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HUMANITARIAN POLICY GROUP

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About HPG

The Humanitarian Policy Group at the Overseas Development Institute is Europe's leading team of independent policy researchers dedicated to improving humanitarian policy and practice in response to conflict, instability and disasters.

In brief

- The 'global war on terrorism' promises to remain a central feature of the international landscape for many years to come.
- This is not one war, but many. It constitutes not only a series of actual and potential armed conflicts, but also a framework within which national and international policy, including humanitarian aid policy, will be defined and implemented.
- However humanitarian actors may seek to distance themselves from the politics of the global war on terrorism, in operational terms they have played a key role in its major theatres, and are deeply embedded in it, culturally, politically and financially.
- Humanitarian actors therefore need to examine carefully how they position themselves in relation to the conflict.



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Humanitarian action and the 'global war on terror': a review of trends and issues

Historically, humanitarian actors have not concerned themselves about the rights and wrongs of war *per se*, but with the how they are fought, and how their effects might be mitigated. In some respects, the 'global war on terrorism' is just another war, and the obligations of humanitarian actors have changed little since that fateful September day. Yet the war on terrorism also constitutes a framework within which national and international policy, including humanitarian aid policy, will be defined and implemented. While humanitarian action has always been influenced by the geopolitical environment, questions concerning the relationship between aid and politics, and the roles and responsibilities of humanitarian actors, have become more urgent.

New questions, old concerns

The 'global war on terror' has raised important new questions concerning:

- the integration of humanitarian policy with international security policy;
- the weakening of multilateralism, and the consequent erosion of mechanisms insulating humanitarian action and principles from geopolitical influence;
- the implications of integrated approaches to peace-building, and the bilateral management of political transition;
- the interpretation of the international legal framework on the use of force, as well as international humanitarian, human rights and refugee law; and
- issues of dual responsibility, where the governments defining the policy agenda for the war on terrorism are also the main drivers and financiers of humanitarian policy in these settings.

The prosecution of the war has also highlighted more familiar issues in humanitarian policy. These concern the roles and responsibilities of humanitarian actors, not simply in providing a palliative for the worst excesses of war, but also for resolving conflict. Afghanistan and Iraq have shown the difficult implications of blurring the line between humanitarian action and peace-building. This has underscored the conceptual, legal and operational links between instruments of 'hard' power, in other words the use of force, and 'soft' instruments of power, including aid.

The war has also revitalised debates over:

- how humanitarian actors interact with states in situations of political transition;
- the relationship between NGOs, the military and security issues;
- the position of faith-based humanitarian agencies in a war which has assumed a religious dimension;
- donor relations, funding, issues of independence and the place of advocacy; and
- the advent of a new relief 'industry' of for-profit providers.

The 'war on terror': policy frameworks

Humanitarian action has become increasingly embedded – conceptually, culturally and operationally – within a framework of international peace and security. The majority of international organisations, including humanitarian organisations, initially welcomed this approach to international public policy when it was presented in terms of human security. Military responses to conflict

were combined with non-military instruments, such as trade, aid and diplomacy, and national public policy was linked to international public policy to ensure a coherence of response to complex political crises.

There is considerable continuity between these ideas and the thinking shaping the global war on terrorism. There are also, however, fundamental differences. The first concerns the notion of security, what it means and how it can be achieved. The second relates to how this agenda is shaped, and how objectives regarding values, principles and legal norms intersect with immediate concerns to protect security. So, for example, arguments in favour of investing humanitarian aid and development assistance in refugee-producing countries are being linked to the need to prevent migration into donor countries, because such migration is seen to be associated with security. How international refugee organisations respond to such trends, and to an increasingly restrictive asylum regime in Western countries, will be important for the protection of refugees. It will also be important in determining the vulnerability of populations remaining in conflict-affected countries.

The ‘war on terror’: legal frameworks

International humanitarian law (IHL) governs the way in which armed conflict is conducted, setting limits on the permissible methods and means of warfare and making specific provision for the protection of civilians and others taking no direct part in hostilities. Whether terrorist actions and the response to them amount to an armed conflict such as to be governed by IHL depends on the particular circumstances, and this question may well be disputed. IHL governs both international and internal armed conflicts, carried out by armed groups, and is understood to apply once an armed attack takes place against a state, or once a certain (undefined) threshold of internal violence has been crossed, such as to distinguish ‘internal disturbances’ from armed conflict. In practice, the state in question is usually the arbiter of whether an internal armed conflict exists, regulated by IHL, or whether the situation and the response to it constitute a matter of law and order, governed by domestic criminal law. The question of whether the state may legitimately adopt emergency measures in pursuing a counter-terrorist strategy, involving the suspension of normal rights and civil liberties, depends on the terms of the state’s constitution, domestic law and obligations under international human rights law. Certain core rights cannot be suspended under international law.

In order for a non-state entity to constitute a party to a non-international armed conflict within the framework of IHL, a number of criteria have to be met. Such a group must be an ‘organised armed group’ under ‘responsible command’, and must exercise ‘such control over a part of [the state’s] territory as to enable [it] to carry out sustained and concerted military operations’. Although many terrorist groups have an organised structure, with a capacity for establishing internal discipline, they are less likely to comply with the rules of armed conflict. This may indicate a lack of effective control, and so affect the status of the ‘conflict’; but just because one party does not follow the rules of war, this does not mean that another can violate them, even in its own defence.

While the formal language of international treaties and law

Box 1: Defining terrorism

‘Terrorism’ is generally understood to refer to the deliberate or reckless killing of civilians, or to the doing of extensive damage to their property, with the intention of spreading fear through a population and communicating a political message. That said, there is no precise, internationally-accepted definition of terrorism; the meaning of the term remains contested, and a marked moral element has insinuated itself into the language around it.

The ‘global war on terror’ is linked to a wide range of ideologies, and appears to have no temporal or spatial limits, nor clearly-defined enemies. It is about the politics of opposition. And it is about the production of, and trafficking in, illicit goods and services. The ‘global war on terrorism’ thus provides a label which can be applied to a very wide range of political and military conflicts. Some constitute armed conflicts, while others are in the realm of national and international policing and governance. A diverse assemblage of conflicts have been relabelled ‘terrorist’ and ‘counter-terrorist’ operations. These include the confrontations in Chechnya, the Palestinian territories and Kashmir. In countries as far apart as Tunisia, Colombia and Uganda, the label ‘terrorism’ has been used by governments against their opponents as a justification for derogating from their obligations with respect to human rights.

provides an important framework within which the global war on terrorism can be understood, the interpretation of that law fluctuates in line with domestic and international politics. Most obviously, there has been an explicit questioning of the utility of conforming to IHL, both as a matter of principle and in terms of military efficacy. This is likely to manifest itself not simply in the way that warfare is conducted, but also in a reduction in the leverage that might be exerted on parties to encourage closer adherence to IHL. In other words, the protection of civilians may be undermined. Equally, it may prove more difficult to appeal to humanitarian principles and values if humanitarian organisations are perceived to be allied with particular parties and traditions, and where the value of independent and impartial humanitarian action is in question.

The ‘war on terror’: key milestones

Stage 1: Confronting al-Qa’eda

The conflict in Afghanistan began in October 2001. Although sanctioned by the UN, it was prosecuted by an ad hoc coalition of forces, including a large number of anti-Taliban factions in Afghanistan, led by the US. By November, the Northern Alliance had taken control of Kabul, although the majority of al-Qa’eda’s leaders, including Osama bin Laden, eluded capture and remain at large.

The war in Afghanistan brought to the fore a number of issues regarding the conduct of a war against terrorists, as opposed to states accused of supporting terrorism. The first concerns the legal framework governing such a conflict. The war clearly constituted an international armed conflict, and therefore was bound by the Geneva Conventions. However, the status of captured al-Qa’eda fighters proved difficult and controversial. The US government designated these individuals as unlawful combatants, so denying them prisoner of war status. They were

given no rights to the due process of American law, meaning that they could be denied access to a lawyer and may be detained indefinitely without trial.

The Afghanistan campaign also highlighted the difficulties of prosecuting a war on terrorism, while at the same time engaging in state-building. The ousting of the Taliban provided an opportunity for a significant expansion of international engagement. However, it also raised questions regarding how the international community engages with a transitional administration suffering from weak capacity and uncertain legitimacy, and struggling to maintain minimal levels of security. While humanitarian aid has remained the default method of engagement, increasing developmental claims have been made on it. This has generated tensions between humanitarian actors, who wish to maintain their independence, and the interim administration, which is concerned to legitimise and stabilise its fragile grip on power by exerting control over the international assistance agenda.

Stage 2: Iraq: the pre-emptive strike

Iraq has been the test-case of the doctrine of the pre-emptive strike. The view advanced by the US and its allies to justify the Iraq conflict was that, taken together, the various UN resolutions since 1990–91 cumulatively provided sufficient legal authority to use force in 2003. This was particularly imperative, according to coalition forces, given that Iraq might be willing to provide terrorist groups with weapons of mass destruction. The opposing view argued that, while Resolution 1441 of November 2002 found Iraq to be in material breach of previous resolutions, it stopped short of authorising the use of force on that basis. Critics pointed to the shifting objectives of the Iraq campaign, from disarming Iraq of weapons of mass destruction, to removing its regime and ‘liberating’ its people. Critics contend that regime change in Iraq went beyond the original premise on which the use of force against Iraq had been authorised in 1991.

In advance of the conflict, some NGOs questioned the legitimacy of the war itself, so going beyond commenting only on the humanitarian implications of such a war. Investment in

Box 2: The doctrine of pre-emption

The doctrine of the pre-emptive strike was formally articulated in the US National Security Strategy in September 2002. This stated that the US ‘will not hesitate to act alone, if necessary, to exercise our right of self-defence by acting pre-emptively against such terrorists, to prevent them from doing harm against our people and our country’.

The doctrine remains contested. Critics argue that Article 51 of the UN Charter only authorises self-defence if an armed attack occurs, not before one has taken place. It is argued that the right to ‘pre-emptive’ defence is potentially destabilising since it permits military action outside the framework of the UN, raising the question of how military intervention will be governed and regulated.

Advocates of the doctrine maintain that, in an age of global terrorism and weapons of mass destruction, Article 51 is no longer adequate. Thus, the US contends that the goal of its security strategy is to eliminate potential threats *before* they can strike, and that this is justified because of the scale of the potential threat posed.

humanitarian preparedness was slowed because the UN and some member states feared that such preparations would signal that war was inevitable, and so undermine diplomacy. Such political obstacles to humanitarian preparedness are, of course, neither new nor unique to the Iraqi conflict. What was different in Iraq was that these political blockages were associated with the very governments that were the primary supporters and financiers of humanitarian action.

Once hostilities started in Iraq, new dilemmas emerged. In addition to problems of humanitarian access, which severely restricted the scope of independent humanitarian organisations, questions surfaced regarding the ability of military actors to provide assistance efficiently and impartially. Questions have also been raised as to whether the humanitarian community is witnessing the beginnings of a new relief ‘industry’, with for-profit providers competing with their NGO counterparts, not only for large-scale infrastructure repair, but also in areas traditionally handled by the UN and NGOs, such as clean water, healthcare and education.

By mid-2003, while there had been no major humanitarian crisis, Iraq remained extremely vulnerable, both economically and politically. People’s livelihoods and access to basic services were precarious, and the security environment was complex and difficult. Like Afghanistan, Iraq has demonstrated that, while ‘regime change’ can be achieved relatively quickly, rebuilding and stabilisation are much more difficult. In both countries, humanitarian aid, particularly large volumes of food aid, remains an important instrument for engagement, and is seen to play an important role in stabilisation and the consolidation of peace.

The political framework for humanitarian action in Iraq is, however, very different from Afghanistan, where the UN was responsible for the political transition. The establishment of the Office for Reconstruction and Humanitarian Assistance in Iraq marks a new moment in integrated approaches to peace-building, and in the bilateral management of political transition. While the responsibilities of the coalition forces are clear in relation to the Geneva Conventions, ambiguities remain regarding how the international community more broadly will engage with the occupying powers. These relate to the future of sanctions, the financing and management of the Oil for Food Programme and reconstruction. These are sensitive issues, particularly because the coalition’s occupation remains contested politically within Iraq.

The scale of assistance in post-Taliban Afghanistan, though large compared to previous levels in the country, was dwarfed by the appeals and pledges for Iraq. The World Food Programme alone has put out appeals for \$1.3 billion, equivalent to nearly 20% of total global spending on official humanitarian assistance in 2000. The UK’s Department for International Development has earmarked £210 million to Iraq, nearly double its total humanitarian aid budget for 2001. While assurances have been given that such responses will not detract from spending elsewhere, there are questions regarding proportionality, and indeed whether there is capacity within the system as a whole, and within Iraq in particular, to absorb such funds effectively.

Aid strategies in the global war on terrorism

Failed states and the potential threat they pose to national security

have attracted considerable interest in the aftermath of 9/11. The US National Security Strategy marked a new departure in US policy in its focus on the dangers that such states posed. The 'failed states' agenda has also become more prominent in bilateral donor aid policies, and in the policies of international development organisations, as the risks associated with disengagement are acknowledged.

This merging of the failed states agenda with the war on terrorism has direct relevance for international aid actors, and for the conduct of humanitarian operations. It is the most immediate expression of attempts to enhance the 'coherence' of military, political and humanitarian responses to countries experiencing protracted crises of governance and under-development. This is not confined to Western policy domains, but is also important in the Islamic world, where it is difficult to distinguish between the political, military and welfare functions of radical Islamic groups.

What we are seeing is the securitisation of aid, even if there are differences between the US and others on what shape that securitisation should take. Thus, while the US broadly favours military options, the Europeans prefer the soft-power technologies of human security.

The growing interest within aid policy in re-engaging with states affected by protracted political and economic crises marks a shift away from previous policy, which had emphasised investing aid resources in countries which had embraced reform and whose policy environment was considered favourable for long-term, sustainable development. However, the policy framework to steer investment in soft security in so-called 'poorly performing countries' remains weak; renewed interest in these states has not been accompanied by any significant breakthroughs in how development aid (as opposed to relief aid) will be managed to avert the risks associated with engaging with contested or illegitimate states.

These challenges are further compounded in those countries where central governments are not in full control of their territory, and/or where governments are not prepared to play their allotted role in counter-terrorism. In these environments, humanitarian aid is likely to remain important, not only for the provision of relief, but also more broadly in the initial phases of rehabilitation and reconstruction.

Issues and implications

The global war on terrorism promises to remain a central feature of the international landscape for many years to come. While the *object* of the conflict may be new, many of the mechanisms being used to implement it are not. The explicit linkage of the security and humanitarian agendas has been shaping responses to complex political crises for a decade. This includes the shift towards greater interventionism; the increasing proximity of military and humanitarian objectives and delivery mechanisms; and an increased emphasis on the coherent management of international policy. The hardening of the security edge to international relations has accelerated the rate of policy formulation, and has

made it easier to jettison some of the baggage of multilateralism, as effectiveness of outcome is prioritised over legitimacy of process.

Conventional mechanisms for punishing non-compliance with international norms and values have proved relatively blunt instruments in responding to new security threats, both in engaging with rogue regimes, such as those in Iraq and Afghanistan, and in targeting non-state actors. However, attempts to find new approaches, in particular through investments in soft security, have proved controversial, and have yielded questionable results. As such, the global war on terror is likely to remain a destabilising and unpredictable force. For humanitarian actors, this difficult environment is likely to complicate, rather than ease, their work.

In this troubled environment, it will be important for humanitarian actors to distinguish between the legitimacy and even legality of the multiple struggles being waged, the means by which they are being fought, and their impacts on civilians. In other words, humanitarians will need to be clear precisely which of the many ethical and legal dilemmas raised by the global war on terrorism are *humanitarian* in nature, and which are not.

In doing so, the traditional humanitarian principles of universality, impartiality and neutrality may prove to be just as valuable as before. However, ensuring that these principles are, and are perceived to be, truly universal in their aspiration and practice will depend on achieving consensus from those within and outside of the humanitarian community. At present, that debate has hardly begun. It is notable that very few humanitarian organisations have developed formal policy statements regarding their position on the global war on terror. There is a need to invest in such a dialogue, in which the distinctiveness of the humanitarian agenda is asserted, and its relationship with other political, military and developmental forms of international engagement clarified.

This Briefing Paper is drawn from Joanna Macrae and Adele Harmer (eds), *Humanitarian Action and the 'Global War on Terror': A Review of Trends and Issues*, HPG Report 14 (London: ODI, 2003).

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Chaloka Beyani, *The 'Global War on Terror': Issues and Trends in the Use of Force and International Humanitarian Law*, Briefing Paper 10, July 2003.

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