



PROGRAM ON HUMANITARIAN POLICY AND CONFLICT RESEARCH

HARVARD UNIVERSITY

*Countering Terror in Humanitarian Crises:
The Challenges of Delivering Aid to Somalia*



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Introduction

In the post-9/11 era, humanitarian organizations face a growing dilemma regarding access to vulnerable groups in internal conflicts. On the one hand, international actors have increasingly recognized the importance of engaging with non-state armed groups (NSAGs) to ensure the timely delivery of humanitarian assistance in crisis-affected territories. On the other hand, in recent years, political and policy actors operating at domestic, regional, and international levels have pursued security policies and enacted laws geared toward curbing relationships with NSAGs accused of executing acts of terrorism. As a result of these two parallel developments, humanitarian actors are often uncertain about how to implement aid initiatives based on international legal standards while maintaining adherence to national laws.¹

This dilemma is particularly acute in Somalia. Harakat al-Shabaab al-Mujahideen, or the Shabaab (“the youth” in Arabic), is an al Qaeda affiliate that controls vast swaths of territory in southern and central Somalia. The group has required humanitarian actors, among other measures, to pay fees to deliver humanitarian aid to populations located in territories controlled by the Shabaab. But the United Nations Security Council (UNSC), regional organizations, and individual states — including the United States, the United Kingdom, Australia, and Canada — have undertaken a series of coordinated actions geared toward isolating and criminalizing engagement with the Shabaab. The resulting counterterrorism legal framework has left humanitarian organizations with a predicament: engaging with and potentially paying fees to the Shabaab may be necessary for delivering lifesaving assistance to tens of thousands of civilians but may also engender criminal liability. In light of the famine that began in 2011, a situation that the United Nations High Commissioner for Refugees (UNHCR) dubbed the “worst humanitarian crisis in the world,”² the situation in Somalia has been particularly grim, and the potential consequences of this unresolved dilemma to crisis-affected civilians particularly adverse.

This paper examines the challenges that result from this quandary. Part I offers an overview of the historical context of Somalia’s ongoing humanitarian crisis. Part II describes the legal basis for humanitarian initiatives in Somalia, focusing on tensions between different bodies of law that have led humanitarian actors to perceive a lack of legal clarity. Part III details key challenges — either caused by or compounded by this legal confusion — of delivering humanitarian aid in Somalia. And Part IV explores avenues that humanitarian organizations and governments might consider moving forward.

¹ See generally Naz K. Modirzadeh, Dustin A. Lewis, and Claude Bruderlein, “Humanitarian engagement under counter-terrorism: a conflict of norms and the emerging policy landscape,” 93 *International Review of the Red Cross* No. 883 (2011).

² “Somalia is world’s worst humanitarian disaster: UN,” *Reuters*, July 11, 2011 (<http://af.reuters.com/article/topNews/idAFJJOE76A0F720110711>).

I. The Crisis in Somalia

Diversion and politicization of humanitarian aid has dogged Somalia since the rule of Siyad Barre, the dictator who governed the country from 1969 to 1991. However, during Barre's rule, the dilemmas of humanitarian organizations in Somalia were very different than those of today. As one writer notes, the Barre regime "transform[ed] [refugee] camps into de facto training sites and the international aid into logistical support for those military units." But, the writer continues, "Somalia during the Cold War was too valuable an ally of the West," and "[s]ecurity concerns thus entirely overrode and badly compromised humanitarian operations in Somalia in the 1980s." While diversion of aid has been a constant problem in Somalia, the views of international actors have been shaped by the legal and political environment. Under Barre, security concerns trumped worries about aid diversion, while today, security concerns drive increased scrutiny of humanitarian operations to prevent aid diversion. This section examines how this state of affairs arose.

A. Historical Context

In the wake of the downfall of the Barre government in 1991, various Somali factions battled for dominance in the country, and no entity has since succeeded in controlling all of Somalia.³ Certain northern parts of the country have splintered from formal centralized control, with Somaliland declaring independence in 1991 and Puntland proclaiming autonomy in 1998.⁴ And various international diplomatic and military interventions — as well as numerous national reconciliation conferences convened over the past two decades — have failed to stabilize the country.⁵ In 2004, two years of peace talks in Nairobi resulted in the creation of the Transitional Federal Government (TFG),⁶ which the UNSC and the AU have recognized as the legitimate government of Somalia.⁷ But the TFG has been unable to control much territory outside of Mogadishu.⁸

³ See Mark Bradbury, "State-building, Counterterrorism, and Licensing Humanitarianism in Somalia," Feinstein International Center, Briefing Paper, September 2010, pp. 2-7.

⁴ *Ibid.*, p. 5.

⁵ The most recent national reconciliation conference was held in September 2011. See "Somali leaders launch reconciliation bid," *Al Jazeera*, September 4, 2011 (<http://www.aljazeera.com/news/africa/2011/09/201194153630941320.html>). For an overview of international interventions in Somalia since 1991, see generally Ken Menkhaus, "Stabilisation and humanitarian access in a collapsed state: the Somali case," 34 *Disasters* Issue Supplement S3 (2010).

⁶ Menkhaus, *supra* note 5, at S331.

⁷ See, e.g., "Statement by the President of the Security Council," May 11, 2011, S/PRST/2011/10; and "Decision on the Report of the Peace and Security Council on its Activities and the State of Peace and Security in Africa," July 27, 2010, Assembly/AU/Dec.294 (XV), para. 7.

⁸ "Somalia's al-Shabab lose 'key town' to Kenya troops," *BBC News*, February 2, 2012 (<http://www.bbc.co.uk/news/world-africa-16853688>).

Numerous intergovernmental organizations and individual states have undertaken military and peacekeeping actions to support the TFG. In December 2006, Ethiopian forces entered Somalia in an attempt to bolster the TFG.⁹ In January 2007, the AU's Peace and Security Council created the African Union Mission to Somalia (AMISOM),¹⁰ which received UNSC authorization the following month,¹¹ and which, in February 2012, the UNSC increased to 17,731 troops and police.¹² AMISOM's mandate includes supporting the TFG and creating a secure environment for delivering humanitarian aid in Somalia.¹³ In October 2011, Kenyan troops entered Somali territory to battle Shabaab militants.¹⁴ And the United States has reportedly also intervened — using unmanned aerial vehicles, or drones — to attack anti-governmental forces as well as armed elements linked to al Qaeda.¹⁵ These efforts have failed to stabilize the country, and Somalia remains mired in ongoing conflict.

B. The Humanitarian Crisis

Somalia's instability has fueled a humanitarian crisis that has plagued the country for decades,¹⁶ and the situation worsened drastically in 2011, when a historic drought struck the Horn of Africa.¹⁷ The United Nations (UN) subsequently declared a state of famine in several regions of Somalia.¹⁸ A July 2011 report published by the United Nations

⁹ See generally Napoleon A. Bamfo, "Ethiopia's invasion of Somalia in 2006: Motives and lessons learned," 4 *African Journal of Political Science and International Relations* No. 2 (2010).

¹⁰ Human Rights Watch, "No Place for Children: Child Recruitment, Forced Marriage, and Attacks on Schools in Somalia," February 2012, pp. 14-15.

¹¹ S/RES/1744 (2007).

¹² S/RES/2036 (2012).

¹³ African Union, "Communiqué of the 69th Meeting of the Peace and Security Council," January 19, 2007, PSC/PR/Comm(LXIX), para. 8.

¹⁴ "Kenya sends more troops to Somalia, 10 AU soldiers killed," *Reuters*, October 21, 2011 (<http://www.reuters.com/article/2011/10/21/us-kenya-somalia-idUSTRE79K5TQ20111021>).

¹⁵ "US shadow wars rely on drones, computers," *CBS News*, June 18, 2012 (http://www.cbsnews.com/8301-505245_162-57455096/us-shadow-wars-rely-on-drones-computers/). President Obama, in a letter to Congress in June 2012, admitted that the United States has engaged in "a limited number" of operations in Somalia, though the letter did not specify the use of drones. See "Obama Acknowledges U.S. Is Fighting Groups Tied to Al Qaeda in Somalia and Yemen," *New York Times*, June 15, 2012 (<http://www.nytimes.com/2012/06/16/world/obama-admits-us-fight-of-al-qaeda-has-extended-to-somalia-and-yemen.html>).

¹⁶ International Crisis Group, "Somalia: An Opportunity that Should Not Be Missed," Africa Briefing No. 87, February 22, 2012, pp. 2-3.

¹⁷ OCHA, "Eastern Africa Drought," Humanitarian Report No. 3, June 10, 2011, available at: <http://reliefweb.int/sites/reliefweb.int/files/resources/OCHA%20Eastern%20Africa%20Humanitarian%20Report%20No.%203%20-%20Drought%20May%202011%20FINAL.pdf>

¹⁸ The UN initially declared a state of famine in July 2011 in just two regions: southern Bakool and Lower Shabelle. See United Nations, "Press Conference on Somalia Famine by United Nations Humanitarian Coordinator," July 20, 2011, available at:

Office for the Coordination of Humanitarian Affairs (OCHA) stated that 2.85 million people in the country were in need of relief assistance.¹⁹ The following month, according to OCHA, the situation had worsened, leaving 3.2 million people in need of “immediate, lifesaving assistance (...).”²⁰ In February 2012, the UN declared an end to the famine but asserted that 2.3 million people were still in need of emergency humanitarian assistance, including 325,000 children suffering from malnourishment.²¹ And as Mark Bowden, the United Nations Humanitarian Coordinator for Somalia, stated, Somalia could “easily slip back into very severe conditions.”²²

The international community has addressed this crisis in various intergovernmental fora. The February 2012 London Conference between various donor governments and the TFG included a humanitarian side event at which the participants “noted that emergency assistance should be provided in a way that is supportive of the recovery and development of the Somali people, and creates the conditions for lasting solutions for the displaced, including voluntary return (...).”²³ These governments further “agreed to deepen ongoing efforts, led by the United Nations, to strengthen coordination (...).”²⁴ Additionally, in March 2012, the UNSC held an open debate on Somalia, after which the UNSC “emphasize[d] the need for the international community to provide well coordinated, timely and sustained humanitarian assistance to the Somali people (...).”²⁵

http://www.un.org/News/briefings/docs/2011/110720_Somalia.doc.htm. The following month, the UN declared a state of famine in three additional regions: the Balcad and Cadale districts of Middle Shabelle, the Agooye corridor, and Mogadishu. See “Somali famine spreads to three new areas,” *Reuters*, August 4, 2011 (<http://af.reuters.com/article/topNews/idAFJJOE77303M20110804?sp=true>). In September 2011, the UN declared the entire Bay region to be in a state of famine. See “U.N. Officials Say Famine Is Widening in Somalia,” *New York Times*, September 5, 2011 (<http://www.nytimes.com/2011/09/06/world/africa/06somalia.html>).

¹⁹ OCHA, “Weekly Humanitarian Bulletin,” Issue #26, June 24 – July 2011, available at: http://reliefweb.int/sites/reliefweb.int/files/resources/Full%20Report_23.pdf

²⁰ OCHA, “Weekly Humanitarian Bulletin,” Issue #31, July 29 – August 5, 2011, available at: http://reliefweb.int/sites/reliefweb.int/files/resources/fullreport_80.pdf

²¹ “UN says Somali famine over, but warns action needed to forestall new crisis,” *UN News Centre*, February 3, 2012 (<http://www.un.org/apps/news/story.asp?Cr1=famine&NewsID=41133&Cr=somalia>).

²² *Ibid.*

²³ Department for International Development, “London Conference on Somalia: Humanitarian conclusions,” February 23, 2012, available at: <http://www.dfid.gov.uk/News/Speeches-and-statements/2012/London-Conference-on-Somalia-Humanitarian-Conclusions/>

²⁴ *Ibid.*

²⁵ United Nations Security Council, “In Wake of London Conference on Somalia, Security Council, In Statement, Affirms August Deadline for Ending Transition, Encourages More

C. The Shabaab

Somalia's insecurity — and the resulting ongoing humanitarian crisis — is driven in large part by the TFG's struggle against the Shabaab, a Somali NSAG devoted to overthrowing and replacing the current government with an Islamist state.²⁶ The group is an offshoot of the Islamic Courts Union (ICU), which was an amalgam of local Shari'a courts formed after the fall of the Barre regime.²⁷ The ICU, reportedly with the support of the Government of Eritrea,²⁸ took control of Mogadishu in 2006, was driven out of the city by Ethiopian and Somali government forces the following year, and subsequently fragmented into different factions, some of which favored reconciliation with the TFG, some of which favored a continuation of armed struggle.²⁹ One of these anti-reconciliation factions morphed into the Shabaab.³⁰

The Shabaab has claimed responsibility for numerous attacks inside Somalia, including a recent bombing — perpetrated in April 2012 — of the National Theater in Mogadishu.³¹ Shabaab attacks outside of Somalia have included two 2010 bombings in Kampala, reportedly undertaken to exert pressure on Uganda and Burundi to cease contributing troops to AMISOM.³² The Shabaab has also gained control of significant amounts of territory in Somalia. In 2008, the Shabaab seized neighborhoods inside Mogadishu,³³ and in 2010 declared the initiation of a “massive war” against “invaders,”³⁴ but in August 2011, the group was pushed out of Mogadishu after intensive fighting.³⁵

Permanent UN Footprint,” available at:
<http://www.un.org/News/Press/docs/2012/sc10566.doc.htm>

²⁶ See generally Abdi O. Shuriye, “Al-Shabaab’s Leadership Hierarchy and Its Ideology,” 2 *Academic Research International* No. 1 (2012).

²⁷ “Profile: Somalia’s Islamic Courts,” *BBC News*, June 6, 2006 (<http://news.bbc.co.uk/2/hi/5051588.stm>).

²⁸ “Report of the Monitoring Group on Somalia and Eritrea pursuant to Security Council resolution 1916 (2010),” S/2011/433, July 18, 2011, para. 282.

²⁹ David Shinn, “Al Shabaab’s Foreign Threat to Somalia,” 56 *Orbis* No. 3, 206 (2011).

³⁰ *Ibid.*, pp. 206-207.

³¹ “Deadly Blast Shatters Calm in Somali Capital,” *New York Times*, April 4, 2012 (http://www.nytimes.com/2012/04/05/world/africa/deadly-blast-shatters-calm-in-somali-capital.html?_r=1&ref=somalia).

³² “Somalia militants ‘behind’ Kampala World Cup blasts,” *BBC News*, July 12, 2010 (<http://www.bbc.co.uk/news/10602791>).

³³ “Shabab Concede Control of Capital to Somalia Government,” *New York Times*, August 6, 2011 (<http://www.nytimes.com/2011/08/07/world/africa/07somalia.html>).

³⁴ “Somalia’s Al Shabab: Does suicide attack mark the launch of a new offensive?” *Christian Science Monitor*, August 24, 2010 (<http://www.csmonitor.com/World/Africa/2010/0824/Somalia-s-Al-Shabab-Does-suicide-attack-mark-the-launch-of-a-new-offensive>).

³⁵ *Supra* note 33.

Currently, the Shabaab retains control over significant southern and central portions of the country.³⁶

As the Shabaab has risen in power, the group has developed an increasingly close relationship with al Qaeda.³⁷ Beginning in 2008, public statements from Shabaab and al Qaeda leaders reflected a growing level of mutual support between the two groups.³⁸ Then, in February 2012, the Shabaab declared itself to be an integral part of the al Qaeda network.³⁹ These developments have thrust the Shabaab directly onto the international community's counterterrorism agenda. As a result of the listing of the Shabaab as a terrorist organization by most donor states, humanitarian aid workers in Somalia have been forced to grapple with dilemmas associated with the criminalization of humanitarian engagement.

II. The Legal Foundation for Delivering Humanitarian Aid in Somalia

This section examines the two countervailing sets of laws that govern humanitarian engagement in Somalia. The first body of law — which includes international humanitarian law (IHL), customary international law, and UNSC resolutions — promotes humanitarian engagement with NSAGs. The second body of law — which includes measures taken in the past decade by the UNSC, regional entities, and national governments — criminalizes engagement with NSAGs that have been accused of undertaking terrorist acts. The tension between these two legal frameworks forms the foundation for many of the dilemmas that humanitarian aid workers in Somalia face.

A. International Laws Promoting Humanitarian Engagement with NSAGs in Armed Conflict

The international legal framework underlying humanitarian access in situations of armed conflict traces its modern roots back to the four Geneva Conventions of 1949. These four treaties, as well as the Additional Protocols of 1977, comprise the cornerstone of IHL, which states adopted to govern situations of armed conflict. Since the situation in Somalia constitutes a non-international armed conflict (NIAC), the relevant portion of IHL treaty law is Common Article 3, which applies to armed conflicts “not of an international character occurring in the territory of one of the High Contracting Parties (...).”⁴⁰ Common Article 3 provides a clear legal basis for humanitarian organizations to autonomously offer services to all parties — including non-state parties — to armed

³⁶ Supra note 8.

³⁷ Shinn, supra note 29, at 207.

³⁸ Shinn, supra note 29, at 207-208.

³⁹ “Somalia’s al-Shabab join al-Qaeda,” *BBC News*, February 10, 2012 (<http://www.bbc.co.uk/news/world-africa-16979440>).

⁴⁰ See Article 3 common to Geneva Conventions I-IV. Though Additional Protocol II also applies to NIACs, Somalia is not a State Party to this treaty, and hence, the treaty does not apply.

conflicts. The article states, “An impartial humanitarian body, such as the International Committee of the Red Cross, may offer its services to the Parties to the conflict.”⁴¹

Additionally, the International Committee of the Red Cross (ICRC) concluded in its 2005 study on *Customary International Humanitarian Law* that numerous factors, including state practice, official state statements, and military manuals applicable to NIACs support the notion that, in NIACs, states and NSAGs controlling territory have an “obligation to allow the free passage of relief supplies (...).”⁴² As the ICRC study states, “If it is established that a civilian population is threatened with starvation and a humanitarian organization which provides relief on an impartial and non-discriminatory basis is able to remedy the situation, a party is obliged to give consent.”⁴³ However, as legal scholars have noted, IHL does not create “a general right to humanitarian assistance” or an unlimited mandate for humanitarian organizations to carry out any activities they wish at any time and in any manner humanitarian actors choose.⁴⁴

Alongside these treaty-based and customary legal obligations, the UNSC has adopted numerous resolutions promoting engagement with NSAGs. The UNSC has repeatedly called attention to the importance of “all parties” in agreeing to and facilitating humanitarian relief operations in Somalia,⁴⁵ as well as in other armed conflicts.⁴⁶ The UNSC has also urged “all parties,” including NSAGs, in various armed conflicts to take all required measures to meet civilian populations’ basic needs.⁴⁷

Additionally, the UNSC has specifically requested that states and humanitarian organizations support and cooperate in monitoring and reporting on, and implementing plans to halt, wartime violations by NSAGs and states listed in reports of the UN’s Monitoring and Reporting Mechanism, which investigates violations against children in armed conflict.⁴⁸ These measures suggest not only that humanitarian organizations can

⁴¹ See Article 3 common to Geneva Conventions I-IV. Additional IHL treaty articles may be applicable as customary law. See, e.g., Geneva Convention IV, Articles 23 and 59; and Additional Protocol II, Article 18(1).

⁴² See ICRC, *Customary International Humanitarian Law*, “Rule 55. Access for Humanitarian Relief to Civilians in Need,” available at: http://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule55

⁴³ Ibid.

⁴⁴ See, e.g., Yoram Dinstein, “The Right to Humanitarian Assistance,” 53 *Naval War College Review* No. 4 (2000).

⁴⁵ See, e.g., S/RES/1964 (2010), para. 17.

⁴⁶ See, e.g., S/RES/1674 (2006), para. 11; S/RES/1889 (2009), para. 12; S/RES/1894 (2009), para. 14; and S/RES/1923 (2010), para. 22.

⁴⁷ See, e.g., S/RES/1417 (2002), para. 5; S/RES/1564 (2004), preamble; and S/RES/1894 (2009), para. 1.

⁴⁸ S/RES/1612 (2005) established the Monitoring and Reporting Mechanism (MRM) to monitor and report on the following six violations against children in armed conflict: killing or maiming

engage with NSAGs in the delivery of assistance but also that humanitarian organizations *should* engage with these groups as a means to prevent specific violations of IHL.

B. Counterterrorism Regulations

Though the IHL-based laws, customary laws, and UNSC resolutions described above seemingly encourage engagement with NSAGs, recent counterterrorism regulations initiated at international, regional, and national levels aim to restrict engagement with certain NSAGs. These laws suggest a drive by states to prevent individuals and organizations from supporting terrorist groups, including the Shabaab. This section examines the counterterrorism laws relevant to the conflict in Somalia.

United Nations Security Council

Beginning in the 1990s, and intensifying particularly after the terrorist attacks of September 11, 2001, the UNSC adopted a series of resolutions requiring member states to take certain steps to disrupt the funding and movements of particular entities and individuals — namely, members of Al Qaeda, the Taliban, and associated forces, including members of the Shabaab.⁴⁹ The UNSC has required member states to refrain from providing any form of support to entities or persons involved in acts of terrorism, as well as to prohibit member states' nationals and individuals in member state territories from making financial resources available for the benefit of anyone involved in terrorist acts.⁵⁰ The UNSC's counterterrorism resolutions also oblige all UN member states to ensure that any person who supports acts of terrorism is brought to justice.⁵¹

A series of Somalia-specific UNSC resolutions imposes sanctions on entities and individuals accused of fueling the Somalia conflict or exacerbating the humanitarian crisis. This sanctions process — which built on the sanctions regime initiated in 1992⁵²

of children, recruitment or use of child soldiers, rape and other forms of sexual violence against children, abduction of children, attacks against schools or hospitals, and denial of humanitarian access to children. Originally, the MRM monitored all six violations but only in countries in which “recruitment and use of child soldiers” had occurred, thus allowing this violation to function as a ‘trigger.’ S/RES/1882 (2009) added both “killing and maiming of children” and “rape and other sexual violence against children” to the list of triggers. S/RES/1998 (2011) added “attacks on schools and/or hospitals” to the list of triggers.

⁴⁹ See, e.g., S/RES/1390 (2002); S/RES/1455 (2003); S/RES/1526 (2004); S/RES/1617 (2005); S/RES/1735 (2006); S/RES/1822 (2008); S/RES/1904 (2009); and S/RES/1989 (2011). These resolutions built on pre-9/11 UNSC resolutions, including S/RES/1267 (1999) and S/RES/1333 (2000). The Consolidated List of sanctioned individuals and entities is available at: <http://www.un.org/sc/committees/1267/consolist.shtml>

⁵⁰ See S/RES/1373 (2001); S/RES/1456 (2003); S/RES/1535 (2004); S/RES/1624 (2005); S/RES/1787 (2007); S/RES/1805 (2008); and S/RES/1963 (2010).

⁵¹ See S/RES/1373 (2001), para. 2(e).

⁵² S/RES/733 (1992).

— began in November 2008, when the UNSC, invoking its authority under Chapter VII of the UN Charter, adopted resolution 1844. With this resolution, the UNSC decided, among other measures, to create a UN Committee that would designate individuals and entities determined to be “engaging in or providing support for acts that threaten the peace, security or stability of Somalia”; violating an arms embargo imposed by earlier UNSC resolutions; or “obstructing the delivering of humanitarian assistance to Somalia, or access to, or distribution of, humanitarian assistance in Somalia (...).”⁵³ The resolution — which, according to the UN Charter, all member states must implement — obligated member states to freeze funds, financial assets, and economic resources of designated groups and individuals and criminalized actions that financially benefit these designated entities.⁵⁴ Subsequently, the Committee designated the Shabaab, certain specific Shabaab members, as well as other individuals, formally condemning these entities to financial isolation.⁵⁵

However, in March 2010, the UNSC — again acting under its Chapter VII authority — adopted resolution 1916, which established a limited humanitarian carve-out to the Somalia sanctions regime. The resolution states that the UNSC:

Decides that for a period of twelve months from the date of this resolution, and without prejudice to humanitarian assistance programmes conducted elsewhere, the obligations imposed on Member States in paragraph 3 of resolution 1844 (2008) shall not apply to the payment of funds, other financial assets or economic resources necessary to ensure the timely delivery of urgently needed humanitarian assistance in Somalia, by the United Nations, its specialized agencies or programmes, humanitarian organizations having observer status with the United Nations General Assembly that provide humanitarian assistance, or their implementing partners (...).⁵⁶

In March 2011, the UNSC extended the humanitarian carve-out for a period of sixteen months.⁵⁷ But this carve-out only applies to certain entities that are part of, or associated

⁵³ S/RES/1844 (2008), para. 8.

⁵⁴ S/RES/1844 (2008), para. 3.

⁵⁵ See “List of Individuals and Entities Subject to the Measures Imposed By Paragraphs 1, 3 and 7 of Security Council Resolution 1844 (2008),” available at: http://www.un.org/sc/committees/751/pdf/1844_cons_list.pdf

⁵⁶ S/RES/1916 (2010), para. 5.

⁵⁷ See S/RES/1972 (2011), para. 4, which states that the UNSC “[d]ecides that for a period of sixteen months from the date of this resolution, and without prejudice to humanitarian assistance programmes conducted elsewhere, the obligations imposed on Member States in paragraph 3 of resolution 1844 (2008) shall not apply to the payment of funds, other financial assets or economic resources necessary to ensure the timely delivery of urgently needed humanitarian assistance in Somalia, by the United Nations, its specialized agencies or programmes, humanitarian organizations having observer status with the United Nations General Assembly that provide humanitarian assistance, or their implementing partners (...).”

with, the UN, thus excluding other non-governmental organizations (NGOs), such as Medecins Sans Frontieres (MSF), which has extensive operations in Somalia.⁵⁸ Additionally, the humanitarian carve-out is not mandatory; in some cases — such as the United States — has not been incorporated into member states' domestic law; and as one recent policy brief notes, raises “fears that it sets a precedent in which humanitarian action is exempted only in particular circumstances, rather than this being the norm in situations of humanitarian need.”⁵⁹

Regional Organizations

The African Union (AU) and the European Union (EU) have similarly taken steps to require their respective member states to prohibit the provision of support to acts of terrorism and to promote cooperation and coordination in counterterrorism measures.⁶⁰ Specifically, the Council of the European Union, to implement the UNSC resolutions regarding sanctioning designated entities related to the conflict in Somalia, issued an April 2010 decision that requires EU member states to give effect to the UN's sanctions provisions, including the humanitarian carve-out, against the Shabaab, and other relevant entities and individuals.⁶¹ Such measures exemplify a growing trend in multilateral, regional, and domestic cooperation in global counterterrorism efforts.⁶²

⁵⁸ Humanitarian Policy Group, “Counter-terrorism and humanitarian action: Tensions, impact and ways forward,” HPG Policy Brief 43, October 2011, p. 9.

⁵⁹ *Ibid.*

⁶⁰ For the AU, see, e.g., African Union, “OAU Convention on the Prevention and Combating of Terrorism,” (entered into force Dec. 6, 2002). For the EU, see, e.g., Official Journal of the European Communities, “Council Common Position of 27 December 2001 on the application of specific measures to combat terrorism,” available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2001:344:0093:0096:EN:PDF>; Official Journal of the European Communities, “Council Framework Decision of 13 June 2002 on combatting terrorism (2002/475/JHA),” available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2002:164:0003:0007:EN:PDF>; and Official Journal of the European Union, “Council Framework Decision 2008/919/JHA of 28 November 2008 amending Framework Decision 2002/475/JHA on combatting terrorism,” available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:330:0021:0023:EN:PDF>

⁶¹ Official Journal of the European Union, “Council Decision 2010/231/CFSP of 26 April 2010 concerning restrictive measures against Somalia and repealing Common Position 2009/138/CFSP, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:105:0017:0021:EN:PDF>

⁶² See, e.g., “United Nations Global Counter-Terrorism Strategy,” Background Note, March 2009, available at: http://www.un.org/terrorism/pdfs/CT_Background_March_2009_terrorism2.pdf; and Kim Lane Scheppele, “The International Standardization of National Security Law,” *Journal of National Security Law and Policy*, Vol. 4 (2010).

Individual States

At the domestic level, a range of countries — especially in the past decade — have criminalized or otherwise imposed sanctions against providing material support, financial assistance, or other resources to entities considered to be involved in acts of terrorism.⁶³ The United States, Australia, Canada, and the United Kingdom — as well as other countries — have directed specific measures against the Shabaab, establishing penalties for various forms of support to the group or specific members.⁶⁴

In the United States, at least two sets of laws criminalize support for the Shabaab and could affect humanitarian access and the delivery of humanitarian assistance in parts of Somalia. First, a federal statute — commonly called the “Material Support” statute — makes it a crime punishable up to fifteen years in prison to provide “any property, tangible or intangible, or service (...) except medicine or religious materials” to any foreign terrorist organization.⁶⁵ The “Material Support” statute was enacted in the mid-1990s and was expanded by the Patriot Act in 2001 to add “expert advice or assistance” to terrorist organizations to the list of proscribed activities.⁶⁶ This law has applied to the Shabaab since 2008, when the U.S. State Department declared the group a Foreign Terrorist Organization (FTO).⁶⁷

⁶³ See generally United Kingdom Secretary of State for Foreign and Commonwealth Affairs, “Counter-Terrorism Legislation and Practice: A Survey of Selected Countries,” October 2005, available at: http://www.terrorisme.net/pdf/2005_terrorlaws.pdf; Nicola McGarrity and George Williams, “Counter-Terrorism Laws in a Nation without a Bill of Rights: The Australian Experience,” 2 *City University of Hong Kong Law Review* No. 1 (2010); “The Anti-Terrorism Special Measures Law (Tentative English Summary),” October 2001, available at: http://www.kantei.go.jp/foreign/policy/2001/anti-terrorism/1029terohougaiyou_e.html; and Transnational Terrorism, Security & the Rule of Law, “Case Study: Germany,” November 20, 2008, available at: [http://www.transnationalterrorism.eu/tekst/publications/Germany%20case%20study%20\(WP%206%20Del%2012b\).pdf](http://www.transnationalterrorism.eu/tekst/publications/Germany%20case%20study%20(WP%206%20Del%2012b).pdf)

⁶⁴ See, e.g., Australian Government, “Al-Shabaab,” November 8, 2010, available at: http://www.nationalsecurity.gov.au/agd/WWW/NationalSecurity.nsf/Page/What_Governments_are_doing_Listing_of_Terrorism_Organisations_Al-Shabaab?open&query=shabaab; Public Safety Canada, “The Government of Canada lists Al Shabaab as a terrorist organization,” News Release, March 7, 2010, available at: <http://www.publicsafety.gc.ca/media/nr/2010/nr20100307-eng.aspx>; and Home Office, “Proscribed terror groups or organisations,” November 11, 2011, available at: <http://www.homeoffice.gov.uk/publications/counter-terrorism/proscribed-terror-groups/>

⁶⁵ See “18 USC 2339B — Providing Material Support or Resources to Designated Foreign Terrorist Organizations,” available at: <http://www.law.cornell.edu/uscode/text/18/2339B>

⁶⁶ Charles Doyle, “Terrorist Material Support: An Overview of 18 U.S.C. 2339A and 2339B,” Congressional Research Service, July 19, 2010, p. 2.

⁶⁷ “Designation of al-Shabaab as a Foreign Terrorist Organization,” U.S. Department of State, Federal Register: Volume 73, Number 53, Public Notice 6136, February 26, 2008, available at: <http://www.state.gov/j/ct/rls/other/des/102446.htm>

Second, two additional measures — Executive Orders 13224 and 13536 — prohibit U.S. individuals and organizations from providing a range of economic benefits to the Shabaab.⁶⁸ To implement these legal provisions, as well as others, the Office of Foreign Assets Control (OFAC) of the Department of the Treasury administers three sets of sanctions regimes that include the Shabaab and designated members of the group.⁶⁹

Additionally, state donor agencies have instituted policies for ensuring adherence to counterterrorism laws. For example, the United States Administration for International Development (USAID) requires recipient organizations to attest that funds have not supported listed entities in the past ten years and that new funds will not be used to provide support to such entities.⁷⁰ Also, in the United Kingdom, the Charity Commission assesses domestic non-profit organizations' compliance with laws and administrative regulations, including those in the counterterrorism sphere.⁷¹

III. Challenges of Delivering Humanitarian Aid

A. Shabaab Interference

The Shabaab has continually interfered with humanitarian operations by restricting access through a series of measures that has included imposing “taxes” on organizations delivering aid to Shabaab-controlled territory, as well as coercive measures that include

⁶⁸ Executive Order 13224 is available at: <http://www.treasury.gov/resource-center/sanctions/Programs/Documents/terror.pdf>; and Executive Order 13536 is available at: <http://www.gpo.gov/fdsys/pkg/FR-2010-04-15/pdf/2010-8878.pdf>. Executive Order 13536 blocks in particular the property and property interests of specific individuals and entities listed in its Annex, as well as those of specific individuals and entities determined by OFAC to have engaged in acts that threaten the peace, security, or stability of Somalia; to have obstructed humanitarian access to Somalia; to have supplied arms or related material in violation of the United Nations arms embargo on Somalia; or to have provided support for any of these activities.

⁶⁹ The three sets of sanctions regimes are: 1) The Global Terrorism Sanctions Regulations implementing Executive Order 13224; 2) The Foreign Terrorist Organizations Sanctions Regulations implementing provisions of the Antiterrorism and Effective Death Penalty Act, including the requirement that financial institutions that possess or control funds in which al-Shabaab or its agents have an interest maintain control over those funds and report the funds to the Secretary of the Treasury; and 3) The Somalia Sanctions Regulations implementing Executive Order 13536. See U.S. Department of the Treasury, “Counter Terrorism Sanctions,” available at: <http://www.treasury.gov/resource-center/sanctions/Programs/pages/terror.aspx>

⁷⁰ U.S. Administration for International Development, “Acquisition & Assistance Policy Directive (AAPD) 04-14, Certification Regarding Terrorist Financing Implementing E.O. 13224 (Revision 2),” September 24, 2004, available at: <http://www.oired.vt.edu/sanremcrsp/documents/research-activities/phase3/AAPD04-14.pdf>

⁷¹ Charity Commission (Liverpool), “Operational Guidance: Charities and Terrorism,” August 29, 2007.

kidnapping and even killing aid workers.⁷² In December 2009, according to OCHA, the Shabaab “requested humanitarian agencies to register, and pay a \$3,000 fee” for “security activities” in the Hiraan region.⁷³ Additionally, the Shabaab has required humanitarian agencies to register and submit staff lists;⁷⁴ in January 2011, Shabaab representatives prevented MSF supervisors from leaving the town of Dinsor;⁷⁵ and in February 2011, OCHA reported that in the Marka district, the Shabaab “required all NGO national staff working in the district to pay a 10 per cent tax from their salaries to the administration” and justified the “tax” by asserting that the money would be used “to support drought affected communities in the region.”⁷⁶ The Shabaab has banned numerous UN agencies — including the United Nations Children’s Fund (UNICEF), UNHCR, and the World Health Organizations (WHO) — from operating in Shabaab-controlled territory after accusing these entities of “illicit activities and misconduct.”⁷⁷ And in January 2012, the Shabaab banned the International Committee of the Red Cross (ICRC) from territory under Shabaab control after claiming that the ICRC had distributed expired food to beneficiaries.⁷⁸

Additionally, in March 2010, the Monitoring Group that supports the UNSC-established Somalia Sanctions Committee issued a report alleging that collusion between World Food Programme (WFP) ground transporters and local implementing partners had resulted in diversion of up to fifty percent of food aid from the intended beneficiaries, with the Shabaab receiving five to ten percent of the aid in areas under the Shabaab’s control.⁷⁹ WFP strongly denied the report’s allegations,⁸⁰ but the report and the extensive press coverage — not only of the report itself but also of a leaked draft of the

⁷² Bureau of Democracy, Human Rights, and Labor, U.S. Department of State, “2010 Human Rights Reports: Somalia,” April 8, 2011, available at: <http://www.state.gov/documents/organization/160144.pdf>

⁷³ OCHA Somalia, “Humanitarian Access Update 01 to 31 December 2009,” available at: http://reliefweb.int/sites/reliefweb.int/files/resources/E02D73520BB2CE3A492576BF001E0ECC-Full_Report.pdf

⁷⁴ OCHA Somalia, “Humanitarian Access Update, 01 to 31 January 2010.”

⁷⁵ Médecins Sans Frontières, “Médecins Sans Frontières (MSF) calls for the freedom of movement of its medical staff in Somalia to be respected,” January 10, 2011, available at: <http://www.somali.msf.org/2011/01/medecins-sans-frontieres-msf-calls-for-the-freedom-of-movement-of-its-medical-staff-in-somalia-to-be-respected/>

⁷⁶ OCHA Somalia, “Humanitarian Access Update, 01 to 28 February 2011.”

⁷⁷ “Somalia: Al-Shabab ban on agencies threatens aid,” *IRIN*, November 28, 2011 (<http://www.irinnews.org/Report/94321/SOMALIA-Al-Shabab-ban-on-agencies-threatens-aid>).

⁷⁸ “Somali Islamists ban Red Cross,” *The Guardian*, January 31, 2012 (<http://www.guardian.co.uk/world/2012/jan/31/somali-islamists-ban-red-cross>).

⁷⁹ “Report of the Monitoring Group on Somalia pursuant to Security Council resolution 1853 (2008),” S/2010/91, March 10, 2010, para. 235.

⁸⁰ World Food Programme, “Food Aid and Somalia’s Needy: A Six-point Response to the Monitoring Group’s Report,” available at: <http://www.wfp.org/node/21755>

report and WFP's response — resulted in increased state awareness of and sensitivity to misappropriation of assistance by the Shabaab.⁸¹

B. Lack of Clarity About Applicable Laws

Shabaab's control over humanitarian access and aid has often left relief workers unsure about the legal implications of interactions with the Shabaab due to uncertainty about which actions fall within the realm of counterterrorism legislation.⁸² Various U.S. officials have attempted to offer clarifications about which options are legally available to humanitarian organizations, but confusion persists.

OFAC, in the midst of the 2011 famine, published a document entitled "Frequently Asked Questions Regarding Private Relief Efforts in Somalia."⁸³ This document aims to "provide guidance to the public regarding making donations toward or undertaking the delivery of humanitarian assistance in Somalia."⁸⁴ But HPCR interlocutors involved in humanitarian operations in Somalia have indicated that the document leaves many concerns unaddressed.⁸⁵ First, the OFAC document appears to apply only to the State Department and USAID's grantees and contractors, and therefore appears not to apply to other humanitarian organizations, such as many European or other privately funded organizations. Second, though the document states that certain activities will not be "a focus for OFAC sanctions enforcement," this statement applies only to very limited activity — namely, incidents in which humanitarian organizations pay "taxes" to the Shabaab unintentionally and have no reason to know they are dealing with the Shabaab. Evidently, the intentional payment of taxes will remain a point of focus for OFAC. Third, the legal significance of this guidance is far from clear, including the extent to which being a "focus" or not for OFAC sanctions enforcement is legally relevant. Fourth, the criminal law statute prohibiting support to terrorist organizations (hereafter, the "Material Support" statute), which the OFAC document does not address, remains fully in force. The enforcement of this statute is under the responsibility of the U.S. Attorney General within the Justice Department while OFAC belongs to the Treasury Department.

On her side, U.S. Secretary of State, Hilary Clinton, in August 2011, attempted to clarify the applicability of the "Material Support" statute by stating:

⁸¹ See, e.g., S/PV.6313, May 12, 2010, available at: <http://www.un.org/Depts/dhl/resguide/scact2010.htm>

⁸² Sarah Margon, "Unintended Roadblocks: How U.S. Terrorism Restrictions Make It Harder to Save Lives," Center for American Progress, 2011, p. 17.

⁸³ Office of Foreign Assets Control, "Frequently Asked Questions Regarding Private Relief Efforts in Somalia," August 4, 2011, available at: http://www.treasury.gov/resource-center/sanctions/Programs/Documents/somalia_faq.pdf

⁸⁴ Ibid.

⁸⁵ HPCR interviews with INGOs and NGOs conducted in Nairobi, August 2011.

If people from the UN or from other organizations are trying to get food into the al-Shabaab controlled region, the United States will not be imposing the penalties that are called for under our laws, particularly, as you know, the Patriot Act, which talks about any material support that goes to terrorists. And if it inadvertently does go to al-Shabaab, we think, unfortunately, the situation calls for us to offer some room for more maneuverability in trying to get the food in.⁸⁶

Though this statement may initially appear to be relevant for discerning the legal liability of organizations providing relief in Shabaab-controlled territories, in fact the legal or policy effect, if any, is difficult to decipher. The Secretary of State, who may designate FTOs and may revoke such designations, does not investigate or prosecute violations of the “Material Support” statute. That task falls to the Attorney General, who has not publicly stated that he will refrain from imposing the statute in this context. As a result, humanitarian organizations operating in Somalia continue to lack clarity and face a situation in which, as one recent analysis states, U.S. officials “are encouraging aid groups to take on the risks of additional legal liability without providing any real guarantees that there will be no criminal enforcement (...).”⁸⁷

C. Donor Concerns and Compliance Requirements

The international community has exhibited a tremendous commitment to funding humanitarian and development assistance initiatives in Somalia. From 2006 to 2010, states and intergovernmental bodies contributed over \$2.4 billion in humanitarian and development assistance to Somalia.⁸⁸ In 2011, states and intergovernmental bodies committed \$1,341,314,097 of humanitarian funding to Somalia, and as of June 2012, had committed to an additional \$654,486,376.⁸⁹

Yet these figures may mask a downward funding trend from major donors, as identified by DARA in a recent analysis of the issue.⁹⁰ According to DARA, donations from the United States, the United Kingdom, Norway, Italy, and France for assistance to Somalia in 2009 decreased — in some cases quite significantly — from the prior year.⁹¹ The

⁸⁶ Secretary of State Clinton, “Remarks With Canadian Foreign Minister John Baird Following Their Meeting,” August 4, 2011, available at: <http://www.state.gov/secretary/rm/2011/08/169568.htm>

⁸⁷ Margon, *supra* note 82.

⁸⁸ Financial Tracking Service, “Total Humanitarian Funding per Donor,” Somalia, 2006 — 2010, available at: <http://fts.unocha.org/pageloader.aspx?page=emergencyCountryDetails&cc=som>

⁸⁹ Financial Tracking Service, “Total Humanitarian Funding per Donor,” Somalia, 2011 and 2012, available at: <http://fts.unocha.org/pageloader.aspx?page=emergencyCountryDetails&cc=som>

⁹⁰ DARA, “Somalia Crisis Report 2010,” p. 214, available at: http://daraint.org/wp-content/uploads/2010/12/Somalia-Crisis-Report_HRI-2010.pdf

⁹¹ *Ibid.*

reason for diminished funds is uncertain, but one plausible explanation is heightened donor concerns regarding misappropriation and diversion of assistance to the Shabaab and to other armed groups.

Additionally, some donors have instituted compliance requirements to ensure that aid is not diverted. Humanitarian workers from various organizations have expressed concerns that certain compliance requirements — including delivering documentation such as photographic evidence, latitude and longitude coordinates of initiative locations for verification on Google Earth, and beneficiary lists — are overly onerous.⁹² HPCR interviews with key interlocutors indicate that both local and international NGOs frequently struggle to keep up with the increasing amount of required project reporting, particularly in light of decreased funding levels.⁹³ And some humanitarian workers have expressed concern that data collected as part of compliance measures may ultimately be used in support of counterterrorism-related operations.⁹⁴ Because of such concerns, some international non-governmental organizations (INGOs) have opted not to take funding from certain donors, such as USAID.⁹⁵

The difficulties of compliance requirements are compounded by the fact that — due to security concerns — various humanitarian organizations that previously operated in south and central Somalia either have withdrawn and shifted focus to supporting local implementing organizations or have maintained a minimal presence in affected areas after removing international staff, who “remotely manage” local staff in south and central Somalia from Nairobi.⁹⁶ Such operations — removed from the immediate on-the-ground situation — are deemed necessary by humanitarians to protect aid workers but can also lead — as MSF has stated of its limited experience with “remotely managed”

⁹² HPCR interviews, supra note 85.

⁹³ HPCR interviews, supra note 85.

⁹⁴ HPCR interviews, supra note 85.

⁹⁵ HPCR interviews, supra note 85.

⁹⁶ HPCR interviews, supra note 85. For more information on remote managing in Somalia, as well as in other contexts, see generally Oxfam International and Merlin, “Remote Programming Modalities in Somalia,” Discussion Paper drafted for the Somalia NGO Consortium, January 2009; Abby Stoddard, Adele Harmer, and Jean S. Renouf, “Once Removed: Lessons and challenges in remote management of humanitarian operations for insecure areas,” *Humanitarian Outcomes*, February 25, 2010, available at: http://www.cic.nyu.edu/humanitarian/docs/once_removed.pdf; and Riccardo Polastro, “Humanitarian response in conflict: lessons from South Central Somalia,” *Humanitarian Exchange Magazine*, Issue 53, March 2012, available at: <http://www.odihpn.org/humanitarian-exchange-magazine/issue-53/humanitarian-response-in-conflict-lessons-from-south-central-somalia>

operations in Somalia — to “a loss of fiscal and operational accountability and a likely diversion of aid.”⁹⁷

IV. Key Questions

As this paper has demonstrated, Somalia offers a valuable case study for assessing the core dilemmas that humanitarian actors face in light of the counterterrorism regulations adopted in the post-9/11 era. But the tensions between various actors’ humanitarian and counterterrorism objectives are also relevant to numerous other situations across the globe. This section highlights central areas for discussion as humanitarian organizations, donors, and governments move forward in addressing this issue.

To the extent that states seek to prohibit engagement with listed entities, particularly those that control territory or access to vulnerable populations in need of humanitarian assistance, how might humanitarian organizations respond to increasingly strict regulatory frameworks?

Numerous humanitarian organizations — concerned about the impact of laws criminalizing humanitarian engagement with listed armed groups and varied, as well as overlapping, donor regulations restricting operations in areas where listed groups are active — are currently contemplating their responses to a normative framework that many humanitarian professionals find confusing. Through consultations with major UN agencies, humanitarian INGOs active in Somalia, and governments, HPCR has identified a series of possible responses for humanitarian actors.

At the most extreme, some organizations may cease their activities, determining that compliance with the current regulatory framework is impossible. In this scenario, humanitarian organizations may limit themselves far beyond the actual limits of the law, and some evidence exists that this “chilling effect” has already begun.⁹⁸ Other organizations may discontinue relationships with certain donors, attempting to shield themselves from specific donor requirements for sharing beneficiary data or to forego donor-imposed limitations on negotiations with listed groups controlling access to populations in need. Another possibility is that humanitarian organizations wishing to continue humanitarian operations may evade and conceal relationships with listed groups or the specifics of on-the-ground operations. And other humanitarian organizations may adopt a different tactic by ‘opting in’ to the current regulatory and

⁹⁷ Medecins Sans Frontieres, “Somalia: The Need for Independent Humanitarian Aid,” January 17, 2007, available at: <https://www.doctorswithoutborders.org/publications/article.cfm?id=1927&cat=open-letters>

⁹⁸ The United Nations Special Rapporteur on Terrorism, Counter-Terrorism and Human Rights has referred to a “chilling effect” on humanitarian aid due to “a risk that charity aid would be identified as indirectly funding terrorist organizations.” See United Nations Department of Public Information, “Press Conference by Special Rapporteur On Protecting Human Rights While Countering Terrorism,” October 26, 2010, available at: http://www.un.org/News/briefings/docs/2010/101026_Scheinin.doc.htm

compliance frameworks. With this option, humanitarian organizations risk losing a certain of independence, but — after accepting intensified oversight procedures — may benefit from increased leeway from governments.

But other options exist for the humanitarian community. In particular, humanitarian organizations could work together to develop new norms to regulate humanitarian engagement with NSAGs. These norms might be developed through a new treaty on the laws of NIAC, an international declaration on principles of humanitarian action, or another form to be devised through a consensus between key humanitarian and government actors. With these options, rather than accepting the confines of the current regulatory framework, humanitarian organizations may be able to reshape the regulatory landscape in a manner that leads to greater legal clarity.

What potential strategies are available to states wishing to ensure both a coherent and coordinated approach to global security and a robust, principled, and effective international humanitarian response to conflict-related crises around the world?

Given the confusion experienced by many humanitarian actors regarding the current counterterrorism legal framework — particularly in circumstances involving NSAGs — states may wish to revise existing regulations at international, regional, or national levels. But short of re-drafting or significantly altering legislation, states may benefit from exploring pragmatic solutions to monitoring and risk mitigation that might better allow humanitarian organizations to operate in a coherent, predictable, and stable regulatory environment. Rather than framing the discussion as one of counterterrorism versus humanitarianism, states may be in a position to explore “best practices” of experienced humanitarian organizations. With this option, states may be able to collaborate with the humanitarian community and perhaps even lead a process by which the humanitarian community develops standardized regulations for organizations operating in contexts where listed armed groups control territory.

Governments may also wish to study the responses of states that have combatted domestic insurgencies, particularly in contexts in which NSAGs have controlled territory. In many cases, such states — arguably the most threatened by NSAGs — have devised innovative and effective pragmatic approaches to allowing humanitarian organizations to negotiate, coordinate, and deliver life-saving assistance to populations living under the control of NSAGs waging hostilities against host states.⁹⁹ Such states may be able to provide insight and experience to help governments engage in addressing the tensions and dilemmas described in this paper.

Such engagement may be particularly beneficial given the fact that the current counterterrorism regulatory system — to the extent that regulations pose difficulties for humanitarian organizations receiving funding from multiple donors to fully adhere with

⁹⁹ HPCR interviews, *supra* note 85.

all compliance measures — may result in a decrease in the efficiency and efficacy of humanitarian aid operations. HPCR interlocutors have indicated that in several conflict situations in which regulations prohibit or criminalize interaction with listed groups, humanitarian agencies have been less willing to coordinate with one another and with umbrella coordinating bodies.¹⁰⁰ Hence, governments may wish to view the issue not only from the perspective of security but also in terms of how security-based regulations can impact humanitarian foreign policy and potentially countervail a well-functioning aid industry.

¹⁰⁰ HPCR interviews, *supra* note 85.