

hpg

Humanitarian
Policy Group

Developments in counter-terrorism law



Definitions

- No international definition of terrorism
- Controversy over
 - self-determination
 - state actors
- National / EU definitions include
 - Political motivated violence
 - Causing death or injury
 - Aim to intimidate a wider audience

Context

- Piecemeal conventions, sanctions and resolutions at UN level
- Patchwork of different laws at national level, relevant to each country's history
- 9/11 marks leap forwards
 - SC Resolution 1373
 - Regional (EU) & National implementation
 - Consolidated terrorist lists

Law relevant to humanitarian action

- Many armed opposition groups appear on terrorist lists
- Material support to these groups & individuals is criminal
- Definition of material support is broad
- No intention (knowledge?) to support terrorism is required
- Exception for medicine and religious materials
- OFAC terrorist sanctions post 9/11, override humanitarian exceptions

Law relevant to humanitarian action (2)

- Holder vs HLP (2010)
 - Innocent intentions
 - “even material support meant to promote peaceable lawful conduct can be diverted to advance terrorism in multiple ways”
- US vs Shah (2007), US vs Farhane (2011)
 - Conviction for providing medical treatment
 - Suggestions that independent humanitarian medical organisations would not be prosecuted for treatment
- Boim vs Holy Land Foundation (2008)

Effects on donor policy

- Clauses in grant agreements
- USAID Partner Vetting System
- AusAid: obligation to notify
- Perceptions of neutrality?

CT vs humanitarian action under IHL

- Impartiality – help all according to need
- Neutrality – remain outside the conflict, neither on one side nor the other
- Engage with all parties on an equal basis
- IHL already balances military necessity and humanitarian imperative
- Contributing to a terrorist act is criminal under IHL