

# Chapter 6

## Counterterrorism Laws Create Barriers for International Philanthropy and Programs

Counterterrorism laws, the *Anti-Terrorist Financing Guidelines* (Guidelines), and, to a lesser degree, the *Risk Matrix for the Charitable Sector* (Risk Matrix), have significantly affected international philanthropy and programs. Direct grants to grassroots organizations appear to be declining, due to funders that want to avoid unwanted scrutiny by the Department of the Treasury (Treasury), even though international giving is up overall. Disaster and other relief organizations are faced with the dilemma of complying with laws barring broadly defined “material support” for terrorism or violating the International Red Cross’s long-standing standards of neutrality in aid delivery. Organizations that seek funding from the United States Agency for International Development (USAID) are now susceptible to extensive terrorist vetting by the State Department, and development and relief programs are hampered when working in areas controlled by designated organizations. These measures have done little to fight terrorism. Instead, they are politicizing aid and creating a hierarchy of beneficiaries that is not based on need.

### Impacts on Private International Philanthropy

Private philanthropy plays a significant role in global aid and development. Accounting for 22 percent of all foundation grants, international grantmaking totaled \$4.2 billion in 2006, a staggering 48.4 percent increase from 2005.<sup>182</sup> Some interpret the growth in international philanthropy as indicative of a healthy sector. However, deconstructing the data reveals some noteworthy trends.

International grantmaking typically happens through one of three channels:

- A grant is given to a U.S.-based organization with international programs (for example, Save the Children);
- A grant is given directly to an overseas recipient (also known as a cross-border grant); or
- A grant is given to an intermediary that regrants the funds to organizations and projects outside the United States (intermediaries are both U.S.- and non-U.S.-based).<sup>183</sup>

<sup>182</sup> *Foundation Giving Trends*, Foundation Center, 2008 Edition. The Foundation Center’s database sample includes private foundations and community foundations (it does not include public grantmaking charities).

<sup>183</sup> Grantcraft defines an intermediary as “an organization (not an individual) that provides specialized expertise to foundations and other donors, in particular through the regrating of funds to organizations and projects outside the United States. An intermediary’s expertise may include legal knowledge of U.S. and other governments’ guidelines, a deep understanding of a specific issue or region of the world, or capacity building and other support to grantee organizations.” *Working With Intermediaries*, at <http://www.grantcraft.org/index.cfm?fuseaction=page.viewPage&pageID=932&nodeID=1>.

## Collateral Damage

Each can be an effective means of international giving. However, the complexities of international grantmaking, coupled with the uncertain regulatory environment created by counterterrorism measures, are marginalizing overseas recipients in the developing world.

The percentage of international grants targeting overseas recipients dropped from almost 40 percent in 1998 to 31 percent in 2001<sup>184</sup> and dropped again between 2002 and 2004.<sup>185</sup> In 2006, the percentage rebounded, accounting for almost 45 percent of all international grants. However, 60.1 percent went to grantees in Switzerland, England, and Kenya. This suggests many grants were given to intermediaries for regranteeing or to western-based organizations in the developing world. Likely only a minority of cross-border grants went to grassroots organizations in the developing world.

There are many reasons why intermediaries and western-based charities played such a significant role in international grantmaking. Both are often used to help with due diligence and terrorism vetting, often when grantmakers lack the capacity to do it themselves or when they are intimidated from engaging in cross-border giving by the threat of being shut down by Treasury if something goes wrong. In a 2004 Foundation Center survey, a majority of respondents agreed that it was now more difficult to fund internationally due to “the more demanding and uncertain regulatory environment” and “increased security risks abroad.”<sup>186</sup>

In 2003, *Alliance*,<sup>187</sup> the world’s leading magazine on philanthropy and social investment, published a study on perceived barriers to international giving by U.S. foundations.<sup>188</sup> The study found that complying with counterterrorism measures is particularly difficult in the context of cross-border grants. Organizations interviewed for the study noted practical problems in applying counterterrorism measures and organizational anxiety due to the draconian consequences of non-compliance. Many also



feared the long-term consequences to international grantmaking because of the unpredictability of counterterrorism enforcement – inexperienced grantmakers “will [be] frighten[ed] away ... think[ing] that it is not worth the effort.”<sup>189</sup>

A 2003 *New York Times* article entitled “Small Charities Abroad Feel Pinch of U.S. War on Terror” noted that Rockefeller Philanthropy Advisors suspended funding for a Caribbean program designed to “kick-

<sup>184</sup> *International Grantmaking Update*, Foundation Center, October 2003, at <http://foundationcenter.org/gainknowledge/research/pdf/intlupdt.pdf>.

<sup>185</sup> *International Grantmaking Update*, Foundation Center, October 2006, at <http://foundationcenter.org/gainknowledge/research/nationaltrends.html>.

<sup>186</sup> *Ibid.*

<sup>187</sup> <http://www.alliancemagazine.org/>

<sup>188</sup> Rachel Humphrey, “Alliance Extra – June 2003.” *Alliance* (June 2003).

<sup>189</sup> *Ibid.*

start a flow of American charity” to that often-overlooked region. Inability to comply with the Guidelines was cited as the reason, and Eileen Growald, Rockefeller Philanthropy’s chairwoman, stated that “[i]f these guidelines become the de facto standard of best practices for giving abroad, we might very well have to stop making grants outside the United States.”<sup>190</sup> Later in the article, Robin Krause of the law firm Patterson, Belknap, Webb & Tyler said, “If a donor can choose between three programs, he’s likely to choose the least risky one, and right now that’s not an international one.”

In her paper *Philanthropy at Risk*, Dr. Nancy Billica<sup>191</sup> warns of overly conservative programmatic changes within international grantmaking organizations, saying “philanthropists are sometimes impelled to do more than what is outlined in order to demonstrate that they are acting in good faith and in full compliance – a hedge against the possibility of even more intrusive and/or restrictive government actions in the future.”<sup>192</sup> Furthermore, vague government policies surrounding international philanthropy create the appearance that it is a risky grantmaking environment, causing some organizations to turn away from international work or not start international programs.<sup>193</sup> She also notes that counterterrorism measures especially affect grantmaking organizations with small budgets because they lack the personnel or resources to engage in the exhaustive new procedures.<sup>194</sup>

Although it appears that international funders are finding ways around perceived and real barriers to international grantmaking, the face of international philanthropy is changing. At a time in history when America has so much to gain by supporting international philanthropy, it is unfortunate that it is becoming more difficult. There is data to suggest that international assistance does much more than make Americans feel good; it also makes the world feel good about America, thereby counteracting anti-American sentiment. For example, Terror Free Tomorrow conducted surveys within Indonesia to gauge public opinion about the U.S. after the 2004 Indian Ocean tsunami, when more than \$13.4 billion in U.S. humanitarian aid, both public and private, went to help victims.<sup>195</sup> Due to the tsunami relief, 44 percent of respondents in January 2006 reported a favorable view of the U.S., compared to 15 percent in May 2003, before the tsunami.<sup>196</sup> In addition, Indonesia reported the lowest level of support for Osama bin Laden and terrorism since 9/11. This same phenomenon was recorded by Terror Free Tomorrow in Pakistan after the 2005 earthquake;<sup>197</sup> 75 percent of Pakistanis had a more favorable opinion of America, and most cited earthquake relief as the reason.

### **Barriers to U.S.-Based Relief and Development Program Operations**

U.S. counterterrorism laws have also made it increasingly difficult for U.S.-based relief and development organizations and their volunteers to operate in areas controlled by

<sup>190</sup> Stephanie Strom, “Small Charities Abroad Feel Pinch of U.S. War on Terror,” *The New York Times*, (Aug. 5, 2003).

<sup>191</sup> Professor of Political Science at the University of Colorado, Boulder and consultant for Urgent Action Fund.

<sup>192</sup> [http://www.urgentactionfund.org/new\\_site/assets/files/philanthropy\\_at\\_risk/Philanthropy\\_072507.pdf](http://www.urgentactionfund.org/new_site/assets/files/philanthropy_at_risk/Philanthropy_072507.pdf)

<sup>193</sup> *Ibid.*

<sup>194</sup> [http://www.urgentactionfund.org/new\\_site/assets/files/philanthropy\\_at\\_risk/Philanthropy-Post%209-11\\_Final.pdf](http://www.urgentactionfund.org/new_site/assets/files/philanthropy_at_risk/Philanthropy-Post%209-11_Final.pdf), p. 15.

<sup>195</sup> [http://www.internationaldonors.org/issues/pdf/tlp\\_exec-summary.pdf](http://www.internationaldonors.org/issues/pdf/tlp_exec-summary.pdf)

<sup>196</sup> <http://www.terrorfreetomorrow.org/articlenav.php?id=82>

<sup>197</sup> <http://www.terrorfreetomorrow.org/articlenav.php?id=5#top>

## Collateral Damage

designated organizations. When designated groups control territory and governmental functions in areas where relief agencies need to go, such as eastern Sri Lanka after the 2004 tsunami disaster, it is nearly impossible to set up displaced persons camps and hospitals, travel, or distribute food and water without violating the laws barring “material support” for terrorists.

In Sri Lanka, the Liberation Tigers of Tamil Eelam (LTTE), a designated terrorist organization, controlled areas where thousands died from the tsunami and hundreds of thousands lost their homes. The story of one volunteer, Ahilan Arulanantham, told in testimony before the House Judiciary Subcommittee on Crime, Terrorism and Homeland Security,<sup>198</sup> exemplifies the experience of many relief workers. The son of Sri Lankan immigrants and an attorney for the ACLU of Southern California, Arulanantham was on his way to Sri Lanka to visit relatives when the tsunami hit in December 2004. Instead of his planned vacation, he spent three weeks volunteering for relief efforts with several organizations, including at a displaced persons camp serviced by the Hospital Christian Fellowship. He told the committee,

Unlike our material support laws, the tsunami did not differentiate between areas under the LTTE’s control and those controlled by the Sri Lankan government ... in the first few days of relief work we focused on treating people’s immediate medical needs – injuries wounds, dehydration, respiratory infections – with medicines and dressings. Such assistance would probably fit under the [legal] exception for “medicine.” But within a week, the most serious public health problems of the hundred of thousands of displaced people changed. In situations of mass displacement, the greatest killer is often infectious disease, which spread through contaminated water, inadequate sanitation, and exposure from lack of shelter. To prevent outbreaks, humanitarian organizations must provide displaced people with water purification systems, toilets, tents, and other such goods which are not “medicine”, but nonetheless serve an absolutely critical medical function ...

I have spoken with doctors, teachers, and others who want to work with people desperately needing their help in Sri Lanka, but fear liability under the portions of the material support laws that bar expert advice, training and personnel ...

Indeed the current material support provision with its limited exceptions and extremely broad intent requirement leads to truly irrational results. A humanitarian organization may send medicine to aid life-saving surgeries, but arguably cannot send a doctor to perform those surgeries. Medicine is useless to people dying of starvation, but the law contains no exception for food.

---

<sup>198</sup> Testimony at Oversight Hearing on Amendments to the Material Support for Terrorism Laws: Section 805 of the USA PATRIOT Act and Section 6603 of the Intelligence Reform and Terrorism Prevention Act of 2004, by Ahilan Arulanantham, Staff Attorney, American Civil Liberties Union, May 10, 2005, available at <http://www.aclu.org/safefree/general/17536leg20050510.html>.

### The Code of Conduct

Compliance with overly broad U.S. counterterrorism laws can force NGOs to violate The International Red Cross and Red Crescent Movement's Principles of Conduct in Disaster Response Programmes:

1. The humanitarian imperative comes first;
2. Aid is given regardless of the race, creed or nationality of the recipients and without adverse distinction of any kind. Aid priorities are calculated on the basis of need alone;
3. Aid will not be used to further a particular political or religious standpoint;
4. We shall endeavor not to be used as an instrument of government foreign policy;
5. We shall respect culture and custom;
6. We shall attempt to build disaster response on local capacities;
7. Ways shall be found to involve program beneficiaries in the management of relief aid;
8. Relief aid must strive to reduce vulnerabilities to future disaster as well as meeting basic needs;
9. We hold ourselves accountable to both those we seek to assist and those from whom we accept resources;
10. In our information, publicity and advertising activities, we shall recognize disaster victims as dignified human beings, not hopeless objects.

Source: <http://www.ifrc.org/publicat/conduct/code.asp>

### Government-Funded International Aid Programs Under Fire

USAID is an independent government agency that provides foreign assistance throughout the globe to support U.S. foreign policy objectives.<sup>199</sup> Most assistance is given through nonprofit partners, and in 2006, USAID distributed almost \$10.4 billion,<sup>200</sup>

<sup>199</sup> USAID Primer: What We Do and How We Do It, available at [http://www.usaid.gov/about\\_usaid/PDACG100.pdf](http://www.usaid.gov/about_usaid/PDACG100.pdf).

<sup>200</sup> USAID, Analysis of USAID's Financial Statements, chart 3, available at [http://www.usaid.gov/policy/par06/highlights\\_006.html](http://www.usaid.gov/policy/par06/highlights_006.html), and Sarah R. Eremus, "NGOs Respond to USAID's Proposed Anti-Terror Screen," *The International Journal of Not-for-Profit Law*, Vol. 10, Issue 1 (Dec. 2007).



## Collateral Damage

supporting economic growth, agriculture, trade, global health, democracy, education, conflict prevention, and humanitarian assistance. Many nonprofits that partner with USAID feel the burden of political ties with the U.S. and struggle to maintain neutrality within their international programs. However, counterterrorism measures are making this increasingly difficult.

Since 2001, USAID has adopted new grant procedures to help ensure that any assistance given is not delivered to or through terrorists, in compliance with EO 13224. In addition, congressional spending bills since 2003 have required USAID to take “appropriate steps to ensure that [foreign] assistance is not provided to or through any individual, private or government entity, or education institution that the Secretary [of State] knows or has reason to believe advocates, plans, sponsors, engages in, or has engaged in, terrorist activity.”<sup>201</sup>

Recipients of USAID funds in the West Bank and Gaza undergo additional scrutiny through a USAID program called the “USAID mission for the West Bank and Gaza” (the mission).<sup>202</sup> Any entity that receives support or grants from USAID in these areas must screen their key personnel and leadership. The names of individuals and organizations that implement USAID projects are submitted to USAID/Washington, which sends the information to a government vetting center to be checked against databases and other information



Photo credit: Kinder USA

sources to determine if they are associated with terrorism. Organizations must also certify that no employee is affiliated with any government-listed terrorist group and that they do not provide material support for terrorism.<sup>203</sup> A certification form is now part of every USAID grant agreement. All contracts, grants, and cooperative agreements include clauses that remind recipients that transactions with those associated with terrorism are prohibited.<sup>204</sup>

A 2006 Government Accountability Office (GAO)<sup>205</sup> report criticized USAID’s implementation of the mission in the West Bank and Gaza, saying it did not routinely collect required identification information on individuals, properly maintain the database of vetting results, and did not ensure all sub-awardees signed certification statements. In addition, an internal audit from the USAID Inspector General revealed USAID funding went to a Bosnian group whose president was on a “watch list” and an aid “partner”

<sup>201</sup> USAID West Bank and Gaza Antiterrorism Procedures, available at <http://www.gao.gov/new.items/d061062r.pdf>.

<sup>202</sup> *Ibid.*

<sup>203</sup> Certification Regarding Terrorist Funding required by Internal Mandatory Reference AAPD 04-14, available at <http://www.usaid.gov/wbg/misc/2007-WBG-26.pdf>.

<sup>204</sup> Update to Mission Order #21, 2007-WBG-26, Oct. 5, 2007, at <http://www.usaid.gov/wbg/misc/2007-WBG-26.pdf>.

<sup>205</sup> <http://www.gao.gov/new.items/d061062r.pdf>

who later pleaded guilty to lying to federal agents about his involvement with Osama bin Laden.<sup>206</sup> The audit suggested that “[t]hese instances could have been avoided if USAID had comprehensive vetting policies and procedures.”<sup>207</sup>

USAID moved to address these criticisms in July 2007, when it announced a major shift in its funding process called the Partner Vetting System (PVS). This essentially seeks to implement the West Bank and Gaza programs on a global scale.<sup>208</sup> Under the proposed PVS,<sup>209</sup> every organization that applied for “USAID contracts, grants, cooperative agreements, or other funding or who apply for registration with USAID as Private and Voluntary Organizations (PVOs)” would have had to collect and submit highly personal information to ensure that “neither USAID funds nor USAID-funded activities inadvertently or otherwise provide support to entities or individuals associated with terrorism.”

Nonprofits expressed strong objections to the proposal, leading USAID to restrict the initial implementation of PVS as a pilot program in the West Bank and Gaza.<sup>210</sup> In the meantime, USAID published an *Updated Anti-Terrorism Procedures, Update to Mission Order #21* in October 2007 to address concerns raised in the GAO report.<sup>211</sup>

Many nonprofits hope that before PVS is expanded globally, serious flaws will be addressed. The PVS methodology, not the objective, is the problem. PVS asks organizations to collect information about their employees, directors, officers, any individual “otherwise employed by either for-profit or not-for-profit organizations,” and the recipients of re-grants. Collected information includes phone numbers, date and place of birth, e-mail addresses, nationality, gender, profession, citizenship, and copies of government-issued identifications (such as a social security number and passport number). This information is then submitted to USAID for vetting against unspecified terrorist watch lists. Grants will be denied or funding suspended if a possible match is found.

The initial *Federal Register* notice that announced the PVS exemptions to the Privacy Act also explained that applicants would not be able to dispute a list match because USAID would not inform applicants on why funding is denied. USAID explained that “[b]ecause the results of screening on any particular organization or individual may be derived from classified and sensitive law enforcement and intelligence information, USAID cannot confirm or deny whether an individual ‘passed’ or ‘failed’ screening.”<sup>212</sup> OMB Watch submitted comments warning that “PVS will more than likely result in the creation of a secret USAID blacklist of ineligible grant applicants, based on PVS results. Organizations and individuals erroneously listed as having ties with terrorism will have no way of knowing they are deemed as such, or why. Innocent and well de-

<sup>206</sup> <http://blogs.abcnews.com/theblotter/2007/11/feds-may-fund-t.html>

<sup>207</sup> *Ibid.*

<sup>208</sup> <http://a257.g.akamaitech.net/7/257/2422/01jan20071800/edocket.access.gpo.gov/2007/pdf/07-3330.pdf>

<sup>209</sup> *Ibid.*

<sup>210</sup> Walter Pincus, “U.S. Delays Terror Screening for Aid Groups”, *Washington Post* (Aug. 28, 2007), at <http://www.washingtonpost.com/wp-dyn/content/article/2007/08/22/AR2007082202847.html>.

<sup>211</sup> USAID 2007-WBG-26, Oct. 5, 2007.

<sup>212</sup> <http://a257.g.akamaitech.net/7/257/2422/01jan20071800/edocket.access.gpo.gov/2007/pdf/07-3331.pdf>

## Collateral Damage

serving grantees will have no formal means of appealing such decisions.”<sup>213</sup>

Some nonprofits believe the PVS violates the Privacy Act, which requires, among other things, an agency to only collect information that “is relevant and necessary to accomplish a purpose of the agency required by statute or by executive order of the President.”<sup>214</sup> USAID exempts portions of the PVS database from the Privacy Act, thereby denying participants these necessary protections.<sup>215</sup> Objectors to the PVS argue that the collected information is overly invasive and is not necessary to prevent taxpayer dollars from going to terrorist organizations; other approaches would accomplish that purpose with less harm or invasion of privacy. The International Center for Not-for-Profit Law’s (ICNL) comments about PVS argue that “[t]he Privacy Act was intended to cover just these cases, and should be scrupulously followed to avoid unwarranted intrusions on civil liberties.”<sup>216</sup>

In addition, many nonprofits fear that collecting such personal information for the U.S. government puts USAID partners at risk of being perceived as law enforcement or intelligence agents. The Global Health Council’s letter to USAID said such data collection “can only serve to incite animus and increase the likelihood of attacks. Rather than alleviating risk, the PVS will create new dangers for the staff of its partners, who already routinely work in very difficult circumstances.”<sup>217</sup> InterAction further stated, “[USAID partners] are perceived to be extensions of the U.S. intelligence community, terrorist attacks against them can only increase. Putting our employees in this position is totally inconsistent with efforts USAID is making to help its implementing partners improve the security of staff members working in hazardous places.”<sup>218</sup>

The PVS program was created and implemented without normal rulemaking procedures<sup>219</sup> or authorization from Congress.<sup>220</sup> Additionally, it was originally scheduled to go into effect the day public comments were due, Aug. 27, 2007, suggesting the agency had no plans to consider the concerns of the nonprofit sector. Many organizations submitted comments criticizing the PVS, including OMB Watch, the ACLU, ICNL,

---

<sup>213</sup> <http://www.ombwatch.org/npa/OMBWPVSComments.pdf>

<sup>214</sup> 5 U.S.C. 552a(e)(1) and INCL letter.

<sup>215</sup> *Federal Register*, July 20, 2007, at <http://a257.g.akamaitech.net/7/257/2422/01jan20071800/edocket.access.gpo.gov/2007/pdf/07-3331.pdf>.

<sup>216</sup> INCL letter to Philip Heneghan, USAID, August 2007, at [http://www.npaction.org/pdfs/pvs\\_icnl.pdf](http://www.npaction.org/pdfs/pvs_icnl.pdf).

<sup>217</sup> Global Health Council letter to Philip Menegan, USAID, Aug. 23, 2007.

<sup>218</sup> InterAction letter dated Aug. 17, 2007.

<sup>219</sup> EO 12866 and the Congressional Review Act require all government agencies to screen “significant regulatory action” and “major rules” with the Office of Information and Regulatory Affairs (OIRA). OIRA then reviews the regulations, a statement of need, and “an assessment of costs and benefits of the regulatory action.” Economically significant regulations must include a cost-benefit analysis of reasonable alternatives and “an explanation of why the planned regulatory action is preferable to the identified alternatives.” USAID argued that an OIRA review was not necessary because the PVS is not a “significant regulatory action.” However, EO 12866 tasks OIRA, not the agency proposing the regulations, to decide if a regulatory proposal is significant.

<sup>220</sup> USAID cites “annual foreign operations appropriation legislation” and EO 13224 as statutory authority for the PVS. However, neither of these specifically proscribes the PVS system, and a requirement under 22 C.F.R. Section 226.1 mandates, “USAID shall not impose additional or inconsistent requirements except as provided in Sections 226.4 and 226.14, or unless specifically required by federal statute or executive order.” The “annual foreign operations appropriation legislation” addresses the USAID mission program in the West Bank and Gaza, and EO 13224 grants the Secretaries of State and Treasury the authority to designate individuals and entities as terrorist organizations, not implement a PVS program for all USAID grants.



InterAction and many of its members, and the Global Health Council.<sup>221</sup> InterAction, the largest alliance of international humanitarian and development organizations working overseas, has a historical partnership with USAID in U.S. foreign assistance policy. However, it said, “The process by which this new Partner Vetting System was designed seems to ignore that partnership.”<sup>222</sup>

---

*The PVS program was created and implemented without normal rulemaking procedures or authorization from Congress.*

---

During a public meeting on April 11, 2008, USAID announced that there will be changes made to the program since the July 2007 *Federal Register* announcement. One significant change is that applicants that are denied a grant can present additional information and proceed with an administrative appeal within USAID. However, there will be no formal description of this appeals process or any other change before the program becomes mandatory.

InterAction issued a press release on April 11 that stated, “As USAID has made changes to the proposed PVS, it must reintroduce the PVS, following the applicable rulemaking processes, and provide: accurate descriptions of the appeal and correction process; a concise definition of those individuals in each application organization that will need to provide personal information; and a description of the processes for emergency vetting in appropriate circumstances.”

### **Politicization of Aid**

Compliance with counterterrorism laws can bring nonprofits into conflict with basic tenets of non-discrimination in carrying out international programs. After Sept. 11, 2001, compliance with counterterrorism policies has caused some charities to be perceived as agents of the U.S. government. This, coupled with increasingly negative opinions of the U.S. abroad, impedes the groups’ ability to do politically neutral charitable and development work.

In 2001, former U.S. Secretary of State Colin Powell described non-governmental organizations (NGOs) as “force multipliers”<sup>223</sup> that helped achieve the government’s political and military goals in the war in Afghanistan. The statement generated protests from the nonprofit sector, reflecting what scholar Sarah Lischer calls “[t]he growing friction between military and humanitarian organizations.”<sup>224</sup> Lischer notes that three guiding principles govern nonprofits’ approach to their work: “neutrality, impartiality and independence. Neutrality requires an organization to refrain from taking sides in a conflict. Impartiality means basing the provision of aid solely upon the need of the

---

<sup>221</sup> Available at <http://www.ombwatch.org/article/articleview/3978/1/265?TopicID=1>.

<sup>222</sup> InterAction letter to Philip Heneghan, USAID, Aug. 17, 2007, at [http://www.interaction.org/files.cgi/5976\\_InterAction\\_response\\_to\\_July\\_23\\_Federal\\_Register\\_Notice\\_\(PVS\).pdf](http://www.interaction.org/files.cgi/5976_InterAction_response_to_July_23_Federal_Register_Notice_(PVS).pdf).

<sup>223</sup> U.S. Department of State Remarks by Secretary of State Colin L. Powell to the National Foreign Policy Conference for Leaders of Nongovernmental Organizations (NGO), Oct. 26, 2001. Available at <http://www.globalsecurity.org/military/library/news/2001/10/mil-011026-usia01.htm>.

<sup>224</sup> S.K. Lischer, “U.S. Military Interventions and the Humanitarian Force” (March 2004).

## Collateral Damage

recipients. Independence ensures that governments do not influence the decisionmaking or actions of the NGO.”

Since 9/11, these three principles have been threatened by government policy and counterterrorism measures. Increasingly, U.S. charities and foundations are under pressure to ally themselves with the foreign policy and political goals of government. In December 2003, this led Oxfam’s policy adviser on Iraq, Jo Nickolls, to say, “Bush’s doctrine – the ‘with-us-or-against us’ doctrine – denies the possibility of neutrality by simply vanishing it away. It defines the two sides of a conflict – ‘terrorism’ versus ‘freedom’ and ‘civilisation’ – then automatically assigns all parties to one or the other: if you cannot side with Bush, you are for terrorism.”<sup>225</sup>

This only multiplies an already negative impression of U.S. NGOs abroad, where many believe “that the politicization of aid before and during the war, and the resulting absence of clear distinctions between the U.S. government and aid organizations, including those distinctively focused on independent humanitarian action, has created the perception that all assistance is part of the U.S. agenda.”<sup>226</sup>

The pressure on U.S. nonprofits to adjust their operations to suit U.S. military operations is growing. Department of Defense Directive Number 30000.05 calls on the military to build alliances with nonprofits for “stability operations,” defined as “maintaining order in States and regions.” As a result, an INTRAC Policy Briefing Paper reports, “US NGOs thus today find themselves being approached in various countries by the US military with proposals for joint development and stability activities. Some NGOs and faith-based NGOs complain that the appearance of joint operations or visits by US military personnel imperil the NGO’s reputation for neutrality and independence in the eyes of local communities.”<sup>227</sup>

---

<sup>225</sup> Limits to neutrality in Iraq, Jo Nickolls, Oxfam, at <http://www.odihpn.org/report.asp?id=2579>.

<sup>226</sup> Nicolas de Torrente, “Humanitarian Action under Attack: Reflections on the Iraq War,” *The Harvard Environmental Law Review* (Spring 2004). Available at <http://www.doctorswithoutborders.org/publications/opedsarticles/2004iraq.cfm>.

<sup>227</sup> Joseph McMahon, “Developments in the Regulations of NGOs via Government Counter-Terrorism Measures and Policies,” International NGO Training and Research Center (September 2007).