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"Listing terrorists": the impact of proscription on third-party efforts to engage armed groups in peace processes - a practitioner's perspective

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ARTICLE

“Listing terrorists”: the impact of proscription on third-party efforts to engage armed groups in peace processes – a practitioner’s perspective

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This article explores the effects of proscription – the act of listing an armed group as a designated terrorist organisation – as an example of how international counterterrorist policy can impact on the possibility for third-party actors to engage with listed armed groups in the context of peace processes. From a peace practitioner’s perspective, the article draws on findings from a series of workshops organised with high-level mediators, counterterrorism policy-makers and diplomats, and interviews with policy actors and non-governmental peace-building organisations. The article concludes that the listing of armed groups as terrorist organisations is having serious consequences on the ability of third-party actors to engage with armed groups. It has affected both of the preconditions of access and trust, thereby narrowing the possibilities for third parties to effectively understand groups, influence them, affect their strategic calculations and train them in conflict resolution. The global proscription regime appears to be eroding in practice, with state third-party actors choosing to opt out of international proscription regimes. Doubts about the legality of third-party engagement are creating a new selective pressure on what types of conflict resolution activities are possible.

Keywords: proscription; listing; terrorism; counterterrorism; peace-building; third-party actors; engaging armed groups; policy-making

Introduction

In late August 2012, the President of Colombia, Juan Manuel Santos, confirmed that his government had been conducting “exploratory talks” with the rebels of the Revolutionary Armed Forces of Colombia (Fuerzas Armadas Revolucionarias de Colombia, FARC) (Gonzalez and Neuman 2012). The FARC, like many other armed groups, is listed as a foreign terrorist organisation by a number of international actors, including the European Union and the United States. Governments and armed groups do not just suddenly sit at the negotiation table and start talking. Much work is done by third-party actors to get them to this point and to persuade them to continue supporting the peace process. Such has been the case in Colombia.

Most violent conflicts today are intrastate and are being fought between governments and armed groups. Most of them involve armed groups that are on one or other lists

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of designated foreign terrorist organisations. Since third-party engagement with armed groups is an essential component of any peace process support strategy, there is a need for greater clarity about the effects of international proscription on the space for third parties to engage with armed groups.

This article starts by exploring the case for engaging with armed groups in peace processes, and the role of third-party actors. The following section clarifies the concept of proscription and looks at the similarities and differences between different proscription regimes. This is then followed by an exploration of how proscription has affected engagement of listed organisations by third-party actors in terms of the main roles played by these actors, namely understanding armed groups, influencing how the group sees itself, affecting the group's strategic calculations and organising training in conflict resolution and negotiation. Finally, the article examines how proscription has affected the two preconditions to these roles, namely access and trust.

From a peace practitioner's perspective, the article draws on findings from a series of workshops organised with high-level mediators, counterterrorism policy-makers and diplomats, and interviews with policy actors and non-governmental peace practitioners. This is not an exhaustive (or heavily theoretical) analysis, but rather an attempt at shedding new light on this issue through practical examples and case studies.

Engagement with armed groups

Of the 37 armed conflicts active in 2011, 36 were being fought within states (Themner and Wallensteen 2012). These armed intrastate conflicts tend to be asymmetrical in nature, pitting the state against one or more non-state armed actors. At least 50% of these major violent conflicts involved armed groups or individuals proscribed in one of the lists of designated foreign terrorist organisations drawn up by the United States, United Nations, European Union or other Western governments.¹

In these conflict contexts, the fear that governments might give an armed group unwarranted legitimacy by engaging with it is widespread. Democratic governments are bound by their domestic constraints and do not want to appear to be "soft on terror". In reality, however, contrary to what they claim in public, politicians often negotiate with "terrorists" (Cronin 2009).

One study by RAND (Jones and Libicki 2010) shows that military force has rarely been the primary reason for "terrorist" groups to end their activities. They concluded that in 43% of the cases it was because they joined the political process. As Mo Mowlam said following her involvement in the Northern Irish peace process, "you don't fight terrorism with weapons and bullets. You fight it by talking to them" (as quoted in Ricigliano 2005).

Engaging armed groups in peace processes

For the purpose of this article, engagement is defined in broad terms as "interacting with armed groups". The type of interaction can vary, ranging from conversations and carrying messages to facilitating or advising (Whitfield 2010). Peace processes are defined in broad terms as "initiatives intended to help reach and implement a negotiated agreement to end an armed conflict and create the basis for a new political settlement" (Conciliation Resources 2009). In this definition, I also include efforts to help "belligerents and non-combatants to reframe the conflict, increase understanding and improve relationships" (Conciliation Resources 2009). The term "armed group" refers to non-state armed groups that (1) challenge the state monopoly on coercive force; (2) operate outside effective state control; and/or (3) are capable of preventing, blocking or endangering humanitarian action or

peace initiatives (Ricigliano 2005). It does not focus on groups that could be described, for instance, as paramilitary.

The issue of giving legitimacy to armed groups is not one that should be brushed aside too quickly.² There is a sliding scale when it comes to engaging armed groups in peace processes. For more significant outcomes, the “criteria for engaging an armed group become more exacting” (Ricigliano 2005). If the purpose of an engagement is to understand a group, then the threshold can be low. If the aim is to engage in negotiations, then the threshold might be higher. More commitment, such as a credible pledge to respect humanitarian law or reach a political settlement for example, might be needed.

In some cases, non-engagement or disengagement may make sense, but it is important to bear in mind that there are a myriad of engagement choices, ranging from informal talks to negotiating. Informal talks can involve initial contacts to establish a rapport or assess an armed group’s willingness to engage in a peace process. These contacts tend to be informal and discreet. Engagement with an armed group for the purpose of negotiating would tend to be more formal and above board. Some form of contact, however, is always essential to start to understand an armed group and determine if other forms of engagement are warranted. It is also important to maintain contact with groups so as to tap into windows of opportunity for other types of engagement if and when they appear (Lustenberger 2012).

Third-party actors

For the purpose of this article, third-party actors are defined as “individuals or organisations outside of the combatant groups who assist in the establishment and management of a peace process” (Ricigliano 2005). These third-party actors can range from government diplomats to non-governmental organisations or private individuals.

Third-party actors often play an important role in getting belligerents to engage with each other, meet in a room or collaborate in joint structures (Haysom 2005). It is important to bear in mind that governments and armed groups do not just suddenly sit at the negotiation table and start talking. If that were the case then, “parties are likely to sit down and continue fighting across the table, as if the battlefield had simply been replaced by a meeting room” (Hottinger 2005). Third-party actors play an important role in getting belligerents to the table in what is sometimes described as a pre-negotiation phase. The roles played by third-party actors should not be automatically assumed as positive. There have been cases when governmental or non-governmental actors have had negative repercussions on the peace process because of their engagement with armed groups. Sometimes their goodwill was abused and parties did not actually intend to enter into negotiations seriously. At other times, it has been down to a lack of experience of the third party or a lack of trust between the third-party actor and an armed group (Peace Practitioner no. 3, 2012).

There are four main roles played by third-party actors when they engage with armed groups in the context of peace processes: (1) understanding armed groups; (2) influencing how the group sees itself; (3) affecting strategic calculations; and (4) training the group in conflict resolution or negotiations. The following section analyses proscription and looks indicatively at four third-party actors and their engagement with armed groups.

What is proscription?

Since September 11, 2001, and the emergence of the “global war on terror”, the designation and proscription of militants, rebel movements and non-state armed groups has become a prominent policy tool. International organisations like the United Nations (UN) and the

European Union (EU), and individual states like the United States (US) and the United Kingdom (UK) have developed lists of proscribed organisations that are designated as “foreign terrorist organisations”.

Before September 11, 2001, there were already some forms of designation and proscription, but they tended to be put in place by individual states. Hicks (1991), for example, gives an interesting account of how terrorism was described during the Reagan and Bush Senior years, and how it subsequently structured American perceptions and foreign policy towards the Middle East in particular. The difference seems to be that after September 11, 2001, proscription began to be more widespread and was embraced by multilateral institutions such as the UN and the EU. Some authors have argued that the war on terror has become the new “dominant framework” (Bhatia 2005). Similar to the Cold War, the “war on terror sees its transnational element transplanted on local conflicts in which both government and non-state armed actors present their acts” (Bhatia 2005).

The organisations and governments initiating these lists believe its effect helps further contain security threats. The logic is that by blocking material support and raising the costs of pursuing terrorist activities, they will force individuals and groups to abandon them. In 2011, the UK’s independent reviewer of terrorism legislation, David Anderson QC, stated in a review of proscription that the law on proscription was felt to achieve “real, if modest, gains in terms of convictions”, and that it had “the ability to disrupt harmful organisations and to change their behaviour” (quoted in Horne and Douse 2013). Proscription can disrupt the activities of an armed group, for example, by limiting its ability to fund-raise or by disrupting potential supportive links the group has with states (Chatham House 2010).

Another objective of proscription is to isolate the group by narrowing support for it. The US State Department (2012) lists as other effects of designation the fact that it “stigmatizes and isolates designated terrorist organizations internationally . . . ; heightens public awareness and knowledge of terrorist organizations; signals to other governments our concern about named organizations”. Similarly, the UN Working Group on Terrorism states that “labeling opponents and adversaries as terrorists offers a time-tested technique to de-legitimize and demonize them” (quoted in Toros 2008, 412).

There is a need to break down these different lists and explore in more detail who they include and what it means in practice for an armed group to be on these lists.

The United Nations

There are three types of sanctions at the United Nations level. The first is the list established by UN Security Council Resolutions 1267, 1988 and 1989 in relation to the Taliban and al-Qaeda. Second, there are other UN Security Council resolutions imposing sanctions on armed groups in specific conflicts. One example is the case of Somalia, in relation to which the UN has had a specific sanction regime since 2002 – further tightened in 2011 to include specific individuals and entities identified as threats to peace and security (UN Security Council SC/10348, 2011). Third, UN Security Council Resolutions 1373, 1540 and 1624 require states to take various steps against non-state armed groups, including criminalising terrorism.

Resolution 1373, which was passed after the September 2001 attacks in New York and Washington, DC, is the core document in the UN’s counterterrorism regime (UN Security Council SC/7158, 2001). UN member states both enforce those lists and add to them through their own national regimes. The resolution calls on all states to freeze assets, ban travel and have an arms embargo against listed individuals and groups.

The United States

In the United States there are two main lists. The US Department of Treasury's Office of Foreign Assets Control (OFAC) has a list of Specially Designated and Blocked Persons, which includes individuals, groups and entities, considered to be terrorists, narcotics traffickers or acting for or on behalf of a sanctions-targeted country (OFAC, 2012). The US State Department has a specific list of foreign terrorist organisations, which is the one I will focus on as it designates non-US-based organisations as terrorist organisations. The US list includes groups like al-Qaeda, Hamas, Hezbollah, the Communist Party of the Philippines' New People's Army (CPP/NPA), al-Shabab, the Kurdistan Workers' Party (Partiya Karkerên Kurdistan, PKK), Ejército de Liberación Nacional (ELN), Fuerzas Armadas Revolucionarias de Colombia (FARC) and the Liberation Tigers of Tamil Eelam (LTTE).

Individuals who are considered to belong to these groups are subject to asset freezes and travel bans. Furthermore, it is unlawful for a person in the US or subject to US jurisdiction to knowingly provide "material support or resources" to a listed organisation. Material support is defined as "currency or monetary instruments or financial securities, financial services, lodging, training, expert advice or assistance, safe-houses, false documentation or identification, communications equipment, facilities, weapons, lethal substances, explosives, personnel, transportation, and other physical assets, except medicine or religious materials" (US Patriot Act 2001).

Third-party actors like US State Department staff, US embassy staff or NGOs can apply for waivers from the State Department before engaging with groups. This is known as an OFAC licence (Office of Foreign Assets Control). This OFAC licence allows them to interact with designated armed groups, subject to limitations or conditions stated in the licence. However, in a June 2010 Supreme Court ruling, it was made explicitly illegal to provide "expert advice", "service" or "training in human rights enforcement or peaceful conflict resolution" to armed groups that are listed as foreign terrorist organisations (US Supreme Court 2010), and as the US law is extraterritorial, it also applies to non-Americans. As discussed below, this Supreme Court decision has discouraged contacts with listed groups, thus limiting possibilities of resolution of conflict involving proscribed groups.

The European Union

At the European Union level, the key documents are the EU Common Position 2001/931/CFSP and the EU Council Framework Decision of June 2002, which introduces a common definition of terrorism as "a crime perpetrated with the goal of gaining political advantages which could be achieved by legal means" (EU Council 2002). The EU list is comprised of two sub-lists: one for groups operating within the EU and another one for groups operating outside the EU in non-member state countries.

There are 54 designated groups on the EU external list, such as Hamas' armed wing, CPP/NPA, PKK, LTTE, ELN and FARC (EU Council 2001). Members of these groups are subject to travel bans, visa denials, asset freezes and other financial restrictions, and arms embargoes (EU Council 2001). The EU also directly implements the UN's consolidated list, meaning that it implements an asset freeze, travel ban and arms embargo on those named on the UN Taliban and al-Qaeda lists.

EU and EU member state diplomats say there have been many situations where, even though engagement with listed groups is not made illegal *per se*, they chose not to engage with a listed organisation. During a seminar with EU policy-makers and member states in Brussels, a participant said that 30–40% of the work done by the Swiss government in

engaging with armed groups was done at the request of EU member states that felt they could (or should) not be engaging with a particular group (Haspeslagh and Dudouet 2011).

The United Kingdom

In the UK, the basis for the proscription regime is the Terrorism Act of 2000. Forty-eight international organisations are proscribed as terrorist under this act, such as al-Qaeda, al-Shabab, the PKK, the Basque Homeland and Liberty (Euskadi Ta Askatasuna, ETA), LTTE, Hamas and the Hezbollah military wing (Home Office 2011).

The Terrorism Act subjects listed organisations to asset freezes and travel bans. It also criminalises meeting with listed groups or assisting in arranging or managing a meeting, unless it is considered to be “genuinely benign” (Parliament of the United Kingdom 2000, Annex of 2000 Terrorism Act). This has left UK-based actors in a grey area, as there have not been further clarifications on what might be considered “genuinely benign”.

Of relevance to UK-based charities is the UK Charity Commission’s whistle-blowing procedure, which is aimed at ensuring that no registered charity has any informal links to organisations proscribed under the Terrorism Act. In this context, organisations like Conciliation Resources (a UK-registered charity) sign contracts with the government development agency DFID that any funds will not be used to benefit anyone “associated with terrorism” (Charity Commission 2012).

Commonalities and diversions

All the lists operate on the same principle: they are aimed at disrupting armed groups’ activities such as their freedom of movement or fund-raising ability. When it comes to whether or not these lists explicitly criminalise third-party engagement with listed groups, there are discrepancies. The US proscription regime is at the moment the one that most explicitly criminalises the engagement of third-party actors with these groups. The UN and EU lists do not explicitly address this issue and the UK list remains very vague with its notion of “genuinely benign” meetings.

Delisting procedures also vary greatly. The UN lists appear to be the most flexible as illustrated by the recent separation of the al-Qaeda and Taliban lists in June 2011, creating two separate lists: (1) UN Resolution 1989 for al-Qaida and (2) UN Resolution 1988 for the Taliban. At the same time, 14 Taliban members were removed from the list. At the European Union level, listed groups can now submit a request to the European Council at any time, asking for their designation to be reconsidered. However, the delisting process still relies on unanimity among the 27 member states, which makes it nearly impossible (Haspeslagh and Dudouet 2011).

These lists include a wide variety of groups with different objectives and methods, from the transnational al-Qaeda, to local outfits such as the FARC, which has now – in September 2012 – entered into negotiations with the government, to dozens of almost unknown leftist and anarchist groups in Greece and Italy. There are some notable differences between these lists in terms of who lists which groups. Hezbollah is a good example of these discrepancies. The whole group is listed by the US, but only its military wing is listed by the UK, whilst the EU has recently stated that it has no intention of listing the group (Kulish 2012).

Literature on the effects of proscribing armed groups

The traditional academic literature in terrorism studies approaches terrorism from a state-centric perspective, the state being the ultimate entity to be secured. Scholars in this

field tend to see the words “terrorist” and “terrorism” as “useful, if imperfect, political vocabulary” (Jones and Smith 2009). There has been little exploration of the effects of counterterrorism policies such as proscription. Critical approaches to terrorism, on the other hand, take humans rather than states as their ultimate point of reference. One central tenet of this critical approach is to place terrorism back in its context, thus inextricably linking the study of terrorist violence to counterterrorism violence (Toros and Gunning 2009).

There has been little academic work on the effects of proscription *per se*. One area that has been explored in more depth is the effect of labelling and naming terrorists. In a special edition of *Third World Quarterly*, two articles explore how naming affects attempts at political reconciliation. On Sri Lanka, Nadarajah and Sriskandarajah (2005) explore how rhetoric on terrorism became a serious impediment to reaching a solution, by delegitimising the Tamil political project. On Chechnya, Russell (2005) explores how far the demonisation of the Chechens has become a major obstacle to peace. Similarly, Toros (2008) explores how the naming of a group as “terrorist” can forestall non-violent responses to terrorism.

Literature on negotiating with “terrorists” has explored tactics for dealing with “terrorist organisations,” making distinctions, for example, between “absolute terrorists” versus “engageable terrorists” (Zartman and Faure 2011). Unlike traditional terrorism studies, conflict resolution scholars accept that it is more useful to see “terrorism as a phase in a conflict” rather than an inherent characteristic (Zartman and Faure 2011). In general, scholars in this field have not explored the effects of counterterrorism measures, with the exception of Höglund (2011). She looks at whether ceasefires and anti-terrorist measures are effective tools to bring about negotiation with “terrorists”, or whether they create obstacles in the search for dialogue. Looking at short case studies, but mainly at Northern Ireland and Sri Lanka, she concludes that the existence of a political wing may be the condition that allows ceasefires and counterterrorism measures to hold (Höglund 2011).

Practitioner research on the effect of labelling armed groups as terrorist organisations has been more prolific. In recent years, there has been an increase in articles and reports on the effects of proscription on humanitarian actors (Pantuliano et al. 2011), on human rights (Sullivan and Hayes 2010) and on the space for civil society to operate (Howell et al. 2006; Cortright et al. 2011). It has also grown in the field of conflict resolution (Ricigliano 2005; Philipson 2005; Dudouet 2011; Haspeslagh and Dudouet 2011; Gross 2011). These studies have tended to be articles focused on a number of case studies that recur (Maoists in Nepal, LTTE in Sri Lanka, the Irish Republican Army in Northern Ireland), or workshop reports. They all highlight the significant effect that labelling appears to have on armed groups and on the dynamics of peace processes, but are not specifically focused on the effects of proscription on third-party actors engaging with armed groups.

How has proscription affected the two preconditions?

Before exploring how proscription has affected the main roles played by third-party actors previously mentioned, there is a need to look at the two preconditions that are necessary for third parties to engage with and influence armed groups. The first one is access, because if a third-party actor is not able to contact and meet armed groups, it will severely impede them in talking, organising training workshops and so on. The second one is trust. Without a level of trust between third-party actors and an armed group, it will not be possible for third-party actors to effectively engage with a group.

Access

What have these different proscription regimes meant for third-party access to listed armed groups? In a recent series of workshops organised by Conciliation Resources, it was clear that conflict resolution policy-makers and practitioners were confused about whether engagement with listed groups is legal or illegal. During one workshop in Brussels, a high-level EU mediator asked his counterpart in the counterterrorism department whether what he had done in Afghanistan was illegal or not. He did not know, and at the time he thought it best not to ask in case the answer he received was not the one he wanted. This comes in the context of a general lack of information on proscription and what it actually means in practice.

It is not always clear what groups or individuals are on which lists, nor what the exact implications of such a listing are. When is engagement with a listed group legally or politically acceptable? Some have referred to this as the “chilling effect” proscription seems to have on third parties, leading them to avoid, or to question how far they can take it (Dudouet 2011). To explore how this dynamic has worked in practice, this article uses two examples from Afghanistan: the first looks at how proscription appears to have affected governmental actors’ access, and the second explores how non-governmental actors have been affected.

Governmental third-party actor: the case of Afghanistan

When the Taliban were removed from power in Afghanistan, they were included in the UN list alongside al-Qaeda. A German Diplomat working on Afghanistan said that this decision was based on the analysis at the time that the Taliban and al-Qaeda represented the same menace and that “nobody was expecting to have to talk to the Taliban” (German Diplomat 2012).

UN staff and mediators say that there have long been contacts with the Taliban in Afghanistan. Engagement with the group is not illegal *per se* under the UN sanctions regime. Moreover, they did not feel constrained by the US listing and its possible legal consequences: “there is an unwritten understanding that, if we proceed with human rights or humanitarian activities, there will not be prosecution for it”, said one high-level UN diplomat (Conciliation Resources, Center for Humanitarian Dialogue and the Center on Global Counterterrorism Cooperation 2012).

Similarly, UN staff said that travel bans on the Taliban were regularly circumvented to allow the Taliban to travel (UN Official Working on Afghanistan 2012). The Taliban got exemption visas and even sometimes travelled in UN planes. However, the discussions around opening up a Taliban office in Qatar have apparently made this more challenging. If the Taliban were going to have an open status in Qatar, UN staff felt it would be difficult to continue to circumvent the travel ban informally.

US diplomats working in Afghanistan, on the other hand, appear to have felt more constrained in their contacts. They have repeatedly publicly denied being in direct contact with the Taliban. It is only after the separation of the UN al-Qaeda and Taliban lists in June 2011 that the US government openly acknowledged direct contact with the Taliban (Thompson 2011).

On the part of intergovernmental and governmental actors, there has been an over-reliance on personal discretion and tacit member state approval. Sometimes, however, this has backfired. In December 2008, two high-level diplomats, Michael Semple, then acting head of the European Union mission, and Mervyn Patterson, a UN political affairs expert, were expelled from Afghanistan, accused by the Afghan authorities of talking to

and supporting the Taliban. In this case, the UN was quick to publicly deny that engagement with Taliban had indeed taken place and called it a “misunderstanding” by the Afghan government (Pallister and Walsh 2007).

There appears to be a general feeling shared by intergovernmental and governmental diplomats interviewed that they are not too worried about navigating these grey areas, as they feel protected by their diplomatic immunity. Many hope that common sense will prevail: “The moment one Special Representative is prosecuted for engaging with a proscribed armed group, the Secretary General will never be able to find a serious mediator again” (Conciliation Resources, Center for Humanitarian Dialogue and the Center on Global Counterterrorism Cooperation March 2012). However, as the Semple and Patterson examples illustrate, for intergovernmental actors, this tacit consent largely depends on the way the political wind is blowing at the member state level.

Non-state actors: the role of peace-building INGOs

Diplomatic actors (government officials, UN and EU actors) work with a range of non-state actors as important partners in engaging with armed groups. This is particularly the case in the “pre-negotiation” phase, where the discreet role played by NGOs or private individuals is often particularly valued (Hottinger 2005). In the early phases of peace processes, there is often a heightened need to engage with armed groups, as armed groups tend to be more isolated and/or have less understanding and expertise in peace processes and diplomacy (Peace Practitioner no. 1 2012).

NGOs offer the potential to fill the gap in an international legal regime as they can pursue lower-key initiatives, which give less legitimisation or recognition of an armed group. The key difference however is that these actors, which include international NGOs (INGOs), individuals and local community groups or NGOs, do not enjoy the same immunity privileges as diplomatic actors.

In Afghanistan, an American conflict resolution organisation, 3P Human Security, decided to put an end to their training and mediation efforts with Taliban insurgents as a result of proscription (Schirch 2012). They were working to set up demobilisation and re-integration processes with a conflict resolution angle that sought to address insurgents’ grievances at the local level. The approach is very much based around the idea that many grievances in the Afghan conflict are local, and there are many different factions of the Taliban. This project was attempting to develop a localised process of grievance resolution.

Following the US Supreme Court decision, Lisa Schirch, who was leading the work, became worried about being in contact with Taliban members. She was aware that training and advice to the Taliban could be considered “material support” to terrorism under US law (Schirch 2012). After contacting a number of American diplomats, 3P Human Security was not able to get any assurances on the safety of its activities, so it decided to put an end to them.

Even though peace-building NGOs tend to be risk-taking and discreet, a number of them have expressed concern about proscription regimes and flagged up the potential risks entailed in being in direct contact with listed groups because they do not have the same immunity privileges as diplomatic actors. This is of particular concern, as NGOs are often used by states to feel out possible grounds for talks at a stage when official engagement would be deprecated. One risk is that NGOs are reducing their contact with listed groups because they fear being criminalised for this engagement, reducing the ability of governmental actors to work “through” NGOs. Another risk is that NGOs might become

less transparent about who they engage with, which could negatively affect the need for coordination with other third-party actors that might be involved in the conflict.

Trust

In terms of a third party's perceived impartiality, which is an essential component of trust-building between third parties and armed groups, proscription regimes are of increased significance. This section explores the case of the EU proscription regime and how third parties engaging with armed groups were affected by it. Focusing on the EU allows us to look at how proscription affected not only the EU itself, but other actors associated with it, such as representatives of EU member states.

The EU listing groups during peace talks

In three cases, the EU listed armed groups as terrorist organisations in the middle of ongoing peace processes. In Colombia, a number of EU member states were engaged in an initiative termed the "The Group of Friends" to support talks hosted by Mexico between the Colombian government and the ELN. The "Group of Friends" consisted of Cuba, France, Norway, Spain and Switzerland. It was not a UN "Group of Friends". In the middle of the talks, in 2004, the EU added the ELN to its list of designated terrorist organisations. The EU listed the ELN alongside the FARC and the Autodefensas Unidas de Colombia (AUC), the United Self-Defense Forces of Colombia paramilitary groups. According to a mediator involved in the talks, following the listing, France and Spain in particular lost a lot of credibility in the eyes of the ELN (Haspeslagh and Dudouet 2011). It appears that the listing had a significant effect on this initiative, and, after several years of existence, the Group of Friends was discontinued.

Similarly in Sri Lanka, the EU listed the LTTE as a terrorist organisation during the peace process. A peace practitioner, who was with the LTTE at the time, said that the listing affected the LTTE's capacity to read diplomatic messages and to adjust their behaviour in consequence (Sri Lanka Peace Practitioner 2012). The LTTE found their listing at that particular moment very confusing. It happened at a time when they were not committing grave human rights violations and actively engaging in the peace process. The EU listing of the LTTE led the movement to reject an EU-supported mission monitoring the 2002 ceasefire, which was part of the reason the peace process collapsed (Florquin and Decrey Warner 2008).

When the EU listed the CPP/NPA in the Philippines in 2004 in the middle of the peace process, there were questions raised about the Filipino government's own human rights records. These were later reported by the Special Rapporteur on Extra Judicial Executions Philip Alston, who documented "acts of terror" by the state (Alston 2008). A peace practitioner who was engaging with the group said the group felt it was a victim of double standards and believed the state should be held to account for its own human rights violations. By "branding one party as a group of 'terrorists' it [the international community] judges them, and the third party can no longer be considered impartial" (Peace Practitioner no. 2 2012). Following the listing, the armed group withdrew from the talks and made delisting an explicit condition for renewed dialogue.

In these three examples, it appears that the EU ended up listing these armed groups in the middle of peace processes because of the bureaucratic and clunky nature of the listing mechanism. Once the listing process got underway, it took on a dynamic of its own and the proscription ended up happening in the middle of the peace processes. This meant that

the credibility of EU and European member states' third parties engaging at that time with armed groups were affected by being closely associated with the listing by the EU.

Norway distancing itself

This fear of losing perceived impartiality for being associated with the EU listing is what pushed Norway to distance itself from the EU's proscription regime. Even though Norway is not a member of the EU, it has cooperated with the EU on measures against terrorism. Norway had previously aligned itself with the EU's list of persons, organisations and entities designated as foreign terrorist organisations.

Norway is also a country that has played a significant role as a third-party actor in a number of peace processes since the Oslo channel in the Middle East peace process in the early 1990s. Norwegian diplomats started increasingly feeling that the proscription regime was having a "severe impact on the conditions for Norwegian peace diplomacy" (Helgesen 2007). The Norwegian government feared the EU proscription regime would undermine the good offices role it had been playing in many conflicts, such as Sri Lanka, Colombia, Israel-Palestine and the Philippines. In 2006, Norway explicitly distanced itself from the EU proscription regime, claiming that it was causing problems for its role as a "neutral facilitator" (Norwegian Ministry of Foreign Affairs 2006).

How has proscription affected the roles played by third parties?

Having established the challenging effects proscription has had on access and trust, two essential preconditions to third-party engagement with armed groups, the following section analyses the effect proscription is having on the roles played by third parties, namely understanding armed groups, influencing how a group sees itself and understands its environment, affecting a group's strategic calculations and training groups in conflict resolution and negotiation.

Role 1: Understanding armed groups

Efforts to understand armed groups are a prerequisite for any type of engagement. As a UN staff member pointed out, "understanding armed groups' objectives, perspectives and realities is crucial to a number of UN activities" (Conciliation Resources, Center for Humanitarian Dialogue and the Center on Global Counterterrorism Cooperation 2012). Particularly with armed groups, behaviour and actions cannot always be interpreted at face value. Accurate information about armed groups, their realities and their aspirations are required to be able to interpret their behaviour. Armed groups' actual perceptions are often hidden from the public because groups want to avoid showing weakness (Lustenberger 2012).

Understanding how an armed group views violence requires direct engagement with that group; it is not something that can be inferred through news reports or secondary sources. In this process, the role of local actors, including civil society, plays an important role. One needs to explore whether challenges around access to groups have led to problems for third-party actors to gather enough information to help them understand groups' perspectives, motivations and dynamics. In the following subsections, one such example with governmental actors in the Occupied Palestinian Territories and one with local civil society in Kashmir are explored.

Research on Hamas for Western governmental actors

Hamas has been listed by the US since 1993 and by the EU and the UK since 2003. Following its election victory in 2006, Western actors that have listed Hamas have not entered into contact with them. In the case of US actors, contact is directly prohibited. In the case of the EU and EU member states, even though contact is not illegal *per se*, discussions with senior EU diplomats suggest that proscription has become a pretext for not entering into contact with Hamas (Haspeslagh and Dudouet 2011).

Diplomats working for countries that do not enter in contact with Hamas are left to depend on second- or third-hand sources. Their understanding of the group tends to be limited. UN actors have said that they feel a responsibility towards other third-party actors in terms of collecting information on armed groups. They are aware that other actors rely on them for information, and that if they do not have sufficient contact with groups to develop a nuanced understanding then others could risk multiplying misinformation (Conciliation Resources, Center for Humanitarian Dialogue and the Center on Global Counterterrorism Cooperation 2012).

This is compounded by the fact that national funding councils tend to be risk averse and so it is very difficult to get adequate funding for first-hand research with groups like Hamas. One academic working on the Middle East conflict said that without Norwegian and Swiss funding of research in the last six years, there would be very little by way of academic research for Westerners studying Hamas (Academic Working on the Middle East 2012).

Understanding Kashmiri militants: insight of a local peace-builder

When it comes to understanding armed groups, local perspectives from civil society actors directly affected by the violence or who are close to the group are essential. They often have insights and contacts that are not accessible to external third-party actors.

There are a wide range of armed groups active in the Kashmir conflict. Some of these groups are local Kashmiri groups described as the “indigenous” groups. There are also groups linked to Pakistani militancy, such as Hizb-ul-Mujahideen or Lashkar-e-Toiba, listed by the EU and the US, respectively.

In Pakistan, one local peace practitioner working on the Kashmir conflict said civil society and political actors had been engaging with militants from both “indigenous” groups and Pakistani-supported groups to try to help moderate them. Civil society actors in the Pakistan-administered Jammu and Kashmir had regular contacts with the Pakistan-based Kashmiri militants and easy access to them.

Once these Pakistan-based militant groups were listed, the peace practitioner and others had to end their engagement. It became too difficult to maintain dialogue and be seen to be in contact with them. The peace practitioner said he was worried “contact with a listed group could endanger my entire peace-building work” (Kashmiri Peace Practitioner 2012). At the local level, he would not be able to get a visa to travel to the other side of the Line of Control. He added that if he were known to be in contact with a member of a listed organisation, he would be unable to get visas to travel abroad, particularly to the US.

There have been similar trends for local civil society actors in Sri Lanka and north-eastern India. They have raised concerns about the risks they face in accessing and being in contact with listed organisations (Human Security Network 2012). This has led to a reduction in the pool of local third-party actors able to be in contact with the groups to gather information on them and to understand their motivations and perceptions.

Problems relating to accessing listed armed groups seem to have led governmental actors to increasingly depend on secondary sources. Moreover, local civil society actors' contacts, access and information – seen as an important resource for international third parties – are being significantly reduced.

Role 2: Influencing armed groups

Third parties can influence the way an armed group sees itself and understands its environment. Some groups are far removed from global political discussions and not fully informed about the wider political dynamics. Third parties have helped groups develop a more nuanced understanding by sharing other perspectives with them.

Often, third parties help armed groups reflect on their own political agendas. During all-out war, political statements and political agendas are used more as a tool to communicate with their own constituency or to take a stance that will sustain their armed struggle. One peace practitioner recounts that he was surprised at how little certain groups actually thought about their agenda. It was often in these first engagements with third parties that groups started “reflecting in depth” on what their concrete demands and interests were (Peace Practitioner no. 1 2012).

Reduced contact with people who think differently: the case of Hamas

Third-party actors tend to expose armed groups to alternative views. There are situations where, because third parties are concerned about engaging with a listed group, the group appears to have had little or reduced interaction with people who think differently. In reaction, groups have tended to strengthen relationships with other like-minded actors, entrenching their positions.

Building on the example previously explored regarding Hamas, it seems that this pattern is emerging. Analysts closely following Hamas have said that since the 2006 elections and the continued proscription of Hamas by the West, Hamas has had less contact with Western governments. It has increasingly turned towards Iran and other similar actors and become stuck in what researchers have described as an “echo chamber of like-mindedness” (Gunning 2010). Hamas is more entrenched and intransigent than it was in the lead-up to the 2006 legislative election (Academic Working on Middle East 2012).

In the case of Hamas, it is also important to note that certain countries, such as Norway, Russia, Turkey and Switzerland have chosen not to list the group. In fact, Norwegian and Swiss representatives have regular contacts with Hamas leaders as the *de facto* authority of the Gaza strip.

An interesting analysis that illustrates how the actors that have continued to engage with Hamas have been able to somehow influence them is Gunning's account of what happened when the Swiss continued to engage with Hamas. Gunning (2010) notes that engagement by the Swiss offered an opportunity to “expose Hamas to alternative viewpoints” and concludes that Hamas showed willingness “to explore compromise”:

Hamas, moreover, has heeded criticisms and alternative suggestions. It returned the goods to UNRWA [United Nations Relief and Works Agency for Palestine Refugees in the Near East], revoked the hijab decree, and removed links to the notorious forgery The Protocols of the Elders of Zion from an affiliated website, when prompted. (Gunning 2010, 105)

The Hamas example shows that Western countries that have proscribed the group and chosen not to engage have missed opportunities to influence it in a way that might moderate its behaviour.

Role 3: Affecting strategic calculations

Third parties can also influence how a group relates to a conflict. In certain cases, they can contribute to a shift in a group's strategic calculations on whether to pursue violent or other means. One peace practitioner was recounting his engagement with the Revolutionary United Front (RUF) in Sierra Leone during the war. He thought it essential to talk with those with blood on their hands and make them familiar with human rights standards, in order to get them to assume responsibility for their actions (Peace Practitioner no. 2 2012).

How proscription has affected NGOs that stop groups committing human rights violations

A good third-party actor will put facts on the ground to challenge parties. One NGO that has been doing just that is Geneva Call. It played an important role in getting armed groups to desist from practices that cause human rights violations and contravene international humanitarian law. They have been engaging with more than 60 armed groups all over the world in the last 12 years, and, for example, have already got 35 of them to sign up to their deed of commitment to stop the use of landmines (Decrey Warner 2008).

Their contact with armed groups is more transparent than that of many other organisations because their aim is to get groups to publicly sign up to the Geneva Call. Since the US Supreme Court ruling and because they have been working with groups listed by the US, their work has become increasingly difficult. The president of the organisation will not risk travelling to the US for fear of being arrested for engaging with listed groups (Folke Bernadotteakademin and Life and Peace 2011). They have also been affected by the UK legislation. A British university, they were partnering with wanted to restrict which armed groups should receive access to their interactive international humanitarian law dissemination tool, concerned that groups listed by the UK would have access to these tools.

The blanket nature of proscription regimes

The blanket nature of proscription regimes means that there is no discrimination possible between armed actors that have said they seek engagement and those that will never seek engagement. This approach tends to treat armed groups as monolithic entities; the whole group is listed.

Some third-party actors felt that after being listed, pro-engagement camps within armed groups felt undermined within their own movement. Mediators who have engaged with al-Shabab highlight the challenge posed by the blunt nature of listing in that it tars all the individuals with the same brush and does not allow for differentiation: "when there is a generalised banning of everybody it does not encourage dialogue or the resolution of conflict", one expert said (Third Party Mediator Working on Somalia 2012).

Moreover, in most proscription regimes, apart from the UN list, delisting is clunky. At the national level, high political costs would be associated with delisting. In the case of al-Shabab, certain peace practitioners have argued that the delisting of individuals would potentially help. Apparently, al-Shabab members have referred to the recent delisting of

Taliban members in conversations with third parties as a potential example to follow (Third Party Mediator Working on Somalia 2012).

Other peace practitioners claim that the hard/soft line dichotomy is simplistic, as not only most groups, but most individuals within them, probably have a mix of both (Sri Lanka Peace Practitioner 2012). It is maybe more a case of individuals within armed groups making a calculation about the external environment and the strategies that would be most effective to advance their cause. In cases when groups are listed, political negotiations or changes in human rights practices are less appealing if the groups cannot be rewarded by changes in proscription regime.

Symbolic effect: the case of the Basque country

In the Basque country, the fact that the European Union listed Batasuna, the political wing of the Abertzale Left movement, for its association with ETA has meant that it was shunned by mainstream political parties across Europe. The only groups willing to meet them were other nationalist movements with similar trajectories. In this case, however, one of those groups was Sinn Féin. Because of Sinn Féin's own transition into a non-violent political actor, it probably had a beneficial impact on Batasuna's transition and its recent condemnation of violence.

Similarly, the symbolic effect of listing can sometimes aid arguments made by third-party actors on the need to alter their strategy. The listing of both the armed and the political wing of the Abertzale Left, ETA and Batasuna, respectively, at both the Spanish and European level did significantly affect their possibility for political mobilisation in Spain (Member of the Abertzale Left 2012). Moreover, the al-Qaeda bombings in Madrid in March 2004 and the fact that ETA was initially accused of these attacks seems to have sparked within the Abertzale Left movement a reflection on whether they wanted to be associated with the "same random violence as al-Qaeda" (Member of the Abertzale Left 2012). In this particular context, the proscription seems to have been a factor in the transition of the Abertzale Left towards non-violent means of continuing their struggle.

When it comes to affecting an armed group's strategic calculation, it appears that listing a group as terrorist organisation can in certain cases, like in the Basque example, encourage a group to desist from using terrorist practices or being associated with those practices. Going back to Höglund's (2011) analysis – that the existence of a political wing might be the condition that allows counterterrorism measures to work – it would be valuable to explore the particularities of cases where the political wing was also proscribed, as in the case of the Basque country. Proscription remains a clunky tool that does not easily incentivise behavioural shifts, because delisting is not commonly practised. Moreover, the risk of criminalisation, particularly for NGOs engaging with US listed groups, seems to have hampered attempts at getting armed groups to respect human rights and international humanitarian law.

Role 4: Training in conflict resolution

Armed groups tend to have less expertise in negotiations and diplomatic affairs than governments. They may not have as much of an understanding of the structure, pace and process of negotiations (Lustenberger 2012). In a pre-negotiation phase, efforts to train armed groups in negotiation processes can be an important factor in how constructively they might engage in such a process. As Fink Haysom puts it, "adversaries who are poor negotiators make for poor negotiation process" (Haysom 2005).

US NGOs stop training Hamas

Certain individuals, particularly American nationals, have been increasingly cautious about the risks they are willing to take when it comes to organising training workshops with listed entities. The US-based Carter Center, for example, had been active in the Middle East, engaging with Hamas for years. They had regular meetings with, and organised training for, the Hamas leadership. But, following the US Supreme Court ruling, and given the fact that Hamas was listed by the US, they decided to stop training the Hamas leadership in conflict resolution. Instead, they decided to focus their efforts on an NGO close to Hamas but not listed, called the House of Wisdom.

Nathan Stock from the Carter Center said that during a recent training, a woman who supports Hamas asked: “what does Hamas need to do to get off the US list?” (Stock 2012). He uses this example to show that this is exactly the kind of conversation that conflict resolution NGOs should be having with groups like Hamas or people close to them – something that is becoming increasingly difficult with the proscription legislation, particularly that of the US.

Following the US Supreme Court ruling, former President Jimmy Carter said that “the ‘material support law’ – which is aimed at putting an end to terrorism – actually threatens our work and the work of many other peacemaking organizations that must interact directly with groups that have engaged in violence” (quoted in Richey 2010).

European NGOs face funding restrictions

Funds received from governments that have proscription regimes make it illegal to make any of these funds directly or indirectly available to listed groups. This has been a factor of particular concern to INGOs. It appears to have restricted INGOs in paying for flights, food or accommodation for members of listed groups (Dudouet 2011). If you engage with a listed group, it is “hard to stay under the radar”, as one peace practitioner put it (Peace Practitioner no. 1 2012).

One interesting example of an organisation having worked on peer learning between armed groups is the Berlin-based NGO Berghof. It has worked closely with groups that have made the transition from violence to peace, to analyse the relationship between political and military strategies and tactics from a group’s perspective. This knowledge is then shared with other groups that might consider such a shift in strategy.

Between 2006 and 2009, Berghof facilitated a collaborative project of exchange amongst senior members of armed groups and ex-negotiators of former armed groups who had led successful conflict resolution processes. This has been an important peer learning exercise. The project was funded by the United States and Canada, but as some of the participants were listed by these two countries, the project had to be discontinued because of funding restrictions (Dudouet 2011).

These examples illustrate that some important opportunities to train armed groups and support them in their transformation process away from violence are being affected by proscription regimes.

Conclusion

This article started from the proposition that there is a need to engage with armed groups in the context of peace processes, even if the nature of this engagement is minimal and aimed at understanding the group or keeping a contact in case further opportunities arise. The article’s specific contribution has been to explore the impact of proscription on conflict

resolution. More specifically, it has made apparent that the listing of armed groups as terrorist organisations has narrowed the possibilities for third parties to effectively understand groups, influence them, affect their strategic calculations and train them in conflict resolution.

The difficulties faced by local actors in accessing and being in contact with listed organisations are of particular concern when it comes to understanding armed groups. This has been especially damaging to local community-based actors that lack the foreign backing or protection that their international counterparts enjoy, making them particularly vulnerable to attack.

Proscription has also reduced the pool of people armed groups have engaged with. The analysis showed some very explicit cases, especially of US-based NGOs, that decided to stop doing their work in conflict resolution following the US Supreme Court ruling. Restrictions on NGOs receiving funds from governments with lists means that it has also become increasingly difficult in practice for a range of NGOs to organise meetings or training sessions with listed groups.

These consequences of proscription regimes appear to be making the achievement of successful peace processes that much harder. With civilians bearing the brunt of violent conflicts around the world, it is urgent for policy-makers to consider how the work of third-party actors can be protected and encouraged. This type of work is already dangerous and politically delicate. Third-party actors need to know they will not be persecuted when the political wind changes.

The strategic impact of listing needs to be explored in more depth. The Basque example seems to imply that in some cases proscription can encourage a group to desist from using terrorist practices, to distance itself from the terrorist “label”. But the analysis also showed that current proscription regimes are often too clunky a tool to engender behavioural changes. The case of an EU proscription regime that takes on its own dynamic and ends up listing groups in the middle of peace talks – as in the cases of the Philippines, Colombia and Sri Lanka – does little to incentivise behavioural change. There is a need to explore ways of delisting, such as the slightly more flexible UN approach, or a system that would link delisting to adherence to principles like those put forward by Geneva Call or the Mitchell principles used in Northern Ireland.

The proscription regime established post-September 11, 2011, appears to be eroding in practice. The case of Norway illustrates how state third-party actors are choosing to opt out of international proscription regimes. Moreover, grey areas over what is legal and what is not are creating new selective pressures on what types of mediation, peace process support and peace-building activities are possible.

Notes

1. Of the groups mentioned by the Uppsala data set for 2011 and comparing it to the US, UN, EU and UK lists of designated foreign terrorist organisations.
2. For a detailed discussion on legitimacy and complexity in engaging with terrorism, see Toros (2008).

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