

The impact of the *war on terror* on aid flows

- The *war on terror* had had an impact on aid and is undermining development policy. Aid decisions are increasingly being weighted in terms of security and foreign policy rather than on humanitarian goals.
- Although aid budgets are increasing, the aftermath of the war on terror may absorb all of the increase and more. Some donors are already cutting programmes elsewhere to pay for their commitments for rebuilding Afghanistan and Iraq. This means that there will be less assistance for the poor.
- The *war on terror* is like a new *Cold War* where everything is subordinated to a single purpose. NGOs that don't fit in with this purpose may face problems.
- The increasing subordination of development programmes to foreign policy in the EU and elsewhere may lead to the millennium development goals being replaced by questions about security.
- The lack of an adequate definition of terrorism has led States to define their opponents as terrorists and to use very broad definitions in new legislation. The new legislation is sometimes so broad that it can and is used against community based organisations.
- The failure of developed countries to uphold basic human rights standards, on such issues as detention without trial means that they are poorly placed to raise human rights issues in third countries.
- Advocates for change not only risk persecution from repressive governments using anti-terrorism legislation against them, but also from conservative elements within communities who may wrongly perceive advocacy for change as part of a wider *anti-Islamic* agenda.

Executive Summary

Introduction

The *war on terror* was launched by President Bush nine days after the September 11th attacks. Initially the war focused on the terrorist groups with global reach, but was then extended to include the Iraqi regime. In 2004 the *war on terror* will probably cost the US eight times as much as it spends on Overseas Development Aid.

After a low point in the late 1990's, aid flows were increasing prior to September 11th. That trend has continued with aid flows in 2002 reaching a record high. Aid is expected to again increase in 2003. This trend looks likely to continue in the near term with three further EU countries pledged to provide 0.7% of their Gross National Income (GNI) for aid.

The September 11th attacks have brought renewed interest in development aid. US spending on Overseas Development Assistance is expected to rise in 2004, as it has in 2003. What is not clear is how much of this increase will be absorbed by Afghanistan, Iraq, and additional aid for countries assisting in the *war against terror*.

In October 2003, the US pledged 20 billion dollars for reconstruction in Iraq. This amount is equal to one and a half times the USA's annual development aid budget. Pledges by other donors were far smaller, but those like the UK, the European Commission, or Spain that have pledged an amount equivalent to 20% of their annual development budget for Iraq will have to dig deep. This will have a cost for existing development programmes as most countries have drawn contributions for Afghanistan and Iraq from existing budgets.

Despite denials by donors, aid has often been used as a tool of foreign policy. The changing patterns of who gets aid can only be explained in terms of broader foreign policy. It has even been suggested that the reason for the decline of aid in the early 90's was the ending of competition for clients during the Cold War.

While development aid statistics are only available up to 2002, it is already clear that substantial sums flowed into Afghanistan and Pakistan. Pakistan is a very important player in the *war on terror*, and it became, in 2002 the largest recipient of ODA in the world. Afghanistan saw its aid receipts grow eightfold over the average for the second half of the 90's. This new concentration in aid sees the poor losing out as the Millennium Development Goals are subordinated to a *security first* policy.

In the 90's aid was used to paper over the gaping holes of the lack of political action in both Bosnia and Rwanda. By the end of the 90's, and the Kosovo crisis this had changed to aid being used to prop up political action and prevent unfavourable publicity. This policy was extended further in Afghanistan with pressure on Pakistan to keep its borders closed to prevent a politically embarrassing exodus, coupled with generous assistance for those who did cross.

During the Cold War, both sides used aid to support their clients. The West used aid to combat communism. Countries that were seen as being under a communist threat got generous assistance, both development and military. After the Cold War the emphasis shifted to development criteria, culminating in the Millennium



Development Goals with their targets for 2015. This targeting of poverty now appears to have been lost.

After September 11th, the realisation that developed countries were at risk of major terrorist attacks^A seems to have caused a change in approach in the West. Suddenly, the most important factor about an aid recipient was not the recipient's level of need, but its importance and usefulness in the *war on terror*. The poor lose out doubly as it is the less poor who will be targeted by anti-terrorist development funding, as the very poor simply do not have the resource base to pose the threat of international terrorism.

A further threat to the independence of aid has been the rush to draw aid into the foreign policy sphere. The European Union has possibly been the worst case of this, with the proposed European Constitution seeing not only development Aid but also Humanitarian assistance as being subordinated to the overall Common Foreign and Security Policy (CFSP). Within the European Union's structures themselves the development decisions now fall under the review of Foreign Ministers rather than of Development Ministers.

The United Nations quickly passed a binding resolution on terrorism, but it has no definition of what terrorism is. The draft UN definition of terrorism is so broad that it would appear to include ordinary criminal activity in its scope. This problem is repeated with national legislation.

The polarisation of Muslim communities makes it harder and more risky for agencies trying to promote anything, such as women's rights, that may be seen as challenging religious orthodoxy.

Governments have taken advantage of the lack of firm definitions to define their opponents as terrorists, or to use vague definitions to allow opponents to be arrested under anti-terrorist legislation. Western countries, instead of upholding good human rights practices, have resorted to tactics like detention without trial. Worse, there appears to be at best, no objection to serious human rights abuses by repressive governments who are seen as allies in the *war on terror*. This places donor countries in a very poor position to argue for the respect of human rights in third countries.

Agencies advocating for change are at risk of being prosecuted under anti-terrorist legislation, and Human Rights Watch has already documented cases of anti-terrorist laws being used to imprison activists.

^A The attacks on the World Trade Centre imposed a cost in excess of \$50Bn in addition to the death toll. The most expensive terrorist attack prior to this (in monetary terms) was the IRA bomb at Bishopsgate in the City of London in 1993 which is estimated to have had a \$1Bn price tag, although it caused only one death.

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1 The War on Terror

Following the attacks on the World Trade Centre and the Pentagon on September 11th President Bush said “*America and our friends and allies join with all those who want peace and security in the world, and we stand together to win the war against terrorism.*” This was the first reference to what later became known as the war against terror.

Nine days later, in an address to the joint houses of Congress, President Bush officially launched the *war on terror* and defined it thus “*Our war on terror begins with al-Qaeda, but it does not end there. It will not end until every terrorist group of global reach has been found, stopped, and defeated.*”

1.1 Impact on Aid Flows

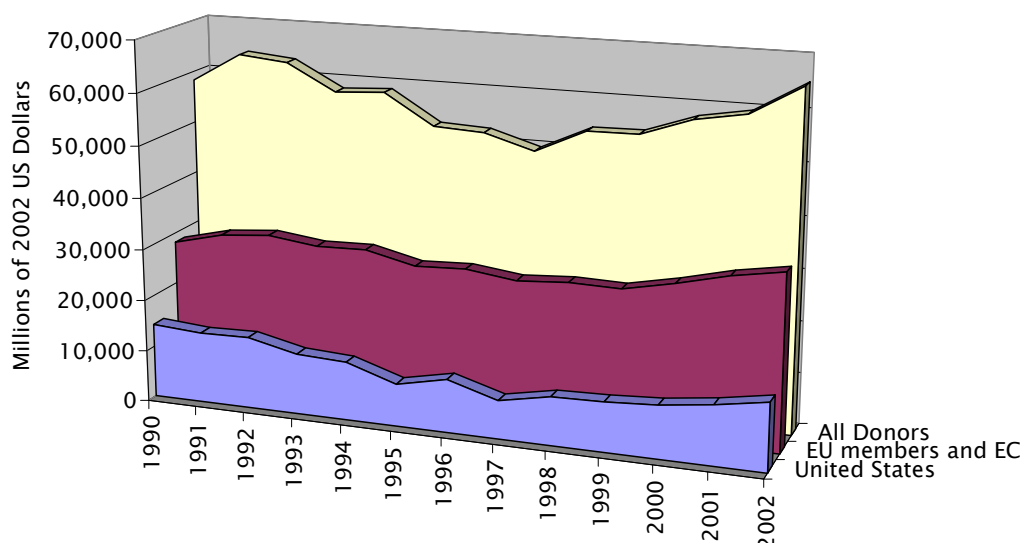
1.1.1 TRENDS IN AID FLOWS BEFORE THE SEPTEMBER 11TH

The nineties saw real reductions in overseas aid. In constant dollar terms overseas development assistance bottomed out in 1997 before starting to rise to its present levels. Aid from the United States fell in a similar way, but aid from the European Union (EU) member states and the European Commission (EC) rose initially and only dropped below the 1990 level in 1997.

Aid levels in 2002 were the highest to date. This is true not only for total of overseas development assistance but also for assistance from EU’s members and institutions. US assistance has not recovered and now comprises only 20% of the total rather than 25% as in 1990^A.

Net Overseas Development Assistance 1990 to 1992

Source OECD DAC table 1. Data for net Disbursements



^A The US’s share of the world economy, as measured by its Gross National Income divided by the Gross National Income of all countries, rose from 38% to 42% over the same period.

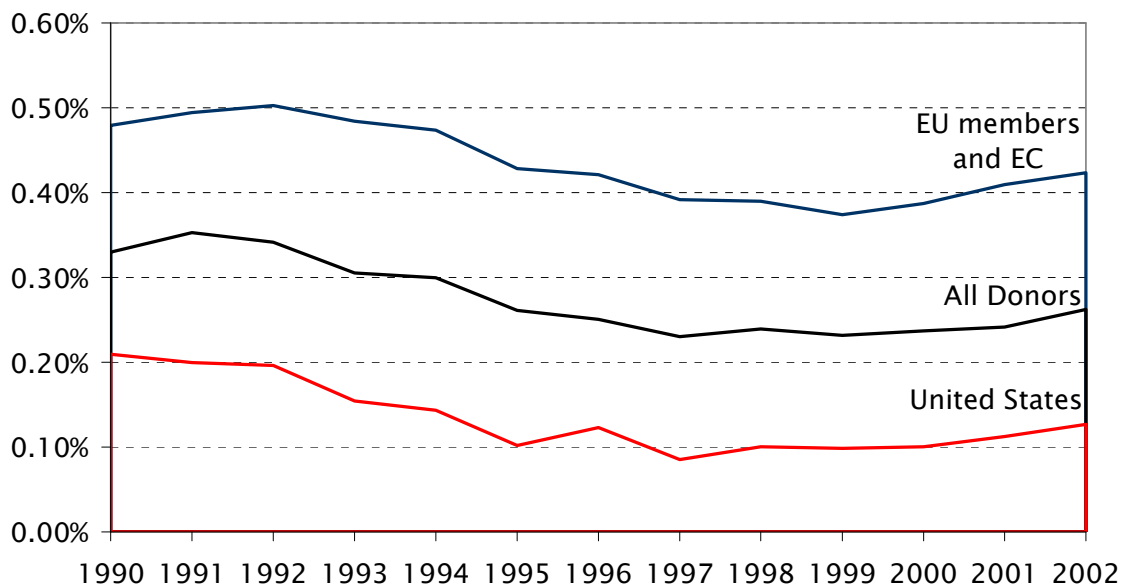


Overseas Development Assistance can be expected to reach new heights (in Dollar terms) in 2003, in part due to the precipitous fall in the value of the dollar^A, and also because of spending on Iraq. The difficulties of comparing different currencies over different years can be dealt with by dealing with aid as a percentage of the national income.

In 1970 the UN set the target for the rich countries to spend 0.7% of their national income for overseas development. Currently only five countries^B meet this target. All but one of these are EU members and a further three EU members have set dates for meeting the 0.7% target^C. The EU also plans to set a timetable for all members to meet the 0.7% target.

Overseas Development Assistance Disbursements as a % of Gross National Income 1990–2002

Source OECD–DAC Table 1. Lines shown are not cumulative



At present the EU members and the EC contribute about 0.42% of the EU Gross National Income for overseas development assistance. The US contributes only one third of this level. It can be seen from the graph that overseas development assistance from some donors was increasing as a percentage of GNI prior to September 11th.

1.2 *The cost of the war on terror*

The exact cost of the *War on Terror* is not clear. The US is paying by far the largest proportion of the cost. The estimates for the cost to the US prepared by the Center on

^A During 2003, the dollar fell by 17% against the Euro and 10% against the pound and the Yen.

^B Denmark, Luxembourg, the Netherlands, Norway and Sweden. (Norway is not a member of the EU).

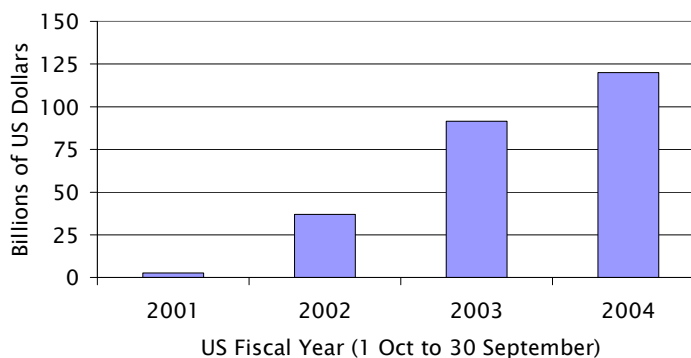
^C Ireland by 2007; Belgium by 2010; and France to reach 0.5% by 2007 and 0.7% by 2012. Some of these undertakings were given in good economic times and it is not clear if they will still be met.

Budget and Policy Priorities suggest that the cost (as disbursement rather than budgets) will be 120 Billion USD in 2004. This is more than eight times as much as the US is expected to provide in ODA in 2003 and will represent about one percent of the gross national income of the USA^A. Spending by other countries on the *War on Terror* are nowhere near as high. Spain has budgeted the cost of their military contribution to Iraq at 542 million dollars per year. The UK budgeted a total of £3Bn^B for its involvement in Iraq, (about \$5.5Bn at current rates).

However, despite the war, overall US ODA is expected to increase. What is not clear is whether ODA for countries other than Afghanistan and Iraq will increase or whether the whole increase and more will be consumed by these two states. It is also not clear whether the military costs of the operations in Afghanistan or Iraq will remain in the military budgets or will creep into the development budgets.

Estimated cost for the US government of the
war on terror

Source: Center on Budget and Policy Priorities (www.cbpp.org)



The Development Assistance Committee is the arm of the Organisation for Economic Cooperation and Development that prepares development aid statistics. The DAC has already come under pressure from states who want to change the DAC rules so that spending on peace-keeping and peace-enforcement would be included as a sub-category of aid. This would allow countries to represent their spending on this area as part of their contribution to development.

1.2.1 AID FLOWS SINCE SEPTEMBER 11TH

It appears that September 11th has driven home the risks that inequality brings for rich countries. It has certainly led to an increased interest in overseas development assistance in the United States. While the official reasons given for the September 11 attacks was that: *“America was targeted for attack because we’re the brightest beacon for freedom and opportunity in the world”*^C the greater interest in development assistance following the attacks suggests that there is some awareness that the willingness to make suicide attacks thrives on injustice.

The interest may also come from the realisation that ignoring the situation in Afghanistan in the hope that it would resolve itself had led to the conditions whereby Al Qaeda were hosted by the Taliban. Clearly, ignoring messy situations in foreign parts is no longer an option.

^A The author is following the US practice in including the invasion of Iraq as part of the *war on terror* even though it does not meet the targeting criteria initially established by President Bush who defined the targets of the *war on terror* as: *every terrorist group of global reach*.

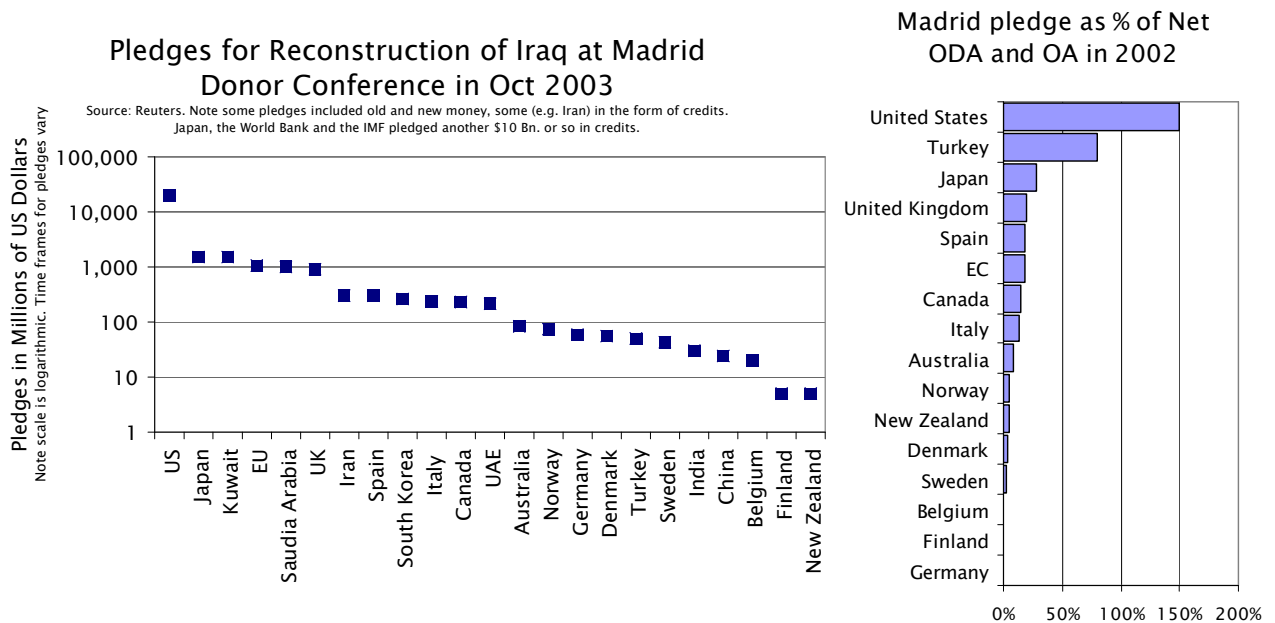
^B This compares with the UK’s £3,165 Million for ODA in 2002.

^C President Bush, in a speech from the Oval Office on the evening of September 11th, 2001.



Presently, ODA statistics are only available for 2002, but even these already show some of the effects of the war on terror. One of the consequences of the *war on terror* has been the need for reconstruction in Afghanistan and Iraq. This reconstruction is needed not only on humanitarian or developmental grounds, but also on political grounds to deliver a *regime change dividend* to the population.

One difference between Afghanistan and Iraq is that the “*coalition of the willing*” for Iraq originally included far fewer countries^A than supported the action in Afghanistan. Many members of the *coalition of the willing* supporting the campaign in Iraq are net aid recipients rather than donors. This may mean that donor support for reconstruction in Iraq may be confined to fewer donors than for Afghanistan. This can be seen from the October 2003 Donor Conference for the Reconstruction of Iraq.



What is noticeable here is that after the US’s 20 Billion, only Japan, the EU and the UK committed around the one billion mark. The figures are not all directly comparable, as countries pledged for different time periods and with different mixes of humanitarian aid, development aid, and reconstruction funds. However, it is interesting to note that several major donors made substantial commitments for three or four year funding when compared with their annual spending on Development Aid and Official Aid.

1.2.2 ROBBING PETER TO PAY PAUL

While the US funds were from a separate vote rather than from the annual Aid appropriation, the same is not true of the other donors. In terms of NGOs the largest impact will probably be for those with UK, Spanish, and EC funding. The UK has already announced that it will be cutting development assistance to middle income

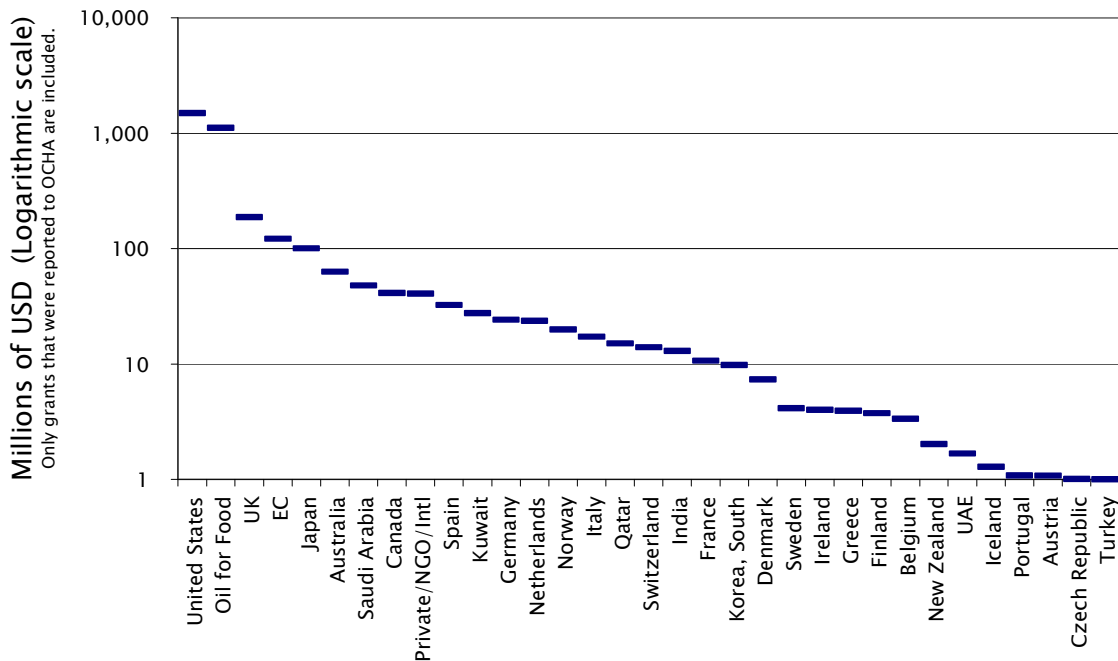
^A There are now some 46 nations in the “*coalition of the willing*”. They are: Afghanistan, Albania, Angola, Australia, Azerbaijan, Bulgaria, Colombia, Costa Rica, Czech Republic, Denmark, Dominican Republic, El Salvador, Eritrea, Estonia, Ethiopia, Georgia, Honduras, Hungary, Iceland, Italy, Japan, Kuwait, Latvia, Lithuania, Macedonia, Marshall Islands, Micronesia, Mongolia, Netherlands, Nicaragua, Palau, Panama, Philippines, Poland, Portugal, Romania, Rwanda, Singapore, Slovakia, Solomon Islands, South Korea, Spain, Turkey, Uganda, Ukraine, United Kingdom, United States, and Uzbekistan



countries. The European Commission's budget has not expanded to meet its pledges and the money will have to come from existing programmes. Even before the October 2003 pledging conference for Iraq, donors have already pledged \$3.6 Billion^A for humanitarian assistance to Iraq. These monies were paid early in the year and may be one of the reasons why donors have not been able to fund acute food needs in Africa later in 2003.

Donors of 1 Million USD or more for humanitarian aid in Iraq in 2003

Data from the relief web tracking system on 22 Jan 2003. Includes funding both inside and outside the UN Appeal



The global funding for humanitarian assistance in 2002 was \$4.17, and the figure for Iraq alone in 2003 was 83% of this. What is more shocking is that independent actors like MSF confirmed that there was no huge humanitarian crisis in Iraq, only a crisis brought about by the lack of order:

.. there is a crisis in the health sector. What I would question though is whether it justifies this description of humanitarian catastrophe. It is still a bit early for MSF to draw any final conclusion, we are still looking for more information but it is a bit provoking for me to see how all of the world's attention has been brought to this situation in Iraq, when at the same time we are really struggling with tremendous humanitarian crises in the Democratic Republic of Congo, in Ivory Coast, in Liberia, in South Sudan, where there is increased malnutrition^B.

Why did Iraq get so much humanitarian assistance when there were genuine humanitarian crises in the world that went largely forgotten? Clearly it was because of the impact of the *War on Terror*.

^A OCHA financial tracking's total for 2003 was \$3.458 Billion.

^B Morten Rostrup, MSF's medical co-ordinator in Baghdad, April, 2003.



It is not only the rich countries who joined in support for Iraq. Not less that thirteen of the countries that donated humanitarian assistance for Iraq are themselves recipients of ODA. One of these, India, has a lower Gross National Income per capita than Iraq. India^B also had a lower ranking than Iraq in the last edition of the UNDP's *Human Development Index* (HDI)^C to include a HDI rank for Iraq.

Country	2003 Aid to Iraq Millions of USD	HDI Rank	GNI(USD per Capita) ^A
India	12.94	128	470
Iraq		126	1,090

Despite the overall increase in aid, the poor have lost out due to the war on terror:

- Large amounts of aid being channelled into countries which have borne the impact of the *War on Terror* so that the military are not left with a humanitarian catastrophe on their hands. This is being channelled, especially in the case of Iraq, regardless of the level of need, but to establish the donor countries credentials with the world's only superpower.
- Even developing countries, with significant poverty problems at home, have found it expedient to donate money for the non-emergency in Iraq.
- The switch in the donor's focus away from poverty means aid is now being focused on targets other than the elimination of poverty^D.

Clearly the needs of the poor were being put on the back burner while Iraq had the donor's attention.

There are three other costs related to the *war on terror* for developing countries:

- Loss of tourist revenue^E because of the reluctance of tourists from developed countries to travel abroad. Even countries that were not themselves the scene of terrorist attacks saw an immediate reduction in bookings and a slowing in the growth of tourism revenues following high profile attacks.
- The direct and indirect costs of terrorist incidents (e.g. Kenya and Indonesia).
- The cost of security intended to prevent high profile terrorist incidents and to reassure the west that countries are allies in the *war on terror*.

These costs reduce the revenues available to governments to meet their social obligations to their own citizens.

^A Source: the World Bank: *India at a Glance – 25 August 2003; Iraq at a Glance – 4 September 2003*.

^B India is a special case as it remains concerned about the close relations that have developed between Pakistan and the United States because of Pakistan's importance in the war on terror. India's developing overseas aid policy is also linked to its wish to become a permanent member of the security council.

^C UNDP (2000) *Human Development Report 2000*. UNDP, New York. No HDI rank has been calculated for Iraq in the three subsequent Human Development Reports due to a lack of reliable data.

^D For example, Denmark and Australia have introduced counter terrorism as an objective of their development policy. Australia recently announced a five million AUD 3-year package of counter terrorism assistance to the Philippines that will come out of the aid budget.

^E It has to be recognised that in many cases, only a small part of the overall income from tourism reaches the poor.

2 Aid and Foreign Policy

2.1 *Historically intertwined*

The degree to which foreign policy and aid are intertwined has varied from time to time. The largest aid programme of all time, the United States Marshall Plan, was executed so as to help Europe recover after World War Two. Stalin rejected the assistance offered by the plan as a trick. Stalin's rejection helped to get the plan through Congress. Congress saw the plan as a way of supporting and protecting a free and democratic Europe from the *communist menace*.

Other aid efforts have similar political underpinnings. One of the reasons suggested for the fall in development aid in the 1990s was that with the end of the Cold War the West no longer had a political incentive to compete with the East on development assistance^A.

Top twenty Aid recipients showing the percentages of all ODA and OA received for that year

1962		1972		1982		1992		2002	
Country	% of AID	Country	% of AID	Country	% of AID	Country	% of AID	Country	% of AID
India	12.6%	India	7.7%	India	5.5%	Egypt	6.5%	Pakistan	3.5%
Algeria	7.0%	Viet Nam	6.7%	Egypt	4.8%	China	4.8%	Mozambique	3.3%
Pakistan	6.8%	Indonesia	6.6%	Bangladesh	4.6%	Israel	4.3%	Serbia & MN	3.1%
Korea	4.1%	Korea	5.1%	Indonesia	3.2%	India	4.0%	Palestin. AA	2.6%
Turkey	4.1%	Pakistan	3.7%	Syria	3.2%	Indonesia	3.3%	China	2.5%
Indonesia	3.6%	Turkey	2.7%	Pakistan	3.1%	Bangladesh	3.0%	India	2.4%
Viet Nam	3.5%	Philippines	2.7%	Israel	2.8%	Philippines	3.0%	Indonesia	2.2%
Egypt	3.1%	Bangladesh	2.6%	Jordan	2.7%	Russia	2.9%	Russia	2.1%
Brazil	2.9%	PNG	1.8%	Morocco	2.6%	Mozambique	2.3%	Ethiopia	2.1%
Chile	2.5%	Brazil	1.6%	Sudan	2.5%	Poland	2.2%	Viet Nam	2.1%
Israel	2.2%	Egypt	1.6%	Tanzania	2.2%	Tanzania	2.1%	Egypt	2.1%
DRC	2.2%	DRC	1.4%	China	2.2%	Ethiopia	1.9%	Afghanistan	2.1%
Liberia	1.6%	Colombia	1.4%	Turkey	2.2%	Pakistan	1.7%	Tanzania	2.0%
Morocco	1.4%	Tunisia	1.3%	Yemen	1.9%	Zambia	1.7%	Poland	1.8%
Taiwan	1.3%	Algeria	1.3%	Kenya	1.6%	Kenya	1.4%	Cote d'Ivoire	1.7%
Venezuela	1.3%	Jordan	1.2%	Somalia	1.6%	Morocco	1.4%	Bangladesh	1.5%
Tunisia	1.2%	Morocco	1.2%	Thailand	1.5%	Zimbabwe	1.3%	DRC	1.3%
Kenya	1.2%	Israel	1.0%	Sri Lanka	1.4%	Thailand	1.2%	Israel	1.3%
Jordan	1.1%	Nigeria	1.0%	Philippines	1.3%	Somalia	1.2%	Romania	1.1%

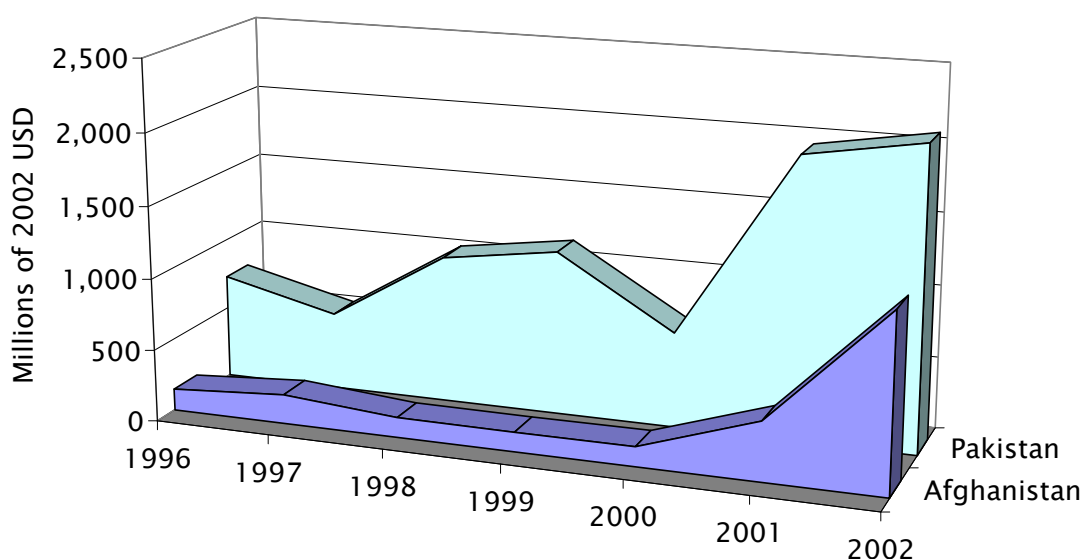
Forty years ago one eighth of all Aid went to India. Newly independent Algeria got 7% of all aid spending in 1962 at the end of the long war with France. The pattern of aid varies with different political developments over the years. In 1972, during the Vietnam War, Vietnam was the second largest recipient, and anti-communist Indonesia came next. Pakistan, the bulwark against al-Qaeda, and a battleground in the *war on terror* was the largest aid recipient in 2002.

^A Development assistance was one of the battlegrounds of the Cold War with the USA and the USSR providing generous support for client states.

Afghanistan had been receiving relatively little donor assistance for some years^A. The *War on Terror* changed all of that. Pakistan which saw some donors cutting assistance after the announcement of nuclear tests in 1998^B and the 1999 coup^C was now an essential ally of the West and aid flows in 2002 were two and a half times the average for the period 1996 to 2000. Afghanistan saw an even more dramatic increase, with the overthrow of the Taliban leading to aid increasing to eight times the average for 1996 to 2000.

Net Disbursements of Development Assistance

Source: OECD DAC table 2b.



It is expected that when data is available for development aid in 2003, it will show significant amount of spending for Iraq. Investment in Iraq by donors is expected to be far higher than in Afghanistan, despite the lower population^D. This is a reflection of the level of prior development in Iraq, and the scale of the problems there. Another factor influencing donor interest is that Iraq's oil wealth means that it is likely to be a far bigger market for goods and services than Afghanistan.

2.2 Saving face

In the aftermath of the Rwandan crisis, *The Joint Evaluation of the International Response to the Conflict and Genocide in Rwanda* (Eriksson 1996) concluded that

^A It does not appear in the top twenty in any of the years reviewed.

^B However the impact of the cutting of donor assistance was initially masked by a large increase in structural adjustment funds from the World Bank.

^C Pakistan was suspended from the commonwealth after the bloodless coup which brought General Musharaff to power. Pakistan remains suspended and blames India for its continuing isolation.

^D The estimated populations of Iraq and Afghanistan are 24 and 28 million respectively. Some \$5.6 billion was pledged for reconstruction at the Afghanistan Donor Conference against \$33 billion at the equivalent conference for Iraq.

humanitarian action was not a substitute for foreign policy. That report called for greater coherence between foreign policy and humanitarian aid. Both Rwanda and the Bosnian crisis saw inaction by the international community leading to humanitarian crises and large scale loss of life.

Three years after this report the International Community showed a new resolve in the Kosovo crisis. Some, noting that there was little action over human rights in other problem areas, argued that the response had more to do with the over half a million refugees who fled into Western Europe from the Bosnian war, than any concern over human rights abuses in Kosovo. There were strong calls from some parts of the humanitarian community for military action to prevent a repeat of Bosnia.

The Kosovo war saw government aid organisations eager to provide support to refugees to avoid any humanitarian crisis that would discredit their government's foreign policy. Money was no object in the rush to prevent a crisis that could be used by opponents of the war at home.

The pattern was repeated in Afghanistan, with major efforts by the Western protagonists to prevent a humanitarian crisis that would look bad on television. Aid insiders felt that one of the reasons that Pakistan closed its borders to Afghan refugees was that it was urged to do so by Britain and the United States to prevent a politically embarrassing refugee exodus. As combatants in the war they were keen to prevent a humanitarian crisis in front of the television cameras. Pakistan was well rewarded for its cooperation by generous aid allocations.

2.3 *Securing the homeland*

During the Cold War, western aid was targeted, in part, at saving the world from communism. With the end of the Cold War, new criteria emerged. There was increasing concern about the lack of development in sub-Saharan Africa and concern about the impact this would have on developed countries. Flows of migrants from developing countries was already a very contentious issue in the west^A. Donors set international development goals at conferences throughout the nineties culminating in the Millennium Development Goals in September 2000.

With the change of Government in the UK the Overseas Development Administration became the Department for International Development and the International Development Act ensued that aid could only be disbursed on bona-fide development grounds^B. This was in response to past scandals like the Pergau Dam^C.

^A The DAC now allows the costs of caring for refugees in western countries to be included in a country's figures for development assistance.

^B Aid can only be given for the purpose of furthering sustainable development or improving welfare, and DFID must be satisfied that the assistance is likely to contribute to the reduction of poverty.

^C Work started on the Pergau River in Malaysia, near the Thai border, in 1991. The British Government funded the project to the extent of £234 million. Concurrently, the Malaysian government bought around £1 billion worth of arms from the UK. There was an enquiry on the possible linkage of arms deals to aid and in November 1994 a High Court ruled the funding of the dam by the Foreign Secretary was illegal as it was not of economic or humanitarian benefit to the Malaysian people. The dam was the largest aid project ever financed by the UK.

September 11th seems to have turned the clock back. Now, the position of a government seems to be more important than its human rights record or anything else. This is a return to the cold war days with *terrorism* replacing *communism* as the bogey.

A further concern is that while in the past, development aid has often been politically targeted, humanitarian assistance has usually been targeted on the basis of need. This is changing. Huge amounts of official aid were targeted at the Kosovo crisis, disproportionate to the number of persons affected. Afghanistan and Iraq are both the targets of large amounts of Humanitarian Aid, but here the intention appears to be more about delivering a *regime change dividend* than about humanitarian assistance.

Research by the Federation of American Scientists found that countries that joined the coalition of the willing were not generally rewarded with increased aid. However, many of them did get additional military aid from the United States. Special cases that got economic aid were Turkey (\$1 Bn), Jordan (\$0.7Bn) and Egypt (\$0.3Bn) in additional economic aid in 2003. These were special appropriations in addition to existing aid spending plans.

2.4 Changes in EU policy under the new European Constitution

The proposed new European Constitution included several provisions relating to development and humanitarian aid. The opening sentence of Article III-218.1 says that "*Union policy in the sphere of development cooperation shall be conducted within the framework of the principles and objectives of the Union's external action.*" This is perhaps not very shocking, as development aid has often been subordinated to political aims.

What is of greater concern is that a similar wording is also applied in Article III-223.1 on Humanitarian Aid: "*The Union's operations in the field of humanitarian aid shall be conducted within the framework of the principles and objectives of the external action of the Union.*"

This subordination of development aid to foreign policy has already taken place at one level. EU foreign ministers decided in 2002 to abolish the EU Development Council, which used to be responsible for taking strategic decisions on development policy and to transfer its responsibilities to the General Affairs and External Relations Council. A substantial part of the responsibility for the implementation of development policy has been handed over to the Commission for External Relations, downgrading the role of the Development Commissioner.

Clearly within the EU structures, development is not seen as an independent aspect of external policy and development decisions are now effectively reviewed by foreign ministers rather than development ministers.

There have been discussions on making Aid conditional on countries cracking down on illegal immigration or on cooperating with the fight against international terrorism. These types of proposals risk replacing the criteria of assistance from the alleviation of poverty to a whole set of formal tests for states on whether they are cooperating with one or another of the EU foreign policies. It is clear from these



proposals that some EU foreign ministers see external aid as just another policy tool in advancing their own foreign policy agenda.

In *A secure Europe in a better world*, Javier Solana, the EU's High Representative for the Common Foreign and Security Policy called for greater coherence in the EU's external relations:

The point of the Common Foreign and Security Policy and European Security and Defence Policy is that we are stronger when we act together. Over recent years we have created a number of different instruments, each of which has its own structure and rationale. The challenge now is to bring together the different instruments and capabilities: European assistance programmes, military and civilian capabilities from Member States and other instruments such as the European Development Fund. All of these can have an impact on our security and on that of third countries. Security is the first condition for development. Our objective should be to create synergy through a more coherent and comprehensive approach.

Here we see that all of the mechanisms of the EU should be used coherently for the security of the EU and of third countries.

At present it looks unlikely that the constitution will be adopted as several members are unwilling to submit to qualified majority voting for a larger number of issues. However, it is a concern that security seems to be displacing the millennium development goals as the targets for development aid.

The poor will lose out three fold under this new politicization of aid.

- First, the way in which Security has become the prime focus of aid rather than the Millennium Development Goals means that aid programmes are no longer directed to the alleviation of poverty.
- Second, the increasing subjugation of aid decisions to a political agenda, as can be seen by the abolition of the Development Council in the European Commission, means that aid becomes primarily a political rather than a humanitarian tool.
- Thirdly, international terrorism is not the weapon of the poor, and therefore programmes addressed at combating terrorism through aid will not necessarily target the poorest, but rather those who are more likely to be recruited by international terrorists.

3 Impact on civil liberties and operational programmes

3.1 The United Nations

The United Nations Security Council passed Resolution 1373 on September 28 that set up the Counter Terrorism Committee. Amazingly however, there is no definition of terrorism, so this makes the resolution somewhat meaningless. The draft Comprehensive Convention on International Terrorism which is before the UN now has a definition on terrorism which is still under discussion. The draft definition is very long and appears to include all criminal acts, whatever the motive, that could result in death, serious injury, or serious damage to property, provided that one used any lethal device or dangerous substance to do so:

The act of terrorism, or offence, is defined as a person's unlawfully and intentionally causing or threatening to cause violence by means of firearms, weapons, explosives, any lethal devices or dangerous substances, which results, or is likely to result, in death or serious bodily injury to a person, a group of persons or serious damage to property – whether for public use, a State or Government facility, a public transportation system or an infrastructure facility. Acts of terrorism also include such person's attempt to commit such an offence, participate as an accomplice in the commission of such an offence, or in organizing or directing others to commit such an offence, or in contributing to the commission of such an offence. A person also commits an offence if he/she commits any of the offences defined in the following international instruments: the 1970 Convention for the Suppression of Unlawful Seizure of Aircraft, the 1971 Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, the 1973 Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, the 1979 International Convention against the Taking of Hostages, the 1988 Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, the 1988 Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, the 1997 International Convention for the Suppression of Terrorist Bombings, as well as any Convention, global or regional, aimed at combating terrorism.

A far better definition^A of terrorism is that proposed by the Israeli International Policy Institute for Counter Terrorism:

^A Other possible definitions include the League of Nations definition of terrorism in 1937: *All criminal acts directed against a State and intended or calculated to create a state of terror in the minds of particular persons or a group of persons or the general public.* The standard US definition from the Code of Federal Regulations in July 2001 is: *Terrorism includes the unlawful use of force or violence against persons or property to intimidate or coerce a Government, the civilian population, or any segment thereof, in furtherance of political or social objectives.* The US Department of Defence defines terrorism as: *The calculated use of violence or threat of violence to inculcate fear; intended to coerce or to intimidate governments or societies in the pursuit of goals that are generally political, religious, or ideological.* Another definition is that terrorism is the commission of the equivalent of war crimes in time of peace.

Terrorism is the intentional use of, or threat to use violence against civilians or against civilian targets, in order to attain political aims.

This definition includes two key elements apart from violence or the threat of violence:

- Civilians or civilian targets are attacked or threatened.
- The act is done for political reasons.

Unlike some definitions it also includes the possibilities for states to carry out terrorist acts. Under this definition, the attack on the World Trade Centre was a terrorist attack, while the suicide attack on the USS Cole was not a terrorist attack, but presumably an Act of War.

3.2 *Legislation and Human Rights*

While September 11th was a wake up call for the United States many countries around the world had been dealing with serious terrorist or insurgency threats. Many countries already had fairly repressive legislation on the books that allowed for detention without trial and other practices that run counter to natural justice.

September 11th has provided carte blanche to many governments to deal with political opponents by branding them as terrorists, whether it is China and its separatists or Russia and the Chechens, the label terrorist suddenly became very useful. Governments have not found the lack of an agreed definition to be any obstacle in identifying their own terrorists.

Like the draft UN Convention, much of the anti-terrorist legislation passed since September 11th appears to be extremely broad. India's Prevention of Terrorism Act has a very wide scope with all sorts of acts being regarded as terrorist. Several Western countries, including the US and the UK are holding terrorist suspects without trial, or even incommunicado in some cases. This means that they are very poorly placed to argue against such detentions in other countries.

Just as in the cold war, Human Rights considerations have been put on the back burner and all means seemed to be considered acceptable in the *war on terror*. The recent discharges of US soldiers for torturing prisoners in Iraq seems very lenient^A.

3.3 *The costs of polarisation*

The military action against Afghanistan and Iraq has led to further polarisation between the west and the Islamic world^B. There appear to have been no terrorists (other than the security services) in Iraq prior to the conflict, but now there are many. Aid agencies operating in Iraq have major security problems and costs.

This polarisation has an important effect in that not only does it influence aid donors and governments, but also stakeholders within communities. In the *Muslim World*^C,

^A The torture was apparently not even to extract information but simple sadism.

^B Here a distinction needs to be drawn between the views of citizens and of states. In general the vast majority of those in the *Muslim World* appear to be opposed to the invasion of Afghanistan and Iraq, but their governments often recognise that Islamist extremism is also a threat

^C The phrase *Muslim World* is used here as a shorthand for states with a majority Muslim population.



the *War on Terror* is often seen more as a crusade against Islam. There is now far less scope for introducing ideas that challenge traditional thinking as they are seen as adjuncts to this crusade. This is a particular problem for agencies that advocate for a more equal role for women

This creates huge problems for groups trying to bring about changes in such communities. Such change may be opposed not only by the authorities but also by stakeholders within the community who perceive them as attacking traditional values. This places agencies at risk as anyone thought to be *attacking traditional values* is seen as aligning themselves with the western powers in their *war on terror*.

Appendix 1: Politicisation of Aid

Written by Belen Vazquez of ActionAid

This note is just a brief contribution to the policy position on the state of development policy and assistance since Sept11. The subject is also briefly covered in the policy position on 'aid volumes and allocation', coordinated by B.Vazquez from UKAT.

The 'war on terror' has affected aid and is undermining development policy. Aid decisions (allocations and programme funding) are increasingly being weighted in terms of security and/or foreign affairs. Although we are only talking a few years back, this change in donor behaviour is already compromising the objectives of fighting poverty and shifting international attention away from achieving the MDGs. Some OECD countries have introduced counter terrorism as an objective for development (a new goal!). As some political expert put it '9/11 has re-politicised aid perhaps in the way that the Cold War politicised aid'.

Another feature which has emerged in the last years quite strongly and could be subject for future work, is the expanded role of the private sector in development and the use of private sector involvement as a leverage to aid, a sort of conditionality.

The main constraint we face in trying to prove this trend is the lack of recent aid data. The most recent aid statistics are from 2002, which cover the financial year of 2001. Statistics for 2003 will only be available in March 04. (that's how the DAC works!).

Below a bullet point summary of features in aid and development policy:

Aid allocations

- Aid allocation decisions are becoming increasingly politicised. Donors' unconditional support to Pakistan is just an example. Once it proved it was going to cooperate in counter terrorism, all kinds of sanctions were dropped and received a flood of aid despite the government's military background and repressive measures.
- Aid is being diverted from Africa and most of it sent to a very few countries where there is political priority. The Madrid donor conference on Iraq pledged \$33billion for the period 2003-07. This compares with what Sub-Saharan Africa gets annually, a grand total of \$11billion.
- Where will all this money come from? It is becoming evident that pledges for the reconstruction of Iraq will come from cuts in aid programmes for other parts of the developing world. The UK has announced it will cut middle-income countries' programmes. In 2002, 15% of EU aid for the whole Asia region went to Afghanistan. The EC contribution to the reconstruction of Iraq (total EURO400million will have to come from reallocations elsewhere). The US is spending more on reconstruction in Iraq than on its total annual aid budget for the rest of the world (US commitment to Iraq accounts for \$18.6billion. This aid is tied to the purchase of goods and services from US firms as a matter of "essential" national security).

The US

- Since Sept 11, the US has been looking to harness all of its policy tools on a campaign of counter terrorism and foreign assistance is one of them. The Bush administration has emphasised from the very start the role of development assistance in advancing US foreign policy goals. An example is the Millennium Challenge Account (MCA), set up last autumn with an operational budget of \$5billion annually, which makes the award of aid to strictly linked political conditions. (\$5billion equals 50% of total US aid).
- US involvement in Iraq and Afghanistan threatens to undercut new initiatives such as the President's promises of \$15billion over 5 years to combat HIV/AIDs. With US budget stretched to pay for the war in Iraq, government has already announced they will not meet promised levels for next year. Further, according to Interaction, there is a stark gap between funding rhetoric and reality. The \$20billion for Iraq is larger than the entire foreign assistance budget and there are indications that some of the cost could be borne by cuts in development programmes in other parts of the world.

The EU

- At the structural level, EU foreign ministers decided in 2002 to cancel the EU Development Council, which used to be responsible for taking strategic decisions on development policy. Development discussions take place now as part of the Foreign affairs council's agenda with very low involvement from development ministers. 2 main implications for EU development policy: a) visibility, it clearly sends a signal that development is not an independent aspect of EU external policy and b) Foreign ministers are now de facto reviewing development decisions (development ministers have been sidelined).
- EU external borders and migratory flows - a proliferation of initiatives. Examples are the set up of a European agency for the management of common borders, new measures to combat illegal immigration across the maritime borders, a new programme to assist third countries' effort to control migratory flows and discussions on reaching a common return policy. The most 'dangerous' initiative came from the UK (David Blunkett). The UK put forward at the Seville EU Council (June 2002) a number of proposals to boost efforts to fight illegal immigration, including making the award of aid to developing countries conditional on their cooperation in cracking down on illegal immigration. Despite support from SP, IT and DK (the usual suspects) the proposal was watered down to some initiative by which the EC monitors third countries in the fight of illegal immigration. The danger remains as it is not clear how this information will then used and what the implications will be in terms of development cooperation. There have also been some talks at the Council about making the fight against international terrorism (or rather the lack of it) an essential element for suspending development cooperation with a third country. This unilaterally-imposed conditionality could represents a diversion of the poverty and humanitarian principles governing development cooperation.

- EU foreign affairs and security agenda – new draft security strategy. This paper put forward by Javier Solana, underlines the need for a coherent security, trade, aid and foreign policy. Some analysts point out although security cooperation does not appear so much to be a hard condition, there however lies a tough if still implicit warning: cooperate on security to get your aid money.

At the DAC

- There are attempts to expand the definition of aid to include expenditures related to migration control and refugees. In 2002, donors agreed to include ‘refugee aid spent in the donor country’ as development aid.
- The distinction between military and development aid is becoming blurred. There is a move in the DAC to reclassify aid criteria to make military expenditure eligible where currently it is excluded. This is part of a general trend to finance peace keeping/making/enforcement processes from development budgets. Already in Iraq and Afghanistan, humanitarian operations are being seen as part of military operations. This is undermining aid effectiveness and turning NGO staff into war targets.

Individual donors

The UK is torn between its commitment to fighting poverty in the world and the fight against terrorism. The UK government has been sending mixed signs. On one hand, it has decided to increase its aid to 0.4% GNI by 2006 (Brown’s announcement in July 2002) and repeated its solidarity with Africa (see PM’s speeches, like the one on Africa being in the scar on our conscience). On the other, there are Blunkett’s harsh proposals on illegal immigration. As far as aid allocations goes, there are again inconsistencies. On the one hand the UK promotes the use of selectivity (aid is most effective if going to good policy countries) but on the other, UK continues to support Pakistan. In the last 3 years, UK aid to Pakistan has tripled. (gone from £16million in 2000 to £47million in 2002).

The UK is using its new cultural diplomacy programme as an example of how to use development tools in the fight against terrorism. “Connecting futures”- a £2million/year for the next 4 years- is a British council-run programme that prioritises 10 developing countries with predominately Muslim population.

Denmark and Australia have introduced counter terrorism as an objective of their development policy. The Australian PM recently announced 5million AUS\$ in a 3-year package of counter terrorism assistance to the Philippines and that will come out of AusAid’s budget.

Appendix 2: Terrorism and Human Rights, the international legal dimension

A2.01 *The role of the UN*

Before September 11th 2001, a number of countries had signed treaties relating to terrorism. However, following the September 11th attacks, the UN Security Council also passed SC resolution 1373, which set out measures to be taken by member states concerning terrorism. This resolution was passed under Chapter VII of the UN Charter, which meant that it was automatically binding on *all* member states of the United Nations- in effect, every country in the world.

The measures adopted in the resolution include the prevention of the financing of terrorism, the establishment of terrorist acts as serious criminal offences and the taking of “appropriate measures” to ensure that an asylum seeker has not been involved with terrorist acts. The resolution also created the Counter Terrorism Committee (CTC) in order to oversee the implementation of these resolutions. However, the resolution makes no positive reference to the requirement on member states to respect human rights and the late High Commissioner for human rights, Sergio de Mello, raised concerns about states enacting overly broad terrorism legislation, or seeking to go beyond the bounds of the law in the fight against terrorism. Although guidance from the High Commissioner on human rights obligations has been posted on the CTC website, it is not willing to integrate human rights considerations into its work and has stressed that monitoring human rights obligations does not fall within its work.

One of the articles in the Charter of the UN, Article 103, sets out that in the event of a conflict between a state’s obligations under the Charter, and those under another treaty, its obligations under the Charter prevail. The UK has reportedly invoked Article 103 of the Charter^A to argue that its obligations to the Counter Terrorism Committee took precedence over its obligations to the Human Rights Committee (the body that monitors implementation of the ICCPR).

In resolution 57/219, the General Assembly asked the Human Rights Commissioner to monitor the protection of human rights in the fight against terrorism and to make recommendations. It also asked the Secretary General to file reports on the implementation of this resolution, and he filed a preliminary report in March of this year. One international human rights NGO has asked the Secretary General to appoint a special representative to monitor human rights abuses in different countries^B

A2.02 *Derogation from Human Rights Treaties*

Under many human rights treaties, states facing defined situations of national emergency are able to “derogate” from their obligations under these treaties. This

^A A Human Rights Watch Briefing Paper for the 59th session of the UN Commission on Human Rights

^B UN, Counter-Terrorism Watchdog needed, Human Rights Watch, March 26 2003.

effectively means that they can suspend some of their obligations under these treaties.

There are, however, certain human rights obligations from which it is not possible to derogate. Some of these, such as the prohibitions against genocide and torture, form a part of *ius cogens*, a stream of international law that is regarded as so fundamental that if a state that a state which breaches it is committing a universal crime. This would be the case even if the state were acting under a Security Council resolution.^A

As stressed by the UN General Assembly in resolution 57/219, all human rights treaties contain certain non-derogable rights must be fully observed at all times^B. The resolution also underlines that, where it is possible for a state to derogate from its human rights treaty obligations, it must meet the strict requirements laid down within the treaty concerned. If a state is party to more than one treaty, there is a strong argument here that an individual should be entitled to the highest level of protection available under the local, national and international legislation applicable to that state, so that the requirements of the treaty offering the most protection should apply.

Under the ICCPR (International Covenant on Civil and Political Rights), any restrictions on the exercise of rights must be temporary in nature, limited to the exigencies of the situation, not discriminate on grounds such as religion and be consistent with a state's other international obligations, particularly those under international humanitarian law. The UK derogated from both the ECHR (European Convention on Human Rights) and the ICCPR when dealing with the IRA, and has recently derogated from provisions of the ECHR concerning the war against terrorism.

A2.03 *Derogations under the ICCPR*

Of the states I referred to in my initial paper, Pakistan, Tanzania, Somalia and Kenya are not parties to the ICCPR. Of the others, none has currently derogated from the ICCPR. Nepal derogated from several provisions of the ICCPR, including the rights to freedom of expression, freedom of assembly and privacy, during the state of emergency in March 2002. The state of emergency ended in August 2002 and the derogation also ended at this point.

A2.04 *4. Representations by states to the Counter Terrorism Committee*

I set out below details of recent representations made to the Counter Terrorism Committee by the states I looked at in my initial paper.

^A See the comments of Judge Lauterpacht in the Bosnian Genocide case.

^B Such rights are set out in a number of international and regional treaties and, in addition to the *ius cogens* rights discussed above, include the right to life, and the right to freedom of thought, conscience and religion.

A2.04.1 AFGHANISTAN

In a note verbale dated July 2003 to the UN Counter Terrorism Committee on the implementation of 1373, the Afghan Permanent mission to the UN said that there was no specific legislation in Afghanistan relating to terrorism but that the Penal Code forbids activities threatening the internal and external security of Afghanistan.

A2.04.2 BANGLADESH

In a communication to the Counter Terrorism Committee in October 2003, the government of Bangladesh stated that, although it planned to accede to the international convention for the suppression of the financing of terrorism, it viewed its existing legislation as adequately addressing the problem of terrorism.

The government pointed out that the Special Powers Act 1974 gave it wide powers to detain persons “without necessarily showing expressed reasons” and said that the legislation was drafted to control a range of prejudicial activities including terrorism in all its forms. It also added that the schedule to the Act covered all offences under the Arms Act and the Explosive substance Act which it described as covering a wide range of activities generally recognised as terrorist acts.

A2.04.3 CHINA

I could not find anything in China’s last communication to the CTC (dated 9 July 2003) of relevance to this paper.

A2.04.4 INDIA

In its last communication to the CTC dated March 2003, the Indian government cited POTA 2002 as its main legislation for dealing with terrorism in the country and also provided details of legislation monitoring the activities of foreigners in the country.

A2.04.5 KENYA

In its last communication to the CTC, dated March 2003 Kenya said that its existing legal provisions were inadequate to deal with terrorism and that this was why it was introducing its’ Counter Terrorism Bill.

A2.04.6 NEPAL

The file for Nepal’s latest communication to the CTC was not available. In its most recent communication before last dated December 2001, Nepal stated that a Terrorism and Disruptive Activities Control and Punishment Ordinance 2058 (2001) was under consideration to be tabled for approval. The reasons cited for passing the ordinance included the countries domestic problems as well as res 1373. The Ordinance may have been approved since this communication, although it was not referred to in the Amnesty/HRW web sites

A2.04.7 NIGERIA

In a letter dated 7 March 2003 to the CTC, Nigeria referred to existing criminal legislation for the recruitment of members of a terrorist group in the Public Order



Act Cap 382 Laws of the Federation 1990. It also refers to a proposed Anti-terrorist Act to be presented to the National Assembly for enactment to remedy any “shortcomings” in existing legislation in line with its international obligations.

A2.04.8 PAKISTAN

In a letter to the CTC dated 10 March 2003, Pakistan cites the Anti Terrorism Act 1997 as being its main piece of legislation devoted to the problem of terrorism, stressing that this applies to terrorist acts against any state. It also refers to a Madrassah Registration Ordinance (Deeni Madaris Ordinance) which has to be approved by Parliament which is to be approved by Parliament.

A2.04.9 SOMALIA

The Somali government has set up an Anti-Terrorism task force chaired by the Minister of the Interior. It has set out what measures it deems will be necessary for it to comply with 1373, such as updating its existing legislation and has requested assistance from the international community in order for it to be able to implement these measures.

A2.04.10 SOUTH AFRICA

In a letter to the CTC dated 3 March 2003, the South African government has referred to its proposed anti-terrorism bill as a means of implementing the requirements of 1373.

A2.04.11 THAILAND

In a letter to the CTC dated 18 September 2003, the Thai government refers to amendments to its Penal Code to prosecute acts of terrorism directed both within and outside Thailand. The letter refers to specific sections of the Penal Code, such as s135, which specifically deal with the problem of terrorism and which have been amended to comply with 1373.

A2.04.12 TANZANIA

In a letter to the CTC dated 16th July 2002, the Tanzanian government describes itself as in the process of strengthening existing laws in order to comply with the CTC’s requirements that legislation exist defining terrorist acts as serious criminal offences with serious punishments.

A2.04.13 ZIMBABWE

In its letter to the CTC dated 31 March 2003, the Zimbabwean government states that its existing legislation, such as the Criminal Matters (Mutual Assistance) Act and the common law offence of defeating or obstructing the course of justice, cover terrorist offences, although it is looking into the question of terrorist financing.

Appendix 3: National Security Legislation passed since September 11 in Developing Countries

A3.01 Introduction

Amnesty International has pointed out that in many cases where there has been a “war^A” against political opponents of whatever kind, human rights have been violated, including those of the wider population who are innocent of any illegal activity. Examples of this are the *guerras sucias* or “dirty wars” in Latin American countries such as Argentina and Chile in the 1970’s; South Africa during the Apartheid era; Turkey; Spain and the UK in attempts to deal with nationalist minorities; India; and Israel.^B As Human Rights Watch points out, state repression and human rights abuse closes off peaceful and political channels for dissent and can channel alienation and grievance into extremism and violence.^C The “war” against terrorism has also led to attention being drawn away from conflicts in other areas such as Nepal.

The APEC meeting in Thailand this year led to human rights abuses by the government. APEC took on issue of international terrorism last year it should make sure that its consideration of the issue incorporates respect for human rights. Terrorism in Africa, specifically in the Southern region, was debated when about 170 delegates attended a two-day terrorism seminar in Pretoria in September 2003, Anneli Botha, head of the Institute for Security Studies (ISS) said on Monday that the conference was necessary because Africa was a breeding ground for terrorism. Botha recognised that a balance must be struck between anti-terrorism legislation and the avoidance of the infringement of civil liberties.^D

Interestingly, according to iafrica.com, the largest number of people injured or killed as a result of terrorist attacks between 1990 and 2003 was in Asia at 12,534, with Africa second at 6,177 casualties.

A3.02 India

The Indian government has enacted the Prevention of Terrorism Act (POTA) as a successor to the Terrorists and Disruptive Activities (Prevention) Act (TADA) of 1985. TADA was used to detain religious minorities, dalits and TU activists but the

^A I’ve referred to the international campaign against terrorism rather than war because it creates less of a buy-in to the idea that this is a war situation.

^B *Rights at Risk*, Amnesty International’s concerns regarding security legislation and law enforcement measures

^C *In the Name of Counter-Terrorism: Human Rights Abuses Worldwide*, a Human Rights Watch briefing paper for the 59th session of the UN Commission of Human Rights on March 25, 2003

^D See *African Terrorism under the spotlight*, iafrica.com, posted Monday 15 September 2003

Indian government eventually let it lapse after mounting opposition from civil society, journalists and opposition parties^A

POTA has a wide definition of terrorism including violence and the “disruption of essential services” the perpetrators need to have “intent to threaten the unity and integrity of India or to strike terror in any part of the people”. Children have been arrested under this law, along with political opponents, religious minorities, dalits and tribals. Over three hundred people were arrested under this Act in February 2003, including a 12 year old boy and an eighty-one year old man^B

After the communal violence in Gujerat in February 2002, local leaders and some sections of the press branded Muslims as terrorists, and the government charged 131 Muslims under anti-terrorism measures but no Hindus have been charged under POTA for violence against Muslims, which the government says is spontaneous and unorganised. Muslims are increasingly being equated with terrorists.

Hindu nationalist groups continue to arm civilians in Gujerat and other Indian states. Dalits and tribals are being recruited into the violence against Muslims and then later used as scapegoats. Christians have also come under renewed administrative, legislative and physical attack.^C

In April of this year, the Malimath committee made recommendations to the Indian Government on reform of the criminal justice system. Amnesty International’s comments on the report^D highlight that the organisation feels that it will increase the risk of torture for those in police detention, weaken safeguards for fair trial and reduce legal protections for women. In Amnesty International’s view the report ignores the plight of the poor and vulnerable, seems dominated by concerns of security rather than justice and devotes three pages to Pakistan and terrorism. According to Amnesty International, the report also clubs together terrorism and crime.

A3.03 *China*

China has linked its support for the global campaign against terrorism to US support for China’s campaign against those seeking autonomy for the Xinjiang Uighur autonomous Region (called East Turkestan by Muslims advocating independence for the area), as well as Tibetan activists. Chinese governmental statements have accused these groups of being linked with international terrorist networks.

Separatism has been redefined to cover only peaceful activities such as expressions of cultural identity, violent separatist activity is now called “international terrorism”, although at every opportunity the two terms are linked^E. Since April 2001, China has launched an anti-crime campaign called “strike hard”, partially aimed at those who support independence in ethnic regions. This has resulted in arbitrary arrests and summary executions, with little if any due process. There have been incidents of

^A *Opportunism in the Face of Tragedy, Repression in the name of terrorism*, a report by Human Rights Watch

^B *In the Name of Counter-Terrorism: Human Rights Abuses Worldwide*

^C *India: Gujerat Massacre Cases Sabotaged*, Human Rights Watch, July 1 2003

^D *Report of the Malimath Committee on Reforms of the Criminal Justice System: some observations*

^E *Opportunism in the face of Tragedy*

violence in the region but China has routinely arrested peaceful activists and imposed tight restrictions on Muslim religious activities.^A The Chinese authorities consider teaching or preaching Islam outside government controls to be subversive.^B

By March 2002, the Ministry of Public Security had formed special units in all provinces to deal with “terrorist crimes”. In Sichuan, the Tibetan religious leader, Tesin Delek Rinpoche, was sentenced to death (with a two year reprieve) for “crimes of terror” and “incitement to separatism” in connection with a series of bombings. His activities included support for schools and orphanages, renovation of monasteries, opposition to extensive logging in the region and support for the Dalai Lama.^C

A3.04 Thailand

The Thai government has banned 500 human rights and social activists from entering the country and threatened potential organisers of protests. In February, the Thai Prime Minister, Thaksin Shinawatra responded to the growing problem of methamphetamine trafficking by declaring a war on drugs which, according to official statements, has led to 2,245 alleged drugs criminals killed in extra judicial executions and tens of thousands being arrested. This having been declared successful, a new target has been identified in the form of the Thai mafia and kingpins. The Prime minister has also offered support for Burma’s military government and has taken steps to crack down on Burmese refugees and migrants in Thailand.

Human Rights Watch has described a “climate of fear and censorship” as now shadowing Thai and foreign NGOs, particularly those working near the Burmese border^D. Human Rights Watch reports them as having been intimidated, harassed and pressured not to engage in activities that might interfere with the Thai government’s plans or to criticise neighbouring governments. Amnesty International highlights a lack of protection for poor people in particular, including those involved in land rights and environmental issues. Amnesty International believes that the Thai government is not exercising due diligence in protecting its most vulnerable citizens, a failure exacerbated by the weak criminal justice system in Thailand^E

A3.05 Pakistan

Since Pakistan began supporting the international campaign against terrorism, its anti-terrorism laws have been strengthened and hundreds of people have been arbitrarily arrested and handed over to US custody in circumvention of Pakistan’s domestic laws. Pakistan’s Anti Terrorism (Amendment) Ordinance allows for the detention of a suspected person for up to 12 months. Amnesty International has documented the cases of Pakistanis, Afghans and people of Middle Eastern origin

^A *Ibid*

^B Rights at Risk

^C *In the name of Counter-terrorism*

^D *Thaksin’s Potemkin Welcome for APEC*, Asian Wall street journal, October 17 2003

^E Thailand, grave developments, killing and other abuses, 5 November 2003, 5 November 2003 (ASA 39/008/2003)

being arrested in one of its reports^A. The reason for the arrests is avowedly due to links with the events of September 11th or a connection with Al-Quaeda or the Taliban. Amnesty International has no information on these individuals being charged with offences under Pakistani law, but many appear to be being held in order to be interrogated by Pakistani officials^B, and also US officials, although Pakistani law makes no provision for this. Detainees have also been deported to Guantanamo.

The four years since General Musharraf came to power have seen a rise in activity by extremist religious groups and an increase in sectarian killings. Human Rights watch views this as being in part due to the Musharraf government's policy of marginalizing mainstream opposition political groups. The growing influence of extremist groups has impinged on the rights of women and religious minorities.^C Amendments to the constitution have strengthened the power of the presidency, formalised the role of the army in governance and diminished the authority of elected representatives.^D

A3.06 *Nepal*

In January 2001 ordinances were passed which created an armed police force and amended the Local Administration Act to give additional powers to the administrators of five regions. The state of emergency declared in November 2001 was not related to the international war on terrorism, but Amnesty International has described the conflict as a "forgotten" conflict while the attention of the world focussed on Iraq^E. In April 2002 Parliament passed the terrorist and disruptive activities act (TADA) to replace the ordinance of the same name of 2001. There have been a spate of unlawful killings in Nepal, including of civilians suspected of providing shelter, food or financial assistance to the Maoists, including 35 labourers involved in construction work. These started about one year after the start of the "peoples war", this decreased in 2001, but rose again dramatically after the army was called out and the state of emergency imposed in late November 2001.

There have been disappearances, including of students, and thousands of people, including lawyers, journalists and farmers have been killed. Sexual abuse of women in Bhutanese refugee camps has also been reported. For their part, Maoists have carried out unlawful killings against members of other political parties, including the Communist party of Nepal. They have also tortured captives, taken hostages and recruited children into their ranks. Maoist rebels have threatened local human rights activists.

In November 2003, seven human rights organisations, including Amnesty International and Human Rights Watch, strongly endorsed the call by the Nepalese Human Rights Commission for international monitoring of the human rights situation in Nepal. Several Northern agencies, including DFID have issued a joint

^A Pakistan, Transfer to US custody without human rights safeguards (ASA/33/014/2002)

^B *Ibid*

^C Human Rights Watch, October 2003, *Pakistan: Four Years after the Coup, Rights Abuses abound*

^D Human Rights Watch, letter to Commonwealth Members on the Eve of CHOGM, November 2003

^E Amnesty International, Introduction to Annual Report 2003

statement expressing concern about the “rapidly deteriorating” human rights situation.^A

A3.07 Zimbabwe

In November 2001, the *Herald*, a state-controlled newspaper, described journalists from a number of reporters from British, American and South African newspapers as “assisting terrorists”. In Mid-November 2001, President Rober Mugabe accused the opposition of killing one of his supporters as part of “an orchestrated, much wider and carefully-planned terrorist plot by internal and external enemy forces.”^B

In May 2003, Amnesty International reported that the government was using national legislation to silence dissent, perpetrate human rights violations and place the basic rights of Zimbabweans under siege. The Public Order and Security Act was an example of a recently enacted piece of legislation that contravened international human rights standards. Following a national “stay away” the police used various provisions of POSA to intimidate and unlawfully arrest hundreds of opposition supporters and human rights activists

“Since 2000, the human rights situation in Zimbabwe has undergone a rapid decline. Parliamentary and presidential elections held in 2000 and 2002 respectively were marred by politically motivated violence, intimidation and attacks, largely on the political opposition. The government initiated a controversial land reform program which sparked illegal occupations of commercial farms by so-called war veterans and other illegal settlers, and resulted in, among other things, the forced eviction of hundreds of thousands of farm workers, farmers and their families. State-sponsored intimidation, unlawful arrests and torture perpetrated by the police, ruling party supporters, youth “militia(1),” and other state agents have become commonplace. The main targets for repression have been those most vocal and critical of the government’s human rights record, namely the independent media, the opposition Movement for Democratic Change (MDC) and civil society organizations attempting to protect human rights.

One of the government’s key vehicles for repression has been the introduction and use of an armoury of restrictive legislation designed to suppress dissent and place under siege the rights of freedom of expression, association and peaceful assembly. The most commonly used and repressive pieces of legislation include, in the order in which they were introduced, the Broadcasting Services Act, the Public Order and Security Act, the Access to Information and Protection of Privacy Act, the Private Voluntary Organizations Act and the Labour Relations Amendment Act. Many provisions of these Acts directly contravene Zimbabwe’s national Constitution and international human rights standards which enshrine and guarantee the rights of Zimbabweans to the freedoms of expression, association and assembly.”^C

A3.08 Bangladesh

There are two specific laws that facilitate human rights violations in Bangladesh. These are the Special Powers Act (SPA), which allows arbitrary detention indefinitely without charge and Section 54 of the Code of Criminal Procedure, which facilitates torture in police or army custody. According to Amnesty International, thousands of people are arbitrarily detained under administrative detention laws under which they do not have access to judicial remedies. The government made a pledge to repeal the SPA in February 2001 but it still remains in force.

^A Human Rights Watch, *NGOs and Governments say Human Rights Monitoring Urgently needed in Nepal*, November 24 2003

^B *In the name of counter terrorism*

^C Zimbabwe, rights under siege AFR 46/012/2003 2 May 2003

On 9 January the President of Bangladesh issued “The Joint Drive Indemnity Ordinance 2003” which provided retrospective immunity relating to “Operation Clean Heart” a campaign against the deteriorating law and order situation carried out jointly by police and army forces. Under the ordinance, no civil or criminal procedure could be invoked against “disciplinary forces” or any government official, for arrests, searches, interrogations etc carried out under this period. As this campaign proceeded there were mounting allegations of torture in Army custody. In February, the Bill became an Act.^A

In late May/June of this year, the government gave the police authority to shoot at sight to protect themselves or others, and Human Rights Watch has called for it to revoke this.^B

A3.09 Afghanistan

Human Rights Watch has recently issued a statement saying that the US military should increase precautions after the deaths of hundreds of civilians, and in the last month, 15 children. The NGO has identified a pattern of mistakes that have led to too many civilian deaths and no clear changes in the way the US plans and carries out military operations.^C

Re-establishing the rule of law and ending impunity are essential for peace and stability in Afghanistan. The failure of the international community to provide effective security and bring an end to the influence of armed groups has left the Afghan judiciary extremely vulnerable. Certain individuals are able to use their place in the community or threats and other forms of pressure to influence judicial proceedings, and there is a problem with corruption.

A new constitution has been drafted which requires Afghanistan to abide by international law and is currently being considered by the loya jirga. Although this constitution has been consulted on, the consultation has not been long enough, has focussed on the urban, educated sector of society rather than the poor and has not included civil society groups.

The Judicial Reform Commission is mandated to rebuild the justice system in accordance with “Islamic principles, international standards, the rule of law and Afghan legal traditions”. But it can only suggest strategies and its success depends on how far the Supreme Court, the Ministry of Justice and the Attorney-General’s office implement its proposed reforms.

The UN force in Afghanistan, UNAMA, has been criticised by Amnesty International for failing to engage in activities that support the protection of human rights within the criminal justice system^D.

Amnesty International has also observed a practice within the country of holding “political prisoners” extrajudicially. Confessions are routinely elicited by the police

^A See Amnesty International, *Bangladesh, Urgent need for legal and other reforms to protect human rights*,

^B Human Rights Watch, *Bangladesh: Revoke Shoot-at-sight*

^C Human Rights Watch, *US military should investigate civilian deaths*

^D Amnesty International, *Afghanistan, re-establishing the rule of law*

through the use of torture. It observed a widespread failure on the part of police, prosecutors and judges to follow the Afghan Criminal Procedure Code which resulted in the majority of detainees being held for over a week. The Bonn agreement states that existing law is only applicable insofar as it is consistent with Afghanistan's international legal obligations. However, provisions of criminal law and criminal procedure that are incompatible with international human rights law continue to be applied.

Finally, there is a need for an effective police force, judicial system and prisons based on international human rights standards. At present the police force, prison system and courts have been almost completely destroyed. Actionaid was one a number of NGOs to raise concerns before the Afghan Support group about the international community's lack of sustained action on past and present human rights abuses.

A3.10 Southern and Eastern Africa

A report by Amnesty International describes how human rights are under attack every day in countries in Southern and Eastern Africa through police ill treatment of suspected criminals or political activists. This, along with excessive force to suppress peaceful protest, is a result of pressure to fight rising levels of crime, or through political manipulation.^A

A3.11 South Africa

The South African government tabled the Draft Anti-Terrorism Bill (2002) in Parliament in March 2003. About three years ago the government introduced international anti-terrorism legislation for discussion, which created immediate and strong opposition which forced the government to retract. The government is currently arguing that it will bring South Africa into line with many other countries that have passed similar laws since September 11th. The legislation is broadly similar to the previous failed attempt to pass legislation, covers very broad acts and contains no definition of terrorism. A forum of civil society groups has been established in Johannesburg to campaign against the legislation. The forum argues that the need for the legislation has no been demonstrated, especially as many criminal laws already govern the activities it seeks to sanction.^B

A3.12 Nigeria

Violence in Nigeria's Southern Delta state resulted in hundreds of deaths, the displacement of thousands of people and the destruction of hundreds of homes^C. Dozens of those killed were likely to have been part of the government's security forces. Those responsible for the rest of the violence were armed ethnic militias belonging to the three major ethnic groups in the state. A hundred civilians have been reported killed in fighting during the first week of December. Although the

^A Amnesty International, Policing to Protect Human Rights in countries in the Southern African Development Community, 9 July 2002 AFR 03/005/2002

^B International Freedom of Expression exchange (www.ifex.org)

^C see Nigeria: Delta violence a fight over oil money

violence has both ethnic and political dimensions, it is essentially a fight over oil revenues- both those earned by the government and the profits of stolen crude oil.

There has been a wave of growing intimidation by Nigerian authorities, targeting the Nigerian human rights community. The passports of human rights activists have been confiscated by the state security service and it has summoned members of the Civil Liberties organisation (the CLO) for questioning over their recent report on state-sponsored violence in Nigeria.

There were far fewer violations of the right to freedom of expression in Nigeria today than four years ago, but there remain a number of abusive practices by the government and there have been a proliferation of such abuses in 2002 and 2003.^A The victims have included journalists, human rights activists, political activists, peaceful demonstrators and passers by.

Protests in June 2003 after the government's announcement of a 50% hike in fuel were severely clamped down on by the government, with the police violently breaking up protests and rallies, even when these were peaceful. A few days after this president Bush visited the country which led to protests outside the US embassy that his visit conferred legitimacy on the Obasanjo government. These protests were also severely cracked down on. There have been cases of extrajudicial killings, arrests and other forms of repression of self-determination groups.

A3.13 Kenya

Kenyan police appeared to use the November 28 attacks on Israeli tourists in Mombassa to crackdown on refugees from Ethiopia, Somalia, Sudan and the Congo in Nairobi. House arrests were made and several refugees said they were beaten. Similar crackdowns occurred in September 1998, February and October 2001, and in May 2002.

The elections in December 2002 highlighted serious shortcomings in Kenya. Although officially Kenya no longer detains political prisoners, torture in police cells is reported to be common. Nowadays, rather than being dissidents, most victims are ordinary poor people.

Activists in poor, remote areas also face particular limitations^B, with two land reform activists being charged with murder though they were reportedly not in town at the time the victim was killed. They say they are being framed to silence their protests over the illegal grabbing of public property by powerful, politically connected individuals.

In November 2003, the Suppression of Terrorism Bill passed its first reading in November before Kenya's parliament and is before a parliamentary committee for debate. Kenyan Muslims fear that they are the targets of the bill, but there are worries that if it is not passed, it will sour relations with the US and Britain^C. Lawyers and human rights groups have called the bill "draconian and repressive". The law includes the possibility of extradition of suspects to other countries without

^A Human Rights Watch, Nigeria: Renewed crackdown on freedom of expression

^B Human Rights Watch: Kenya's December 27 elections won't solve human rights ills

^C Opposition to Anti-Terror law could jeopardise Kenya's relations with the West, townhall.com



the usual legal safeguards, powers to detain suspects for unspecified periods of time and to confiscate assets.

A3.14 *Tanzania*

In December 2002 the Tanzanian parliament passed a law to regulate the activities of non-governmental organizations (NGOs). The Zanzibar government continued to refuse registration to the Zanzibar Association for Human Rights. In November 2002 the Tanzanian parliament passed an Anti-Terrorism Law which gave police wider powers of search and detention, although it did not provide a clear definition of "terrorism". The need for the new law was justified by reference to the *al-Qa'ida* bombing of the US embassy in Dar es Salaam in 1998 when 11 Tanzanians were killed.^A

^A Amnesty International, country report for Tanzania, 2003