

Examples: Impacts of the Material Support Prohibition on Peacebuilding

Afghanistan • Colombia • Philippines • Nepal • Palestinian Territories • Sri Lanka • The Future of Peacebuilding

For many years, U.S. organizations have paved the way for peace by helping to bring fighting factions together and providing alternatives to violence as a means of redressing grievances. Unfortunately, the 2010 Supreme Court decision in *Holder v. Humanitarian Law Project* (HLP) upheld the law defining prohibited “material support” of terrorism to include conflict prevention and resolution activities aimed at getting terrorist groups to lay down their arms. Without a correction, opportunities to end violence will be lost.

Afghanistan

Lisa Schrich, Director of the **3D Security Initiative**, works with a Canadian network of peacebuilding organizations on the Afghanistan Pathways to Peace project. They work in collaboration with Afghan non-governmental organizations that do a range of work, from humanitarian aid, to community development, and peacebuilding. The goal of the project is to foster a public peace process in Afghanistan that is more inclusive of women’s, human rights and development groups, and addresses their concerns in the national peace process.



An important part of the project is facilitating civil society meetings. But it is never clear when, sitting down in a large room in Kabul to facilitate communication, setting the negotiation agenda or teaching negotiation techniques, someone associated with the Taliban, which is on the Department of Treasury's terrorist list, may be present. As a result, Schrich, the sole American in the project, has been forced to withdraw from participation in such meetings, in order to avoid violating the prohibition on material support. The process loses her expertise and the reputation of the U.S. is harmed.

Colombia

In 2005 the **Project on Justice in Times of Transition (PJTT)**, an international conflict resolution and diplomacy organization, held a peacebuilding campaign in Colombia to help the Ejercito de Liberacion Nacional (ELN), a designated terrorist organization by the U.S. State Department, to lay down its arms. The Supreme Court's HLP decision makes this type of work impossible for PJTT to continue, because it cannot run the program without involving the ELN. To do so would be a criminal violation of the material support law. This is the case despite its end goal of fostering a peaceful resolution to a 50-year-old conflict, a goal that matches the interests of the U.S. government.



PJTT’s programs were centered on sharing the experiences of senior leaders who negotiated the Central American Peace Accords and former Northern Irish paramilitary leaders who were part of the Good Friday Agreements with the principle actors involved in the Colombian government-ELN peace process. The former militants serve as examples of successfully negotiated ends to conflict. During small workshops and informal meetings with actors from both sides, participants highlighted the challenges of negotiating with their enemy, managing the transition from paramilitary organization to non-violent political party, disarmament and demobilization, as well as building political will for dialogue.

PJTT’s work was encouraged by the U.S. Embassy in Bogotá, which saw it as valuable, since the Embassy was unable to speak with the ELN itself. PJTT briefed the Embassy on its efforts and remained in close contact with them throughout the program.



George Lopez, the Rev. Theodore M. Hesburgh, C.S.C. Professor of Peace Studies at the **University of Notre Dame's Kroc Institute for International Peace Studies**, described how the HLP ruling puts some international peace organizations that collaborate with Catholic groups "in a very odd situation." For example, "We're allowed to work with the Colombian bishops, but we're not allowed to work with them in the same room when they are working with (groups on the terrorist list)" Lopez told Catholic News Service in a telephone interview. "What happens to that relationship with the local bishops' conference or a local Caritas organization that's dealing with the rebels ... is there guilt by association? This ruling leaves that very, very nebulous."

Philippines

The communist insurgency in the Philippines has a very long and bloody history. Despite numerous and expensive attempts by third parties to bring the parties to the conflict together out of the country for negotiations, all attempts had failed. A local NGO working in the conflict zone wanted to try another approach, since it could see that all parties to the conflict were frustrated by the stalemate and by the endless cycle of violence and poverty. However, the **American Friends Service Committee (AFSC)** was not able to help them build on their success because listed groups were involved.



The local NGO's project began when the commander in a faction of the Communist Party of the Philippines New People's Army (CPP/NPA) agreed to work with the local NGO, the mayor of the largest town, and the military to negotiate a grassroots peace agreement, in order to alleviate the economic suffering and reduce the violence in the area. The NGO and the mayor acted as intermediaries between the military and CPP/NPA. Their goal was to involve both groups in supporting community development projects and in creating conditions that allowed local farmers to grow and market their crops with a sense of security.



This agreement has led to a greater sense of security and much improved economic activity in the area. The mayor set up his own 'social integration program' for rebels who wanted to lay down their arms and access government services. Although the ultimate goal of a recognized peace agreement has not yet been reached, communities are no longer labeled and punished as 'terrorist strongholds,' open confrontations have been greatly reduced, and military commanders report that NPA rebels in their area 'have returned to the fold of the law'.

AFSC hoped to replicate this successful model, and met with the people involved about their desire to build on and also disseminate their experience of grassroots work with armed actors. AFSC considered supporting travel for the main actors to come to Cambodia to discuss the process and strategize over next steps. But the plan never went forward. AFSC would have been in violation of the material support law because the CPP/NPA is on the U.S. list of terrorist organizations.

Nepal

With the United States Agency for International Development's (USAID) strong support, the **Peace Appeal Foundation** helped establish the Nepal Transitions to Peace Initiative. This provided a forum allowing representatives of Nepal's political parties to discuss issues related to resolving Nepal's two-decade old violent conflict. The talks ultimately included the Unified Communist Party of Nepal (Maoist), a U.S. Specially Designated Global Terrorist since October 2003.



Because the Maoist group is on the U.S. terrorist list, both the U.S. embassy and USAID staff were uncertain about whether funding could be used to support travel of Nepalese and foreign advisors to New Delhi to vital confidential talks with Maoist representatives. Before authorizing each trip, the embassy had to cable Washington for clearance allowing project funds to be used. In one instance, this clearance came in time to provide financial support to the trip. In another instance it did not, so that the senior technical advisor's trip to join a critical interlocutor with the Maoists was cancelled. As a result, the Nepalese interlocutor found himself calling the senior technical advisor by cell phone throughout the discussions in New Delhi, which detracted from the potential effectiveness of this rare opportunity.

Palestinian Territories



In 2006 a deputy minister in the Palestinian Ministry of Religious Affairs asked the **United States Institute of Peace (USIP)** for help in training religious school teachers on non-violence and religious pluralism. USIP did not pursue the project because it quickly became apparent that it would require working with individuals with ties to Hamas, which is on the U.S. terrorist list. An opportunity to help reduce Hamas' belligerence was lost.

In 2010, the South African government asked the **United States Institute of Peace (USIP)** to help it facilitate a meeting between leaders of Hamas and Fatah, and former Israeli generals/officials, but USIP could not participate because of the material support prohibition. The opportunity for progress that might have been made was lost.

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Africa Action reports that a moderate faction in Hamas, which may eventually be prepared to recognize Israel's existence, has engaged in back channel discussions with organizations in the Israeli peace movement. U.S. organizations are prevented from contacts with such organizations in Israel on the ground that this could constitute an indirect violation of the material support law.



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The Carter Center, which counsels regional organizations about peaceful conflict resolution, wanted to create a student "parliament" among the universities located in Gaza. Students would be trained to adjudicate disputes through peaceful dialogue rather than violence. Although this activity is intended to help reduce terrorism, it places the Carter Center at risk. If any of the students participating are known or likely to be members of a designated Foreign Terrorist Organization (FTO), the Carter Center could be prosecuted for material support of terrorism.

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The **Interfaith Encounter Association**, an Israeli group, has a project that brings together Jewish and Muslim religious leaders, specifically aiming at people who are not yet involved in dialogue. In one encounter, a group of Salafi Sheikhs who consider Hamas, from a religious perspective, as moderates, participated in the dialogue. They had never met with any Jews before. But after the encounter they wanted to continue the dialogue. These religious figures have influence on thousands of people. A change in tone towards Jews and Israelis will have a great influence. This effort cannot expand to include leaders who are associated with Hamas, due to the prohibition on material support.



Sri Lanka

In 2006 when the Norwegian government was bringing the different parties in Sri Lanka together, a request from the Liberation Tigers of Tamil Eelam (LTTE) passed through an intermediary to United States Institute of Peace (USIP) asking it to provide training to LTTE leadership on conflict analysis and negotiating skills. Because the LTTE is on the U.S. terrorist list, the material support restrictions apply, and USIP was unable to respond positively.



In Sri Lanka, the **Peace Appeal Foundation** aided stakeholders in establishing a confidential multi-party dialogue process between Sinhalese, Tamil, and Muslim political stakeholders in a peace process called the “One Text Initiative.” This process initially received strong support from USAID’s Office of Conflict Management and Mitigation, which cited the project as a “best practice.” However, after the LTTE assigned a proxy representative to participate, USAID and the U.S. embassy began a long drawn out process to determine whether funding for the initiative could continue. U.S. support for the process was ultimately withdrawn, dealing a severe blow to the effectiveness of the talks. After the substantial investment in time and energy that had been put into the One Text Initiative, the withdrawal of funding created a crisis environment that was extremely detrimental during a sensitive period. No other donor agency in Sri Lanka had been able to establish a similar initiative with all stakeholders.

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Chic Dambach, Executive Director of **Alliance for Peacebuilding**, held a collaborative session with a group of NGOs working in Sri Lanka in 2008-2009, before the country’s conflict with the LTTE escalated. The purpose was to bring about a dialog between the government and the LTTE. The meetings were tense, as a representative of the government was present, and many of the NGOs feared retaliation for any statements involving support for government-LTTE dialog.

Progress was made, however, when Dambach was able to summarize the NGOs’ views on the potential for dialog to the Sri Lankan Ambassador in the U.S. The Ambassador retired shortly after that, but then approached Dambach with a proposal for assembling a peacebuilding task force that would bring the LTTE and government together. At that point, Dambach had to decline to pursue the project, because the LTTE is listed as a Foreign Terrorist Organization and the kinds of communications he would need to have in order to bring them into a dialog are prohibited under the material support laws.

The Future of Peacebuilding

There are peace processes in many countries around the world, including Guatemala, South Africa and Bali. The ones that succeed all have key stakeholders trained in principle negotiations. The material support prohibition, however, hinders this training and work.



For example, **Eastern Mennonite University's (EMU) Graduate Center for Justice & Peacebuilding** works with former U.S. Fulbright scholars who have received a Master of Arts degrees in conflict transformation and peacebuilding. As faculty teaches a whole new generation of conflict resolution experts, they wonder whether they could be punished by the U.S. government simply for practicing their profession.

Background information on the Supreme Court’s HLP decision, U.S. material support laws and more can be found at:
<http://www.charityandsecurity.org/litigation/HLP>

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