"Terrorist" lists – A brief overview of lists and their sanctions in the US, UN, and Europe[*]

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1. The issue

The designation of armed groups[***], other entities or individuals as 'terrorists' for the purpose of punishment of some kind is by no means a new phenomenon. The UK has used proscription of certain groups in its fight against terrorist groups in Northern Ireland since the 1920's. Other countries, like Germany, have also been banning the activities of extremist groups on their soil well before 2001. Post 9/11, however, there has been increased international cooperation to combat the phenomenon, and a greater use of *internationally* agreed lists to target groups as well as individuals both globally or regionally.

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[*] This briefing paper is a first part of the HD Centre's project to explore the potential effects on mediation of international and national terrorist designation. The second part will consist of field studies to assess the impact on specific processes, as well as on the parties concerned. Research for the paper was conducted by Chiara Giorgetti and Kristina Thorne. The text on the UN and US lists draws heavily on Chiara Giorgetti's report 'Listing and De-listing Terrorist Organizations: the Cases of the United Nations and the United States of America' of March 2006, on file at HD Centre.

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[***] In this paper, the term 'armed group' is used to refer to those who are beyond the control of state forces, are organised, armed and use force to pursue their objective.

Information about these lists is not readily available beyond what is contained in the documents that create them, and the published lists themselves. In fact, little attention has been paid to the lists outside the realm of human rights concerns. The measures they provide for are intended to severely disrupt the activities of certain organisations and individuals. In the process, they may, however, have undesired side effects. One of these effects has been the disruption of the lives of individuals who were wrongly included in the lists. Another, as yet unproven but potentially significant consequence may be the disruption of peace processes due to unintended impact on mediation activities. This might be the case through restrictions on travel, or on meeting or assisting groups, but might also derive from a potential impact on funding or other aspects of the lists. In addition, it seems likely that being listed will have a political impact, which is alleged to make dialogue more difficult.

This paper sets out to provide an overview of the mechanisms for inclusion in the various lists, as well as to explain the results that follow. It focuses on the lists maintained by the United Nations, European Union, United Kingdom and United States. Although countries such as Australia and Canada also maintain their own lists, they have not been included in this study. It has not been possible to identify other existing national lists, but it is quite likely that many countries apply general bans on the activity of certain organisations as a matter of national legislation. The individual results of such lists or bans would have to be assessed on a case by case basis.

The lists which have been researched for this paper are:

- The UN 1267 list concerning Al-Qaida and the Taliban and associated individuals and entities. Amended and extended several times since its introduction by Security Council resolution 1267 in 1999, this mechanism aims at cutting financial and material support for the target group. The relevant resolutions are binding on all UN member states.
- The EU list deriving from its implementation of the UN's 1267 mechanism. This mechanism is identical with the UN one, and the list is updated as appropriate following amendments to the UN list.
- The EU list of individuals and entities involved in terrorist activities. This list was introduced following UN Security Council resolution 1373 (2001), and specifically targets financial support for terrorism. The list includes groups and individuals both from within and outside the EU.
- The UK list of proscribed groups. Proscription is provided for in national legislation, and outlaws the listed groups in the United Kingdom. While the list only targets groups, individuals are targeted through the criminalisation of certain acts in relation to the groups.
- The US list of Foreign Terrorist Organisations (FTO). The list targets foreign terrorist groups in general, with sanctions aimed at curtailing the activities of the groups and support for them.
- The US Terrorist Exclusion List (TEL). This list targets non-US citizens associated with the listed groups, and aims at curtailing their access to US territory.
- The US list deriving from Executive Order 13224. The Executive Order list targets financial terrorist support networks, and includes names of both

individuals and groups. All groups listed under the FTO regime are also included in this list.

2. Designation and listing

The designation process to place armed groups, entities or individuals on the respective lists we are concerned with varies according to the criteria in use. This is why, at first glance, the lists vary: the EU does not seem to designate the Abu Sayyaf group, for example, whereas all other actors do. The UN, on the other hand, does not list Hamas or Abu Nidal, which are included in the EU, US and UK lists. The EU only recently listed the LTTE, whereas the group has been proscribed in the UK since 2001. The UK also lists the Hizballah External Security Organisation, whereas the EU does not. In the reverse, the EU lists the Al Aqsa Martyrs Brigade and the Shining Path, who are not included in the UK list. There are also differences between the US and UK national lists. The US lists confusingly overlap both in content and the sanctions they entail. All FTO's are included in the Executive Order list, but do not need to be included in the TEL list as the sanctions provided for in the latter are also covered to some degree by the FTO regime. Finally, some groups such as the IRA or the Lord's Resistance Army are only included on one or perhaps two lists, in these cases the UK proscription list and the US TEL list respectively.

On closer scrutiny, a somewhat greater conformity of the different lists is discernible than the first glance might indicate. Abu Sayyaf are included in the EU regime implementing the UN's list, and therefore do not need to be mentioned again in the autonomous lists. Some listings which seem to be absent from the US regime if one only looks at the FTO list, are in fact included on the TEL list. We may also assume that several organisations which have only been listed by one body may have been so due to regionally limited activities of the group in question, such as would presumably be the case for the EU listing of Nuclei Armati per il Communismo or Stichting Al Aqsa.

The criteria in use are largely derived from the specific targets of the lists. Whereas the UK proscribes terrorist groups more generally, the UN deals with a limited group of individuals and entities linked to Al-Qaida and the Taliban regime. Like the UK, the EU also is concerned with a broader range of individuals and entities involved in terrorism. For the US in particular, it is worth noting that the three lists we have covered in this study include anything from just over 40 to around 350 listed subjects, but that American governmental sources also maintain different watch-lists which are estimated to hold up to 200,000 names, despite not having any legal implications.

The differences in the listing processes are most obvious when comparing the national with the international regimes. The national regimes are much more complex and articulate, with an emphasis on procedure which is simply lacking in the international processes. As an example, proscription in the UK is a legal measure, and the procedure, as well as the criteria, is laid down in law (Terrorism Acts 2000 and 2006). On the basis of available information, the Home Secretary proposes designation, which is then approved by parliament. This means that the proscription decision itself becomes law, and that the listing is published as an amendment to existing legislation.

Grounds for listing are for example the nature and scale of the organisation's activities, the threat it poses to the UK, or UK nationals abroad, or the need to support other members of the international community in the global fight against terrorism. At the time of writing, the UK had proscribed 40 international and 14 Northern Irish groups.

In the US, the different listings also derive from law (Immigration and Nationality Act, Patriot Act 2001) and administrative orders (Executive Order 13224). An FTO, TEL or Executive Order designation is proposed by the Secretary of State in consultation with other government departments. The FTO designation requires notification to Congress and becomes valid in the absence of Congressional action to block it within seven days of notification. Neither the TEL, nor the Executive Order 13224 designation requires such involvement of Congress. All designations under these schemes are published in the Federal Register.

There are different criteria for inclusion in the US lists. A decision on FTO designation is taken on the basis of whether the organisation is 'foreign', it engages in terrorist activity and that activity threatens US national security or the security of US nationals. For a TEL designation, the criteria include committing or inciting the commitment of terrorist acts, planning or preparing terrorist activity or gathering information on potential targets for terrorism. The Executive Order designation uses many of the same criteria, but also specifically aims for organisations which are owned or controlled by real or potential terrorists or are associated with other individuals or entities designated under the order. At the end of 2005, there were 42 FTO's, 59 designations under the TEL, and over 350 under the Executive Order regime.

International designations are not subject to the same legal and administrative procedures as the national ones, and contain more of the political and diplomatic elements of the settings in which they are made. Designation decisions with regard to the UN list are taken by members of the Security Council committee established to monitor the implementation of the resolution which creates the list (SC resolution 1267), on the basis of proposals and information received by UN member states. To date, over thirty states have made such proposals. In the absence of objections by members of the 1267 committee within five days of receiving such a proposal, the proposed entry is included in the list, and communicated to UN member states. In March 2006, the list contained the names of 250 individuals and 123 entities associated with Al-Qaida and the Taliban.

The EU incorporates this UN list into its own framework through Regulations and Common Positions. In addition, the EU also maintains its own, 'autonomous', list, in which case it decides on listings and delistings independently. Decisions are taken unanimously by officials of the EU member states on the basis of information and proposals received by member states or third states. Listing decisions are published in the Official Journal of the European Union. As at 29 May 2006, the EU autonomous list contained the names of 45 individuals and 48 groups or entities.

In both the national and international mechanisms, designation is based on information available to the decision-makers at the time of designation. The designation takes place without prior notification to the subject considered for

designation, nor any other involvement of the subject or a third party such as a legal representative, or potentially a mediator. The processes do not, therefore, allow for the provision of potentially contradicting or explanatory information on the part of the subject.

3. Results of designation

As already mentioned, the different lists are drawn up on the basis of different criteria and are aimed at different target groups. They also provide for different sanctions and results, ranging from asset-freezing to travel bans for the international lists, to criminalisation of membership in the designated organisation or fund-raising for it in the national mechanisms. It is evident that the national lists provide for relatively more severe results for the designated armed group or its associates, and that these results are more likely to be enforced. That said, the European Commission has some powers with regard to the sanctions imposed in the financial sector.

It is worth bearing in mind that contrary to the two international mechanisms, UK national designation only targets groups, not individuals. It is also the only one of the mechanisms to outlaw or **proscribe** the organisation concerned, meaning that it is illegal for the organisation to operate in the UK. The proscription of the organisation does also have **consequential implications for individuals**, as it makes professed or real membership of a proscribed organisation unlawful and punishable by up to ten years' imprisonment. The public display of clothing or other articles that might raise suspicion of membership is in itself punishable by six months' imprisonment. The US FTO and TEL mechanisms do have similar effects on individuals through the designation of the organisation, though the direct consequences relate mostly to travel restrictions and removal of aliens from the country.

Both the UN and the EU mechanisms provide for the **freezing of assets** as a result of listing. In practise, this means that designated individuals or groups might be blocked from accessing bank accounts, or from enjoying the usual rights pertaining to other property they hold title to. The EU uses asset-freezing both in implementing the UN mechanism, and for its autonomous list. Asset-freezing is also the main purpose of the US Executive Order list, although the violation of its provisions may carry civil or criminal penalties. While asset-freezing is not an automatic result from proscription in the UK, the UK does freeze funds under other provisions. Unlike the US, the UN and EU provide for exemptions from asset-freezing, mainly on humane grounds or for the payment of necessary expenses, but through an elaborate procedure involving consultation with other member states. It is important to note that within the EU framework, asset-freezing is only applicable to EU-external groups and individuals. Assets of EU-internal designees, such as ETA or Real IRA, are not implicated under this regime, as it has been considered inappropriate to hamper the free movement of capital for internal subjects on an EU level.

Like the US FTO list, the EU autonomous mechanism provides for a **ban on the provision of financial services** to listed subjects, meaning for example that financial institutions are barred from making funds available to designated individuals or groups. As with asset-freezing, this sanction is not applicable in relation to EU-

internal groups or individuals. Under certain conditions, and after consultation with the other member states, a state may, however, authorise the provision of financial services to a listed subject.

Travel restrictions, such as refusal of visas, follow on UN designation and from the US FTO mechanism. Restrictions on entry to or leave to stay in the US are the only consequences of the US TEL list. The FTO, on the other hand, imposes restrictions on representatives and certain members of the designated organisation. If they are aliens, they may be deported from the US. Aliens engaged in any kind of associational activity with the FTO may also be deported. In the UN context, the travel restrictions involve a requirement on member states to prevent the entry into or transit through their territory of listed subjects, unless travel is necessary for the fulfilment of judicial processes, or the sanctions committee determines that travel may be justified. Such a determination will be done on a case-by-case basis. A further exemption is provided for in that states are not required to deny entry to or require departure from their territory of their own citizens.

The UN mechanism also introduces an **embargo on the sale and transfers of arms or related materiel**, as well as a **prohibition on the provision of technical advice or training related to military activities.** Similar if not identical sanctions result from the US FTO list and from the UK proscription regime. The FTO list makes it illegal for anyone in the US or subjected to US jurisdiction to provide listed organisations with 'material support or resources', including training, expert advice or assistance, and weapons. In the UK, weapons training or training in terrorist skills are punishable offences. In addition, and as a unique feature, the UK bans being present in facilities used for terrorist training.

The UN as well as the EU for its autonomous list further include a **ban on making funds directly or indirectly available** to those on the lists. The EU undertakes to 'ensure that funds, financial assets or economic resources or financial services will not be made available, directly or indirectly, for the benefit of persons, groups and entities listed'. The wording of the UN mechanism is somewhat different, and does impose an obligation on states to ensure that no 'funds or financial resources … are made available, by their nationals or by any persons within their territory' for the benefit of the listed groups or persons. A similar ban is included in the US FTO list, where 'material support' includes a ban on the provision of currency or monetary instruments. The one instrument which is uniquely designed to implement this kind of ban is the US Executive Order list, which blocks property and any interest accrued on property of those designated as well as potential subsidiaries or associates, as well as any individuals or entities that provide support, services or assistance to them.

The UK and US FTO regimes include **additional sanctions**, which relate either to the designation itself, or are listed as separate terrorist offences. It is important to note that many of these additional sanctions might be **applicable also to third parties**. The US FTO prohibition on the provision of material support is very broad, and does, for example, also include a ban on the provision of communications equipment. The FTO does not distinguish between the criminal and other activities of the designated organisation, meaning that the act is punishable no matter whether support was directed towards the criminal or other activities of the designated group. In the UK, arranging or managing meetings or assisting in this activity for the purpose of inviting

support for the proscribed organisation, to further its activities or where a real or professed member of such an organisation will speak is punishable by up to ten year's imprisonment. Other acts, carried out 'for the purposes of terrorism', may return prison sentences of five to fifteen years. These acts include fundraising, use or possession of money or property, and the non-disclosure to a police officer that crimes of this nature have taken place.

In addition to noting the results and sanctions that follow designation, it might also be interesting to note the one sanction that does not follow. There is **no ban on direct contact** with designated groups or individuals in any of the mechanisms. Nothing would seem to preclude meeting or discussing with anyone on the lists, provided there were no additional circumstances that might make such meetings illegal. Such circumstances might include, for example, a national ban in the country where the meeting might take place. Several countries do maintain bans on meeting with groups which have been nationally designated as terrorists, whether or not provided for by any international designation mechanism.

There is no consideration made in terms of exemptions or exceptions to sanctions in any of the mechanisms for ongoing peace-processes or mediation activities. Similarly, there are no provisions for potential gradation of sanctions on the basis of behaviour of the designated subject. It would seem, therefore, that whether or not a group or individual is involved in negotiations or political transformation, the sanctions will stand as envisaged. In these circumstances, any exemptions from or temporary lifting of enforced sanctions would have to be sought through appropriate channels if such are provided for.

4. Appeals and challenges to designation

Some of the listing mechanisms provide for an automatic review of listing decisions, whereas others leave any delisting to result from an appeals process. As an example, the UK and EU autonomous lists are automatically reviewed at least every six months, but the UN list has no automatic review procedure. In the US, the Attorney General may at any time revoke an FTO designation after determining that there are grounds for doing so. However, there are no provisions requiring such a determination to be effected within any specified intervals or at any specific time after designation. The US TEL and Executive Order mechanisms contain no procedure for automatic review.

Designated armed groups, entities or individuals, or others affected by the designation may also actively pursue delisting or review of the lists. An armed group designated under the US FTO regime, may file for judicial review of the designation within 30 days of its publication. It may also file a petition for revocation of the listing two years after the designation date, the date of last re-designation or the date after the determination of its most recent petition for revocation. If no review has been conducted in five years from the designation date, the Secretary of State is required to conduct a review to determine whether the armed group still merits to be designated. In contrast, the TEL mechanism contains no procedure for review or delisting. The only way to challenge inclusion in this list is to initiate immigration proceedings and

challenge a potential negative decision in this regard. A review of the Executive Order designation may be requested on the anniversary of the designation. It seems that some designated subjects have, indeed, been taken off the list.

In the UK, a listed group or a person affected by the proscription decision can request the Home Secretary to proceed with delisting. In the event he refuses, the group can appeal to the Proscribed Organisations Appeal Commission (POAC). With the exception of the rules of procedure of the POAC, there seems to be no publicly available information regarding the proceedings, nor about the number of appeals for deproscription. Since the list of proscribed organisations has only grown, with no delistings, it is clear that if any appeals have been made, none have been successful.

In the UN and in the EU with regard to the autonomous list, delisting must be pursued through governmental channels. The processes vary marginally; both are initiated by states only, but in the UN, the process has to be launched by the government of residence or citizenship of the listed subject, and in the EU, the request and supporting information might come from any state. While it is not clear what information might be needed and how much information might be sufficient to merit a delisting in these two international fora, de-listings have taken place in both. In contrast to the EU list, however, the UN continues to publish the names of de-listed armed groups and individuals as a separate section to the designation list.

Failing to obtain delisting through the means provided for by the designation mechanisms themselves, designated subjects may also pursue the issue through national or European courts. Such challenges have been made in the US with regard to the Executive Order list, in national and in the European Court of First Instance with regard to the EU's implementation of the UN list, in the European Court against inclusion in the autonomous list, in the UK against proscription under the national regime, and in at least Belgium, Switzerland and Pakistan against inclusion in the UN list. None of these challenges have been successful in obtaining a delisting, though at least in one case, the national government was required to pursue such a delisting with the UN's 1267 committee.

Civil liberty and due process concerns have been raised with regard to all of the mechanisms. With regard to the UN list, the High-Level Panel on Threats, Challenges and Change points out that 'the way entities are added to the terrorist list maintained by the [Security] Council and the absence of review or appeal for those listed raise serious accountability issues and possibly violate fundamental human rights norms and conventions'. Similar concerns have also been voiced regarding the EU autonomous list. Some efforts are underway to address the problems associated with the lists, although it would seem that these efforts are aiming to address cases of mistaken identity. It is worth noting, however, that the European Court of Justice is expected to return a judgment in late 2006 or potentially early 2007 in a case concerning the legal basis for the EU's implementation of the UN mechanism. If ruled in favour of the claimant, there is a possibility that this judgment will result in changes to the mechanism or at least the ways in which the EU implements it.

5. How effective are the mechanisms?

It is clear that the sanctions resulting from designation in all lists are considerable, and that some of them may have consequences on mediation activities. The US FTO is considered serious enough to potentially impair all kinds of relationships with designated armed groups. Travel restrictions may make the holding of meetings impossible. The UK legislation even makes it punishable to arrange meetings with the knowledge that a real or professed member of a proscribed organisation will address it.

When assessing the potential impact the existence of the various lists might have on peace processes, and also when discussing potential solutions if there should be negative results flowing from proscription or designation, it is important to assess the effectiveness of the sanctions as they stand. Similarly, it is impossible to judge the need for exceptions and exemptions if the sanctions provided for in reality do not affect mediation activities. Especially within the UN, there is an ongoing discussion about the effectiveness of sanctions in general. There have also been attempts by the 1267 sanctions committee and its monitoring team to assess and improve the regime on the basis of responses received from the UN membership.

In the UN context, the 1267 sanctions committee requires regular reporting from the membership. This provides an excellent tool for assessing the effectiveness, if not necessarily the impact of the different sanctions. In this light, it is interesting to note that by late 2004, not one of the member states reported ever having applied the travel restrictions in force. Similarly in 2004, not one report was lodged regarding enforcement of the arms embargo. In 2005, one violation of the arms embargo was reported in Somalia. One explanation for this might be, as the sanctions committee itself has hopefully indicated, that the sanctions are efficient or successful. The other explanation might derive from the view expressed by many member states that, the UN mechanism lacks clear justification, thus opening them up to potential domestic litigation if they take action against designated individuals, notwithstanding the fact that they have incorporated the list and its sanctions into their domestic system. At the time of writing, it was not clear whether the states in question, or others, have subsequently enforced the sanctions provided for by the UN mechanism.

There seems to be no conclusive data regarding the effectiveness of asset-freezing to prevent terrorism. In 2004, the UN's High-Level Panel on Threats, Challenges and Change noted, however, that 'many terrorist funds have a legal origin and are hard to regulate', and that seized funds constitute only a fraction of funds available to terrorist organisations.

A few further factors must also be considered when assessing the effectiveness of this sanction. First, any measures adopted by States would have to build on the basic assumption that designated groups will not be likely to maintain property or bank accounts in their name. Any asset-freezing should therefore be targeted mainly against individuals. So far, though, the lists have been criticised for not providing enough details to allow for positive identification of the individuals concerned to permit for this measure to be applied reliably. Measures to correct this are underway, but will presumably take some time to become effective.

Second, and more basic, assets can only be frozen if they are within the control of the authority providing this measure. Only targeting actors whose activities, and presumably a good deal of their assets, are mainly abroad would therefore by necessity only be partially effective. If this is done on an international level, like in the EU, further national measures should therefore be in place to ensure that also 'internal' actors are similarly targeted.

As fund-raising by terrorist groups would presumably not require formal financial institutions, the bans on making funds directly or indirectly available to designated subjects would seem to provide for a significantly more powerful sanction than does asset-freezing. There is no information regarding the effectiveness of this sanction. The UN 1267 committee did, however, report in 2004 that the legislation used by many Member States with regard to the asset-freeze was not always appropriate, and that relatively few States distributed information regarding the list to non-financial businesses and professionals such as dealers in precious commodities and travel agents. In addition, only one State reported that it had made the list available to charities. It would be logical to assume that the ban on making funds directly or indirectly available is, similarly, little known.

By comparison, the sanctions provided for in the UK mechanism would seem to fare only marginally better. The proscription regime targets groups, but to have any effect, it should also target individuals. The impact of proscription is, in reality, only likely to be felt by individuals, provided that membership of the organisations in question or fundraising for it can be proven. Even this is difficult. Statistics provided in reports by the Independent Assessor of the UK's terrorism legislation show that, between January 2002 and December 2004, only 25 individuals were charged under the applicable legislation for being members of a proscribed organisation. Only 2 individuals were charged with this crime in 2005. Similarly, the statistics show that the one offence which yielded the most charges between 2002 and 2004 (54 for the three-year period), and also in 2005, was that of possession for terrorist purposes. This involves the possession of any article under circumstances which might give rise to reasonable suspicions that the possession is for terrorist purposes. No charges at all were brought between 2002 and 2004 on accounts of support for terrorism, the wearing of terrorist insignia, the duty to disclose information, or directing terrorist organisations. Some charges in this regard were brought in 2005, notably one for displaying clothing pertaining to a proscribed organisation, and two for directing terrorist organisations. A total of 18 charges were also brought in relation to information about terrorist acts or the collection of information for terrorist purposes. No conclusions as to the efficiency of the legislation per se can be drawn from the statistics, but it would seem to demonstrate that either there are very few cases in the first place, or that sufficient proof is hard to come by.

6. The limits of contact and assistance

When research for this paper was started, it was assumed that the various terrorist lists would include severe sanctions which might have a negative impact on mediation. This assumption was made on the basis of several indications that mediators preferred

not to be involved in processes where a party was included in a terrorist list. It was further assumed that any such negative impact on mediation activities would have to be related to international travel bans or bans on training or any other similar mediation-related activities. It was therefore quite surprising to note that in fact, the international mechanisms provide for relatively mild sanctions, which are also not, apparently, strongly enforced. The asset-freezing mechanism is important, but not very effective. It would seem that these sanctions should not hamper any dialogue as long as travel of listed individuals or those associated with listed groups is not required. Even then, it might be possible to request an exemption from the travel restrictions in place.

What is significantly more important is that the national mechanisms provide stronger and more diversified sanctions, which are potentially applicable also to third parties. American courts have maintained that the FTO ban on provisions of material support infringe no Constitutional rights, such as that of free expression or freedom of association even if directed at peaceful activities, since this 'frees up resources that can be used for terrorist acts'. While only US nationals or others falling under US jurisdiction may be prosecuted for such acts, any American decisions for funding of mediation projects involving activities which might be implicated under this legislation is likely to be affected. There might also potentially be implications for mediators who contravene this legislation while travelling in the United States, although it is unclear whether this would, in reality, be the case.

Most of the sanctions contained in UK legislation are directed at individuals who can be directly associated with proscribed organisations or who otherwise commit terrorist crimes. Potentially, however, some of the provisions may be of significance for mediators. The most important of these is the ban on organising or helping to organise meetings where a member of a proscribed organisation may speak. While the provision in question does intend to allow for genuinely benign meetings, it should be assumed that such a meeting has to be carefully prepared in order for it not to make the organisers liable to prosecution. A similar, though in all likelihood less applicable, provision is that regarding attending terrorist training facilities. Unintentional or not, this action is an offence if even part of the training offered would have been for terrorist purposes, and the offender knew or believed that training took place or could not reasonably have failed to understand that it did.

Against this background, there would seem to be no uniform limits on contacts with and assistance to the listed groups or individuals. Nevertheless, American citizens, those falling under American jurisdiction, and those who have American funding for their mediation, may be more limited in their activities. It would seem that such a petty act as offering a cup of coffee to a party in peace talks might be construed as material support if current American praxis really assumes that any support to the peaceful activities of an armed group may free up resources for terrorism. Providing training or expert advice of any kind could easily fall within the FTO regulations, and much would depend on the strictness with which they might be applied. Mediation activities involving close engagement with listed groups, such as training or provision of communications equipment, would have to be carefully considered in this light.

7. Summary of conclusions - different, yet very similar mechanisms

All of the lists share the common goals of prohibiting the existence and/or actions of terrorist groups and reducing their access to funds and personnel. In all of the mechanisms, the designated subjects themselves play no role before designation and receive no notification of designation prior to the decision. Even after designation, the role of the designated group or individual is limited to potential petitioning of the national government for delisting at the international level, or through the mechanisms provided for in the domestic context for the national mechanisms. The role of third parties is even further limited, and mainly reserved for legal representatives of those listed. Others may be reduced to diplomatic pressurising or active lobbying on behalf of the designated party.

The targeted groups differ for all the lists. The UN list targets only Al-Qaida and the Taliban, as well as their associates, whereas the other mechanisms aim at terrorist groups more broadly defined. In the US, many different lists exist, targeting different behaviours and with different listing criteria and review mechanisms.

In the international mechanisms, designation decisions are taken by a group of government representatives. At the national level, decisions are ultimately taken at cabinet level, though with input from many government departments and, at least for some of the mechanisms, parliamentary approval. At the national level, the designated subject may appeal through specified channels or through the courts. In contrast, only governments can act at the international level, and the designated subjects are reduced to petitioning government agencies to act on their behalf. Challenges to both national and international designations have been made in national and European courts, but none have been successful.

The consequences and sanctions of inclusion in the lists also differ in all the mechanisms. The broad range of sanctions includes the freezing of assets, travel restrictions, arms embargoes as well as prison sentences or fines for various offences related to the designation itself or separately designated terrorist offences. Enforceability is limited for the international institutions, in contrast to the full sovereign powers enjoyed by the states. Nevertheless, it would seem that not even national sanctions are easy to enforce.

Some of the sanctions contained in the various mechanisms may have a negative impact on peace processes. The travel restrictions are an obvious example. There are also some provisions which might impact such basic activities as negotiation training or the arrangement of meetings. National legislation may, under those circumstances, also target mediators themselves, even if the possibility for such action would seem very remote.