

Peace Mediation and Listed Terrorist Organizations: Challenges for Peacebuilding

Some Thoughts based on the experience of the Berghof Institutions

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The vast majority of contemporary armed conflicts are typically asymmetrical in nature, opposing internationally legitimized state actors against non-state armed groups – often labeled or legally proscribed as ‘terrorist organizations’. Although there is obviously no template model for conflict transformation in such contexts, it can be asserted that peacebuilding needs the engagement of all main conflict stakeholders; in particular, armed groups representing large social or ethnic constituencies with legitimate collective grievances and who possess the capacity to either impede or facilitate constructive social change must be involved in conflict settlements.

Third party actors supporting constructive conflict transformation, be it in the capacity of negotiation facilitators or mediators, capacity-building trainers or peacebuilding agents, face the challenge of balancing considerations for the rule of law and the respect for the sovereignty of the affected countries with the necessities of proactive and impartial engagement with all conflict parties. It is especially important to find creative ways of supporting the transformation of armed movements using terrorist tactics (or branded as terrorists by the local state or foreign governments) into non-violent political actors through their engagement in peace negotiations.

The legal proscription of suspected terrorist organizations has serious consequences, both intended and unintended, not only for the targeted entities, but also individuals or organizations interacting with them—including for peaceful and constructive ends. This short brief presents some of the key challenges of counterterrorism regimes for third party actors who try to support peace processes. It further illustrates possible forms of constructive engagement with listed terrorist organizations through examples of conflict transformation activities carried out by the Berghof institutions.

1. Challenges related to support for mediation and negotiation

By definition, mediation support implies direct engagement with all sides to a conflict, including proscribed organizations, in order to facilitate their transition from violent to non-violent political activities. The current anti-terrorist laws in the United States, UK and other states impede such activities by prohibiting transactions with listed groups which can be interpreted as providing them with material support or resources. In practice, this might include providing transportation or visas, offering coffee during a meeting, giving advice or technical support, or even advising a group to join a negotiation.

First Contacts: Some listings prohibit citizens or foreign NGOs receiving funds from the government establishing the list from paying for flights and accommodation for members of proscribed movements. Thus, any invitation to a workshop, seminar etc which would also serve the purpose of establishing contact to initiate a peace process is problematic.

Preparations: Some listings prohibit the conduct of any activities which can be interpreted as offering proscribed organizations services such as training, expert advice or assistance. Mediators are operating in a gray zone when they explore the proscribed movement's interest in negotiations or the possibility of entering into talks about talks, conduct shuttle diplomacy, discuss the framework and basic principles for negotiations, or take on similar tasks.

Conducting mediation/negotiation support: According to the US anti-terrorist regulations mentioned above, any drafting of agendas, Memorandums of Understanding, agreements or similar documents by mediators can be seen as illegal support to a proscribed entity. In addition to this, it will be difficult to identify a meeting venue outside the country if it is not possible to conduct the talks in the conflict country itself (due to security or political considerations). If security guarantees cannot be given, it will be very problematic to organize a reliable communication channel with the top leadership of a proscribed movement.

Role of the mediating party: A more indirect effect of proscription is that it makes it more difficult for mediators to maintain an ever-handed or impartial position. This is critical because while the proscribed party might blame the third-party actors for not being able to guarantee parity of status, the hardliner factions of the other side will blame the engagement of the mediators with the proscribed organization as a support to a “terrorist” organization.

2. Challenges related to capacity building for the negotiation parties

In highly asymmetric conflicts, capacity building is an important component (and sometimes a necessary precondition) of peace negotiation processes. It helps to make parties more informed about peaceful strategies, negotiation options and skills, and enhances their ability to devise fair and equitable peace agreements, as well as their readiness to abide by their commitments. When the parties are not ready to consider negotiated conflict outcomes, one-sided engagement through capacity building also helps to nurture non-violent and political alternatives.

However, many countries, including the U.S., do not allow capacity building for a proscribed organization as it is seen as a form of material support, and is thus proscribed by anti-terrorism legislation. Mediators therefore have to face the difficulty of getting other external actors involved to take over such roles, according to the principles of division and coordination of tasks (it is often not appropriate if the same actors combine peace facilitation and capacity-building with one or the other party).

3. Challenges related to confidence-building measures and relationship-building

Armed movements often claim that a certain parity of status is a necessary precondition to enter into negotiations. At the very least, peace processes are highly conditioned on the building of trust and

good faith between the conflicting parties – or should lead to a process of confidence building. However, the listing of one conflict party as terrorist organization tends to further deepen the level of mistrust, especially if conditions and incentives for de-listing are not clearly indicated – which is the case in most proscription regimes. Not only does listing break the parity usually assumed to be a precondition for talks in good faith, but it also risks fuelling radicalism instead of encouraging moderation from the targeted entities. The challenge for the third party is thus to help overcome this deep division, which might entail helping to de-listing the proscribed organization.

4. Challenges related to engagement with ‘proxies’ and insider mediators

Third parties are also encountering difficulties when engaging with actors or organizations close to, or with access to, proscribed actors, as these ‘proxies’ are also subject to listing and are treated as supporters of terrorism. This has created a growing atmosphere of mistrust and suspicion. In some cases international donors do contribute to this atmosphere; a case in point is the partnership vetting regulation of USAID.

Those proxy actors and organizations, including insider mediators (key interlocutors with mediation capability among different factions within the conflict parties) are also subject to security threats which are caused by national anti-terrorism legislation in as far as emergency regulations and other measures tend to undermine the rule of law and human rights regime.

Annex: Peacebuilding engagement with proscribed armed groups by the Berghof institutions

The conflict transformation activities conducted by the Germany-based Berghof institutions - Berghof Peace Support and Berghof Conflict Research - are subject to the regulations of the EU anti-terrorist list, which is less rigid in terms of meetings and provision of advice but which may also lead to difficulties in terms of venues, visa, donor restrictions and other political sensitivities.

Capacity-building:

Since 2002, Berghof Peace Support was involved in a program of capacity building for the major conflict stakeholders in Sri Lanka, which included the Liberation Tigers of Tamil Eelam (LTTE). Topics were related to federalism (study tour by the LTTE’s political divisions), power sharing, interim arrangements, and other conflict transformation mechanisms. We ceased these activities in early 2008, partly due to the polarization and escalation of the conflict in the wake of the EU and Canadian listing of the LTTE.

Since 2006, Berghof Conflict Research and Berghof Peace Support have been engaging a number of resistance and liberation movements, a few of which are or have previously been listed as terrorist entities in the US or EU (such as the LTTE, the Nepali Maoists or the Communist Party of the Philippines), in processes of capacity-building and joint learning for peacebuilding. The overall aim of such engagement is to contribute to the processes of constructive conflict transformation and non-violent social change, through both participatory research and practical engagement with armed movements in transition to non-violent politics. We are pursuing this aim through three complementary strategies:

Self-reflection and learning: We are supporting a process of self-analysis by various resistance and liberation movements on the challenges and successful factors of peace processes and political transition from (illegal) armed resistance to non-violent political engagement in post-war peacebuilding, including in the domains of political and security negotiations, party formation, international standards and status/legitimacy, demobilization, security sector reform, etc. Importantly, the case studies have been produced by the movements themselves, in some cases supported by an accepted researcher, but in all cases approved by the movements. These studies have been collectively presented and discussed during several roundtable meetings in South Africa, Germany, Thailand and Colombia.

Peer-advice: Furthermore, we offered opportunities for peer advice between individual movements, by consolidating the network into a pool of experts offering lessons-learned to leaders of other movements currently engaged in or contemplating a political transition. For instance, in 2009 Berghof Peace Support started to organize negotiation meetings and seminars for active resistance and liberation movements. This series is intended to:

- offer space for peer advice and joint learning on good practices on negotiations and to explore creative ways to deal with negotiation challenges;
- support ongoing or planned negotiation processes by joint reflection based on other experiences; in addition, invited international negotiation and mediation experts will act as resource persons to inspire the group with other innovative perspectives;
- help improve the resources available for, and the understanding of, effective and meaningful negotiation processes among resistance/liberation movements.

Policy advice: We also aim to improve international engagement in post-conflict areas by transferring the research and practical findings into generic lessons learnt for more coherent, effective and holistic interventions by policy makers and peacebuilding agencies. We do this by publishing the case studies as well as policy reports on specific topics of interest for the conflict transformation community.

Mediation and negotiation support:

In Sri Lanka, we have provided issue-related support to the negotiating parties in the period of 2002-3, when six rounds of talks between the Sri Lankan government and the LTTE took place. This support was requested by the two parties and welcomed by the Norwegian facilitator. Most support came in the form of seminars and issue-center workshops, but involved also smaller meetings and individual advice.

In Nepal, in late 2008 we supported the peace process by trying to unblock the negotiations on military integration of the Maoist cadres into the regular Nepali Army, on initial request by the Maoist-led government. We invited to Nepal a high-level facilitation team from South Africa, which consisted of the key players of the South African military integration negotiations (including a former chief-of-staff), and facilitated meetings with the Maoists, the Nepali Army and a roundtable meeting outside Kathmandu which included leading representatives from all the major parties, including both armies.

Berghof Peace Support is also trying to support **insider mediators** who play conflict facilitation roles in their own society. For example, we organized a lessons-learned workshop for insider mediators from various countries in 2008, and are currently providing capacity-building and networking for such actors in Southeast Asia. Insider mediators are very relevant for peace mediation as they are important interlocutors to conflict actors and often mediators between different factions within a conflict party. However, their high level of commitment to identify a peaceful solution to the conflict bears high risk, too. Several insider mediators with whom we have engaged have been in prison or have received serious threats by armed counter-insurgency actors.