 2005 and the widespread flooding in 2010. Pakistan is a deeply divided territory where the U.S.-supported government has battled for control against the Taliban and fought other internal Islamist factions. In the case of these natural disasters, local Islamist charities were able to rapidly mobilize relief campaigns in isolated regions. Due to their links with U.S.-designated terrorist groups, these charities created a complex humanitarian environment for U.S. NGOs working in the region. As in the Somali case, evidence from Pakistan reveals the inadequacy of the current U.S. laws in the wake of disaster in a deeply divided conflict zone. In the U.S. strategic ‘battle for hearts and minds,’ the politicization of disaster relief exacerbated existing divisions, endangered aid workers, and created legal uncertainty for NGOs sharing territory with local relief efforts.

### ***Context: Distrustful population in deeply divided territory***

*[The] concern with **who** distributes aid should not overshadow basic welfare and further isolate communities. When a military agenda takes precedence over humanitarian objectives ... such isolation serves to drive the desperate conditions that lead to violent extremism*

The geopolitical context of Pakistan deeply shapes the short and long term impact of natural disaster, as the divided terrain blocks immediate relief and competing political interests slow infrastructure reconstruction. While the U.S. laws seek to isolate GWOT adversaries, they also further isolate communities in need of assistance and strain the coordination necessary to rebuilding communities. In the context of natural disaster, humanitarian relief becomes part of the competition for strategic advantage, as political and military parties vie for the loyalties of devastated communities. This politicization of relief gambles on the strategic effect of aid, while severely hampering effective coordination that would promote community interests in the region.

Pakistan covers 310,000 square miles, almost twice the size of California,<sup>44</sup> with two-thirds of its population living in rural areas. This rural population accounts for 90 percent of the country's poor.<sup>45</sup> The fledgling civilian government took control from the military in 2008, and has been a key U.S. ally in the GWOT. It has demonstrated tenuous control over territories on the Afghan-border, where Taliban-linked militants have challenged its control. In both 2005 and 2010, some of the regions hardest hit by disaster were in places where the government has little presence or popularity, and Islamist groups have a grassroots presence. This unstable situation led many U.S. politicians and commentators to worry that these disasters would embolden militant forces in the region. However, this concern with *who* distributes aid should not overshadow basic welfare and further isolate communities. When a military agenda takes precedence over humanitarian objectives rather than accommodating them, such isolation serves to drive the desperate conditions that lead to violent extremism.



The GWOT is not only being waged over geographic terrain, but also in a “battle for the hearts and minds” of the Pakistani people, the oft-cited U.S. strategy for aid distribution. This strategy might be useful to U.S. military and diplomatic efforts in Pakistan but is inadequate and inappropriate to the complex local contexts in which aid workers operate. A PEW survey conducted in July 2010 before the flood shows that much of the Pakistani population considers the U.S. an enemy.<sup>46</sup> Furthermore, there has been widespread outrage over civilian casualties caused by U.S. drones, resulting in protests and even a criminal lawsuit against an American official at the C.I.A.<sup>47</sup> This anti-U.S. sentiment has served as a rationale to use aid as an opportunity to gain support, a gamble made at the risk of humanitarian neutrality and security.



90 percent of Pakistan's poor live in rural areas that were heavily affected by the floods. (AP Photo/ Department of State Blog)

The assumption that aid can be traded for loyalty also ignores the long-term relationship of small communities with the Government of Pakistan (GoP). From the immediate aftermath, to reports a year after the flood, citizens expressed frustration with the absence of the GoP in providing basic relief or showing support to communities in the hardest hit areas.<sup>48</sup> There is a perception that the elite political class has willfully neglected marginal areas, undermining local faith in national rebuilding.<sup>49</sup> Some even argue the threat of militancy has been largely overblown to consolidate the power of these political elite.<sup>50</sup> The complexities of Pakistan's democracy cannot be reduced to GWOT politics. The GoP's failure to provide a democratic plan for recovery increases the need for aid from NGOs to be coordinated and distributed with local and long-term needs in mind.

These considerations of Pakistani democracy show the dangers of linking aid to military strategy. In the Feinstein Center Report, *Perceptions of the Pakistan Earthquake Response*, civilians expressed expectations that relief not be tied to a political agenda. Many interviewees to the study dismissed the ‘hearts and minds’ advantage of humanitarian relief altogether, arguing such short-term relief does not translate into political support:

The notion that this was a golden opportunity for jihadi groups to win support doesn't hold true—appreciation for their work doesn't translate into political support. Jamaat Isalmi from day one was the most effective and efficient social welfare organization, but this hasn't led to an increase in its popular support. People don't vote on that account—it doesn't translate into popular support. The same for the US—their role won't “win hearts and minds.” In South Asia charity and charitable work has little to do with political work.<sup>51</sup>

In fact, the report shows that small, isolated communities in Pakistan are generally suspicious of any perceived political pressure from outside, “from the militantly religious or the militantly

secular.”<sup>52</sup> The vulnerability of these communities in disaster should not affect basic respect for their self-determination.

This popular distrust of external aid may be linked to historical evidence that U.S. aid has actually weakened democracy by protecting Pakistani dictators who supported U.S. interests.<sup>53</sup> Linking aid to GWOT objectives, rather than neutral relief and democratic rebuilding, only polarizes community response in areas already fractured by instability and distrust.

As politicians worry over the potential public relations advantage gained by designated terrorist groups, they may only fuel the militarized terms of aid distribution. The history and composition of Lashkar-e-Taiba (LeT) and Jamaat-ud-Dawa (JuD) (the banned organizations with local charity arms assisting in grassroots disaster relief) proves more complex than the picture drawn by blanket policies. LeT, which has links to al-Qaeda and was banned in Pakistan in 2002, earned public notoriety for the 2008 gun attacks in Mumbai that took 173 lives. JuD is widely considered to serve as a public front for the militant wing and was put on the UN terrorist list in December 2008. The groups have historically been associated with the government that has now banned them.<sup>54</sup>

*As the GWOT approach pushes the “battle for hearts and minds,” the needs and input of local Pakistani communities are hinged to military outcomes.*

Among local groups, however, the line between militant and mainstream may be difficult to draw, as Islamist charity operations claim independence from violence. Islamist relief efforts have been effective because of their local capacity, already situated in communities and ready to respond. JuD has even been recognized for getting aid to communities displaced by military attacks on the Taliban in the Swat Valley. In some places, JuD’s charity operations are better organized than available government services, and disruption of their services hurts their beneficiaries. In fact, Pakistani Hindus organized a street protest against the UN’s 2008 action listing the group as a terrorist organization.<sup>55</sup>

Such reports suggest a locally dispersed network of Islamist organizing that cannot all be effectively lumped under one policy. In fact, evidence shows the news media has largely overblown the impact of JuD’s charity work, playing on stereotypes of opportunistic terrorists and diverting attention from the larger issues at hand.<sup>56</sup> GWOT policy promotes this reductive vision of friends and enemies that blindly favors its military ally. While the welfare of the population has been an afterthought to this strategic game, popular attitude on the U.S., GoP, and JuD has been shaped by a much deeper political history.

As the GWOT approach pushes the “battle for hearts and minds,” the needs and input of local Pakistani communities are hinged to military outcomes. As the context of a divided political terrain reveals, these outcomes provide few options to a population suspicious of outside influence and frustrated with national leadership. While the presence and authority of Islamist groups may present challenges, community security and self-determination must be the foundation of long-term democratic infrastructure. Natural disasters reveal the fault lines of

conflict that should not be deepened by political exigencies when neutral humanitarian relief is needed the most.

***U.S. Policy: 'Battle for hearts and minds' limits humanitarian mission***

In the wake of disaster in Pakistan, the terrain requires fast and effective aid deployment to reach communities and stem deeper loss. Evidence from both the 2005 earthquake and 2010 floods show the U.S. laws were inadequate to the situation faced by aid workers and communities in need.

On Oct. 5, 2005 a magnitude 7.5 earthquake struck the Pakistani- controlled part of Kashmir. The quake was one of the deadliest on record, killing around 75,000 people and injuring another 70,000.<sup>57</sup> An estimated 3.5 million were left homeless, and much of the infrastructure in the region was crippled. The international community pledged \$5.4 billion for food aid, shelter and to help rebuild some of the 6,000 schools that were destroyed by the quake.<sup>58</sup>

The Pakistani military, in 2005, still in control of the government, was on the front line of delivery efforts, gaining the confidence of local communities for their effectiveness. Additionally, the UN and NGOs were praised for coordinating their relief efforts and implementing programming sensitive to local norms. The in-depth study conducted by the Feinstein Center surveyed aid workers, officials, and affected communities to improve policy and practices of humanitarianism and address challenges of universality, terrorism, coherence, and security. All of these factors are affected by GWOT procedures, and the results of the study consistently make the case that neutrality and coordination are necessary to efficient aid distribution and local reception. However, the report reveals some of this success must be attributed to the U.S. government's "Don't Ask, Don't Tell" policy with respect to JuD and other local Islamist groups, through which they informally relaxed GWOT procedure in order to answer the demands of the pressing humanitarian situation.

The summer 2010 flooding that hit northwestern Pakistan put nearly one-fifth of the country under water within days. Initial causality estimates by the UN put the dead at 2000 and 20 million displaced (1 in 8 Pakistanis).<sup>59</sup> *The Washington Post* reported that 1.2 million homes, 10,000 schools and 35 bridges were destroyed by the water, which was up to 10 feet high in some areas. Displacement lead to millions being without reliable food, water or shelter, and has raised serious concerns over water borne illnesses, like cholera.



Flooding in the summer of 2010 put nearly one-fifth of the country under water. (AP Photo/ Department of State Blog)

Further complicating any long-term relief effort is the damage to the agricultural infrastructure of the country, which may lead to food shortages for years. UN Secretary General Ban Ki-moon described the scale of the crisis as one “the world has never seen.”<sup>60</sup>

In the case of the floods, several reports reveal an un-systemic response to civilian relief. There is continued frustration that lingers in communities that have yet to be rebuilt. In the immediate aftermath of disaster, citizens’ frustration with government cemented as GoP President Zardari refused to return early from a trip abroad on news of the flooding. The U.S. reportedly saw the flooding as an opportunity to come to the aid of a GWOT ally, thus hoping to strengthen their position among the populace. At the same time, local Islamist groups including the JuD were among the first responders in unrolling relief at the grassroots level, seemingly setting the stage for a “battle of hearts and minds.” In this volatile terrain, neutral NGOs were caught in multiple dilemmas due to the restrictions set upon them by U.S. laws.

First, USAID required branding aid with their logo. According to USAID’s acting director of the Office of Foreign Disaster Assistance, Mark Ward, branding “ensures transparency when America provides aid.”<sup>61</sup> This policy was met by protests of 11 prominent charities, claiming the safety of aid workers and recipients would be at risk in potentially hostile areas. While USAID allowed this requirement to be waived when security was an issue, the guidelines remained unclear and undermined NGO discretion. USAID’s idea of security privileges a militarized perspective of territory rather than a general principle allowing aid workers to act appropriately in context to ensure the safest humanitarian approach. As Samuel Worthington, president of InterAction, noted, “The debate over branding our efforts is not simply another technical policy decision. For us, it can be a matter of life and death.”<sup>62</sup>



The floods displaced one out of every eight Pakistanis. (AP Photo/ Department of State Blog)

Second, while JuD was one of the first responders, Treasury's Office of Foreign Assets Control (OFAC) regulations prevented contact or coordination with them, isolating which communities would be served by what aid. While assumptions about brewing militancy in disaster-struck areas circulated among the press and politicians, there is little evidence that aid distribution has been overtly politicized by the groups, who argue they are simply responding to community need as religious duty.<sup>63</sup> In fact, Anne Patterson, U.S. ambassador to Pakistan in 2010, reported that LeT’s humanitarian impact during crisis was being “wildly exaggerated.”<sup>64</sup> Again, there is little evidence because there was no communication and collaboration among relief workers heeding the militarized policy of U.S. aid regulations.



### ***Effects: Inhibiting humanitarian speed, mobility, coordination***

The polarizing tactics of promoting U.S. interests through humanitarian relief have affected the way humanitarian aid workers navigate the divided conflict zones of Pakistan, where critical factors of speed and coordination are at stake in the effective use of limited resources. Reports from the 2010 flooding reveal multiple conflicts arising in the disaster, many of which have been left unresolved as communities are still displaced and losing hope of recovery. In the case of the 2005 earthquake, the in-depth Feinstein Center study gives on-the-ground stories from aid workers and beneficiaries alike on the efficacy of relief efforts, providing valuable insight on how GWOT affects humanitarian relief in conflict zones, and more generally, suggesting best practices for local coordination and communication.

*The U.S. regulations were not only logistically difficult to navigate post-earthquake; they also threatened principles of humanitarian neutrality key to the success of the relief efforts.*

The most positive outcome reported from the 2005 earthquake was the immediacy of the humanitarian response. The Pakistani military was fast and effective in its relief efforts, joined by an outpouring of support from the international community as well as local Islamist groups, including the LeT and JuD. A senior UN official commented, "This was the first time NATO and al-Qaeda worked together, and western Christian NGOs worked side-by-side with Islamic militant groups – it was great."<sup>65</sup> While long-term rebuilding efforts were criticized as lacking by surveyed communities, immediate relief was praised for its humanitarian intent, un-tied from any political or religious agenda.

In the immediate aftermath of the earthquake, NGOs went to work with all the local help and resources they could get, unable to wait on lengthy screening processes to sort through civilians legally eligible for aid. A World Food Programme (WFP) official commented it was nearly three weeks before aid workers were instructed to check the lists, adopting a "don't ask, don't tell" policy in regards to possible organizational affiliation.<sup>66</sup> In the immediate need for local help, the OFAC list of terrorist groups was an inappropriate and ineffective tool for navigating the devastated terrain. The informal relaxation demonstrates this inadequacy, as aid workers were stuck in the legal dilemma between strict, external procedure and urgent humanitarian need.

The U.S. regulations were not only logistically difficult to navigate post-earthquake; they also threatened principles of humanitarian neutrality key to the success of the relief efforts. NGO workers cited improved relations with Pakistani communities usually hostile to outsiders; they credited how their humanitarian work was not linked to a GWOT agenda.<sup>67</sup> A national NGO worker noted, "People in the earthquake areas didn't care who gave aid – they were happy with anyone. Elsewhere there were perceptions and conspiracy theories but not in the earthquake area."<sup>68</sup> These findings underscore how neutrality not only eases the practicalities of distribution but also ensures cooperation and dialogue.

To the extent Treasury restrictions did limit humanitarian work, the Feinstein Report found many aid workers were frustrated by the "missed opportunity" to coordinate with Islamist relief efforts. One NGO worker stated, "Maybe we avoided them too much. There was very little interaction.

We could have created better coordination, and we should have invited them to cluster meetings.”<sup>69</sup> Many non-militant Islamist organizations were swept up in the blanket ban of listed militant organizations, dividing their efforts. In other words, while the Obama administration seeks to diffuse the notion that GWOT is a war with Islam, GWOT policies created cleavages along these lines, redefining legal humanitarianism as a secular, Western import.

Aid workers fighting to help people, need the discretion to assess disaster situations and mobilize all resources as quickly and effectively as possible. In the case of the 2005 earthquake, GWOT regulations at best proved inadequate as guidelines for humanitarian relief, and at worst served as a major obstacle. Currently, there is no such in-depth data available from the 2010 floods. However, reports over the last year have demonstrated a preoccupation with the looming threat that terrorists will leverage the disaster with little corresponding evidence or concern with the welfare or self-determination of Pakistani communities left devastated by it. Long-term recovery efforts continue to stall, while strategic interests rage on the political battlefield far disconnected from the realities that hang in the balance.

## Conclusion

The effects of U.S. policy on humanitarian aid distribution in Pakistan both 2005 and 2010 share certain aspects with the current Somali situation. In all cases, OFAC restrictions have made it nearly impossible to communicate or coordinate with local Islamist groups. There was no practical consideration of the nature of their links to designated terrorists, the history of these contested politics, or the role of the weakened state. In isolating these groups, the policy has also isolated communities suspicious of GWOT objectives, linking aid to increasingly militarized and polarized factions. In all cases, the best progress in ensuring humanitarian neutrality, safety, and efficacy has been one of informally loosening oversight on compliance without any ensuing legal guarantee or restructuring of the guidelines that are so inadequate to these situations—limited ‘good faith’ assurances in Somalia, ‘don’t ask, don’t tell’ in Pakistan.

## Haiti: A Disaster Outside the GWOT Context

The examples of Somalia and Pakistan stand in stark contrast to the U.S. government's response to the 2010 earthquake in Haiti, where U.S. relief efforts were comparatively swift and unmarred by legal challenges. There are no listed terrorist organizations in the country, making relief efforts possible without the barriers encountered in Somalia and Pakistan. The U.S. response was robust. USAID "deployed staff and assets from 17 government agencies and departments, including USAID, the Department of Defense, and domestic agencies sent for the first time to work outside the United States. The U.S. response [grew] to include 20,000 civilian and military personnel."\* In FY 2010 and FY 2011 thru the end of March, Haiti was the third highest recipient of U.S. foreign assistance, second only to Afghanistan and Pakistan.

USAID's Office of Foreign Disaster Assistance says that "Since the January 12, 2010 earthquake in Haiti, the U.S. government has provided \$1.1 billion in humanitarian relief assistance and an additional \$406 million in recovery assistance.\*\* At the New York donors' conference on March 31, 2010, the U.S. government pledged an additional \$1.15 billion for reconstruction and has spent \$332 million of that assistance in the last year. In total, this is \$2.656 billion towards relief, recovery and reconstruction after the tragic earthquake.

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