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**THESIS**

**KEEPING SURVIVORS ALIVE: SECURITY AND  
HUMANITARIAN AID OPERATIONS DURING  
NATURAL-DISASTER RESPONSE IN CONFLICTS**

by

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**KEEPING SURVIVORS ALIVE: SECURITY AND HUMANITARIAN AID  
OPERATIONS DURING NATURAL-DISASTER RESPONSE IN CONFLICTS**

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## **ABSTRACT**

When a disaster occurs during a conflict, the security concerns and need for humanitarian aid can increase; survivors need both, but often the government needs to choose which takes precedence, and humanitarian aid can fall by the wayside. This thesis examines the impacts of political and military hindrances in conflicts between armed groups and governments on the Red Cross Movement's humanitarian aid delivery during disaster response following the declaration of the war on terror. This thesis is in two parts. The first part establishes the environment in which the Red Cross Movement operates and the attitude toward humanitarian aid in conflict. The second part analyzes the disaster response in three cases, along with the security issues that led to restrictive environments for humanitarian aid and underserved populations. In addition, this thesis includes two historical case studies to provide a comparison between response before and after the war on terror.

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## **LIST OF ACRONYMS AND ABBREVIATIONS**

FATA	Federally Administered Tribal Areas (Pakistan)
FATF	Financial Action Task Force
GAM	Gerakan Aceh Merdeka
GoP	Government of Pakistan
GoSL	Government of Sri Lanka
HLP	Humanitarian Law Project
IAC	international armed conflict
ICRC	International Committee of the Red Cross
IDP	internally displaced person
IFRC	International Federation of Red Cross and Red Crescent Societies
IHL	international humanitarian law
JI	Jemaah Islamiya (Indonesia)
KP	Khyber Pakhtunkhwa (Pakistan)
LTTE	Liberation Tigers of Tamil Eelam (Sri Lanka)
MCDA	international military and civil defense asset
MMI	Mujahedeen Council of Indonesia
NDMA	National Disaster Management Agency
NGO	non-governmental organization
NIAC	non-international armed conflict
NPO	non-profit organization
OCHA	United Nations Office of Coordination of Humanitarian Assistance
PKK	Kurdistan Workers' Party
PMI	Palang Merah Indonesia (Indonesian Red Cross)
PRSC	Pakistani Red Crescent Society
P-TOMS	Post-Tsunami Operations Management Structure
RCRC	Red Cross and Red Crescent
TMVP	Tamil Makkal Viduthalai Puligal (Sri Lanka)
TNI	Nentara Nasional Indonesia
UN	United Nations

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## EXECUTIVE SUMMARY

When a disaster occurs during a conflict, the security concerns and need for humanitarian aid can increase; survivors need both, but often the government needs to choose which takes precedence and humanitarian aid can fall by the wayside. In the aftermath of a natural disaster, populations are displaced and additional burdens are placed on affected governments to aid the survivors—even those who are considered enemies of the state. When a disaster occurs in the midst of a conflict, it can significantly impact governments' and armed groups' abilities to defend and fight.

Natural disasters are non-discriminatory forces that can lead to a scarcity of resources through massive loss of life, depletion of food and water, and destruction of transportation routes. Often survivors, who have already suffered from the conflict, participated in the conflict, or live in areas controlled by armed groups, may find themselves in more vulnerable positions and perhaps stay in the same shelters or camps. At the same time, humanitarian aid workers who are trying to provide impartial and neutral assistance are often caught in between the government and armed groups. The Red Cross Movement has cited counterterrorism laws and the increased use of the military as recent additional issues that are detrimental to the provision of aid because they create an illusion of a unified front that includes non-governmental organizations (NGOs) in the fight against terrorism. These issues lead to uneven provision of aid, which goes against the Red Cross Movement's code of conduct that aid will be provided in a neutral, independent, and impartial manner.

The responses to the 2004 Indian Ocean tsunami in Indonesia and Sri Lanka and the 2010 Pakistan flood illustrate the issues that arise for the Red Cross Movement and governments during a disaster response in a conflict situation. In these situations, there was an increase in restrictions on resources and the provision of aid due to security concerns. The cases show that counterterrorism laws and increased use of the military to provide humanitarian aid to fight terrorism may have exacerbated the negative perception of NGOs, eroding their ability to negotiate and navigate the situation; however, these are not the only factors that contribute to resource restrictions and hindrance of aid. Similar

situations in Nigeria (1968) and Afghanistan (1998) show that the restriction of resources and provision of aid present in Indonesia, Sri Lanka, and Pakistan existed prior to the war on terror.

Political objectives to maintain security are the main focus during both conflict and disasters in conflict. The government is responsible for the response to a disaster but must maintain security operations in the chaos. A 2012 message from the United Nations Office of Coordination of Humanitarian Assistance regarding humanitarian access lists the following barriers to the provision of humanitarian aid that can occur during conflicts, and notes that they may exist in disasters:

- bureaucratic restrictions on personnel and humanitarian supplies
- impediments related to climate, terrain or lack of infrastructure
- the diversion of aid, and interference in the delivery of relief and implementation of activities
- active fighting and military operations
- attacks on humanitarian personnel, goods, and facilities<sup>1</sup>

The five cases—Nigeria, Afghanistan, Indonesia, Sri Lanka, and Pakistan—show all these barriers are present during the disaster response. The more recent cases also show four additional factors that are present in conflict/disaster situations that can cause increased security concerns and resource restrictions:

- multiple NGOs crowding the response
- negative perception of humanitarian aid
- increase of internally displaced persons in camps that existed due to the conflict
- impacted areas are not under state control

These four additional factors put stress on states and can significantly hinder disaster response operations. The Red Cross Movement's relationships with governments and

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<sup>1</sup> "OCHA on Message: Humanitarian Access," March 2012, [https://docs.unocha.org/sites/dms/Documents/120312\\_OOM-humanitarianAccess\\_eng.pdf](https://docs.unocha.org/sites/dms/Documents/120312_OOM-humanitarianAccess_eng.pdf).

armed groups facilitate its response, but all of these factors can still result in the uneven provision of aid, regardless of best attempts to avoid them.

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This process has been a struggle. The writing wouldn't happen, the thoughts were jumbled, and the rambling was intense and frequent. Work and school deadlines were whizzing past me and I could not seem to catch up. None of this is unique to myself, of course (though I could easily forget that while whining), but I was lucky enough to have people around me that had gone through this before and understood. Friends, family, classmates, co-workers, professors, and even strangers graciously listened to the ramblings, read incoherent parts of this thesis, and provided input and encouragement or a kick in the butt when needed. I owe all of you a big thank you and *a* drink (*one* drink...a beer, rail drink, or water at a happy hour special...maybe some chips, too, but nothing too crazy). To the strangers that listened (like the guy in the Atlanta airport from AfriCom or the president of Global Rescue whom I accosted while he was trying to catch a cab to the airport), a drink may not be possible, but if by some crazy chance you read this, please know you are thanked for listening and providing insight.

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back to me providing advice and articles to read. That marked the start that I needed to begin this thesis.

## **I. INTRODUCTION**

In the aftermath of a natural disaster, populations are displaced and additional burdens are placed on affected governments to aid the survivors—even those who are considered enemies of the state. When a disaster occurs in the midst of a conflict, it can significantly impact governments’ and armed groups’ abilities to defend and fight. Natural disasters are non-discriminatory forces that can lead to a scarcity of resources through massive loss of life, depletion of food and water, and destruction of transportation routes. Often survivors, who have already suffered from or participated in the conflict, or who live in areas controlled by armed groups, may find themselves in more vulnerable positions and perhaps stay in the same shelters or camps. At the same time, humanitarian aid workers who are trying to provide impartial and neutral assistance are caught in between the government and armed groups.

The government must grapple with the dilemma of not just protecting its people against the armed groups, but also determining priorities for rebuilding and restoring the impacted areas and determining if aid should, or can, be provided to areas populated or held by armed groups. Should the government abstain from providing aid to those areas and capitalize on the vulnerability to eradicate the threat, or should it allow for the delivery of water and food to keep the survivors alive to fight another day? What about the non-combatant survivors in the area caught in the middle?

### **A. PROBLEM STATEMENT**

The situation described in the previous paragraphs is considered a complex emergency. A complex emergency is “a humanitarian crisis in a country, region or society where there is total or considerable breakdown of authority resulting from internal or external conflict and which requires an international response that goes beyond the mandate or capacity of any single agency and/or the ongoing [United Nations] country program.”<sup>1</sup>

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<sup>1</sup> “Complex/Manmade Hazards: Complex Emergencies,” International Federation of Red Cross and Red Crescent Societies, accessed February 21, 2017. <http://www.ifrc.org/en/what-we-do/disaster-management/about-disasters/definition-of-hazard/complex-emergencies/>.

The International Federation of Red Cross and Red Crescent Societies (IFRC) lists the following characteristics of a complex emergency:

- extensive violence and loss of life
- displacements of populations
- widespread damage to societies and economies
- the need for large-scale, multi-faceted humanitarian assistance
- the hindrance or prevention of humanitarian assistance by political and military constraints
- significant security risks for humanitarian relief workers in some areas<sup>2</sup>

This thesis focuses on the political and military hindrances in complex emergencies and their impacts on the Red Cross Movement's disaster response during conflicts.

Governments' recent actions to curb security risks for their countries have focused on cutting off financing and material support to terrorist organizations through counterterrorism laws, as well as military operations that include security operations and humanitarian aid. Non-governmental organizations (NGOs) have argued that counterterrorism laws and increased use of the military for humanitarian aid missions result in increased operational complexities that compromise their ability to provide aid. In the United Nations (UN) Office of Humanitarian Assistance's list of barriers to humanitarian access in conflicts, counterterrorism laws are described as bureaucratic restrictions. Increased military humanitarian aid has blurred the lines between NGOs and the military. However, attributing these mechanisms as the sole cause of recent issues (e.g., increased attacks on NGOs by armed groups and decreased access to certain areas) fails to recognize the tensions that have always existed between political/military objectives and providing impartial, neutral, and independent aid in a conflict.

First of all, the provision of aid has always been dependent on the willingness of the government and the armed groups, and the Red Cross Movement's capability to navigate the situation. Article 71 of the Geneva Conventions First Additional Protocol

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<sup>2</sup> Ibid.

notes that NGO personnel “shall be subject to the approval of the Party in whose territory they will carry out their duties” and cannot “exceed the terms of their mission under this Protocol.”<sup>3</sup> Disasters and conflicts, individually, can have political and security ramifications; governments are judged on their response by the international community and the response efforts can lead to tension between humanitarian aid agencies and the government. From the government perspective, humanitarian aid is an aspect of the response, and the objective is to make sure the aid gets to survivors—which can come with a bias in the distribution of the aid. From the NGO perspective, everyone should get unbiased aid with a focus on the most vulnerable and without political or military direction. The two different perspectives cause tension during a conflict.

The tensions between humanitarian aid and political and military objectives that exist during a conflict are compounded in the chaos of disaster response. The disaster can cause political and military issues—such as in Indonesia, where local government officials were killed in the disaster, or in Sri Lanka, where aid to the Liberation Tigers of Tamil Eelam (LTTE) caused political strife.<sup>4</sup> Disasters provide a chance to exercise “soft power” counterinsurgency efforts. The provision of aid to soften the negative perception of a country was cited as a reason for U.S. Navy operations in Indonesia.<sup>5</sup> Disasters can cause unexpected and unplanned-for security risks that can be exploited by armed groups to make the government appear weak. The international community had concerns that the Pakistani government could not handle the response to the 2010 floods.<sup>6</sup> Poor response, it was believed, would have been a setback to the stabilization efforts supported by the United States.<sup>7</sup> This causes more, sometimes erratic, restrictions on humanitarian aid that

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<sup>3</sup> David Fisher, “Domestic Regulation of International Humanitarian Relief in Disasters and Armed Conflict: A Comparative Analysis,” *International Review of the Red Cross* 89, no. 866 (June 2007): 366.

<sup>4</sup> Sharon Wiharta et al., *The Effectiveness of Foreign Military Assets in Natural Disaster Response* (Solna, Sweden: Stockholm International Peace Research Institute, 2008); Jon Bennett et al., *Coordination of International Humanitarian Assistance in Tsunami-Affected Countries-Evaluation Findings for Indonesia* (London: Tsunami Evaluation Coalition, 2006): 37.

<sup>5</sup> Rhoda Margesson, *Indian Ocean Earthquake and Tsunami: Humanitarian Assistance and Relief Operations* (CRS Report NO. RL32715) (Washington, DC: Congressional Research Service, 2005).

<sup>6</sup> K. Alan Kronstadt, Pervaze A. Sheikh, and Bruce Vaughn, *Flooding in Pakistan: Overview and Issues for Congress* (CRS Report No. R41424) (Washington, DC: Congressional Research Service).

<sup>7</sup> *Ibid.*

leaves the Red Cross Movement unable to navigate the situation and provide aid to the most vulnerable.

Furthermore, the applicability of the Geneva Conventions and international humanitarian law (IHL)—longstanding frameworks drafted to address these tensions and give the International Committee of the Red Cross (ICRC) its authorities—has diminished due to changes in the conflict environment. The ICRC conducts independent assessments of a situation to determine how a conflict should be classified; the state should take this assessment into account under a Geneva Convention mandate.<sup>8</sup> However, since the 1990s, there have been changes to the definition of conflict; states show reluctance to accept these changes and a lack of political will to adhere to IHL, calling the framework into question. Humanitarian aid resources (workers, relief supplies, and funding) used in the conflict- and disaster-impacted areas are subjected to stricter laws and regulations due to security issues.<sup>9</sup> This is a violation of the Geneva Conventions and IHL during conflicts, as defined in the frameworks.<sup>10</sup> If a situation is considered a law enforcement operation by the state, the Red Cross Movement can only mitigate the situation through negotiation.

The mix of counterterrorism laws, increased use of military humanitarian aid efforts, and lack of political will to adhere to IHL are new hindrances that exacerbate the tension between governments and the Red Cross Movement. This creates a wicked problem: how to provide aid during a disaster in an unsecure situation. The government's restrictions on efforts by the Red Cross Movement to maintain security lead to underserved populations of the most vulnerable. This violates the Red Cross Movement's principles and makes for an untenable situation that erodes the perception of the NGOs' work and hinders their ability to negotiate with all parties to provide aid.

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<sup>8</sup> Kathleen Lawland, interview by International Committee of the Red Cross, October 12, 2012, "What Is a Non-international Armed Conflict?," <https://www.icrc.org/eng/resources/documents/interview/2012/12-10-niac-non-international-armed-conflict.htm>.

<sup>9</sup> Fisher, "Domestic Regulation," 354.

<sup>10</sup> Ibid.

## **B. RESEARCH QUESTIONS**

This research seeks to answer the following question: How does conflict between governments and armed groups affect humanitarian aid delivery in response to natural disasters?

This research question leads to many ancillary questions that are explored in this thesis. The ancillary questions include, but are not limited to, the following:

- Are the principles of neutrality, independence, and impartiality achievable for the Red Cross Movement as a whole under these conditions?
- Are political and military objectives in conflict the same during a disaster?
- What aspects of the conflict would impact humanitarian aid delivery during a disaster?
- Are conflict response and disaster response treated differently?
- How does humanitarian aid impact the conflict?

This thesis argues that, while there have been new challenges, there is an inherently insurmountable gap between political/military objectives and humanitarian aid in a conflict that extends into disaster response, causing an exacerbated bias and corruption in the provision of aid. Response to a conflict and response to a disaster are seen as different situations. The ICRC argues that when a disaster happens during a conflict, the disaster response should be seen as a part of the conflict response. The confusion of the conflict translates into the confusion of the disaster response, but political objectives do not change; the objective is still to maintain security and sustain the state.

Despite numerous attempts to manage and define boundaries between political, military, and NGO actors, there will always be compromises. The government has the sovereign right to secure its country as it sees fit. Security measures used in the conflict must be adjusted, and often tightened, due to the chaos a disaster causes to ensure continued safety for survivors. Impartial aid in conflicts as well as disasters not only keeps civilian survivors alive with food, water, and medical aid, but also allows those within the terrorist organization to continue fighting. As a transnational issue, the fight

against terrorism has opened up a non-international armed conflict (NIAC) between governments and internationally recognized terrorist groups dealing with international concerns about how to handle the situation. It is beneficial for the impacted country to call on those that have the same objectives (country stability and destruction of terrorist organizations) for aid, rather than relying on NGOs that call for unbiased aid. This leaves the Red Cross Movement to provide aid within its principles according to the situation as it stands rather than the ideal.

### **C. RESEARCH DESIGN**

This thesis uses field research data for inductive theory construction in line with Erving Goffman's approach.<sup>11</sup> It uses observations of those in the field during disaster response in conflict areas to determine if security decisions have obstructed humanitarian aid delivery efforts. The thesis uses multi-explanatory case studies as defined by Robert Yin in *Case Study Research: Design and Methods*.<sup>12</sup> The case studies are organized as a structured, focused comparison. The criteria for the case studies are described in the following sections.

#### **1. NGO Selection**

While many NGOs respond to disasters, this thesis focuses on the Red Cross Movement, comprising the ICRC and IFRC. The Red Cross Movement was chosen due to the system of quasi-governmental societies that reside in 189 countries and the ICRC's relationships with governments and armed groups. The ICRC has established agreements with states that grant it legal status as an "international legal personality." This allows the ICRC to assert legal rights and "shoulder legal responsibilities." This status is normally given to states or state organizations (e.g., the Organization of American States) and is not provided to any other NGO.<sup>13</sup> This also protects ICRC staff from being legally compelled to testify or provide information to governments. This status is only allotted to

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<sup>11</sup> *About.com*, s.v. "Constructing an Inductive Theory," accessed January 26, 2016, <http://sociology.about.com/od/Research/a/Inductive-Theory-Construction.htm>.

<sup>12</sup> Robert K. Yin, *Case Study Research: Design and Methods* (Thousand Oaks, CA: Sage, 2013).

<sup>13</sup> Gabor Rona, "The ICRC Privilege not to Testify: Confidentiality in Action," ICRC, February 28, 2004, <https://www.icrc.org/eng/resources/documents/article/other/5wsd9q.htm>.



the ICRC; the Red Cross and Red Crescent (RCRC) Societies are not protected under this status. The legal status is established in legislative treaties, agreements, and judicial decisions.<sup>14</sup> The International Criminal Tribunal for the former Yugoslavia cited and recognized the ICRC's right to decline to testify on criminal actions its workers may have witnessed during the Balkan Wars.<sup>15</sup> The ICRC was granted observer status by the UN General Assembly.

The ICRC, as the custodian of the Geneva Conventions, promotes governments' and armed groups' adherence to IHL and serves as the leading entity in conflict-related response operations.<sup>16</sup> The ICRC reported that, in 2013, it was involved in operations and engagement with 200 armed groups in 50 countries to encourage those groups to follow IHL.<sup>17</sup> The IFRC provides disaster response in conjunction with the RCRC Societies, but also provides development programs that primarily focus on medical issues, such as reducing the spread of HIV/AIDS, malaria, and tuberculosis.

The RCRC Societies' relationships with their respective governments vary from receiving funding to conducting joint operations for domestic response efforts. This connection leaves the societies vulnerable to political objectives, reducing their ability to provide humanitarian aid. Out of the 195 independent states in the world, 190 have an RCRC Society.<sup>18</sup> RCRC Societies make up the International Federation of the Red Cross (IFRC) and support their home governments by acting as independent auxiliaries in disaster response. For example, the American Red Cross is a co-lead with the Federal Emergency Management Agency in providing mass care services during the response to

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<sup>14</sup> Gabor Rona, "The ICRC's Status: In a Class of its Own," International Committee of the Red Cross, February 17, 2004, <https://www.icrc.org/eng/resources/documents/misc/5w9fjy.htm>.

<sup>15</sup> Ibid.

<sup>16</sup> "International Federation of Red Cross and Red Crescent Movement: At a Glance," IFRC, November 2007, [http://www.ifrc.org/Global/Publications/general/at\\_a\\_glance-en.pdf](http://www.ifrc.org/Global/Publications/general/at_a_glance-en.pdf).

<sup>17</sup> "Paul Reuter Prize Award Conference on Contemporary Challenges of Non-International Armed Conflicts," International Committee of the Red Cross (ICRC), December 12, 2013, <https://www.icrc.org/eng/resources/documents/feature/2013/12-12-paul-reuter-prize-award-conference.htm>.

<sup>18</sup> "Independent States of the World," Bureau of Intelligence and Research, accessed January 17, 2016, Retrieved from <http://www.state.gov/s/inr/rls/4250.htm>.

domestic disasters, to include a memorandum of understanding allowing the government to reimburse the American Red Cross.

The three entities (ICRC, IFRC, and RCRC Societies) maintain relationships with governments in some capacity. The RCRC Societies are auxiliaries of their home governments during disaster response but maintain their independence to conduct operations. The ICRC simultaneously negotiates with armed groups that are in opposition to the government to gain access to populations living in occupied areas, while working with governments to coordinate response operations. The RCRC Societies' quasi-governmental status and the ICRC's work with armed groups make these entities unique among NGOs; they have access to governments and areas that other NGOs may not be able to reach. This duality also allows the Red Cross Movement to maintain neutrality and impartiality as a whole by providing, or attempting to provide, humanitarian aid to all survivors.

## **2. Case Selection**

Utilizing three complex emergency case studies, this thesis analyzes the disaster response and security issues (i.e., government exclusion, counterterrorism laws) that led to restrictive environments for humanitarian aid and underserved populations. The cases highlight different political situations (i.e., government support of humanitarian aid, non-government support, and areas where the government is unable to provide assistance). These case studies also demonstrate how counterterrorism laws, financial regulations, and other countries' military objectives impact humanitarian aid delivery.

The following factors were used to identify the complex emergencies:

- multiple RCRC Societies and ICRC involved in the response
- multinational governmental involvement
- significant security issues involved
- groups designated as threats
- U.S. interest in the country
- military involvement

- groups with reach outside of home country
- humanitarian aid used strategically (good or bad)

Based on these criteria, the cases for this thesis are the responses to the 2004 Indonesia tsunami response, the 2004 Sri Lanka response to the same tsunami, and the 2010 Pakistan Flood Response. These three responses represent a wide span of time to illuminate humanitarian aid issues before the advent of the 2001 Global War on Terror, three years afterward, and nine years after the implementation of counterterrorism laws.

### **3. Data Sources**

The data sources used for this research are varied and include many of the typical sources. While many sources on this topic are from the '90s, they nevertheless seem to remain relevant. These sources are:

- historical data
- surveys conducted and published by the ICRC on its public website
- government reports
- newspaper articles
- journals
- books
- policies, regulations, and laws
- UN reports

### **4. Limitations**

This thesis is limited to the operational complexities of the cases and cannot address all issues that arise during disaster response in counterterrorism conflict situations. This thesis focuses on operations conducted by the impacted government, military, armed groups, and Red Cross Movement to the extent possible. Since the responses involved many NGOs, there may be gaps in information or identified security issues that did not affect the Red Cross Movement. Since the ICRC has established relationships with armed groups and governments, it can negotiate access to areas that

other NGOs are not able to, leading to a different experience than other NGOs. The Red Cross Movement, however, typically plays a large role in disaster response as the lead coordinator of NGOs for the UN, giving the group a situational awareness of security situations.

## **5. Outcome**

Through a comparison of Red Cross Movement disaster response before and after the advent of the war on terror, this thesis produces an analysis that describes how the evolving international security environment has affected humanitarian aid delivery in complex emergencies involving a response to natural disasters.

### **D. LITERATURE REVIEW**

This literature review accounts for the current discussions regarding security issues and humanitarian aid.

#### **1. Discussion of Counterterrorism Laws**

This section of the literature review discusses arguments regarding the impact of counterterrorism laws on NGOs.

The article “Humanitarian Engagement under Counter-Terrorism: A Conflict of Norms and the Emerging Policy Landscape” discusses recent legal changes that restrict material support, resources, and expert advice or assistance to terrorists and foreign terrorist groups, and how the changes impact humanitarian aid delivery.<sup>19</sup> The article references The Humanitarian Law Project’s (HLP) trial; the Kurdistan Workers’ Party (PKK) and the Liberation Tigers of Tamil Eelam (LTTE) had asked the HLP for assistance in training members to use international law to resolve disputes, petitioning UN members for relief, and engaging in political advocacy. The case ultimately reached the U.S. Supreme Court, where HLP argued that 18 U.S.C. § 2338A—Providing Material Support to Terrorists—was unconstitutional as it violated the group’s First Amendment

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<sup>19</sup> Naz K Modirzadeh, Dustin A. Lewis, and Claude Bruderlein, “Humanitarian Engagement under Counter-terrorism: A Conflict of Norms and the Emerging Policy Landscape,” *International Review of the Red Cross* 93, no. 883 (September 2011): 632.

rights to free speech and association. Specifically, the HLP argued that the statute “was unfairly vague; that portions of the statute impermissibly criminalized pure speech and discriminated by content; and that the statutory provisions at stake violated the constitutionally enshrined freedom to associate.”<sup>20</sup> Multiple organizations submitted amicus curiae briefs; one amicus brief from a collection of humanitarian agencies noted that the statute could have a negative effect on humanitarian aid delivery.

The government, in turn, argued that the statute should not be voided due to vagueness simply because terms such as “training,” “expert advice or assistance,” “personnel,” and “service” are hard to define in some circumstances. The government also argued that the statute does not restrict members of the HLP from joining the PKK or LTTE or from having discussions with members of those organizations, but that the statute regulates activities that go beyond a discussion, including teaching the groups how to work the international legal system. The Supreme Court upheld the constitutionality of the statute and, in the syllabus, concluded that directly training the PKK on the use of international law could help the organization obtain funding, and members could use the knowledge as a means to promote terrorism, threaten, manipulate, or disrupt.<sup>21</sup> The argument was that the PKK and LTTE were “so tainted by their criminal conduct that any contribution to such an organization facilitates that conduct.”<sup>22</sup>

Elizabeth Bloodgood and Joannie Tremblay-Boire, in their article titled “International NGOs and National Regulation in an Age of Terrorism,” analyzed the impacts of counterterrorism regulations on humanitarian organizations in five countries: the United States, United Kingdom, Japan, Canada, and Germany.<sup>23</sup> In three of the five

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<sup>20</sup> Ibid.

<sup>21</sup> Holder v. Humanitarian Law Project, 130 S. Ct. 2705 (2010). Note: “As to the particular speech plaintiffs propose to undertake, it is wholly foreseeable that directly training the PKK on how to use international law to resolve disputes would provide that group with information and techniques that it could use as part of a broader strategy to promote terrorism, and to threaten, manipulate, and disrupt. Teaching the PKK to petition international bodies for relief also could help the PKK obtain funding it would redirect to its violent activities. Plaintiffs’ proposals to engage in political advocacy on behalf of Kurds and Tamils, in turn, are phrased so generally that they cannot prevail in this preenforcement challenge.”

<sup>22</sup> Modirzadeh, Lewis, and Bruderlein, “Humanitarian Engagement,” 634; Holder v. Humanitarian Law Project.

<sup>23</sup> Elizabeth A. Bloodgood and Joannie Tremblay-Boire, “International NGOs and National Regulation in an Age of Terrorism,” *Voluntas* 22, no. 1 (2011), 142–173.

countries (the United States, Canada, and Germany), international NGOs tested counterterrorism laws in court. Bloodgood and Tremblay-Boire found that reactions to counterterrorism laws by NGOs varied, ranging from “wait and watch” (Canada) to engagement with legislation (United Kingdom). Bloodgood and Tremblay-Boire argue that counterterrorism laws have not affected NGOs equally and the changes are mainly an extra burden of reporting and information collection rather than a cause for legal action against an NGO. This has led to inefficiencies and a waste of resources in accounting, reporting, legal fees, and bureaucratic checks of volunteers. However, according to Bloodgood and Tremblay-Boire, the fear of counterterrorism laws or the “shadow of law” has caused some international NGOs to refrain from providing aid in certain areas for fear they will face legal repercussions.

## **2. Politics and Humanitarian Aid**

A 1999 article written by Thomas G. Weiss, titled “Principles, Politics and Humanitarian Action,” discusses if the ICRC principles of impartiality, neutrality, and independence are valid in the post–Cold War era.<sup>24</sup> Weiss argues that IHL and the principles of impartiality and neutrality cannot be accomplished due to the change in traditional warfare, i.e., disregard for IHL by war criminals, use of child fighters, use of foreign aid to fuel war economies, and the targeting of civilians. Weiss’s argument provides a foundation for the diminishing respect for IHL that is applicable to how NGO work is currently viewed during both conflict and disaster.

According to Weiss, humanitarian organizations are either *classicists* or *solidarists*. Classicists, led by the ICRC, believe that humanitarian action should be insulated from politics. Solidarists reject impartiality and neutrality and the concept of permission to intervene in crisis situations. Weiss argues that the classicist approach, specifically the ICRCs’ principles, is no longer applicable and fails to address two types

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<sup>24</sup> Thomas G. Weiss, “Principles, Politics, and Humanitarian Action,” *Ethics and International Affairs* 13, no. 1 (March 1999): 3, doi: 10.1111/j.1747-7093.1999.tb00322.x.

of politics: “realpolitik amongst states and factional politics within them.”<sup>25</sup> This article provides a counterargument to the ICRC approach during responses.

*a. Realism Theory*

Hans Morgenthau’s view of morals as a constraint on political objectives speaks to the gap between the two during conflict and disasters. He argues, “Moderation in policy cannot fail to reflect the moderation of moral judgment.”<sup>26</sup> This is illustrated by the use of the military in the disaster response cases analyzed in this thesis. For instance, despite the United States’ stance against Indonesia for human rights violations during the East Timor conflict, at the time of the tsunami the United States had been funding Indonesia’s counterterrorism efforts against U.S.-designated terrorists for years.<sup>27</sup> Additionally, the means of providing conflict and disaster response involved restricting NGOs from areas outside of Aceh where there were camps of internally displaced persons and insurgents. The international military response did not appear to push the relaxation of these restrictions and focused on the directions of the government.

In this case, Morgenthau’s fourth and fifth principles of realism theory also apply. The fourth principle of Morgenthau’s theory states that political action cannot be viewed through the lens of universal morals, but must be based on the facts and circumstances of the situation.<sup>28</sup> His fifth principle furthers the previous one by noting that nations should recognize interests regarding power rather than focusing on a comparison of morals. In all three case studies in this thesis, the stabilization of the country facing the conflict and disaster is imperative to counter terrorist groups that are a global threat. For the purposes of this thesis, Morgenthau provides a theoretical perspective for government’s reluctance to permit humanitarian aid and adherence to IHL.

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<sup>25</sup> Ibid.

<sup>26</sup> Hans Morgenthau, *Politics among Nations: The Struggle for Power and Peace*, Fifth Edition (New York: Knopf, 1978), 11.

<sup>27</sup> Adam O’Brien, “The U.S.-Indonesian Military Relationship,” Council on Foreign Relations, October 3, 2005, <http://www.cfr.org/indonesia/us-indonesian-military-relationship/p8964>.

<sup>28</sup> Morgenthau, *Politics among Nations*.

**b. *Soft Power and NGOs***

The approach to counterterrorism is not solely focused on the funding and aiding of other countries' fights against terrorism; countries also hope to attain buy-in with the important international fight against terrorism. A Congressional Research Service report on the 2004 Indian Ocean earthquake and tsunami response stated:

The U.S. tsunami relief effort could help counter the perception among some Southeast Asians that the United States not only has placed too much emphasis on terrorism in its Southeast Asia policy but also has relied too heavily on "hard" (military) power to combat terrorism. The 9/11 Commission and others have recommended expanding U.S. public diplomacy programs as a way to help win the global battle for "hearts and minds" especially in the Islamic world from which the Muslim terrorists seek to draw recruits and support.<sup>29</sup>

The 2006 National Strategy for Combatting Terrorism stated that the war on terror was like no other war. It went on to state:

The paradigm for combating terrorism now involves the application of all elements of our national power and influence. Not only do we employ military power, we use diplomatic, financial, intelligence, and law enforcement activities to protect the Homeland and extend our defenses, disrupt terrorist operations and deprive our enemies of what they need to operate and survive.<sup>30</sup>

Both examples show a policy shift toward a mix of hard power and soft power tactics in the war on terror. "Soft power" is the power of persuasion or "the ability to shape the preferences of others."<sup>31</sup> Nye argued that, to meet the goals for the war on terror, the United States needed the cooperation of others through the use of soft power.<sup>32</sup> U.S. military support for disaster efforts in Indonesia and Pakistan was a means to show support and improve the United States' standing in those countries. Nye even argued that if the United States were "more attractive to the Pakistani populace," it would have

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<sup>29</sup> Margesson, *Indian Ocean Earthquake and Tsunami*.

<sup>30</sup> White House, *The President's National Strategy for Combatting Terrorism* (Washington, DC: Department of State, 2006).

<sup>31</sup> Joseph S. Nye, *Soft Power: The Means to Success in World Politics* (New York: PublicAffairs, 2004), 5.

<sup>32</sup> *Ibid.*, 129



greater success in convincing the Pakistani government to fight terrorism in their country.<sup>33</sup> Due to their domestic and international clout, along with their ability to argue against actions that violate human rights, NGOs, Nye argues, are effective where hard power does not work. This makes them a powerful tool in convincing countries to join the war on terror.<sup>34</sup> For the purposes of this thesis, Nye's book provides the theoretical perspective regarding the United States' reasoning for increased use of the military for humanitarian aid and the inclusion of NGOs in the war on terror.

### **3. Civil-Military Coordination**

There are two essential documents that speak to civil–military coordination regarding counterinsurgency efforts and the use of the military for security during a response to a complex emergency. The 2006 U.S. Army Manual *Counterinsurgency* defines counterinsurgency as “military, paramilitary, political, economic, psychological, and civic actions taken by a government to defeat insurgency.”<sup>35</sup> The document includes twenty-six references to humanitarian aid workers and NGOs as key components in counterinsurgency efforts. This document does not appear to take into account the fact that NGOs are not government entities and operate under the principles of independence, neutrality, and impartiality. In addition, an NGO's mission is to provide assistance, not to defeat an insurgency. For the purposes of this thesis, this shows that the United States considers NGOs a part of counterinsurgency efforts rather than independent entities. This can explain some of the tensions between military and humanitarian operations.

In 2008, the UN issued *Civil-Military Guidelines & Reference for Complex Emergencies*. This document provides guidance on the use of military for security purposes and emphasizes that military help should be used as a last resort; operational control should remain with the NGO. The document specifically points out the importance of maintaining a clear line between humanitarian aid efforts and military efforts: “Sustained humanitarian access to the affected population is ensured when the

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<sup>33</sup> Ibid.

<sup>34</sup> Ibid., 92

<sup>35</sup> Department of the Army, *Counterinsurgency* (FM 3-24) (Washington, DC: Department of Army, 2006), 1-1.

receipt of humanitarian assistance is not conditional upon the allegiance to or support to parties involved in a conflict but is a right independent of military and political action.”<sup>36</sup> This document attempts to create a common standard of military use for security by NGOs in both conflict and disaster response. However, as shown in the case studies in Chapter III, the Red Cross Movement’s disaster response does not always accept the guidance in this document, causing a confusing, uncoordinated response with the military.

#### **4. Perceived Negative Effects of Humanitarian Aid**

Fiona Terry’s *Condemned to Repeat? The Paradox of Humanitarian Action* offers a different perspective of humanitarian aid. Terry explores the paradox of humanitarian aid prolonging conflicts while providing life-saving and life-sustaining actions through the exploitation of assistance.<sup>37</sup> Using examples from the Congolese Wars, Khmer Rouge, and Afghanistan, she shows how humanitarian aid can be used to the advantage of warlords or those in charge to gain money or withhold aid. One particular account shows both the corruption and the futility of providing aid when NGOs cannot impact the situation: when the Médecins Sans Frontières (a medical humanitarian organization) was forced to question its involvement in the refugee camps in Tanzania during the Congolese Wars. The aid system in this situation, Fiona states, was manipulated such that it only served to strengthen those in power. At the time, the Tanzanian government had begun attempts to curb corruption and provide security to the camps, but considerable damage occurred. Terry states that lack of security and state support left refugee camps run by NGOs easy targets for massacres by Hutu forces. Raids on refugee camps across the border of Tanzania from Rwanda resulted in large-scale massacres and rendered attempts to tend to the wounded refugees futile. The Médecins Sans Frontières had begun to question if continued efforts were merely creating healthier people for slaughter and

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<sup>36</sup> United Nations, *Civil-Military Guidelines & Reference for Complex Emergencies* (New York: United Nations, 2008), <https://docs.unocha.org/sites/dms/Documents/ENGLISH%20VERSION%20Guidelines%20for%20Complex%20Emergencies.pdf>.

<sup>37</sup> Fiona Terry, *Condemned to Repeat? The Paradox of Humanitarian Action* (Ithaca, NY: Cornell University Press, 2002).

prolonging the conflict since the group could not affect the overall incident. This book provides insight into the choices faced by NGOs in situations when armed groups or governments do not adhere to IHL and the Geneva Conventions.

## **5. Geneva Conventions**

### ***a. Definition of NIAC***

This thesis focuses on natural disasters that occur in non-international armed conflicts (NIACs). NIACs are defined in Common Article 3 of the Geneva Conventions (1949) as conflicts that involve the state and armed groups or warring armed groups within the territory governed by the state.<sup>38</sup> Article 1 Protocol II, promulgated in 1977, extends the definition to conflicts that take place in the territory governed by the state:

Between its armed forces and dissident armed forces or other organized armed groups which, under responsible command, exercise such control over a part of its territory as to enable them to carry out sustained and concerted military operations and to implement this Protocol.

The protocol adds that “riots, isolated and sporadic acts of violence and other acts of a similar action” do not constitute an armed conflict.<sup>39</sup> There are two criteria that trigger the IHL in a NIAC. The armed groups must show at least a low level of organization, and armed confrontations must meet a “minimum level of intensity.”<sup>40</sup> The actions, capabilities, and resources of the state and the armed groups, and the impacts on civilians, determine a “minimum level of intensity.”<sup>41</sup> “Organization” factors include established chain of command, recruiting, training and planning capabilities, and ability to carry out and enforce orders.<sup>42</sup> The motivation of the armed group is not a factor in deciding whether or not a conflict is a NIAC.

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<sup>38</sup> ICRC, *The Law of Armed Conflict: Non-international Armed Conflict* (Geneva, Switzerland: ICRC, 2002), [https://www.icrc.org/eng/assets/files/other/law10\\_final.pdf](https://www.icrc.org/eng/assets/files/other/law10_final.pdf).

<sup>39</sup> Ibid.

<sup>40</sup> Lawland, “What Is a Non-international Armed Conflict.”

<sup>41</sup> Ibid.

<sup>42</sup> Ibid.

During a NIAC, the armed groups do not have combatant status, which means they are considered civilians who are subject to laws.<sup>43</sup> Under these circumstances, the state maintains its sovereignty and authority to use all legitimate means to reestablish order and “defend its national unity or territorial integrity.”<sup>44</sup> Armed groups and states are expected to adhere to IHL in a NIAC, with states signing treaties to attest that they will follow IHL in all conflicts.

***b. State Obligations to Provide Aid***

David Fisher’s article “Domestic Regulation of International Humanitarian Relief in Disasters and Armed Conflict: A Comparative Analysis” examines the regulatory controls and the provision of aid in non-conflict disasters and conflicts. Fisher argues that while the regulatory issues are similar, the dynamics and application of international laws are different.<sup>45</sup> This article also speaks to the ambiguities of applying IHL during internal armed conflicts.

In armed conflicts, Fisher found, security is the primary concern and often outweighs the state’s need to provide humanitarian aid. In addition, internal armed conflicts—which Fisher states are the current predominant form of war—have multiple de facto authorities imposing regulatory controls over humanitarian aid that lead to deliberate hindrances to aid. He also argues that there is a difference in the application of international law in the two situations.

Fisher’s analysis also found that IHL has a broader acceptance and scope in armed conflict, as well as specific rights and obligations, but the extent of the government’s responsibilities to provide aid is ambiguous. These ambiguities, he explains, are particular to internal armed conflicts. Fisher lists the applicable Geneva Convention articles that apply to the facilitation of humanitarian aid in conflicts but notes that there is no equivalent language for internal armed conflicts. According to Fisher, the ICRC commentary on Article 18, which argues that the provision of aid “shall be

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<sup>43</sup> ICRC, *Law of Armed Conflict*

<sup>44</sup> Ibid.

<sup>45</sup> Fisher, “Domestic Regulation,” 345.

undertaken,” implies that “once relief actions are accepted in principle, the authorities are under obligation to co-operate, in particular by facilitating the rapid transit of relief consignments and by ensuring the safety of convoys.”<sup>46</sup> An ICRC study of customary laws showed that customary law rules developed in internal conflicts have routinely supported the acceptance of Article 18.<sup>47</sup>

While Fisher does not examine disasters during conflict, he does provide distinctions in the application of IHL between the two situations. For the purposes of this thesis, Fisher’s article shows how international law is applied when the government is focused on security measures rather than humanitarian aid.

#### **E. BACKGROUND: RED CROSS MOVEMENT OPERATIONS IN CONFLICTS AND DISASTERS**

The Red Cross Movement’s operations are conducted in accordance with both its seven fundamental principles and the “Code of Conduct for the International Red Cross and Red Crescent Movement and Non-Governmental Organizations in Disaster Relief.”<sup>48</sup> The seven principles—humanity, impartiality, neutrality, independence, voluntary service, universality, and unity—were adopted in 1965 and provide the base for the Movement’s beliefs and conduct during disaster relief efforts. The Code of Conduct further functions to “guard the standards of behavior” to preserve independence.<sup>49</sup> The Code is written to guide disaster relief efforts in the field and is to be adapted in accordance with IHL during relief efforts in conflict situations. It emphasizes that the Red Cross Movement will provide aid regardless of race, creed, nationality, or religious

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<sup>46</sup> Ibid., 351.

<sup>47</sup> Ibid.

<sup>48</sup> “Code of Conduct for the International Red Cross and Red Crescent Movement and Non-Governmental Organizations (NGOs) in Disaster Relief,” ICRC, accessed February 23, 2017, <https://www.icrc.org/eng/assets/files/publications/icrc-002-1067.pdf>.

<sup>49</sup> Ibid., 1.

affiliation, as an independent entity, and that aid will be determined based on need.<sup>50</sup> The code states that the Movement will

never knowingly—or through negligence—allow for workers to be used to gather information of political, military or economically sensitive nature for government or other bodies that may serve purposes other than those which are strictly humanitarian, nor will we act as instruments of foreign policy of donor governments.<sup>51</sup>

In 1997, the ICRC adopted the Seville Agreement. Under this agreement, the ICRC is assigned as the main coordinating agency during a response to international and non-international armed conflicts, to include “armed conflict concomitant with natural or technological disasters.”<sup>52</sup> The IFRC and RCRC Societies maintain their steady-state lead roles established with their home governments. In non-conflict responses, the RCRC Societies are the lead for the response. The society within the impacted country serves as the lead, and all other responding societies report to it. The ICRC maintains relationships with armed groups as well as the state.

During the armed conflict, the entities share operational resources and coordinate all operations, to include restoration of family links, transportation of wounded, and provision of food and healthcare. The RCRC Societies may support the ICRC outside of their country:

- by managing projects which the ICRC delegates to them entirely;
- by making a financial contribution towards ICRC operations;
- by making donations in kind or
- by lending staff.<sup>53</sup>

RCRC Society missions during conflict and disaster operations also focus on providing support to their home military. Issues between the military and the Red Cross

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<sup>50</sup> Ibid.

<sup>51</sup> Ibid., 3.

<sup>52</sup> “Agreement on the Organization of the International Activities of the Components of the International Red Cross and Red Crescent Movement,” IFRC, November 26, 1997, 5, [http://www.ifrc.org/Global/Governance/Policies/Seville\\_Agreement.pdf](http://www.ifrc.org/Global/Governance/Policies/Seville_Agreement.pdf).

<sup>53</sup> “Cooperation with the National Societies,” ICRC, October 29, 2010, <https://www.icrc.org/eng/what-we-do/cooperating-national-societies/overview-cooperation-national-societies.htm>.

Movement, in particular, are complex. RCRC Societies in some countries support their home country's troops in conflicts. The American Red Cross provides volunteers to support its military on bases around the world. This duty is not subject to the principles of independence, neutrality, and impartiality; it is a means of acting as the auxiliary to the government. Under Section 1-7c of Army Regulation 930-5, the American Red Cross "will furnish the Department of the Army such information as may be required to assist the commander concerned in determining the loyalty and acceptability of Red Cross personnel selected for duty at Army installations and deployment operations."<sup>54</sup>

Although the Red Cross Movement's rules state that using the military to provide security in the provision of aid is not allowable, these rules are not always followed by the RCRC Societies. In Iraq, for instance, Red Cross Movement entities involved in humanitarian response during the Iraq war had different approaches to civil-military coordination. Societies relied on the military to provide security while the ICRC refused such support, despite a car bomb attack on its headquarters.<sup>55</sup> The 2014 U.S. Army manual *Insurgencies and Countering Insurgencies* specifically states that the ICRC intentionally rejects the use of military support in order to maintain the principles of neutrality, impartiality, and independence.<sup>56</sup>

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<sup>54</sup> Department of the Army, *American National Red Cross Service Program and Army Utilization* (AR 930-5) (Washington, DC: Department of the Army), 1, [http://www.apd.army.mil/pdffiles/r930\\_5.pdf](http://www.apd.army.mil/pdffiles/r930_5.pdf).

<sup>55</sup> Pierre Hazan and Jean-François Berger, "Humanitarian Action: From Risk to Real Danger," *The Magazine of the International Red Cross and Red Crescent Movement* 1 (2004): 4-9.

<sup>56</sup> Department of the Army, *Insurgencies and Countering Insurgencies* (FM 3-24/MCWP 3-33.5) (Washington, DC: Department of the Army, 2014), <https://fas.org/irp/doddir/army/fm3-24.pdf>.

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## II. POLITICAL AND MILITARY ISSUES WITH HUMANITARIAN AID

The ICRC has claimed that recent security actions (counterterrorism laws and the use of the military to conduct humanitarian aid) have impacted the organization's ability to provide humanitarian aid in NIACs and, by extension, disaster response during a NIAC. A historical look at humanitarian aid operations in NIACs, however, demonstrates that the Red Cross Movement repeatedly faced political and military hindrances before the recent counterterrorism laws and increased military humanitarian aid. During World War II, the German government blocked the ICRC from visiting and aiding in concentration camps.<sup>57</sup> In 1968, the Nigerian government stopped Red Cross aid during the Nigerian–Biafran conflict when it discovered the armed groups were using Red Cross transports to bring weapons into Biafra.<sup>58</sup> While counterterrorism laws and military humanitarian aid efforts have contributed to perception issues, they are not the only cause for restrictions on humanitarian aid. The increasing lack of political will to adhere to IHL in the interest of security concerns has heavily contributed to the restriction of humanitarian aid.

The application of IHL has increasingly come into question, which has led to an increase in restrictions on humanitarian aid resources for security reasons. In times of conflict, the ICRC is mandated under the Geneva Conventions to conduct its own independent assessment on the situation's "conflict" status.<sup>59</sup> According to Kathleen Lawland, who formerly directed the ICRC unit that counsels on application of the laws in armed conflict, "Although the ICRC's legal classification of a situation of violence does not bind a state, the ICRC's specific mandate under the Geneva Conventions and its historic role in the development of IHL gives a particular weight to its classifications,

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<sup>57</sup> "The ICRC in WW II: The Holocaust," January 24, 2014, <https://www.icrc.org/eng/resources/documents/misc/history-holocauste-020205.htm>.

<sup>58</sup> Marie-Luce Desgrandchamps, "'Organising the Unpredictable': The Nigeria–Biafra War and its Impact on the ICRC," *International Review of the Red Cross* 94, no. 888 (Winter 2012): 1414, doi: 10.1017/S1816383113000428.

<sup>59</sup> Lawland, "What Is a Non-international Armed Conflict."

which a state must consider in good faith.”<sup>60</sup> There are times, however, when the state does not abide by the established agreements, refuses to establish agreements, or sees operations as law enforcement situations rather than NIACs.

#### **A. APPLICATION OF INTERNATIONAL HUMANITARIAN LAW**

In some cases, humanitarian aid work is stopped for security reasons. For instance, the Pakistani government’s actions to combat armed groups were considered law enforcement operations that did not fall under IHL or the Geneva Conventions.<sup>61</sup> The ICRC was not allowed to enter the conflict-impacted areas for security reasons. Another example occurred during the conflict in Aceh, Indonesia. The Indonesian government, before the tsunami of 2004, enacted a law that banned any NGO actions that countered the Martial Law Administration’s rules and dictated that all actions must be run through the Coordinating Minister for People’s Welfare.<sup>62</sup>

As discussed in the previous section, NGOs’ attempts to maintain independence, neutrality, and impartiality can impede the state and cause security risks. Still, IHL and the Geneva Conventions allow for the Red Cross Movement to maintain a presence in conflicts. In the last three decades, however, the conduct of conflicts has not fit into the rules of IHL and the Geneva Conventions. Weiss pointed out that the Geneva Conventions and IHL became irrelevant in NIACs in the 1990s.<sup>63</sup> During this period, war criminals’ disregard for IHL, use of child fighters and foreign aid to fuel war economies, and targeting of civilians had become more prevalent in conflicts.<sup>64</sup>

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<sup>60</sup> Ibid.

<sup>61</sup> Ajay Madiwale and Kudrat Virk, “Civil–Military Relations in Natural Disasters: A Case Study of the Pakistan Floods,” *International Review of the Red Cross* 93, no. 884 (December 2011): 1091, doi: 10.1017/S181638311200032X.

<sup>62</sup> Ali Aulia Ramly, “Modes of Displacement during Martial Law, Refugee Studies Centre,” in *Aceh under Martial Law: Conflict, Violence, and Displacement* (RSC Working Paper No. 24), edited by Eva-Lotta E. Hedman, 17 (Oxford: University of Oxford, 2005).

<sup>63</sup> Weiss, “Principles, Politics, and Humanitarian Action.”

<sup>64</sup> Ibid..

Terrorism on American soil led to the Global War on Terror, which is not a war with a state or states, like World War II or the Cold War, but a war on the poorly defined concept of “terror.” The 2006 National Strategy for Combatting Terrorism stated:

Our strategy also recognizes that the War on Terror is a different kind of war. From the beginning, it has been both a battle of arms and a battle of ideas. Not only do we fight our terrorist enemies on the battlefield, we promote freedom and human dignity as alternatives to the terrorists’ perverse vision of oppression and totalitarian rule. The paradigm for combating terrorism now involves the application of all elements of our national power and influence. Not only do we employ military power, we use diplomatic, financial, intelligence, and law enforcement activities to protect the Homeland and extend our defenses, disrupt terrorist operations and deprive our enemies of what they need to operate and survive.<sup>65</sup>

The Strategy statement uses terms like “fight on the battlefield” and “law enforcement activities,” which makes it appear that the strategy mixes conflict and law enforcement operations. This is outside the definitions in the Geneva Conventions, which does make the war on terror a “different kind of war.” In accordance with Geneva Conventions Article 1 Protocol II of 1977, isolated acts of terrorism are not considered a conflict.<sup>66</sup> For example, the Syrian civil war that began in 2012 now involves the Islamic State. The Islamic State is an extremist group that had been making gains in Iraq and crossed the Iraqi border to fight the Syrian government.<sup>67</sup> The Syrian war is considered a NIAC. The Islamic State has also been linked to several terrorist attacks outside of Iraq and Syria. In 2015, terrorist attacks occurred in sixteen countries, including the United States, France, Canada, and Australia, and were committed by people directly linked to the Islamic State or inspired by the group.<sup>68</sup> The acts committed in those sixteen countries are not acts of war under the Geneva Conventions. The term “internationalized NIAC” has been suggested as a way of describing this type of occurrence. An internationalized NIAC is described by the ICRC as

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<sup>65</sup> White House, *National Strategy for Combatting Terrorism*.

<sup>66</sup> Lawland, “What Is a Non-international Armed Conflict.”

<sup>67</sup> Lucy Rodgers, David Gritten, and Patrick Asare, “Syria: The Story of the Conflict,” BBC, March 11, 2016, <http://www.bbc.com/news/world-middle-east-26116868>.

<sup>68</sup> Karen Yourish, Derek Watkins, and Tom Giratikanon, “Recent Attacks Demonstrate Islamic State’s Ability to Both Inspire and Coordinate Terror,” *New York Times*, January 16, 2016.

- One or more third States or an international/regional organization (the states or the organization acting through a multinational force) intervene in support of a state involved in an armed conflict against an organized armed group
- One or more third States or an international/regional organization (the states or the organization acting through a multinational force) intervene in support of an organized armed group involved in an armed conflict against a state<sup>69</sup>

A third category—a combination of the previous two—also exists. According to the ICRC, this is not a legally recognized type of conflict, but the first two categories could evolve into an international armed conflict (IAC) or NIAC. The resulting application of IHL is mixed when a conflict does not fit under the traditional IAC or NIAC definitions.<sup>70</sup>

The application of IHL in an undefined conflict is dependent on the relationship of the party to the conflict. If an outside state is involved, it is bound by the rules for an IAC, while the state and armed group in conflict are bound by the rules of a NIAC.<sup>71</sup> If the situation is not a NIAC or an IAC, IHL is not in effect when states react to the situation; the state enforces domestic laws against those who broke them. The ICRC, however, has argued that Article 18 of the Geneva Conventions and customary laws provide for the facilitation of unimpeded aid delivery.<sup>72</sup>

The ICRC has also argued that IHL is not the problem; the lack of support from states is the problem. States will deny that a conflict is a NIAC because the violent acts of criminals or terrorists do not fit under the definition of a NIAC.<sup>73</sup> This is within their sovereign right. The ICRC assessments of a situation are not binding. Non-state actors or armed groups argue that they do not have to follow IHL because it is a state-constructed

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<sup>69</sup> “Internationalized Internal Armed Conflict,” ICRC, accessed February 7, 2017, <https://casebook.icrc.org/casebook/doc/glossary/internationalized-internal-armed-conflict-glossary.htm>.

<sup>70</sup> Ibid.

<sup>71</sup> Ibid.

<sup>72</sup> Fisher, “Domestic Regulation,” 351.

<sup>73</sup> ICRC, “International Humanitarian Law and the Challenges of Contemporary Armed Conflicts,” *International Review of the Red Cross* 89, no. 867 (September 2007): 745.

system that they are trying to fight.<sup>74</sup> The ICRC also cites a significant lack of political will to implement IHL when political objectives are contrary to the “rules and spirit of humanitarian law.”<sup>75</sup> These three issues are evident in all three cases analyzed in Chapter III, and resulted in the restrictions on the provision of aid, to include the importing of resources into the area.

## **B. CONTROL OF RESOURCES**

The restrictions imposed on the Red Cross Movement entities are considered a violation of IHL (when the situation is considered a NIAC by the ICRC) and the principles of neutrality and impartiality. However, actual or potential corruption of aid by armed groups can cause the state to impose restrictions on resources that are considered necessary security measures. Resources are the crux of a military operation and a humanitarian response to a conflict. Mary Anderson, president of the Collaborative for Development Action, stated, when discussing the impacts of NGO aid in Africa, that “resources under the control of one or another warring faction help buttress the power and continuing legitimacy of that warring faction.”<sup>76</sup>

A 2012 message from the UN Office of Coordination of Humanitarian Assistance (OCHA) regarding humanitarian access lists the following barriers to the provision of humanitarian aid that can occur during conflicts, and notes that they may exist in disasters:

- bureaucratic restrictions on personnel and humanitarian supplies
- impediments related to climate, terrain or lack of infrastructure
- the diversion of aid, and interference in the delivery of relief and implementation of activities
- active fighting and military operations

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<sup>74</sup> Ibid.

<sup>75</sup> Ibid.

<sup>76</sup> David R. Smock, *Humanitarian Assistance in Africa*, United States Institute of Peace (Washington, DC: United States Institute of Peace, 1996), <http://www.usip.org/sites/default/files/pwks6.pdf>.

- Attacks on humanitarian personnel, goods, and facilities.<sup>77</sup>

Three of those bullets (the first, third, and fifth) relate to the restriction of resources during a conflict. In conflict cases, NGOs are often unable to bring in workers and relief supplies due to restrictions on visas, stricter customs laws, and lengthy security checks. The Red Cross Movement's relationship with governments has facilitated its ability to sidestep these to a certain extent, but the group still faces issues with distribution of aid resources. Though it does not specifically include counterterrorism laws, OCHA defines bureaucratic restrictions as "restrictions imposed by state and non-state actors on personnel and humanitarian supplies. This includes donor governments' funding restrictions on engaging with Al-Shabaab in Somalia and Hamas in Gaza, and domestic legislations criminalizing the provision of 'material support' to designated foreign terrorist organizations."<sup>78</sup> The definition refers to "material support" and "funding restrictions," which are restrictions found in U.S. counterterrorism laws.

Counterterrorism laws are newer bureaucratic restrictions than customs and tax laws, but their intent to stop funding and material support to armed groups is not a new concept. However, NGOs have seen them as another form of political hindrance in the provision of aid.

## **1. Counterterrorism Laws**

Counterterrorism laws seek to restrict the flow of resources to armed groups. Language in counterterrorism laws established following the war on terror declaration has caused concern that the laws further undermine the Geneva Conventions and IHL. This impacts the ICRC's ability to obtain consent from governments to provide aid. In a 2013 speech, Christine Beerli, ICRC permanent vice president, specifically calls governments out for the role they play in the denial, prohibition, and criminalization of contact with and material support to armed groups, to include armed groups that are only

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<sup>77</sup> "OCHA on Message: Humanitarian Access," March 2012, [https://docs.unocha.org/sites/dms/Documents/120312\\_OOM-humanitarianAccess\\_eng.pdf](https://docs.unocha.org/sites/dms/Documents/120312_OOM-humanitarianAccess_eng.pdf).

<sup>78</sup> "Thematic Areas: Humanitarian Access," OCHA, accessed February 23, 2017, <http://www.unocha.org/what-we-do/policy/thematic-areas/humanitarian-access>.

taking part in a NIAC.<sup>79</sup> Beerli goes on to point out that the laws use a vague definition of what constitutes “material support,” arguing that this vagueness could preclude any interaction at all with armed groups.<sup>80</sup>

While the definition remains vague, the impacts of these measures are unclear.<sup>81</sup> NGOs have proactively filed court cases to determine the extent these laws apply to their operations, with mixed results.<sup>82</sup> Bloodgood and Tremblay-Boire’s analysis of the impacts of counterterrorism laws on NGOs in five countries found that they caused administrative burdens and mainly impacted smaller NGOs. The conclusion of a Humanitarian Policy Group study stated that counterterrorism measures are necessary, but the current actions impose on NGOs in five areas: funding levels, administrative burden, relations with communities, transparency, and coordination.<sup>83</sup> The study argued that “rigid and over-zealous” adherence to counterterrorism laws would tie humanitarian aid efforts to political objectives and “unravel the legitimacy and acceptance of humanitarian response,” causing negative impacts to those five areas.<sup>84</sup> Both articles suggest that for larger NGOs, such as the Red Cross Movement, counterterrorism laws may exacerbate preexisting perception issues but have little impact on the groups’ overall operations.

The Humanitarian Policy Group article suggests that counterterrorism laws should be framed in terms of IHL in order to “preserve neutral and impartial humanitarian action, and protect the ability of victims of conflict to receive relief.”<sup>85</sup> If IHL does not change to account for terrorist acts as a form of conflict, humanitarian aid is not seen as advantageous, but as a corruptible avenue for terrorists; changes based on IHL would

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<sup>79</sup> Christine Beerli, “ICRC Operations and Engagement with Non-state Armed Groups in Non-international Armed Conflicts,” (speech, Paul Reuter Prize Award Conference on Contemporary Challenges of Non-International Armed Conflicts, Geneva, Switzerland, November 7, 2013).

<sup>80</sup> Ibid.

<sup>81</sup> Bloodgood and Tremblay-Boire, “International NGOs.”

<sup>82</sup> Ibid.

<sup>83</sup> Sara Pantuliano et al., “Counter-terrorism and Humanitarian Action,” *HPG Policy Brief* 43 (October 2011), <https://www.odi.org/sites/odi.org.uk/files/odi-assets/publications-opinion-files/7347.pdf>.

<sup>84</sup> Ibid.

<sup>85</sup> Ibid., 11–12.

therefore be ineffectual. Corruption by armed groups is prevalent—in particular, the use of NGOs for financial gain.

The Financial Action Task Force (FATF) comprises thirty-four countries and two regional organizations that “set standards and promotes effective implementation of legal, regulatory and operational measures to combat money laundering, terrorist financing, and other financial threats.”<sup>86</sup> FATF points to exploitation of non-profit organizations (NPOs) as a risk.<sup>87</sup> FATF’s 2014 *Risk of Terrorist Abuse in Non-profit Organisations* argues that, due to their ability to easily access materials, funds, and networks with low levels of external scrutiny, terrorist entities see NPOs as high-value targets to exploit.<sup>88</sup> Al-Shabaab in Somalia regulated humanitarian aid agencies, forcing them to follow the terrorist group’s rules and instituting taxes to fund its operations and restricted aid in certain areas.<sup>89</sup> In a Humanitarian Policy Group research project that conducted eighty interviews, “former Al-Shabaab officials reported that they forbade aid agencies from engaging in any activities that empowered traditional or local leaders outside of Al-Shabaab.”<sup>90</sup> The project found that agencies faced greater restrictions and enforcement when Al-Shabaab leaders and the community came from different clans.<sup>91</sup> This meant that not only were NGOs funding Al-Shabaab efforts, they were also unable to deliver resources in accordance with the principles of impartiality and neutrality. The government and armed groups’ actions can have significant impacts on the perception of the RCRC Societies and ICRC operations, which hinders negotiations and the ability to provide humanitarian aid. Al-Shabaab’s actions led to the ICRC pulling out of the Al-Shabaab-held areas altogether rather than adhering to its rules.<sup>92</sup>

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<sup>86</sup> For more information about FATF reference: <http://www.fatf-gafi.org/about/>

<sup>87</sup> Ibid.

<sup>88</sup> Ashley Jackson and Abdi Aynte, “Al-Shabaab Engagement with Aid Agencies,” *HPG Policy Brief* 53 (December 2013), <https://www.odi.org/sites/odi.org.uk/files/odi-assets/publications-opinion-files/8749.pdf>.

<sup>89</sup> Ibid.

<sup>90</sup> Ibid.

<sup>91</sup> Ibid.

<sup>92</sup> Ibid.



In October of 2001, FATF issued eight special recommendations to stop funding mechanisms for terrorists. Recommendation number eight ensures that NPOs cannot be abused by terrorist organizations.<sup>93</sup> FATF does state that countries should take a targeted approach to applying regulations to only those NPOs that do not have mechanisms in place to avoid abuse by terrorist groups.<sup>94</sup> Regulating NGOs meant including counterterrorism clauses in contract and grant funding, which direct NGOs to conduct monitoring of personnel, partners, and beneficiaries, and to divert funds.<sup>95</sup> Numerous NGOs claimed these requirements created extra compliance burden that negatively impacted operations.<sup>96</sup>

The 2014 FATF report *Risk of Terrorist Abuse in Non-profit Organizations* cites reports from OCHA and the Norwegian Refugee Council that indicate these new rules have interfered and distorted the principle of impartiality.<sup>97</sup> It also found that regulations are not administered evenly among NPOs and exceptions have been made for certain NPOs that are not in agreement with counterterror efforts in some countries. The Australian Independent National Security Legislation Monitor (INSLM) found exceptions for humanitarian actions were inconsistent with Australian Criminal Code and UN counterterrorism resolutions.<sup>98</sup> The INSLM argued only “high capacity organisations” that have shown they are reliable, specifically naming the ICRC as an example, should receive exceptions to counterterrorism measures.<sup>99</sup> The FATF report

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<sup>93</sup> Financial Action Task Force (FATF), *Combating the Abuse of Non-Profit Organisations (Recommendation 8)* (Paris: FATF, 2015), <http://www.fatf-gafi.org/media/fatf/documents/reports/BPP-combating-abuse-non-profit-organisations.pdf>.

<sup>94</sup> Ibid.

<sup>95</sup> Counterterrorism and Humanitarian Engagement Project, “An Analysis of Contemporary Counterterrorism-Related Clauses in Humanitarian Grant and Partnership Agreement Contracts,” Harvard Law School, May 2014, [http://blogs.harvard.edu/cheproject/files/2013/10/CHE\\_Project\\_-\\_Counterterrorism-related\\_Humanitarian\\_Grant\\_Clauses\\_May\\_2014.pdf](http://blogs.harvard.edu/cheproject/files/2013/10/CHE_Project_-_Counterterrorism-related_Humanitarian_Grant_Clauses_May_2014.pdf).

<sup>96</sup> Ibid.

<sup>97</sup> FATF, *Risk of Terrorist Abuse in Non-Profit Organisations* (Paris: FATF, 2014), 32, <http://www.fatf-gafi.org/media/fatf/documents/reports/Risk-of-terrorist-abuse-in-non-profit-organisations.pdf>.

<sup>98</sup> Ibid.

<sup>99</sup> Ibid.

points out that exceptions are determined and approved by countries, essentially leaving NPOs at the mercy of countries that are not supportive of humanitarian aid.

A 2015 Harvard Law School study of countries' adherence to UN Security Council Resolution 2178 examined impacts of counterterrorism measures on NGOs.<sup>100</sup> The study looked at the laws and six concerns of the NGOs: heightened administrative and programmatic burdens, decreased freedom of movement, increased governmental scrutiny, decreased access to finances, reputational harm, and decreased autonomy in dealing with all parties in an armed conflict. The United States earned a compliance score of 46 out of 50, and a score of 37.5 out of 50 in the category of "support of five key aspects of principled humanitarian action in counterterrorism contexts."<sup>101</sup> If an NGO wants to work in an area where there are U.S. sanctions, the NGO must apply for a license, which includes undergoing a background check before working in the area. However, the research did not show that there were criminal or civil cases against NGO workers working in conflict zones with terrorist operations. This is not surprising since the U.S. government would be able to control who gets a license and who does not. A license does not release an NGO from the other laws that govern NGO actions, such as those imposed by USAID for grant funding or the material support laws.

Where NGOs may not be able to provide aid due to counterterrorism laws, the military can fill in the gaps. Military assets can provide not only the relief supplies needed but also the security and logistical support that allows for the quick delivery of aid. However, there are perception and information-sharing issues that result in confusion and that can hinder NGO response.

## **2. Military Humanitarian Aid**

In addition to counterterrorism laws and financial regulations, humanitarian aid missions conducted by military forces have increased in areas where there is conflict.<sup>102</sup>

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<sup>100</sup> Jessica Burniske, Dustin A. Lewis, and Naz K. Modirzadeh, *Suppressing Foreign Terrorist Fighters and Supporting Principled Humanitarian Action: A Provisional Framework for Analyzing State Practice* (Cambridge, MA: Harvard Law School), doi: 10.2139/ssrn.2673502.

<sup>101</sup> Ibid.

<sup>102</sup> United Nations, *Civil-Military Guidelines*.

This increase has led to an encroachment on “humanitarian space” and blurred civil–military boundaries. The use of military as a means for aid in security or law enforcement operations is increasing. Although this does ensure that resources are secured, aid that is tied to a military carries that military’s issues with it, particularly if the military is considered the enemy by local armed groups or civilians. In the 2010 Pakistan floods, the ICRC refused to work with NATO and the Pakistani military due to their involvement in security operations.<sup>103</sup>

Following the September 11th attacks, political language regarding NGOs focused on their importance in the war on terror. In October of 2001, U.S. Secretary of State Colin Powell, in a speech at the National Foreign Policy Conference for Non-governmental Leaders, aligned NGOs with government and military efforts, stating that NGOs are a force multiplier for the United States and a part of the U.S. combat team.<sup>104</sup> He would go on to point out NGOs’ efforts to aid innocent Afghans, ignoring the fact that the NGOs may have also provided aid to Taliban fighters under the impartiality and neutrality principles.<sup>105</sup> NGOs and analysts reacted negatively to Powell’s comments, as they undermined the perception of neutrality, impartiality, and independence.<sup>106</sup>

Military guidance repeatedly refers to NGOs as partners in counterinsurgency efforts. The 2006 U.S. Army counterinsurgency manual defines counterinsurgency as “military, paramilitary, political, economic, psychological, and civic actions taken by a government to defeat insurgency.”<sup>107</sup> The document includes twenty-six references to humanitarian aid workers and lists NGOs as key components in counterinsurgency

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<sup>103</sup> Marion Pechayre, *Humanitarian Action in Pakistan 2005–2010: Challenges, Principles, and Politics* (Medford, MA: Tufts University, 2011), 12, <http://fic.tufts.edu/assets/pakistan.pdf>.

<sup>104</sup> “And I want you to know that I have made it clear to my staff here and to all of our ambassadors around the world that I am serious about making sure we have the best relationship with the NGOs who are such a force multiplier for us, such an important part of our combat team.” Colin Powell, “Remarks to the National Foreign Policy Conference for Leaders of Nongovernmental Organizations,” Washington, DC, October 26, 2001.

<sup>105</sup> *Ibid.*

<sup>106</sup> Laura Hammond, “The Power of Holding Humanitarianism Hostage and the Myth of Protective Principles,” in *Humanitarianism in Question: Power, Politics, Ethics*, ed. Michael Barnett and Thomas G. Weiss (Ithaca, NY: Cornell University Press, 2008), 181

<sup>107</sup> Department of the Army, *Counterinsurgency*.

efforts. This document does not take into account that NGOs are not government entities and that they operate under the principles of independence, neutrality, and impartiality. Also, their mission is to provide assistance, not to defeat an insurgency. While military groups and NGOs may work within the same areas to provide humanitarian aid, the missions are different and should be clear. At a roundtable on civil–military coordination in 2011, the discussion recognized that military counterinsurgency and stabilization strategies in communities mirror NGOs’ approach. The difference is that military tactics may involve “arming local militia to protect their communities, for example, [which] is not the same as building community resilience to protection threats and can generate new or exacerbate existing threats to the civilian population.”<sup>108</sup> Regardless of this distinction, the 2014 revision of the counterinsurgency manual softens its language regarding NGOs, acknowledging that they maintain independence, but still counts them as a part of the counterinsurgency effort.<sup>109</sup> These ties to the military can cause the perception that NGOs, to include the Red Cross Movement, are extensions of counterinsurgency efforts.

In 2008 the UN issued the *Civil-Military Guidelines & Reference for Complex Emergencies* in response to the increased use of the military by NGOs to provide security for humanitarian aid delivery. The document states that humanitarian access is “not conditional upon the allegiance to or support to parties involved in a conflict but is a right independent of military and political action.”<sup>110</sup> However, there has been an increased tendency by NGOs to use military forces to deliver humanitarian aid in insecure areas. The guidelines emphasize that military forces are to be used as a last resort and operational control should remain with the NGO.

Information-sharing is a particular problem between NGOs and the military. The ICRC has established agreements that allow it to maintain silence on its operations. The military may not be able to share operational or tactical information with the ICRC. The summary of the 2011 round table on civil–military coordination also noted a level of

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<sup>108</sup> Humanitarian Policy Group and ICRC, “Roundtable on Civil–Military Coordination: The Concept of Protection: Towards a Mutual Understanding,” ICRC, December 12, 2011, 8, <https://www.icrc.org/eng/assets/files/2012/hpg-icrc-roundtable-summary-note-2011-12-12.pdf>.

<sup>109</sup> Department of the Army, *Insurgencies and Countering Insurgencies*.

<sup>110</sup> United Nations, *Civil-Military Guidelines*, 41.

mistrust by NGOs that militaries would use information inappropriately.<sup>111</sup> The ICRC published *Professional Standards for Protection Work*, which gives guidance on data collection and data sharing. The language in the document highlights the issues; many mirror the concerns of asking a military to provide security. When discussing the interface between UN forces and internationally mandated militaries and police forces, the document states: “Whatever the context, dialogue, and interaction must take place in a manner that neither undermines adherence to the humanitarian principles of independence and impartiality nor exposes affected populations or humanitarian workers to greater risks.”<sup>112</sup>

### **C. POLITICS AND THE RED CROSS MOVEMENT**

To avoid or mitigate political and military hindrances during conflict and disaster response, some argue it is better for NGOs to adopt a more political approach. As discussed in Chapter I, Weiss’s “Principles, Politics, and Humanitarian Action” article, written two years after the Seville Agreement, defines the ICRC approach as classicist, meaning it follows an apolitical approach that does not account for realpolitik or recognize the political repercussions of its actions.<sup>113</sup> To bridge the gap between humanitarian and political objectives, Weiss argues that the ICRC should capitalize on the power it possesses to influence conflicts. The Red Cross Movement’s seven code of conduct principles represent an altruistic, unattainable goal.<sup>114</sup> Weiss argues that because their actions are influenced by politics, NGOs cannot turn a blind eye to political machinations. Therefore, NGOs need to act as “political humanitarians” and recognize that their actions are not disassociated from politics.<sup>115</sup>

The Red Cross Movement, however, already has a presence in politics. Its roles are spelled out in agreements and charters with states prior to conflict and in the Geneva

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<sup>111</sup> Humanitarian Policy Group and ICRC, “Roundtable on Civil–Military Coordination.”

<sup>112</sup> ICRC, *Professional Standards for Protection Work* (Geneva, Switzerland: ICRC, 2013), 52, <https://www.icrc.org/eng/assets/files/other/icrc-002-0999.pdf>.

<sup>113</sup> Weiss. “Principles, Politics, and Humanitarian Action.”

<sup>114</sup> *Ibid.*

<sup>115</sup> *Ibid.*

Conventions and IHL. The Movement also maintains a political presence through the RCRC Societies. As auxiliaries, the RCRC Societies can be very closely tied to the government, and their leaders may even act as advisors to state leaders. The president of the Indonesian Red Crescent Society was an advisor to the Indonesian president during the 2004 tsunami response. Regardless of its relationship with the government, the Red Cross Movement will still only be allowed to act with the consent of the “parties to an armed conflict.”<sup>116</sup> Since NGOs have no “hard power,” i.e., military strength, and must rely on the power of persuasion, it could be argued that the Red Cross Movement is only able to achieve humanitarian aid work because of its principles. It is for this reason that the perception of the Red Cross Movement is critical.

#### **D. A MATTER OF PERCEPTION**

The main effect of counterterrorism laws and increased military humanitarian aid is perception issues. The perceived stronger ties to military and political objectives outlined in counterinsurgency efforts have eroded trust of NGOs and opened them up to increased attacks. In Indonesia, Pakistan, and to a lesser extent Sri Lanka, NGOs have faced backlash due to the perception that they are furthering the Western Judeo-Christian agenda. Armed groups in Pakistan refused to allow the ICRC and Pakistani Red Crescent Societies to provide aid, believing the NGOs were involved with security operations.<sup>117</sup>

The information requirements and vetting process to receive assistance have led to the belief that NGOs are complicit with political views and need justification for providing aid.<sup>118</sup> The largest NGOs, to include the ICRC, have close ties to the Western world because the majority of their funding coming from Western countries. These countries also provide military support in major conflicts.

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<sup>116</sup> Tarcisio Gazzini, “A Unique Non-state Actor: The International Committee of the Red Cross,” March 2009, 8, [https://ghum.kuleuven.be/ggs/projects/non\\_state\\_actors/publications/gazzini\\_bis.pdf](https://ghum.kuleuven.be/ggs/projects/non_state_actors/publications/gazzini_bis.pdf).

<sup>117</sup> Humanitarian Policy Group, “A Clash of Principles? Humanitarian Action and the Search for Stability in Pakistan,” *HPG Policy Brief* 36 (September 2009), <https://www.odi.org/sites/odi.org.uk/files/odi-assets/publications-opinion-files/4854.pdf>.

<sup>118</sup> *Ibid.*

In recent conflicts such as Kosovo, Iraq, and Afghanistan the United States and other Western countries have not been neutral bystanders, but instead have been participants in the conflicts.<sup>119</sup> Monica Krause argues that adherence to the principle of “independence” is measured by an NGO’s distance from the United States due to the U.S. role in current conflicts.<sup>120</sup> Distance from the United States is difficult to attain; while the ICRC and the RCRC Societies rely on donors for response, they also rely heavily on government funding. Western countries, in particular the United States and the United Kingdom, are the largest donors of financial assistance to NGOs. In 2014, the Red Cross Movement appealed to the United States for \$1.6 billion and received \$1.4 billion in funds for responses in the South Sudan, Central African Republic, Liberia, Syria, Lebanon, and Ukraine.<sup>121</sup> The United States and European governments represented 83 percent of government funding for humanitarian assistance overall in 2014.<sup>122</sup>

Just like the restriction of humanitarian aid for political objectives, perception issues are not new. NGOs have been unable to shake civilians’ and armed groups’ perception that NGOs are Western Judeo-Christian groups that foster Western government ideals—this perception has held fast in both conflict and non-conflict situations, and prior to recent counterterrorism laws and increased military humanitarian aid. During the Congolese Wars, before recent security actions, the Congolese believed that the Rwandans were helped by the “white people’s aid groups.” Jason K. Stearns, in his book *Dancing in the Glory of Monsters*, quotes Pentecostal Reverend Kapala, who stated, “First the white people bring the refugees here; then they refuse to help us!”<sup>123</sup> He went on to state, “The international community has all the power. You can’t tell me that the United States, the biggest superpower in the world, could not stop this if they had

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<sup>119</sup> Monika Krause, *The Good Project: Humanitarian Relief NGOs and the Fragmentation of Reason* (Chicago: University of Chicago Press), 116.

<sup>120</sup> *Ibid.*, 116–117.

<sup>121</sup> Sophia Swithern et al., *Global Humanitarian Assistance Report 2015* (Bristol, UK: Development Initiative, 2015), 28.

<sup>122</sup> *Ibid.*, 30.

<sup>123</sup> Jason Stearns, *Dancing in the Glory of Monsters: the Collapse of the Congo and the Great War of Africa* (New York: Public Affairs, 2011), 132.

wanted to. They didn't stop it because they didn't want to."<sup>124</sup> David Rieff suggests that humanitarian aid is viewed as a means of colonizing a country. He points out that white, Western humanitarian aid workers in developing countries will live in former cabinet ministers' houses and have local drivers while making and directing changes.<sup>125</sup> Rieff argues that while the workers are there to help, they maintain the image of Western power.<sup>126</sup> When a humanitarian agency works with a military that is considered hostile, this image is further reinforced.

Attacks on humanitarian aid workers are increasing. In an article entitled "Humanitarian Action: From Risk to Real Danger," Michel Cagneux, the head of the ICRC's security unit, is quoted as saying some actors "are caught in an unequal struggle and have no hesitation in resorting to non-conventional methods of warfare such as attacks on humanitarian organizations, considered 'soft targets.'"<sup>127</sup> At an August 2014 meeting of the UN Security Council tribute to fallen personnel, Deputy Secretary-General Jan Eliasson stated that, in 2013, there had been 155 humanitarian workers reportedly killed, 171 wounded, and 134 kidnapped.<sup>128</sup> This was a 66-percent increase from 2012. Masood Karokhail, director of The Liaison Office in Afghanistan, stated that in Afghanistan, from 2001 to the first quarter of 2014, 895 humanitarian workers were attacked and 325 killed.<sup>129</sup> Armed groups have issued statements that attacks on humanitarian workers align with their efforts to stop the enemy. A week before the bombing of the UN compound in Iraq, Mullah Omar, a Taliban leader, issued a statement that identified the worst enemies of Islam and humanity to be "Jews and Christians, America, Great Britain, the UN and all Western humanitarian organizations."<sup>130</sup>

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<sup>124</sup> Ibid.

<sup>125</sup> David Rieff, *Bed for the Night: Humanitarianism in Crisis* (New York: Simon and Schuster, 2003), 257.

<sup>126</sup> Ibid.

<sup>127</sup> Hazan and Berger, "Humanitarian Action."

<sup>128</sup> Jan Eliasson, "Paying Tribute to Fallen Personnel, Speakers Call for More Effective Use of Judicial Tools, Sanctions, Resolutions," (speech, United Nations Security Council, August 19, 2014).

<sup>129</sup> Ibid.

<sup>130</sup> Hammond, "Holding Humanitarianism Hostage," 181.



The implications of tying NGOs to military efforts, or at least blurring the lines between them, have varying impacts depending on the views of civilians regarding the military. In April of 2012, in an interview for the 16th Tokyo Defense Forum, Larry Maybee, the ICRC regional delegate to armed forces for Asia and the Pacific, was asked about the role of armies in disaster response during an armed conflict. He stated there might be a perception issue with militaries within the country or militaries from abroad that leads to perception issues for NGOs:

Military may be viewed with suspicion or worse by the local population; in extreme cases they may be actively involved in the conflict or violence, conducting operations in the disaster-affected region. There is also the danger that their humanitarian response and the relief they provide is not impartial but rather distributed with political and/or military objectives, for example, to win the hearts and minds of the population.

The Director of Médecins Sans Frontières-USA De Torrente, in the article “Humanitarian Action under Attack,” states:

When governments drape their military and political actions in the cloak of humanitarian concerns, they undermine humanitarian action’s essential purpose: the unconditional provision of assistance to those in need. When all aid efforts are presented and perceived as being at the service of political and military objectives, it is more difficult and dangerous for independent humanitarian organizations to carry out their work.<sup>131</sup>

## **E. CONCLUSION**

The gap between humanitarian aid and political objectives is not easily bridged, and bridges that may be built are often rickety and easily burned when their actions result in security issues. IHL and the Geneva Conventions provide a bridge that received buy-in from states, but it is uncertain if they were ever reasonable when put up against political objectives. When ICRC Co-founder Henry Dunant won the Noble Peace Prize for his humanitarian work, Bertha Von Suttner expressed her disagreement with the decision, stating that his work on IHL and the Geneva Convention simply acted to improve the

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<sup>131</sup> Ibid.

laws of war; “improving the laws of war,” she said, “[is] like regulating the temperature when boiling someone in oil.”<sup>132</sup>

The war on terror is a different kind of war. Actions to combat terrorism in countries like Sri Lanka, Indonesia, and Pakistan where the governments are in conflict with armed groups are considered law enforcement actions, which are not considered subject to IHL. This has left NGOs and the Red Cross Movement increasingly unable to respond under the traditional IHL and Geneva Convention banner. Without the ability to exercise its role as guardian of IHL and the Geneva Conventions, the ICRC has to rely on its reputation to make headway during negotiations. Counterterrorism laws and competing military humanitarian aid have furthered the perception that NGOs are extensions of enemy countries rather than independent, neutral, and impartial entities there to help everyone. This can have far-reaching implications, from the increased attacks on aid workers to a significant reduction in funding from donors. In conflicts, this may not seem as significant; but when a natural disaster happens and the government cannot provide for its citizens, it must rely on humanitarian aid to keep survivors, to include the politicians and military that were suffering from the conflict, alive.

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<sup>132</sup> Ivar Libaek, “The Red Cross: Three-Time Recipient of the Peace Prize,” Nobelprize.org, October 30, 2003, [http://www.nobelprize.org/nobel\\_prizes/themes/peace/libaek/](http://www.nobelprize.org/nobel_prizes/themes/peace/libaek/).

### **III. CASE STUDIES IN NATURAL DISASTERS AND CONFLICT: UNEXPECTED VULNERABILITY**

Disasters pose a different challenge for states during a conflict and can be devastating politically. Natural disasters are non-discriminatory and expand beyond the conflict boundaries. So while a conflict may be in one part of the country, where the state and the military may have an established response, a natural disaster may overwhelm the government's capabilities and resources. When a state's response capability is overwhelmed, it is vulnerable; it must refocus efforts and reallocate resources to ensure citizens can recover. In some cases, the armed group or "terrorists" can provide for the population when there is no local government, allowing the group to more effectively gain support.

In a review of the humanitarian response in Sri Lanka, John Goodhand and Bart Klem noted: "Although natural disasters are in a sense 'nondiscriminatory,' war affected countries have higher preexisting levels of vulnerability, whilst the distribution of vulnerability tends to be geographically concentrated in the areas most affected by violence."<sup>133</sup> By the principles of the Red Cross Movement, this means the people in concentrated areas of violence would be the primary focus during the response. However, due to political objectives, there can be restrictions that do not allow for the most vulnerable to receive aid.<sup>134</sup> During the response to the 2004 Indian Ocean tsunami in Indonesia and the 2010 flooding in Pakistan, the Red Cross Movement's activities were restricted to certain areas for what the government called security reasons. This left those in restricted areas without access to relief supplies.

The three issues discussed in the previous chapter do not necessarily translate to a disaster response. However, the two most important issues—political objectives and military humanitarian aid—do apply in disasters. Conflict-related political objectives remain the same from conflict to disaster response. How the government views the

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<sup>133</sup> Randall Kuhn, "Tsunami, and Conflict in Sri Lanka," Global Facility for Disaster Reduction and Recovery, March 20, 2009, [https://www.gfdr.org/sites/gfdr/files/Kuhn\\_Tsunami%26Conflict.pdf](https://www.gfdr.org/sites/gfdr/files/Kuhn_Tsunami%26Conflict.pdf).

<sup>134</sup> Fisher, "Domestic Regulation," 354.

situation drives the way it responds to a disaster. In Indonesia and Sri Lanka, the government and the armed groups called a ceasefire. Despite the ceasefire in Sri Lanka, some political parties disagreed with the coordination efforts with the LTTE and stopped these efforts.<sup>135</sup>

Local and international militaries play a large part in disaster response by not only conducting security operations, but also providing aid. In all three case studies used in this thesis, the military either led the disaster response efforts (Indonesia) or played a significant role in the response (Sri Lanka and Pakistan). In Pakistan and Indonesia, security operations continued during the disaster response. In all three countries, the armed groups continued attacks. If the military is the leading entity for disaster response and apart from the conflict, as it is in the three case studies, the perception issues for NGOs falling in line with military efforts are the same as those in conflict.

Disaster response brings a slew of actors and, with them, more resources that were not involved in the conflict originally; these resources can compromise the security situation through relaxed customs and visa regulations. As in conflict response, resources are imperative to a successful disaster response. The government is in charge of the allocation of resources in a disaster and faces the challenges that come with an influx of resources. A common associated legal issue is the overregulation of incoming resources and personnel.

IFRC Vice President Dr. Jaslin Salmon, speaking on the topic of IHL and humanitarian assistance in 2011, stated that, in disasters and conflicts, the most common barriers are “bureaucratic bottlenecks” that include delays in or denial of visas for aid workers, clearance of goods and supplies through customs, and taxation of NGOs.<sup>136</sup> The government may relax customs and visa laws to facilitate the influx of relief supplies due to security issues (e.g., the use of relaxed customs laws allowed for fraudulent NGOs to ship weapons mixed in with relief supplies); the government may then respond by

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<sup>135</sup> Bennett et al., *Coordination of International Humanitarian Assistance*, 37.

<sup>136</sup> Jaslin Salmon, “Barriers to Access: Similarities and Differences between Situations of Armed Conflict and Disaster Response,” Speech at the 31st International Conference of the Red Cross and Red Crescent, Provisional Agenda Item 5.4 (Commission E): International Humanitarian Law and Humanitarian Access and Assistance, Geneva, November 29, 2011.

overregulating, creating delays in the provision of aid.<sup>137</sup> The 2012 OCHA message regarding humanitarian access referenced in Chapter II listed five barriers to humanitarian aid in conflict, but the message also notes that these may be the same in disasters. Once again, the barriers are:

- bureaucratic restrictions on personnel and humanitarian supplies
- impediments related to climate, terrain or lack of infrastructure
- the diversion of aid, and interference in the delivery of relief and implementation of activities
- active fighting and military operations
- attacks on humanitarian personnel, goods, and facilities<sup>138</sup>

The issues of counterterrorism laws (OCHA lumps the restrictions laid out in the laws under “bureaucratic restrictions”) and IHL are not necessarily applicable to a disaster response. Counterterrorism laws are not often raised as an issue during disaster response. International counterterrorism efforts do play a role in the response; in Sri Lanka, the U.S. military avoided “rebel strongholds in the north.”<sup>139</sup>

There is a debate over the applicable laws that pertain to the protections of civilians in a conflict-zone disaster. It has been argued that application of IHL in a disaster would be impractical because the boundaries of a disaster can extend beyond the conflict area.<sup>140</sup> However, disaster-related internally displaced person (IDP) camps outside of the conflict area may be harbors for or targets of armed groups. If this is the case, then conflict-related security measures would extend outside of the disaster area.

The IFRC argues that Article 59 of the fourth Geneva Convention, 70 and 71 of the First Additional Protocol, and 18 of the Second Additional Protocol refer to

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<sup>137</sup> IFRC, *Legal Issues from the International Response to the Tsunami in Sri Lanka* (Geneva, Switzerland: IFRC, 2006), 21, <http://www.ifrc.org/PageFiles/139604/indonesia-cs.pdf>.

<sup>138</sup> “OCHA on Message: Humanitarian Access,” 1.

<sup>139</sup> Bruce Elleman, *Waves of Hope: The U.S. Navy’s Response to the Tsunami in Northern Indonesia* (Newport Papers 28) (Newport, RI: Naval War College, 2007), 29.

<sup>140</sup> Justin A. Fraterman, “Criminalizing Humanitarian Relief: Are U.S. Material Support for Terrorism Laws Compatible with International Humanitarian Law?” *International Law and Politics* 46, no. 399 (April 2013): 399–470.

“situations of ‘inadequate supply’ without any requirement that any shortages be directly attributable to fighting,” which apply in mixed conflict and disaster situations.<sup>141</sup> The IFRC argues that the impacts of the conflict are ongoing despite the disaster. Therefore, humanitarian aid can be given under the same rules in disaster as in conflict. David Fisher, the senior legal research officer for the IFRC, argues that in mixed conflict and disaster settings it is clear IHL is applicable. He argues that the triggers for IHL are related to the needs of the civilian population due to lack of “necessary” supplies.<sup>142</sup> The articles in the Geneva Conventions do not call out a particular cause for the needs, to which Fisher responds, “An interpretation of the ordinary meanings of these texts would lead to the conclusion that the need for relief might be attributable to natural forces rather than ongoing fighting does not change the parties’ obligations concerning relief in a conflict setting.”<sup>143</sup>

Application of these regulations assumes that the government considers a) the conflict falls under IHL as a NIAC, and b) the conflict continues during the disaster response. However, in the Sri Lanka and Indonesia case studies, a ceasefire was initially called, indicating that the provision of aid could proceed unimpeded by conflict-related security issues. The government and the armed groups later continued attacks on each other in both countries, with the LTTE committing inter-factional attacks in the Northern and Eastern Provinces. In Pakistan, the government claimed it was conducting “law enforcement operations.” If there is no recognized conflict, then IHL would no longer be applicable, and the state can respond as it sees fit.

To further examine how the issues of conflict impact disaster response, this thesis analyzes the responses in Indonesia, Sri Lanka, and Pakistan. Each case study is divided into six sections:

- Relationship to U.S. counterterrorism efforts—This section describes the role of the country in U.S counterterrorism efforts.

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<sup>141</sup> IFRC, *Law and Legal Issues in International Disaster Response: A Desk Study* (Geneva, Switzerland: IFRC, 2007), <http://www.ifrc.org/PageFiles/125639/113600-idrl-deskstudy-en.pdf>.

<sup>142</sup> Fisher, “Domestic Regulation,” 368.

<sup>143</sup> *Ibid.*

- Conflict background—This section provides background information on the government and armed groups' actions, how humanitarian aid was viewed, and the role of the Red Cross Movement during the conflict before the disaster.
- Incident situation—This section describes the response environment, the status of the government, and the government entities in charge of the response.
- Security situation—This section describes the security environment and its impacts on NGO and Red Cross Movement response.
- Logistical and resource issues—This section describes how the disaster impacted transportation routes and how the regulatory and security restrictions on resources affected NGOs and the Red Cross Movement during the response.
- ICRC and RCRC Society Operations—This section describes the Red Cross Movement's provision of aid during the disaster response based on reports written by both the ICRC and the IFRC.

The first four sections show how the military and political situations impact the disaster response. The fifth and six sections address the resulting hindrances of the political and military situation. The Indonesia case study contains an additional section to account for the perception of NGOs and foreign militaries.

The first and second case studies (which are both responses to the 2004 Indian Ocean tsunami) happened a year after the conflicts in Iraq and Afghanistan began and four years after the Global War on Terror declaration. While they are the same incident, the responses and outcomes of the 2004 Indian Ocean tsunami varied between Indonesia and Sri Lanka and are thus presented separately. The third case occurred six years later in Pakistan, after several changes in policy and legislation regarding humanitarian response in conflicts and disaster. All three countries received funding for counterterrorism activities from the United States and have been considered strategic to the fight against terrorism.

## **A. CASE STUDIES 1 AND 2: 2004 INDIAN OCEAN TSUNAMI**

These two case studies focus on the response in Indonesia and Sri Lanka. Both countries had strong established government structures at the time of the tsunami, which allowed for coordinated efforts in the conflicts. Both countries are also considered a part of the “second front” in the war on terror.<sup>144</sup> Since the September 11th attacks, the United States has seen Southeast Asia as a necessary partner in the war on terror; particular focus after the tsunami in Indonesia—the largest country in the region—was on stability.<sup>145</sup>

## **B. CASE STUDY 1: INDONESIA**

### **1. Relationship to U.S. Counterterrorism Efforts**

When the war on terror was declared, U.S. relations with Indonesia were revived to curb terrorist groups in Southeast Asia. The United States had suspended funding for the International Military Education and Training (IMET) program, which trained in order to increase professionalism, respect for democratic values and human rights, and “cement Indonesia’s cooperation with the U.S. military” because of concerns over human rights violations committed by the Tentara Nasional Indonesia (TNI) in East Timor.<sup>146</sup> In 2002, Jemaah Islamiya (JI), based in Indonesia, successfully committed bombings in Bali that killed 202 Australian tourists. The group was discovered when Singaporean authorities uncovered a cell plotting to attack targets associated with the U.S. Navy in 2002 and were designated as terrorists by the United States on October 23, 2002.<sup>147</sup> Indonesia became a partner in the fight against terrorism after the Bali bombings. The government enacted anti-terrorism laws that were considered to retroactively take effect

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<sup>144</sup> National Institute for Defense Studies, *East Asian Strategic Review 2006* (Tokyo, Japan: National Institute for Defense Studies, 2006), 58, <http://www.nids.mod.go.jp/english/publication/east-asian/e2006.html>.

<sup>145</sup> *Ibid.*

<sup>146</sup> O’Brien, “The U.S.-Indonesian Military Relationship.”

<sup>147</sup> “Foreign Terrorist Organizations,” U.S. Department of State, accessed February 27, 2017, <https://www.state.gov/j/ct/rls/other/des/123085.htm>.



prior to the Bali bombings, allowing the government to prosecute the perpetrators.<sup>148</sup> In 2002, the United States provided the Indonesian government funding to create a special counterterrorism police force called SD 88, and the IMET funding was provided again.<sup>149</sup>

## 2. Conflict Background

By the time of the tsunami, the conflict between the Indonesian government and Gerakan Aceh Merdeka (GAM), a group fighting for an independent Aceh province, had been raging for roughly 30 years. At its height, GAM held 70 percent of Aceh. In May of 2003, the government declared martial law and evacuated Aceh.<sup>150</sup> The military operation that followed, “Integrated Operation,” was twofold: it involved both security operations and humanitarian operations.<sup>151</sup> The security operations were determined to “crush” the GAM movement, and the humanitarian operations were to care for the IDPs in camps.<sup>152</sup> The government insisted that evacuations were necessary to separate GAM fighters from the civilian population and it was a humanitarian operation to keep civilians safe.<sup>153</sup> The military (TNI) parachuted into villages and reportedly forced civilians to evacuate without preparation; if they refused, they were told that they would be considered GAM supporters and treated as such.<sup>154</sup> GAM during this period was also responsible for forced displacement through attacks and threats.<sup>155</sup>

The Indonesian Red Cross, or Palang Merah Indonesia (PMI), and the ICRC issued a joint statement that urged the government to adhere to IHL and the Geneva

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<sup>148</sup> Beth Elise Whitaker, “Exporting the Patriot Act? Democracy and the ‘War on Terror’ in the Third World,” *Third World Quarterly* 28, no. 5, (2007): 1017–1032, doi: 10.1080/01436590701371751.

<sup>149</sup> “The Antiterrorism Assistance Program Report to Congress for Fiscal Year 2003,” U.S. Department of State, accessed February 25, 2017, 4, <https://www.state.gov/documents/organization/89959.pdf>.

<sup>150</sup> Eva-Lotta E. Hedman, “A State of Emergency, A Strategy of War: Internal Displacement, Forced Relocation, and Involuntary Return in Aceh, Refugee Studies Centre,” in *Aceh Under Martial Law: Conflict, Violence, and Displacement* (RFC Working Paper No. 24), ed. Eva-Lotta E. Hedman, 7–11 (Oxford: Refugee Studies Centre, 2005).

<sup>151</sup> Ramly, “Modes of Displacement.”

<sup>152</sup> *Ibid.*, 13.

<sup>153</sup> Hedman, “A State of Emergency.”

<sup>154</sup> *Ibid.*

<sup>155</sup> Ramly, “Modes of Displacement.”

Conventions.<sup>156</sup> The TNI invited the ICRC and PMI to train soldiers on IHL a month after the declaration of martial law. The ICRC and PMI also evacuated the dead and wounded from the camps and, out of respect for the principles of neutrality and impartiality, the victims' status and identification were kept confidential.<sup>157</sup> However, Indonesian and foreign NGOs faced limitations outlined in Presidential Decision No. 43/2003, which banned any actions that ran counter to the martial law administration and required all actions to go through the Coordinating Minister for People's Welfare.<sup>158</sup>

### 3. Incident Situation

The hardest-hit area was Aceh, a 21,000-square-mile province on the northern tip of Sumatra with a population of 4.5 million.<sup>159</sup> The U.S. Geological Survey reported that, in Aceh and Sumatera Utara Provinces, 108,000 people were killed, 127,000 were missing, and 427,000 were displaced.<sup>160</sup> Of the 427,000 displaced, the IFRC reported that 127,000 or more IDPs required shelter, with few suitable sites to set up shelters and sanitary facilities. Seaports, major roads, and bridges to and from the main cities of Medan and Banda Aceh as well as along the coast were destroyed. Airports were either destroyed or operating at severely reduced capacity. Local government officials, many of whom had been killed or had lost family and their homes in the tsunami, were unable to provide support to the population.<sup>161</sup>

At the time, Indonesia's National Coordinating Body for Disaster Management (Bakornas) had no assets, policies, or implementation and enforcement capabilities.<sup>162</sup>

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<sup>156</sup> "Indosneisa/Aceh: Joint Statement by the ICRC and the Indonesian Red Cross (Palang Merah Indonesia—PMG)," ICRC, June 25, 2003, <https://www.icrc.org/eng/resources/documents/misc/5nulpv.htm>.

<sup>157</sup> *Ibid.*

<sup>158</sup> Ramly, "Modes of Displacement."

<sup>159</sup> Saul Bernard Cohen, *Geopolitics: The Geography of International Relations* (Lanham, MD: Rowman & Littlefield, 2014).

<sup>160</sup> "Indian Ocean Tsunami Remembered—Scientists Reflect on the 2004 Indian Ocean that Killed Thousands," U.S. Geological Survey, December 23, 2014, [http://www.usgs.gov/blogs/features/usgs\\_top\\_story/indian-ocean-tsunami-remembered-scientists-reflect-on-the-2004-indian-ocean-that-killed-thousands/](http://www.usgs.gov/blogs/features/usgs_top_story/indian-ocean-tsunami-remembered-scientists-reflect-on-the-2004-indian-ocean-that-killed-thousands/).

<sup>161</sup> Wiharta et al., *Effectiveness of Foreign Military Assets*.

<sup>162</sup> *Ibid.*

The situation caused the government of Indonesia to allow foreign entities to respond. The TNI reported that 14 UN agencies, 16 foreign militaries, and 195 foreign humanitarian groups provided relief operations in Aceh alone.<sup>163</sup> The TNI assumed control of the overall response, ran operations, and served as the foreign military and USAID point of contact. The government asked the UN to coordinate the foreign NGOs. In Medan, the UN would report and coordinate NGO operations with the Australian Defense Force and TNI.<sup>164</sup> Foreign militaries were only allowed to conduct operations for three months and only in areas allowed by the TNI. Restriction of NGOs imposed during the conflict continued for security reasons.

#### **4. Security Situation**

Days after the tsunami, GAM and the government agreed to a ceasefire. With the ceasefire, IHL no longer applied, even under the ICRC interpretation of Article 59 of the fourth Geneva Convention, 70 and 71 of the First Additional Protocol, and 18 of the Second Additional Protocol. However, fighting did not end. The government has since admitted to continuing counterinsurgency efforts despite the ceasefire.<sup>165</sup> The state-run news agency ran quotes from the army chief of staff declaring that at least 120 rebels had been killed shortly after the tsunami.<sup>166</sup> GAM fighters were not innocent in the attacks; they were reportedly violating the ceasefire as well.

Refugee camps posed a potential threat as well. An American civil–military office stated, “Restless refugee camp males are the prime breeding ground of some of these insurgencies.”<sup>167</sup> Refugee camps were a concern in the war on terror due to the arrival of the Laskar Mujahidin—a part of the Mujahedeen Council of Indonesia (MMI), and previously headed by the former leader of JI.<sup>168</sup> The MMI has been considered a front

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<sup>163</sup> Ibid.

<sup>164</sup> Ibid., 95.

<sup>165</sup> Margesson, *Indian Ocean Earthquake and Tsunami*.

<sup>166</sup> Elleman, *Waves of Hope*, 37.

<sup>167</sup> Ibid.

<sup>168</sup> Ibid.

for JI.<sup>169</sup> It was alleged that the groups were brought in to help the TNI hold GAM at bay through ongoing counterinsurgency efforts. The TNI provided air transport, provisions, and housing for MMI responders, which raised questions as to the relationship between TNI and JI.<sup>170</sup> There was also evidence that the MMI was handing out recruiting leaflets in the camps.

Throughout the response, the government and the TNI would continue to restrict both foreign military and humanitarian access to the areas outside of cities for security reasons. Despite GAM claiming a ceasefire, the TNI claimed that the restrictions were for the safety of the aid workers and would prevent supplies from falling into the hands of GAM.<sup>171</sup> In some cases, it was reported that the TNI insisted upon delivering relief supplies and barred local NGOs from providing aid.<sup>172</sup> There were safety concerns for aid workers. The IFRC reported that a Red Cross delegate was shot seven months into the response.<sup>173</sup> The principles of neutrality should ensure that even GAM fighters would receive supplies, but once again the TNI's objective was to ensure that did not happen.

Aid workers, to include those with the ICRC, had to apply for permission to leave designated areas and were required to have military escorts. The multitude of NGOs that entered the country was difficult to manage, and competition between NGOs to get aid to everyone made coordination that much harder.<sup>174</sup> Given the actions of the TNI before the tsunami, NGOs traveling with military escorts could give the perception of NGOs' collusion with the government, causing security problems for aid workers when dealing with GAM or the population most impacted by the conflict. On the other hand, the absence of local government officials and GAM's actions complicated the organization

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<sup>169</sup>Margesson, *Indian Ocean Earthquake and Tsunami*, 24.

<sup>170</sup> Ibid.

<sup>171</sup> Ibid.

<sup>172</sup> IFRC, *Legal Issues*.

<sup>173</sup> IFRC, *Stronger Together: The Global Red Cross Red Crescent Response to the 2004 Indian Ocean Earthquake and Tsunami* (1255200) (Geneva, Switzerland: IFRC, 2013), 63, <http://www.ifrc.org/PageFiles/136957/1255200-Stronger%20Together-EN-HR.pdf>.

<sup>174</sup> Elleman, *Waves of Hope*, 37.

of security and relief efforts in some areas. The U.S. military had to halt operations due to threats from GAM fighters, and NGOs reported attacks on their workers.

## **5. Perception of NGOs and Foreign Militaries**

U.S. and Australian forces and NGOs were reminded they should not try to do anything beyond humanitarian aid work. The Indonesian government, GAM, JI, Laskar Mujahidin, and the public expressed tentative trust of U.S. involvement. There were concerns that military forces and NGOs were there to invade and promote Christianity in the largely Muslim country. A member of Laskar Mujahidin stated, “As long as [foreign troops] are here to help, we will have no problem with them.”<sup>175</sup> Hilmy Bakar Almascaty, the head of GAM, added, “So far, America has come here like an angel, but if it turns into a Satan as it did in Afghanistan and Iraq, we must fight it.”<sup>176</sup> The head of the Indonesian legislative body stated that if America and Australia were to act beyond their humanitarian aid role, “then we have to resist.”<sup>177</sup> The targeting of America and Australia despite fourteen other foreign militaries responding could be an extension of the previous threats on the response from the U.S. Navy and the Bali bombing, both committed by JI. The U.S. Navy based operations off the coast of Aceh, per the government’s direction. However, the Navy provided escorts for NGOs and helped to set up a management information center to aid in information sharing among themselves and the military.<sup>178</sup>

The fear of NGOs proselytizing Muslims to convert to Christianity was also a concern. This situation highlights the perception that NGOs promote Western Judeo-Christian values rather than accepting the beliefs of the local culture. The secretary general of the Indonesian Council of Ulemas warned all “nongovernmental organizations, either domestic or international, with hidden agendas coming here with humanitarian

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<sup>175</sup> Christopher Jasparro, “Old Threats, New Opportunities in Tsunami’s Wake,” YaleGlobal Online. March 23, 2005, <http://yaleglobal.yale.edu/content/old-threats-new-opportunities-tsunamis-wake>.

<sup>176</sup> Ibid.

<sup>177</sup> Elleman, *Waves of Hope*, 37.

<sup>178</sup> Ibid., 63.

purposes but instead proselytizing, this is what we do not like.”<sup>179</sup> The actions of some of the NGOs did not allay those fears; a Christian NGO proclaimed it would take in orphan children and place them in Christian homes.<sup>180</sup> The secretary general of the Indonesian Council of Ulemas condemned these actions, and the NGO abandoned the idea when the population protested, realizing the government had banned the adoption of orphaned Acehese by non-Muslims.<sup>181</sup> Some aid workers reportedly distributed Bibles despite the government’s concerns over proselytizing.<sup>182</sup> The article does not mention if Christian groups were only handing out Bibles to Christians that reside in the area, but given the concerns expressed by the government, it may not have mattered. The UK newspaper the *Guardian* reported American Evangelist Mark Kosinski as stating, “These people need food, but they also need Jesus. God is trying to awaken people and help them realise salvation is in Christ”<sup>183</sup> The *Guardian* article did end noting that Mormon and Indonesian Christian groups were working with Islamic relief workers to remove corpses and provide relief supplies.

NGOs were inconsistent in their approaches with the military, sometimes resulting in tense relations. NGOs did not always follow standard principles of neutrality and provided uneven quality and, at times, inappropriate supplies.<sup>184</sup> NGOs that had not worked in the country before had trouble translating unclear and inconsistent government regulations.<sup>185</sup>

## 6. Overall Logistical and Resource Issues

The response to the earthquake and tsunami resulted in a glut of responders that caused significant logistical issues. The government restricted response efforts by foreign

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<sup>179</sup> Ibid., 37.

<sup>180</sup> Ibid.

<sup>181</sup> Ibid.

<sup>182</sup> Barnaby Willitts-King, *The Role of the Affected State in Humanitarian Action: A Case Study of Indonesia* (London: Humanitarian Policy Group, 2009), <https://www.odi.org/sites/odi.org.uk/files/odi-assets/publications-opinion-files/4281.pdf>.

<sup>183</sup> Jason Burke, “Religious Aid Groups Try to Convert Victims,” *Guardian*, January 16, 2005.

<sup>184</sup> Willitts-King, *The Role of the Affected State*.

<sup>185</sup> IFRC, *Legal Issues*, 40.

militaries to three months. The large-scale response combined with the heavily impacted infrastructure led to operational and logistical issues. Before the tsunami, the Banda Aceh airport on average handled eight flights a day. After the tsunami, the airport was the only partially functional airport that could accommodate large fixed wing planes and would have to support 132 flights a day to accommodate the aid resources.<sup>186</sup> Flights had to land, unload aid supplies on the tarmac, and fly out. Medan was the main staging area for resources. However, the remaining structures did not provide enough storage capabilities and were quickly overwhelmed. Ongoing conflict reportedly held up relief convoys for hours.<sup>187</sup> The government originally under-regulated NGOs and then over-regulated to compensate.<sup>188</sup> For the responders, there were significant bureaucratic bottlenecks in getting visas for incoming volunteers.

## **7. ICRC and Palang Merah Indonesia (Indonesian Red Cross Society) Operations**

The chairman of PMI traveled with the Indonesian vice president as an advisor about the impacted area for the initial assessment of damage. The ICRC had limited travel despite consistent access to GAM and IDP camps during the conflict, but the PMI was allowed outside the main cities without military escorts. This relationship also allowed the ICRC and the PMI to receive resources without as many issues as the other groups. According to the IFRC, GAM also continued attacks. However, the IFRC report did not speak to the military's ongoing counterinsurgency efforts.

The Red Cross Movement was not immune to the corruption of response efforts. In April 2005, the Red Cross Movement issued a security policy due to an increase in corruption and threats to personnel during the reconstruction period. The policy acknowledged that contractors involved in reconstruction efforts were being threatened and felt it was better to pay the government officials than lose their lives.<sup>189</sup> The IFRC *Stay Safe* manual provides a brief vignette that tells of two national societies being

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<sup>186</sup> Wiharta et al., *Effectiveness of Foreign Military Assets*.

<sup>187</sup> Elleman, *Waves of Hope*, 37.

<sup>188</sup> Willitts-King, *The Role of the Affected State*.

<sup>189</sup> IFRC, *Legal Issues*, 40.

threatened by alleged rebels who demanded the Societies pay taxes to finish their programs. The Societies suspended activities and informed the local community that programs would not resume unless the threats stopped. The local community began policing the groups and programs resumed. This vignette highlights the issues that humanitarian agencies face when responding to conflict and disaster. The workers faced threats and demanded the government or community deal with those threatening them. Otherwise, they would have to stop work.<sup>190</sup> If these threats continued, then the vulnerable population would have lost aid and it would reinforce the idea that they were in league with the government and the Western responders.

## **C. CASE STUDY 2: SRI LANKA**

### **1. Relationships to U.S. Counterterrorism Efforts**

By the time of the tsunami, the conflict between the Government of Sri Lanka (GoSL) and the LTTE group fighting for an independent Tamil province in the north and east of the country had been raging for 21 years. The United States designated the LTTE a terrorist group in 1997. The LTTE's reach was beyond Sri Lanka; Tamils in India, Australia, Canada, Switzerland, and other countries provided financial support the LTTE and their Tamil Rehabilitation Organization (TRO), as well as other charitable organizations.<sup>191</sup> The United States froze the TRO's assets under counterterrorism legislation.<sup>192</sup> In addition, they funded themselves through legitimate and illegitimate businesses in Colombo, as well as by smuggling guns to other armed groups.<sup>193</sup> They had an established government and military to include a navy and army, which held a large portion in the north and east of the country.

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<sup>190</sup> IFRC, *Stay Safe: The International Federation's Guide to a Safer Mission* (Geneva, Switzerland: IFRC), <http://www.ifrc.org/Global/Documents/Secretariat/201402/Stay-Safe-manual-EN.pdf>.

<sup>191</sup> Kuhn, "Tsunami, and Conflict in Sri Lanka," 5.

<sup>192</sup> Samir Elhawary, and M.M.M. Aheeyar, *Beneficiary Perceptions of Corruption in Humanitarian Assistance: A Sri Lanka Case Study* (London: Humanitarian Policy Group, 2008), 5, <https://www.odi.org/sites/odi.org.uk/files/odi-assets/publications-opinion-files/2568.pdf>.

<sup>193</sup> Ibid.



## 2. Conflict Background

As in Indonesia, the GoSL treated the conflict as a domestic terrorist issue, insisting that the government is permitted to respond in accordance with its own laws.<sup>194</sup> In 2002, the Sri Lankan government and the LTTE signed their first ceasefire; following the ceasefire was an influx of NGOs into the area. NGOs were focused on reconstruction efforts. However, the GoSL considered their actions, specifically with the LTTE, to be undermining the sovereignty of the government.<sup>195</sup>

Before the tsunami, the ICRC was heavily involved in the Vanni area, working with the LTTE proto-government since 1989. NGOs working in that area had been considered pro-LTTE. However, the UN and ICRC received less criticism than others.<sup>196</sup> The ICRC maintained a good relationship with the Sri Lankan government due to their work negotiating the release of prisoners of war.<sup>197</sup> They also worked to provide better healthcare, water supply, and economic security, and to ensure the safe passage of civilians in and out of the LTTE-held area of Vanni.<sup>198</sup> Sri Lanka was divided among three major ethnicities, the Sinhalese, the Tamils, and the Muslim population. The GoSL had been leveraging the divides to favor groups to create a blockade against the LTTE—in particular, the provision of water.<sup>199</sup> They had also begun moving toward restrictions of movement, to include establishing permits, checkpoints, and “closed military zones.”<sup>200</sup>

Despite the opposition to the LTTE’s methods, the ICRC projects and the GoSL-imposed restrictions helped garner support for the group.<sup>201</sup> In 2004, the leader of the LTTE faction in the Eastern Province, Colonel Karuna, had recently switched sides to

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<sup>194</sup> Simon Harris, *Humanitarianism in Sri Lanka: Lessons Learned?* (Medford, MA: Tufts University, 2010), 2, <http://fic.tufts.edu/assets/Sri-Lanka-Briefing-Paper.pdf>.

<sup>195</sup> *Ibid.*, 7.

<sup>196</sup> *Ibid.*, 3.

<sup>197</sup> *Ibid.*, 2.

<sup>198</sup> *Ibid.*

<sup>199</sup> Kuhn, “Tsunami, and Conflict in Sri Lanka,” 6.

<sup>200</sup> *Ibid.*

<sup>201</sup> *Ibid.*, 5.

support the GoSL, which limited the LTTE's ability to carry out military actions, fundraising, and recruitment in the Batticaloa District.<sup>202</sup> In the Eastern Province the majority of NGOs were run by Tamils, and in 1999 were considered partisan among the Sinhalese and Muslim communities.<sup>203</sup> At the time, the government had frozen the assets of NGOs in the Northern Province due to concern over their links to the LTTE.<sup>204</sup>

### **3. Incident Situation**

Prior to the tsunami, there were an estimated 390,000 IDPs due to the conflict, primarily Tamils in the north and east of the country.<sup>205</sup> The population distribution of the country at the time was 74 percent Sinhalese, 18 percent Tamil, and 7 percent Muslim.<sup>206</sup> The tsunami impacted 61 percent of Sinhalese population in the south, with the Tamils at 21 percent and Muslims at 17 percent in the Northern and Eastern Provinces.<sup>207</sup> Surveys in the Eastern Province showed areas with higher concentrations of Tamils already impacted by the conflict had, in comparison, higher death rates and more damaged or destroyed homes than others.<sup>208</sup> Tamils in these areas also had a socioeconomic disadvantage compared to Muslims, with living standards below average for the area.<sup>209</sup> This meant that Tamils were the most vulnerable of the impacted survivors; however, aid efforts for the Tamils were some of the most politically contested.

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<sup>202</sup> Ibid.

<sup>203</sup> Johnathan Goodhand and Nick Lewer, "Sri Lanka: NGOs and Peace-Building in Complex Political Emergencies," *Third World Quarterly* 20, no. 1 (1999): 83.

<sup>204</sup> Ibid.

<sup>205</sup> Elizabeth Ferris, "Natural Disasters, Conflict, and Human Rights: Tracing the Connections," presented at the Brookings Institution-University of Bern Project on Internal Displacement, St. Mary's University, San Antonio, TX, March 3, 2010.

<sup>206</sup> Kuhn, "Tsunami, and Conflict in Sri Lanka," 5.

<sup>207</sup> Ibid.

<sup>208</sup> Ibid.

<sup>209</sup> Ibid.

In the immediate aftermath of the tsunami, the citizens themselves were the first responders, showing no regard for ethnicity. Their actions are credited with a successful response operation that lessened the risk of endemic disease and food shortages.<sup>210</sup> In the beginning of the response, local governments were in charge of response coordination activities through district secretariats and in coordination with established NGOs.<sup>211</sup> Requests for aid were immediate; while there were no comprehensive plans for a large-scale incident, the secretariats established inter-sectoral coordination led by a government agent who communicated with other districts and the national government. The disaster management legislation had not been passed, leaving the government with no formal mechanism to provide disaster relief.<sup>212</sup> Within the first week of the disaster aftermath, 1,500 American troops were deployed around Sri Lanka to provide relief—primarily in the south, to avoid the LTTE strongholds in the north.<sup>213</sup> Over the course of the response, recovery, and reconstruction period, 2,000 NGOs operated in Sri Lanka.<sup>214</sup>

Three days after the tsunami, the government established the Centre for National Operations, which was responsible for the coordination of state response, to include the direction of NGO activities to the areas in most need. Nine days into the response, the GoSL declared a state of emergency in the interest of public security. In doing so, the president and military were placed in charge of the response efforts and temporarily suspended separation of powers. This action caused the Human Rights Commission of Sri Lanka to express concern that a prolonged state of emergency may result in large-scale human rights violations.<sup>215</sup> The coordination structures would change over the course of the response.

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<sup>210</sup> IFRC, *Legal Issues*, 6.

<sup>211</sup> *Ibid.*

<sup>212</sup> *Ibid.*

<sup>213</sup> Elleman, *Waves of Hope*, 37.

<sup>214</sup> IFRC, *Legal Issues*, 12.

<sup>215</sup> *Ibid.*, 10.

#### 4. Security Situation

The majority of Sri Lanka's security issues occurred during the recovery and reconstruction phases of the response. From the beginning, though, a main concern of the GoSL was aid efforts in the LTTE-held areas. The LTTE and GoSL peace talks had reached a low point by the time the tsunami hit. As in Indonesia, the two agreed to a ceasefire and even agreed to collaborate on disaster response. There were indications that humanitarian aid was used for political capital by both the government and the LTTE to sway constituents.<sup>216</sup> Early on, the GoSL and LTTE agreed to collaborate on the distribution of aid. A UN report on NGO coordination and response in Sri Lanka, the Maldives, and Indonesia stated that aid efforts in LTTE areas led to political dissent, which in turn led to the demise of government and LTTE collaboration efforts.<sup>217</sup> Despite the collaboration attempts, there was still a strong sense among the Tamils that the GoSL assistance was biased. As previously mentioned, the tsunami impacted a large portion of Sinhalese in the south, but the Tamils and the Muslims in the Northern and Eastern Provinces were more vulnerable since they had sustained impacts from both the conflict and the disaster. The percentage of Tamil and Muslim deaths was also more significant than those in the south because the death rate was high and the population was small prior to the tsunami.

Impacts from the tsunami were compounded in the northern area due to destruction and isolation caused by the ongoing conflict.<sup>218</sup> In the first days of the tsunami, the LTTE and GoSL were able to collaborate to respond. However, this collaboration did not hold. Both the LTTE and the GoSL engaged in public relations fights, with each claiming that the other was exploiting the tsunami response. According to a report from the Immigration and Refugee Board of Canada, several sources reported that LTTE-controlled areas were not receiving aid, while other reports stated the LTTE

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<sup>216</sup> Elhawary and Aheeya, *Beneficiary Perceptions of Corruption*.

<sup>217</sup> Bennett et al., *Coordination of International Humanitarian Assistance*, 37.

<sup>218</sup> "ICRC Annual Report 2005—Sri Lanka," June 1, 2006, <http://www.refworld.org/docid/469386d50.html>.

would not allow foreign aid workers into the area.<sup>219</sup> Days after the tsunami, the LTTE invited media into areas under its control to demonstrate the struggles of the Tamils.<sup>220</sup> They also invited UN Secretary-General Kofi Annan to see the damage, but the GoSL canceled the visit.<sup>221</sup>

Most reports highlight inequalities in assistance distribution, but do not provide information on all the factors that play into providing financial assistance. A study for the UN shows a significant difference in spending per house, but the study does not appear to factor in death rates relative to the spending.<sup>222</sup> If a large portion of Tamils were killed, then financial assistance needs would be lower; financial assistance for a family of four survivors in the Southern Province would cost more than for an individual survivor who lost his or her family in the Eastern or Northern Province. There would also be no need to build houses for families that no longer existed; therefore reconstruction costs would be lower in those areas. Orphaned children were also moved into camps, which further reduced the amount of financial assistance required for those areas. An audit by the auditor general did show that the government's misappropriation of funds led to large portions of unspent aid.<sup>223</sup>

In January 2005, the GoSL, the Muslim community, and the LTTE negotiated an agreement establishing a plan for recovery and reconstruction assistance. The agreement, completed in June 2005 and entitled "Post-tsunami Operations Management Structure" (P-TOMS), set up a national, regional, and district-level structure that would oversee distribution of assistance and a fund that would be accessible to both the LTTE and Muslim community for recovery and reconstruction efforts. The IFRC reported that, while the recovery and reconstruction only pertained to the tsunami-affected areas, there

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<sup>219</sup> Research Directorate, Immigration and Refugee Board of Canada, *Responses to Information Requests, Sri Lanka: The Impact of the 26 December 2004 Tsunami on Human rights conditions in Sri Lanka* (Ottawa, Ontario: Immigration and Refugee Board, Ottawa, 2005), <http://www.refworld.org/docid/485ba87e28.html>.

<sup>220</sup> Ibid.

<sup>221</sup> National Institute for Defense Studies, *East Asian Strategic Review 2006*, 56.

<sup>222</sup> Kuhn, "Tsunami, and Conflict in Sri Lanka."

<sup>223</sup> National Institute for Defense Studies, *East Asian Strategic Review 2006*, 58.

was hope that the agreement would help toward the revival of peace talks.<sup>224</sup> P-TOMS created significant political strife and was protested by political groups; it was ruled unconstitutional by the Supreme Court shortly after the agreement was approved. According to the IFRC, this was a damaging setback that slowed reconstruction efforts, caused a renewal of violence, and pressured aid agencies to redirect efforts to the increasing number of IDPs that would not have homes any time soon.<sup>225</sup>

By the summer of 2005, reconstruction and recovery activities were slowed due to increasing violence and political killings. In August 2005, the GoSL declared a state of emergency following the assassination of the Sri Lankan president. Amnesty International reported that killings of civilians had begun to increase by December of 2005. The killings were not attributed solely to the LTTE, but also to Colonel Karuna's group Tamil Makkal Viduthalai Puligal (TMVP) in the Eastern Province, other Tamil armed groups, and government security forces.<sup>226</sup> Interviews conducted by Amnesty International related killings to the split between the northern LTTE and the TMVP as a means to "settle grudges," leading to more instability in the tsunami-affected areas. There were reports of sexual abuse of women and kidnapping of children in camps. The ICRC reported that the recruitment of minors continued in 2005, and the GoSL halted adoptions due to the UN's inclinations that "gang-related" kidnappings were occurring.<sup>227</sup> Security forces were unable to secure camps in the north and east due to attacks. The Deputy Inspector General of Police, Eastern Range, told Amnesty International that armed groups were attacking security forces in camps, leading to a reduction in forces to secure camps. The camps were still populated in 2006, with very little relief in sight.

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<sup>224</sup> IFRC, *Stronger Together*.

<sup>225</sup> *Ibid.*, 77.

<sup>226</sup> Amnesty International, *Sri Lanka: A Climate of Fear in the East* (London: Amnesty International, 2006), 2.

<sup>227</sup> "ICRC Annual Report 2005—Sri Lanka"; Research Directorate, Immigration and Refugee Board of Canada, *Responses to Information Requests, Sri Lanka*.

## 5. Overall Logistical and Resource Issues

There were approximately 2,000 local and international NGOs in Sri Lanka throughout the course of the response and recovery. In addition to the Centre for National Operations, the government founded the Task Force for Logistics Law and Order. The Task Force's duties were to ensure easy access to relief supplies and coordinate with customs and immigrations authorities for secure storage and distribution of relief supplies. The Task Force was also responsible for the protection of survivors of harassment and exploitation.

Impacts from the tsunami were compounded in the northern area of Vanni due to destruction and isolation caused by the ongoing conflict.<sup>228</sup> Prior to the tsunami, the Sri Lankan government had won back Jaffna, a major city on the northern tip of the island. The LTTE, however, had maintained control of the Vanni area. There were two checkpoints into the area. Both the GoSL and the LTTE asked for ICRC presence at checkpoints to facilitate movement of resources to and from the area.<sup>229</sup> The operating hours were extended to allow relief items to reach survivors. Relief supplies going to this area had to be offloaded, thoroughly inspected, and valued twice by the government. If supplies were sent directly into the area without distribution orders from the capital, the Sri Lanka navy and air force would inspect them.

Only a few of the hundreds of responding NGOs in Sri Lanka had previously worked and were registered in the country. Outside NGOs faced challenges and delays in getting visas for both staff and resources into the country. NGOs that had worked in the country prior to the tsunami were able to negotiate concessions on taxes, duties, and customs procedures. Other NGOs were able to negotiate, but with difficulties; it was reported that the Ministry of Finance discouraged new memorandums of understanding that included tax, duty, and immunity concessions.<sup>230</sup> The concessions did not necessarily result in an easier process, but some relief items were considered exempt

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<sup>228</sup> "ICRC Annual Report 2005—Sri Lanka."

<sup>229</sup> *Ibid.*, 186.

<sup>230</sup> IFRC, *Legal Issues*.

from waivers. In some cases waivers were issued for supplies, but only if the supplies were handed over to the government for distribution.<sup>231</sup>

The customs searches—deemed necessary by the GoSL due to security concerns—were a cause of lengthy delays that often resulted in supplies expiring or no longer being needed. There were reports that individuals or groups registered as fraudulent NGOs to import non-relief items (e.g., drugs, ammunition, and grenades) mixed in with relief supplies.<sup>232</sup> NGOs also knowingly mislabeled cargo to avoid taxes and duty fees. In addition, there were reports that organizations tried to import helicopters and items for commercial sale that were not relief items.<sup>233</sup> Communications equipment deliveries to allow for cell and radio capabilities were blocked in conflict areas because the government claimed the technology was military grade and therefore posed a security risk.<sup>234</sup> This issue applied equally to organizations that had previously worked with the GoSL and new organizations.<sup>235</sup> The GoSL leveraged new taxes on relief supplies in the hopes of curbing fraud.<sup>236</sup>

## **6. ICRC and RCRC Society Operations**

The Red Cross Movement had a heavy presence and a good relationship with both the LTTE and GoSL in Sri Lanka. More than 70 National Red Cross Societies contributed, 20 worked in country operations, and 16 of those worked in the north and east.<sup>237</sup> The ICRC coordinated efforts in the north and east, working with the GoSL, LTTE, and other NGOs. As the lead relief entity, the ICRC handled security issues and communication with authorities.<sup>238</sup> The ICRC provided healthcare and water sanitation in isolated areas, as well as seeds and tools to communities to alleviate the economic

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<sup>231</sup> Ibid.

<sup>232</sup> Ibid., 21.

<sup>233</sup> Ibid.

<sup>234</sup> Ibid., 23.

<sup>235</sup> Ibid., 21.

<sup>236</sup> Ibid.

<sup>237</sup> “ICRC Annual Report 2005—Sri Lanka.”

<sup>238</sup> Ibid.



impacts of the tsunami on farmers.<sup>239</sup> As previously mentioned, the ICRC ensured the facilitation of relief supply distribution through the checkpoints. They also worked with the Sri Lankan Red Cross and four other national societies to develop a long-term plan for recovery and reconstruction.<sup>240</sup> The ICRC worked on tsunami-related issues in the north and east until mid-2005, before switching back to its conflict-related responsibilities (e.g., negotiating the release of minors by the LTTE, prisoner visits, and IHL training) full time.<sup>241</sup> The Sri Lankan Red Cross took over coordination of tsunami-related activities in these areas.

#### **D. CASE STUDIES 1 AND 2: CONCLUSION**

Both countries lacked plans to handle a catastrophic incident, much less an incident that could occur during a conflict. This left the governments vulnerable and reliant upon the international community. The TNI in Indonesia faced the challenge of working with an international community that had criticized the government for human rights violations and had previously been kicked out of the country. It had also restricted NGOs previously, and the GoSL had worked out a balance with the Sri Lankan Red Cross and the ICRC. This was thrown by the influx of foreign militaries and NGOs. Without plans to account for these shifts, the government had to scramble to maintain control; it had to address the challenge of responding without allowing the armed groups to use the situation to their benefit.

The overwhelming influx of NGOs into both countries not only created logistical issues, but also taxed the governments' control even more. Even without a conflict, this would have hindered NGO responses; because of damaged infrastructure and the amount of relief supplies coming in, the logistics would have been overwhelming. The influx of NGOs and the lack of a plan led to ad hoc laws and taxes that even the NGOs that had existing relationships with the government found difficult to navigate. Poor NGO

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<sup>239</sup> Ibid.

<sup>240</sup> Ibid.

<sup>241</sup> Ibid.

coordination and communication issues led to multiple approaches to response efforts. The multiple approaches caused perception issues for NGOs across the board.

Corruption of aid occurred in both countries, and aid workers found themselves in danger. In both countries, foreign militaries had advantages in their ability to provide assessments and logistic capabilities. There were issues with information sharing, coordination, and communications between the NGOs and the military, but the advantages of the military seemed to outweigh those issues. The U.S. Navy responded to both countries, but the responses were different. Indonesian response aid delivery did not involve response in an area with a U.S.-designated terrorist group, as it did in Sri Lanka. In Indonesia, a group that was a suspected front for a U.S.-designated terrorist group *provided* aid in Banda Aceh in coordination with the U.S. NGOs and the Navy. In Sri Lanka, the U.S. Navy provided support to the country, but not in the areas held by the LTTE, a U.S.-designated terrorist group.<sup>242</sup>

The response efforts within Indonesia and Sri Lanka had some differences. It would appear that the restriction of humanitarian aid organizations was a benefit in Indonesia. The conflict between the government and the GAM did not resume following the tsunami. By the ICRC's definition of the end of a NIAC, the result of the tsunami response was the end of the NIAC. Response conducted by foreign militaries was closely coordinated with the TNI. In addition, the militaries had similar mission sets beyond tsunami response, to ensure counterterrorism efforts were successful. The TNI treated the response more as an extension of the conflict and, due to the previous actions to restrict NGOs, was able to maintain status quo despite opening the country up to international aid. It was believed that the TNI was able to coordinate both response and counterinsurgency efforts effectively despite restricting NGOs. For security reasons, the PMI and ICRC's actions were tied to political objectives rather than the principles of neutrality and independence.

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<sup>242</sup> Elleman, *Waves of Hope*, 36–37.

In Sri Lanka, humanitarian aid was allowed to continue in all areas without many restrictions imposed by the GoSL. The GoSL and the LTTE made a concerted effort to collaborate in the beginning, but political dissent and inter-factional fighting caused the collaboration to dissipate and the conflict resumed and intensified. Unlike GAM, the LTTE was well funded and organized, with well-established control of territory that had strategic advantage prior to the tsunami. The split of the TMVP from the LTTE added a new factor to the conflict just before the tsunami and caused fighting over resources. The northern faction of the LTTE lost its main source of child recruits after the break and the tsunami overwhelmingly impacted children, causing a reduction in fighting forces. Exploitation of the situation through kidnappings from camps compounded the issues, as did the GoSL's party division on how to deal with the situation. In this case, the ICRC was able to continue its conflict-related activities, and its principles were not compromised by the disaster response as much as in Indonesia.

## **E. CASE STUDY 3: 2010 FLOODS—PAKISTAN**

### **1. Relationship to U.S. Counterterrorism Efforts**

Pakistan is considered a central actor in the war on terror's goals—fighting terrorism and religious militancy, creating stability in Afghanistan, and ensuring nuclear non-proliferation in the area.<sup>243</sup> The country faces a complex insurgency in a complex network of armed groups that operate under the banner of the Taliban Movement of Pakistan as well as various other groups in different parts of the country.<sup>244</sup> While Pakistan has withstood multiple natural disasters, this disaster was worse than all those before and threatened the gains the Government of Pakistan (GoP) had made in the contested areas. A stable Pakistan was considered a strategic goal in U.S. counterterrorism efforts.<sup>245</sup> The scale of this incident exceeded most local actors' (humanitarian and government) abilities and tested the GoP's ability to stabilize the country. There was international pressure on the GoP to maintain security and an

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<sup>243</sup> Kronstadt, Sheikh, and Vaughn, *Flooding in Pakistan*.

<sup>244</sup> C. Christine Fair, "Pakistan in 2010: Flooding, Governmental Inefficiency, and Continued Insurgency," *Asian Survey* 51, no. 1 (2011), doi: AS.2011.51.1.97.

<sup>245</sup> Kronstadt, Sheikh, and Vaughn, *Flooding in Pakistan*.

effective response to maintain goodwill in Khyber Pakhtunkhwa (KP) and the Federally Administered Tribal Areas (FATA).<sup>246</sup>

## 2. Conflict Background

Fighting between the Pakistani armed forces and armed groups in KP and the FATA since the 2001 invasion has led to a large-scale IDP situation. People displaced from fighting in 2009 had returned, but fighting continued in the FATA and KP in the form of armed group attacks against civilians, the army, and the police. The role of international NGOs is not defined, and they were not able to provide aid in “politically sensitive” areas during the conflict.<sup>247</sup> Following the 2001 invasion of Afghanistan, the ICRC’s primary role had been focused on aiding refugees from Afghanistan that were in camps on the Pakistan–Afghanistan border.<sup>248</sup> The ICRC had not been conducting operations in KP or the FATA as they were considered inaccessible. The Taliban Movement of Pakistan saw NGOs as a part of a Western agenda and rejected assistance.<sup>249</sup>

An earthquake impacted the area in 2005, killing or injuring 145,000 people and leaving 3.5 million homeless.<sup>250</sup> The military coordinated efforts, and the response was considered one of the most successful responses to a large-scale incident. Civil–military relationships, despite several issues, were also considered a success. Concerns over cooperating with the military and counterterrorism efforts were set aside for the response. There were reports of “banned jihadi groups,” and “charitable wings of prominent religious parties” being active in response to gain influence over the population.<sup>251</sup>

As the conflict continued, civil–military relations began to break down due to the worsening security situation and geopolitical changes. In 2008, military operations

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<sup>246</sup> Ibid.

<sup>247</sup> Harriet Cochrane, *The Role of the Affected State in Humanitarian Action: A Case Study on Pakistan* (London: Humanitarian Policy Group, 2008), 5.

<sup>248</sup> Pechayre, *Humanitarian Action in Pakistan 2005–2010*, 5.

<sup>249</sup> Humanitarian Policy Group, “A Clash of Principles.”

<sup>250</sup> Madiwale and Virk, “Civil–Military Relations in Natural Disasters,” 1090.

<sup>251</sup> Humanitarian Policy Group, “A Clash of Principles,” 3.

displaced another 500,000 people from the FATA; NGOs and the ICRC began expanding operations into the FATA, Swat, Karachi, and Lahore.<sup>252</sup> The military avoided calling the operations “conflicts,” which would tie them to the Geneva Conventions and IHL, characterizing them as “law enforcement operations.” This gave the military the ability to control and restrict humanitarian operations.<sup>253</sup> In May 2009, the military conducted operations in the Swat region. Despite repeatedly winning the battle but failing to hold the area, leading to low civilian confidence in the military, law and order was restored to the region.<sup>254</sup> Civilians who had fled returned to the area by July 2010.

The government initially downplayed the IDP situation and was slow to react to the humanitarian implications. According to an assessment by the Humanitarian Policy Group, the conduct of the operations created a “clash of principles” for humanitarian groups.<sup>255</sup> The assessment argues that NGOs failed to speak out against the “conduct of hostilities and the politicisation of the emergency response” during the operation.<sup>256</sup> The UN, which was attempting to build a stronger relationship with Pakistan, was quiet on the subject of violations. The ICRC promoted IHL with the government and, according to their reports, repeatedly emphasized that they abide by the principles of neutrality, independence, and impartiality. Regardless, they were restricted from certain areas for security reasons; the ICRC abided by these restrictions, undermining its claims.

### **3. Incident Situation**

Flooding began in July in the KP and Balochistan area, where conflict and the majority of the displacement occurred. Then flooding continued downstream into the Sindh and Punjab areas, flooding a fifth of the country—an area larger than England.<sup>257</sup> At the time of the floods there were nearly 2 million IDPs in Pakistan due to security operations. The flooding impacted 20 million people in 84 of the 121 districts, killing

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<sup>252</sup> Pechayre, *Humanitarian Action in Pakistan 2005–2010*, 12.

<sup>253</sup> Madiwale and Virk, “Civil–Military Relations in Natural Disasters,” 1091.

<sup>254</sup> Fair, “Pakistan in 2010.”

<sup>255</sup> Humanitarian Policy Group, “A Clash of Principles.”

<sup>256</sup> *Ibid.*

<sup>257</sup> Madiwale and Virk, “Civil–Military Relations in Natural Disasters,” 1090.

2,000 people and destroying or severely damaging 1.3 million homes. The flooding affected critical infrastructure and 80 percent of the food reserves, and destroyed farming communities.<sup>258</sup> This caused food prices to surge for the entire country. There was a loss of access to clean water, homes, and sanitation facilities. The incident compounded the IDP situation by not only impacting the camps, but also hindering the return of IDPs to their homes which, in many cases, no longer existed.

The GoP did not request assistance until September, a month after the flooding began. There were conflicts regarding assessments of the damage; the government initially downplayed the damage while international NGOs and the UN reported a large-scale disaster.<sup>259</sup> The government criticized these assessments because NGOs failed to sync their assessments to the state assessments, or among themselves, before publishing.<sup>260</sup> The response was organized from Islamabad by the National Disaster Management Agency (NDMA), a civilian agency led by General Nadeem Ahmed, a senior military figure.<sup>261</sup> The military was once again the GoP's primary provider of disaster response. However, due to the severity of the disaster, the system was overwhelmed and led to the largest aid response in Pakistani history. This disaster did not represent just a catastrophic event for the civilians, but, as some analysts proclaimed, a test of the GoP's durability. A Congressional Research Service report points out that, "in the view of some analysts, the aggregated pressures are so great that the current national government is seen as unlikely to survive and complete its five-year term set to end in the spring of 2013."<sup>262</sup>

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<sup>258</sup> Ibid.

<sup>259</sup> "The Impact of Regulatory Problems and the Gains from Legal Preparedness in Recent Response Operations," IFRC, March 10, 2015, [http://www.ifrc.org/PageFiles/195860/IDRL%20Impact%20Study%20Draft%20for%20Expert%20Meeting\\_270215.pdf](http://www.ifrc.org/PageFiles/195860/IDRL%20Impact%20Study%20Draft%20for%20Expert%20Meeting_270215.pdf).

<sup>260</sup> Ibid.

<sup>261</sup> Madiwale and Virk, "Civil–Military Relations in Natural Disasters," 1090.

<sup>262</sup> Kronstadt, Sheikh, and Vaughn, "Flooding in Pakistan."

#### 4. Security Situation

The international community had concerns that the flooding would allow the armed groups to regroup after attacks by the Pakistani military. By August, 60,000 troops were redeployed to conduct disaster response operations. Attacks by the armed groups and counterinsurgency efforts by the military, despite the diversion of troops, continued. The deputy commander of the U.S. Department of Defense representative in Pakistan stated that he had confidence the GoP would “continue to wage a dedicated, committed struggle against violent extremism.”<sup>263</sup> Another senior military official stated that the flooding had delayed the timetable for operations by both the military and the armed groups.<sup>264</sup>

Goodwill and coordination between the Pakistan military and NGOs eroded following the 2005 earthquake.<sup>265</sup> Pakistani authorities and organizations, some UN agencies, and international NGOs saw the response as simply a natural disaster rather than a complex emergency. The ICRC, on the other hand, viewed the response as a disaster in the midst of conflict. This led to a divergence in response operation conduct. The ICRC reported that military operations, security restrictions, and attacks by armed groups in KP and the FATA hindered humanitarian operations by delaying operations or leading to the cancellation of some activities.<sup>266</sup> The report also mentions several times that the Pakistani Red Crescent Society (PRCS) and the ICRC had to enforce their operating principles. Pakistani authorities strongly encouraged the use of armed escorts in parts of the KP, Punjab, and Sindh districts. Some NGOs accepted the escorts, others obtained exceptions, and others canceled activities in those areas. NGOs were concerned working with the military and police in those areas would cause perception issues that would put NGO staff at risk. The GoP had concerns that an attack on an NGO would give

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<sup>263</sup> Ibid.

<sup>264</sup> Ibid.

<sup>265</sup> Pechayre, “Humanitarian Action in Pakistan 2005–2010,” 12.

<sup>266</sup> Madiwale and Virk, “Civil–Military Relations in Natural Disasters,” 1090.

the perception they could not handle security concerns and insisted that NGOs have police escorts in sensitive areas.<sup>267</sup>

Relief projects and travel to the FATA and KP required no-objection certificates, which serve as proof of authorization by the government to travel and conduct project-related activities. National authorities understood humanitarian security strategies but did not adequately communicate with Punjab and parts of the KP districts, creating confusion at the field and local levels. There was confusion over the need for no-objection certificates and the insistence on the use of armed escorts, and nervousness over allowing expatriate staff to provide aid.<sup>268</sup> The media reported that charities affiliated with armed groups were providing aid in areas where there was no one else, causing concern that their actions could garner support for the armed groups. The *New York Times* quoted Maulana Yousaf Shah, a provincial leader of Jamiat-ulema-e-Islam, as saying, “The West says we are terrorists and intolerant, but in time of need, we’re the ones serving the people.”<sup>269</sup> The *Guardian* also reported that Hajji Makbool Shah, a member of Jamaat-ud-Dawa, stated, “If the government were doing this work, there would be no need for us ... When the floods came, we carried people out on our shoulders, to our own ambulances. Where were the government ambulances?”<sup>270</sup>

## 5. Overall Logistical and Resource Issues

The flooding severely damaged transportation routes and created isolated areas, creating a logistical challenge that was compounded by the security restrictions. Initially, humanitarian actors relied on the Pakistani military to move resources under the “last resort” principle found in the use of foreign military and civil defense assets in disaster relief guidance issued by the UN.<sup>271</sup> NGOs and the UN debated over what constituted a

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<sup>267</sup> Ibid., 1098.

<sup>268</sup> Ibid., 1090.

<sup>269</sup> A. B. Ellick and P. Z. Shah, “Hard-Line Islam Fills Void in Flooded Pakistan,” *New York Times*, June 2010.

<sup>270</sup> Saeed Shah, “Pakistan Floods: Islamic Fundamentalists Fill State Aid Void,” *Guardian*, August 2010.

<sup>271</sup> Madiwale and Virk, “Civil–Military Relations in Natural Disasters,” 1090.



“last resort.” The GoP asked NATO for air assistance, but after much debate over NATO forces’ role in the Afghan conflict, UN humanitarian agencies decided not to use NATO’s assistance.<sup>272</sup>

Varying assessments of the damage hindered response operations. Communities in need were determined by local government assessments that, at times, were based on political pressures. Post-incident recommendations to the IFRC and PRCS stated that while coordination with the local governments was advisable, validation of assessments should have occurred independently.<sup>273</sup> This led to confusion over where resources were needed.

## **6. ICRC and RCRC Society Operations**

The ICRC and the Médecins Sans Frontières refused to use the military, UN, or donor states’ assistance and issued reports that clearly stated they were delivering aid as independent entities.<sup>274</sup> This aligned to the ICRC protocol that states: “Use of military assets by a component of the Movement, in particular in countries affected by armed conflict and/or internal strife/disturbance is a last resort solution, which can only be justified by serious and urgent humanitarian needs, as well as by the lack of alternative means.”<sup>275</sup> The GoP did not allow civilian air assets into the northwest initially, which meant those NGOs that abstained from military support could not move relief supplies into the inaccessible areas.<sup>276</sup> The ICRC argued that refusal to use the military, in this case, was to “safeguard perceptions.”<sup>277</sup>

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<sup>272</sup> Pechayre, “Humanitarian Action in Pakistan 2005–2010,” 12.

<sup>273</sup> Niaz Murtaza, “Evaluation of the Relief Phase of the International Federation of Red Cross Red Crescent Societies/Pakistan Red Crescent Society Monsoon Flash Floods Operation,” ALNAP, accessed February 25, 2017, 24, <http://www.alnap.org/resource/8731>.

<sup>274</sup> Pechayre, “Humanitarian Action in Pakistan 2005–2010,” 12.

<sup>275</sup> Charles-Antoine Hofmann and Laura Hudson, “Military Responses to Natural Disasters: Last Resort or Inevitable Trend,” *Humanitarian Exchange Magazine* 44 (2009): 1–5.

<sup>276</sup> Madiwale and Virk, “Civil–Military Relations in Natural Disasters,” 1090.

<sup>277</sup> *Ibid.*

The ICRC had a presence in the KP, FATA, Pakistan-administered Kashmir, northern Sindh, southern Punjab, and Balochistan districts, providing relief to IDPs before and during the flooding. During the flooding, the ICRC coordinated with the PRCS to ensure the delivery of funding and resources. The work done by the ICRC focused on the response to both the floods and the ongoing fighting. Insecurity and the flood response in KP and the FATA delayed livelihood support projects. The ICRC reported that it often had to operate via “remote management” and put procedures and control mechanisms in place to monitor operations.<sup>278</sup>

An evaluation of the IFRC and PRCS response commissioned by the IFRC’s Asia Pacific Zonal Office found the IFRC response was affected by a lack of status agreement with the Pakistani government, which made it difficult to obtain visas for international staff and to get resources through customs. The evaluation also noted that damaged infrastructure, continuous movement of people, and the mass exodus of the population led to a breakdown of community structures that made it hard for the IFRC to conduct assessments.<sup>279</sup> The evaluation found that the IFRC reached the following percentages of the population: 10 percent in KP, 6 percent in Punjab, and 7.8 percent in Sindh.<sup>280</sup> Despite being the poorest regions with the most damage, the Punjab and Sindh areas received less aid. The NDMA had provided a list to NGOs of all districts affected by the floods, identifying the severely and medium-impacted areas. The list included areas that were low-vulnerability and high-resilience communities mixed with high-vulnerability regions.<sup>281</sup>

## **7. Conclusion**

The focus for this disaster is more on the use of humanitarian agencies for the stabilization of Pakistan. There was very low confidence in the GoP from both civilians and the international community to maintain security and disaster operations,

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<sup>278</sup> “ICRC Annual Report 2010—Pakistan,” May 2011, 256, <http://www.refworld.org/docid/4de626630.html>.

<sup>279</sup> *Ibid.*, 257.

<sup>280</sup> Murtaza, “Evaluation of the Relief Phase ,” 24.

<sup>281</sup> *Ibid.*, 23.

jeopardizing the stability of the state. The scale of the disaster, however, was the largest response operation and, by its sheer size, would be subject to significant issues. Given the complexity of the situation in Pakistan and the management of disaster response, which encompassed multiple armed groups with varying objectives and views of humanitarian agencies, it was unlikely that the distribution of aid would have been widespread.

There were discrepancies in the ICRC and PRCS responses. The groups refused military support while accepting assessments—without validation—from local governments that were pressured by the NDMA. The approach of the ICRC and the PRCS focused on neutrality and independence, which varied from the cooperative approach they had in the 2005 earthquake, causing confusion in coordination with the military. This seems largely due to how the two entities viewed the response and the guidelines they followed. Ajay Madiwale and Kudrat Virk, in their article “Civil–Military Relations in Natural Disasters: A Case Study of the Pakistan Floods,” identified three approaches to the disaster:

1. Those who saw themselves responding to a purely natural disaster tended to follow the Oslo guidelines;
2. Those who saw themselves responding to a complex emergency, in which both the Pakistan national military and NATO were perceived to be parties to a conflict, tended to follow the [international military and civil defense asset (MCDA)] guidelines and to maintain an appropriate distance from the military where possible;
3. Those who saw themselves responding to a natural disaster within a complex emergency, for which there are no international guidelines and where neither the Oslo guidelines nor the MCDA guidelines provide guidance on civil–military relations with the national military, tended to have varying responses to civil–military issues.<sup>282</sup>

The ICRC approached the response per the second identified approach, which did not align with the view of the military.

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<sup>282</sup> Madiwale and Virk. “Civil–Military Relations in Natural Disasters.”

## F. DISASTER RESPONSE DURING CONFLICT: HISTORICAL CASES

This section lends a historical perspective to disaster response in conflict situations as a point of comparison to the response efforts after the Global War on Terror declaration. An early example of the ICRC's involvement—the Nigerian–Biafra, where a disaster occurred during the NIAC of 1967—illustrates the challenge of balancing political and humanitarian goals during a disaster and conflict. This response changed the ICRC operations and spawned the Médecins Sans Frontières due to a disagreement on how to handle political challenges.

In 1967, the eastern region of the newly independent Nigeria declared itself the Republic of Biafra, which resulted in a civil war. The Nigerian government formed a blockade that stopped the transportation of food and resource supplies, eventually creating a famine in Biafra.<sup>283</sup> In 1968, the ICRC began relief operations in response to the famine; however, it had issues obtaining consent from both the Biafran leaders and the Nigerian government. To meet the principle of impartiality, the ICRC insisted that efforts made in Biafra would be mirrored in impacted areas in Nigeria.

The Biafran leaders accepted the concept of aid; however, they were concerned that the ICRC was working with the Nigerian government and was part of a military strategy.<sup>284</sup> The Nigerian government insisted on final say in what would be delivered and how it would be delivered.<sup>285</sup> Despite the concerns, the ICRC was eventually able to conduct airlifts of food into Biafra from September 1968 to the summer of 1969. The airlifts, however, caused an issue for the federal government. Due to the open airspace, gunrunners were able to use the airlifts to bring weapons into the Biafra area.<sup>286</sup> In 1969, government forces shot down an aircraft that was part of the Swedish Red Cross airlift efforts, claiming that the plane was carrying weapons.<sup>287</sup> The Swedish Red Cross also

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<sup>283</sup> Nathaniel H. Goetz, *Humanitarian Issues in the Biafra Conflict* (Geneva, Switzerland: United Nations High Commissioner for Refugees, 2001).

<sup>284</sup> Desgrandchamps, “Organising the Unpredictable.”

<sup>285</sup> *Ibid.*, 1413.

<sup>286</sup> Goetz, *Humanitarian Issues in the Biafra Conflict*.

<sup>287</sup> “Nigeria Admits to Downing Red Cross Plane,” *Chicago Tribune*, June 7, 1967.

reported that two more of its planes had been shot and hit.<sup>288</sup> Shortly after the incident, the federal government took over relief operations and declared the ICRC commissioner general of the Nigeria–Biafra was *persona non grata*, temporarily ending Red Cross efforts.<sup>289</sup>

This response was plagued by the issues identified by the OCHA in 2011, giving the impression that, despite changes made to policies, humanitarian aid agencies still face the same problems. In the ‘90s, shifting roles of humanitarian aid agencies and the increase in the number of NGOs responding in conflict led to policy changes. The UN formed the OCHA and the Red Cross Movement updated the Seville Agreement in 1992, making the ICRC the lead agency in conflicts. Changes mainly focused on the role during a conflict rather than a conflict/disaster incident. In 1995, the Red Cross Movement laid out the “Code of Conduct for the International Red Cross and Red Crescent Movement and NGOs in Disaster Relief,” and the “Principles and Rules for Red Cross and Red Crescent Disaster Relief.”

Despite efforts to adapt to the changing environment of the ‘90s, the same issues continued. Another example of the barriers to humanitarian assistance identified by OCHA is the response to the 1998 earthquake in Afghanistan. In February of 1998, an earthquake occurred in the northern province of Takhar during the civil war between the Taliban and the Northern Alliance. In 1998, the United States had identified the Taliban as potential supporters of Al Qaeda, which was responsible for several bombings of U.S. assets. The UN had repeatedly expressed concern that the ongoing civil war would allow for the growth of terrorist organizations, arms, and drug trafficking that could destabilize the region.<sup>290</sup>

Weather and interference by Russian border guards on the border of Tajikistan and the Taliban, which controlled several access points to the impacted area, hampered

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<sup>288</sup> *Ibid.*

<sup>289</sup> Desgrandchamps, “Organising the Unpredictable,” 1414.

<sup>290</sup> “Afghanistan and the United Nations,” United Nations, accessed February 25, 2017, <http://www.un.org/News/dh/latest/afghan/un-afghan-history.shtml>.

efforts.<sup>291</sup> A study of the UN system response to the earthquake does not mention these issues, but found that communication and poorly established air asset contracts were the cause of delays. At the time, the UN had the Military and Civil Defence Unit (MCDU), which facilitated and coordinated access to and use of MCDAs in countries affected by humanitarian emergencies. The study stated that, “despite its wide range of contacts, the effectiveness and timeliness of MCDU in mobilizing military and civil defense resources to respond to a natural disaster in a country at war is questionable since national, political and security considerations take precedent and influence final government decisions.”<sup>292</sup>

The study recommended that the UN develop stronger cooperation for joint actions with the ICRC/IFRC during sudden disasters. ICRC reports on the earthquake do not mention coordination with the Northern Alliance to provide aid in the area. There was, however, close coordination with the Afghan Red Crescent Society. The ICRC reported that, in March, the second month of the response, ICRC staff were caught in the inter-factional fighting.<sup>293</sup> Buildings where ICRC staff stayed were destroyed and looted. The ICRC also reported insecurity and disrespect for the Red Cross emblem, forcing the evacuation of ICRC staff in the northern capital of Mazar-i-Sharif.

These historical cases show that many of the same issues and barriers that existed in the Indonesia, Sri Lanka, and Pakistan cases existed before counterterrorism laws and increased military humanitarian aid operations. In the case of Afghanistan, the UN study acknowledged that political and security issues would take precedence over humanitarian operations. In all five cases, this finding is evident. Even when a country has allowed for humanitarian aid in the conflict areas (Sri Lanka and Nigeria), once security issues arise the government must take precautions that result in the restriction of aid delivery.

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<sup>291</sup> Rohan J. Hardcastle and Adrian T. L. Chua, “Humanitarian Assistance: Towards a Right of Access to Victims of Natural Disasters,” *International Review of the Red Cross*, no. 325 (1998), <https://www.icrc.org/eng/resources/documents/article/other/57jpd.htm>.

<sup>292</sup> Sarah Longford, *Study of the UN System-wide Response to the Earthquake in Rustaq, North-eastern Afghanistan, 4 February 1998* (Geneva, Switzerland: UN Office for the Coordination of Humanitarian Affairs, 1998).

<sup>293</sup> “Update No. 98/05 on ICRC Activities in Afghanistan,” ICRC, April 17, 1998, <https://www.icrc.org/eng/resources/documents/update/57jp3t.htm>.

## IV. CONCLUSION

The conflict between governments and armed groups affects humanitarian aid delivery during disaster response by creating situations that do not allow for the neutrality, impartiality, and independence touted by the Red Cross Movement's code of conduct. The security concerns in a disaster lead to the same issues that exist in conflicts, as well as additional issues that compound the security concerns and can overwhelm the state. The three cases studies examined in this thesis show that, even if armed groups and governments attempt to collaborate (as they did in Sri Lanka or Indonesia with the ceasefire), to ensure the impartial provision of aid, there is still an insurmountable gap between political and humanitarian aid objectives.

As previously mentioned, the 2012 OCHA message regarding humanitarian access listed five barriers to humanitarian access.<sup>294</sup> The five barriers were present in all three case studies as well as the two historical cases. Counterterrorism laws did not appear to affect the Red Cross Movement's response, but more typical bureaucratic regulations (customs laws, taxes, and inspections) restricted their resource capabilities due to security concerns.

In addition to the barriers listed in the OCHA message, based on the Indonesia, Sri Lanka, and Pakistan case studies, there are four additional barriers to the provision of aid as a result of the conflict or the war on terror with armed groups:

- multiple NGOs crowding the response
- negative perception of humanitarian aid
- increase of IDPs in camps that existed due to the conflict
- impacted areas are not under state control

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<sup>294</sup> "OCHA on Message: Humanitarian Access."

## **A. MULTIPLE NGOS CROWDING THE RESPONSE**

Some of the restrictions were due to security issues, but some may have been avoidable if there had not been hundreds of NGOs within the impacted area. The large-scale influx of NGOs means the arrival of people and resources, which can be overwhelming in the chaos and can lead to delays. Despite the UN and ICRC's role to coordinate NGO efforts, the amount of responding NGOs can create an untenable situation. Government officials have to inspect all resources coming into the country to avoid security risks. If NGOs were not registered in the impacted country and had not previously worked in that country, officials were overwhelmed with requests to process visas for the workers. This is a newer issue, as the historical cases in Nigeria and Afghanistan did not involve a multitude of NGOs on the scale of the three more recent cases. As seen in Afghanistan, the UN had issues coordinating with the NGOs that were responding to the earthquake, but not on the scale of Indonesia, Sri Lanka, and Pakistan.

While the influx of NGOs during the disasters was more related to the large-scale impact of the disaster than to the conflict, it aggravated the security situations. In the Pakistan and Indonesia cases, the NGOs had varying approaches to the provision of aid and how to interact with the military forces of the impacted country or countries providing military aid. This led to confusion on all sides regarding how to interact and coordinate efforts. In Pakistan and Indonesia, there were three different approaches to military assistance. This caused confusion for the military responders who were trying to coordinate efforts. In Indonesia, the U.S. Navy tried to work with NGOs to provide logistical and security assistance but struggled to deal with the lack of coordination among the various organizations. The Pakistani military had successfully coordinated aid efforts in the 2005 earthquake just to face a new scattered response five years later in the 2010 floods. Also, multiple NGOs, to include the ICRC, developed independent assessments that did not coincide with UN or GoP assessments, which led to different approaches that did not sync with GoP efforts.



In Sri Lanka, the arrival of hundreds of NGOs allowed for the LTTE groups to pose as an NGO to take advantage of the relaxed customs laws and smuggle in weapons mixed with relief supplies. Although the Red Cross Movement had relationships with the governments in all three countries that allowed it some exceptions, it was still impacted by the issues caused by the large influx of NGOs. Red Cross Movement resources were delayed and subjected to the stricter regulations imposed for security concerns on resources, and delivery of relief supplies was delayed due to the glut of supplies coming into ports of entry.

## **B. NEGATIVE PERCEPTION OF HUMANITARIAN AID**

As discussed in Chapter II, the negative perception of humanitarian aid is not new. However, with the war on terror, there was more concern over coordinating with the militaries that were involved in the response and also had a role in the conflict. The persistent perception that NGOs are attached to the Western Judeo-Christian agenda made the armed groups leery of working with the ICRC or RCRC Societies in Indonesia and Pakistan. The large influx of NGOs and their varying approaches to response did not help to dispel this perception. Some promoted their values regardless of the government's request not to proselytize (this was the case in Indonesia), while others coordinated closely with the government and the military.

In Indonesia, NGOs, to include the ICRC, were required to use military escorts outside of Aceh. The ICRC had access to areas outside of Aceh during the conflict, but during the disaster response was restricted from leaving Aceh. Conversely, the PMI was allowed to leave Aceh unescorted to provide aid. However, their chairman was also an advisor to the vice president of Indonesia during the response. The ICRC's adherence to the restrictions and the PMI's ties to the government, mixed with the ongoing security operations conducted by the TNI, could be perceived as the two entities being complicit in the security operations. The government already mistrusted international NGOs and was often responsible for fostering the negative perceptions. In Pakistan, the Red Cross Movement was restricted from certain areas and accepted government assessments without validation. This led to a biased aid effort that was not countered by the Pakistan

Red Crescent Society. The ICRC did counter the GoP efforts in an attempt to appear independent and perhaps gain acceptance by armed groups that perceived them as just another extension of the Western Judeo-Christian agenda. In Sri Lanka, the Red Cross Movement had strongly established ties due to its long-term presence during the conflict and did not appear to face much negative perception in that country.

### **C. INCREASE OF IDPS IN EXISTING CAMPS**

All three countries had large numbers of IDPs in camps due to the conflict. When the disaster hit, more people took shelter in the same camps. Security for IDP camps was inconsistent in Sri Lanka due to reported attacks on security forces. This resulted in survivors reportedly being subjected to kidnappings and sexual assaults. In Indonesia, there were security concerns that armed groups would recruit IDPs in the camps. In Pakistan, IDPs displaced due to the conflict had just returned to their homes, only to turn around and return to the camps due to the floods. In Sri Lanka, due to the collapse of the P-TOMS agreement and the renewal of attacks by the LTTE and TMVP, reconstruction efforts were significantly slowed, leaving IDPs in camps for years.

### **D. IMPACTED AREAS ARE NOT UNDER STATE CONTROL**

The government is in charge of disaster response, to include the provision of aid. However, if the government does not control certain parts of the impacted areas, it cannot readily meet the needs of civilians—that is, if the government wants to provide aid in those areas without the consent of the armed groups in the first place. This issue was also present in the historical cases, though the response did not result in planes being shot down by the government, as in Nigeria. Though Indonesia, Sri Lanka, and Pakistan had relatively stable governments, armed groups controlled parts of their country.

GAM in Indonesia had lost much ground by the time the tsunami hit, but still maintained some areas. In Sri Lanka, both the Northern and Eastern Provinces had proto-governments that focused on providing aid; however, response efforts were allowed by the GoSL. While aid was allowed into conflict areas in Sri Lanka, it was restricted, and relief supplies subjected to extensive and time-consuming inspections. In the Pakistan case, KP and the FATA were not under GoP control. This means that the armed groups

were in charge of providing aid, which governments feared would allow them to gain more support. With the exception of Indonesia, armed groups were able to gain media attention, maintain the ability to attack, and receive outside financial support from groups considered “charitable wings” of terrorist groups. In this case, having people in IDP camps outside of the conflict area was beneficial, as it allowed the state to provide aid while choking off the armed group’s ability to “run to the rescue.”

## **E. CONCLUSION**

Humanitarian aid is about bringing resources to those in need to keep them alive. When there are complications getting resources into the disaster-impacted area due to destroyed infrastructure in the conflict—and then additional complications just getting the resources into the country for security reasons—it creates a complex situation that can be challenging at best.

Hans Morgenthau wrote, “The moral duty to spare the wounded, the sick, the surrendering and unarmed enemy, and to respect him as a human being who was an enemy only by virtue of being found on the other side of the fence, is superseded by the moral duty to punish and to wipe off the face of the earth the professors and practitioners of evil.”<sup>295</sup> The cases studied in this thesis illustrate Morgenthau’s point. Despite widespread damage to infrastructure and a large loss of life in these disasters, the actions of the conflict only temporarily stopped. The conflict continued and hindered the provision of aid at the expense of the civilians that had first suffered due to the conflict and now had to deal with the impacts of the disaster.

From all three case studies, it is clear that the government’s view of the situation can shape the response during a disaster, despite the stance of the Red Cross Movement. The fourth principle of Morgenthau’s theory states that political action cannot be viewed through the lens of universal morals, but must be based on the facts and circumstances of the situation.<sup>296</sup> The Red Cross Movement’s insistence that IHL applies in disasters that occur during conflict is the application of a moral lens, but, interestingly, the Movement’s

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<sup>295</sup> Morgenthau, *Politics among Nations*, 246.

<sup>296</sup> Morgenthau, *Politics among Nations*.

response adjusts to the facts and circumstances of the situation. The bifurcation of the ICRC and RCRC Societies' roles were of benefit to civilians in some respects, noticeably in Indonesia. In Sri Lanka, the ICRC's established relationship with the GoSL was beneficial to both civilians in areas held by armed groups and the GoSL. When the Red Cross Movement insisted on adhering to its principles, the GoP stymied the Movement. In Pakistan, the Red Cross Movement insisted that the GoP and UN must recognize its principles of independence, neutrality, and impartiality, and maintained its distance from the military. The Movement would, however, adhere to the government assessments, showing some flexibility based on the situation. This structure allows for some flexibility to negotiate with all sides. However, the Movement is still unable to fully overcome political objectives to provide aid to all survivors equally.

#### **F. RECOMMENDATIONS FOR FURTHER RESEARCH**

Further research on this issue could include:

- studying the impacts of modifying IHL and the Geneva Conventions to encompass the changing environment of conflict
- developing a permanent response organization structure by function for NGOs responding to conflict and/or disaster
- examining the impacts on civilians and effectiveness of multiple NGOs flooding into an impacted area
- modifying the Geneva Conventions to assign the UN the ability to restrict the number and type of NGOs allowed into an area

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