

**Summary of expert meeting:  
"Mediation and engaging with proscribed armed groups"  
29 March 2012**

## **Background**

There has recently been an increased focus within the United Nations (UN) on mediation and the need to engage with armed groups in the peaceful settlement of conflicts, including a General Assembly resolution on mediation in June 2011 ([A/RES/65/283](#)). The UN has long engaged with armed groups for humanitarian and political purposes. However, changes in international discourse and policies, particularly since 9/11, have posed challenges to this engagement.

National and international approaches to the threat of terrorism, including counterterrorism legislation, policies and lists of proscribed groups, can generate challenges for UN and other actors seeking to engage with armed groups in the context of mediation processes or humanitarian support. These challenges are increasingly being recognized -- as evidenced, for example, by the recent distinction made between the Taliban and Al-Qaeda in UN lists in an attempt to create more space for dialogue in Afghanistan.

On 29 March 2012 Conciliation Resources, the Centre for Humanitarian Dialogue and the Center on Global Counterterrorism Cooperation convened an informal expert meeting to explore these challenges. The meeting brought together some twenty experts from the UN from the Department of Political Affairs (DPA), the Counter-Terrorism Committee Executive Directorate, the Counter-Terrorism implementation task force, The Office for the Coordination of Humanitarian Affairs (OCHA), the United Nations High Commissioner for Refugees (UNHCR), and the Security Council Affairs Division to consider questions such as:

- What are the political and practical challenges and constraints on engaging with proscribed groups? How can the UN preserve the space to engage?
- What are the different kinds of engagement with proscribed groups available to the UN and what are the related political considerations? What have been some of the more effective strategies and tactics used by the UN?
- Can counterterrorism policies be used constructively to support prospects for mediation or humanitarian access?

Attendees participated in the meeting in a personal capacity. Deliberations were held under the Chatham House Rule.

## WHY ENGAGE WITH ARMED GROUPS

Participants noted that since the adoption of the General Assembly's [Global Counter-Terrorism Strategy](#) in 2006 there has been a shift towards a more holistic approach to counter-terrorism at the UN, with an increasing willingness to consider how the counter-terrorism agenda can be used to reinforce the pursuit of other UN goals, such as the resolution and prevention of armed conflict, and the provision of humanitarian assistance. At the same time, it was noted that there are situations in which engagement with armed groups that have been labelled 'terrorist' groups may prove controversial. This raises questions both of motivation for engagement – why the UN should engage with such groups – and of the execution of engagement – how it should engage.

Participants outlined at least four broad motivations for the UN in engaging with armed groups.

First, to better understand armed groups. Most participants agreed that the UN is more likely to engage effectively in conflict-affected contexts when it has a deep and nuanced understanding of the dynamics of the conflict. Engagement with armed groups to better understand their objectives, perspectives and realities is crucial to a number of UN activities that armed groups may impact upon – whether within the realm of security, humanitarian assistance, human rights, or development. Mapping actors and their actual and potential roles in political and peace processes is crucial.

Second, some participants, including current and former UN representatives in the field, suggested that engagement can help influence armed groups and may help moderate their views. Some armed groups may be far removed from global political discussions, without a fully informed understanding of wider political dynamics. In some cases group members may never have met someone from outside their area, which can also explain the strong positions they take. One objective of engagement can be to help these groups develop a more nuanced understanding of the conflict and other perspectives, which can lead to them adopting new approaches to the conflict.

A third motivation identified by speakers was that engagement can help end armed conflict or acts of violence. A number of speakers noted that social science analysis suggests that terrorism frequently ends through groups joining the political process. The same is true of many armed conflicts. Mediation and engagement with armed groups does not offer a silver bullet but may still be an effective way of dealing with these groups.

Finally, many speakers identified engagement as necessary for promoting and facilitating humanitarian access. Engagement with armed groups is often essential in order to gain humanitarian access and to ensure the protection of UN and other staff. Relationships established in order to facilitate humanitarian access may in turn allow the discussion of more political questions in due course, contributing to dialogue that helps end or reduce violence.

## **PROSCRIPTION AND LISTING**

Discussion suggested that many of the challenges in marrying counter-terrorism and other objectives in the UN's work arise at the level of execution. How and when should the UN engage? Many speakers suggested this requires a flexible and context-sensitive approach, including sensitivity to the way that terrorism 'listing' works in different contexts.

There are a number of different UN instruments that are relevant. At a global level these include the list established by UNSCRs 1267, 1988 and 1989 in relation to the Taliban and Al Qaeda; other UNSCRs imposing sanctions on armed groups in specific conflicts; and UNSCRs 1373, 1540 and 1624, which require states to take various steps against non-state armed groups, including criminalizing terrorism. UN member states both enforce those lists and add to them through their own national regimes.

Participants noted that the creation of these lists is inherently political. At a global level, member states decide who goes on the lists, how UNSCRs should be enforced, and what implications this may have for UN engagement with listed individuals or groups engaged in proscribed or sanctioned conduct. Powerful member states will often use their political weight to decide when, how, and in what circumstances, they will condone or condemn the involvement of UN staff in direct contact with proscribed groups and listed individuals.

Several participants noted that at a national level UN staff and agencies are required to operate within the law of the country where they are working. One participant noted that in a number of countries where UN actors operate, governments are using UNSCR 1373 as a justification for labelling internal opposition groups as terrorist organizations, thus prohibiting or seriously limiting engagement by UN staff.

Another participant pointed out that in June 2010 the U.S. Supreme Court stated that the United States Government could have the right to prosecute engagement with armed groups even if it was for conflict resolution purposes. The US asserts a global extraterritorial jurisdiction in this regard.

Several participants noted that the existence of these multiple lists, each with different political ramifications, sometimes creates confusion among external actors and armed groups alike. It is not always clear what groups or individuals are on which lists, nor what the exact implications of such a listing are, including for the UN and its engagement with different groups.

## **IMPACTS**

Discussions suggested a range of perspectives on the way in which counter-terrorism policies impact on UN efforts to support mediation or peace processes.

One perspective presented in the meeting suggested that the impact of counter-terrorism policies should not be over-emphasized. Speakers who adopted this

perspective argued that, based on the mandate and prerogatives of the UN, there is an unwritten understanding that, if UN staff engage with proscribed groups for the purposes of promoting human rights, facilitating humanitarian activities, or supporting peace processes, those staff will not be sanctioned or prosecuted.

A second and slightly different perspective highlighted the nature of the UN as a member-state organisation. These speakers argued that the counter-terrorism agenda is largely a member-state-driven issue, and that UN personnel are consequently obliged to operate within that environment, taking their cues from states regarding how far they can go in engaging with specific armed groups.

This raised a discussion of leadership, and in particular the key role of individuals and SRSGs. Most speakers recognized that in practice, the extent to which the UN engages or not with armed groups appears to depend greatly on the personal proclivities or tendencies of Special Envoys and Representatives. Certain Envoys assert that because they represent the Secretary-General, their duty and mandate comes from the UN; whereas others assert that their mandate comes from member-states and they are therefore particularly sensitive to member states' views on this issue. The discussion explored how and when different leaders will take these different approaches. That made clear that many UN representatives are acutely aware of the tensions, dilemmas and responsibilities. At the same time, it was also suggested that these tensions and dilemmas places such individuals in a challenging position.

Some speakers sought to highlight some of the risks associated with this reliance on personal discretion and tacit member-state approval. They recounted incidents where the UN has been unable to engage with armed groups perceived as terrorist groups by key member states, notwithstanding a perception in the UN that engagement would help to reduce violence or end conflict. Examples cited where this occurred included Somalia, the Occupied Palestinian Territories, and Kyrgyzstan.

Along these lines, other speakers suggested that this lack of clarity about when engagement with an armed group may be acceptable – either legally or politically – tends to 'chill' UN engagement efforts. UN officials are not sure how far they can take engagement, and so some do not try. Some speakers pointed out that this 'chilling effect' is closely intertwined with a lack of information on proscription and what it means. Participants also considered that this could lead to the UN missing out on obtaining information about, and insight into, these armed groups, which also left others who rely on the UN for such information and analysis worse off.

Another concern expressed by some speakers was the impact on perceptions of the UN's impartiality. These participants argued that the perceived impartiality of the UN is crucial to its ability to engage with armed groups and other non-state actors. They suggested that the close identification of the UN with western and other state-led counter-terrorism strategies risks undermining that perception of impartiality. This reduces the space and ability for the UN to engage with such groups, and increases the physical risk to all UN staff. Problems arise in particular when the UN is seen as not engaging with certain actors because of pressure from specific member states.

Finally, some participants noted a related impact, involving the perception by armed groups of listing and proscription regimes. These regimes tend to provide little clarity on how groups and individuals can get themselves de-listed. The de-listing processes associated with UNSCR 1267 in particular have proven slow and lack transparency. This means that there are few incentives for groups to modify their behaviour in order to be de-listed, which risks encouraging them to adopt a position of antagonism towards the UN, undermining its capacity for engagement and increasing the risks for its staff and other agencies who operate under its security umbrella.

## **WAYS OF DEALING WITH THESE ISSUES**

Whilst the obstacles and challenges identified above are very real, participants noted that UN officials and others have found useful ways of addressing them.

Several participants argued that there remains a strong voice amongst many senior UN officials that assert they can and should engage. Individuals proceed on that basis unless and until, significant obstacles are put in their path, they are instructed to desist, or political pressure becomes unbearable. Other participants cautioned, however, that while this can prove to be effective in specific cases, it places much onus and responsibility on individuals, and provides little or no institutional backing to a strategy of engagement. This approach still leaves a decision open to influence by powerful states and individuals, and discourages more cautious UN officials from adopting a strategy of engagement.

In some cases, participants noted, the UN has in fact chosen to take a more assertive approach and explicitly articulates its right to engage and talk to whomever it wishes. This has more often been the case, participants suggested, where the primary obstacle to engagement has been the government in the country where the UN is operating, rather than a powerful foreign actor. Several participants voiced concerns that there may be a risk that in the future attempts by national governments to restrict engagement will increase, creating more uncertainty. In a context where UN agencies need donor support, UN staff may feel obliged to obey restrictions imposed by national governments, and may be less ready to assert the UN's right to engage. Some participants noted cases where the UN has engaged governments directly on these issues, for example in Colombia, Ethiopia and Pakistan.

## **FLEXIBILITY VERSUS STRATEGY**

However, a number of participants argued that an emphasis on the need for flexibility came at the risk of broader strategic incoherence. These participants suggested that when the UN has a clear strategy and people know what it is doing, it is easier for UN actors to pursue and justify a policy of engagement. The need for coordination of strategy in the system was seen as essential, especially as the UN system is charged by member states with seeking to achieve multiple goals, including promoting security, conflict resolution, and humanitarian access.

Humanitarian engagement was identified by a number of participants as a starting point for any broader effort by the UN to engage with proscribed groups or individuals. UN humanitarian agencies regularly need to deal with belligerents on all sides: government and non-state actors. They manage access to populations at risk, which requires developing knowledge and understanding, mapping key actors, and engaging to secure access. The relationships that these agencies establish, including the trust that is built, can be useful starting points for further, more political, engagement with these groups.

Several participants cautioned, however, that there is a need to retain a degree of constructive ambiguity in the UN environment. Many participants noted that there exists no clear, general legal advice within the UN system on the limits of engagement with proscribed groups. Several argued that there should not be, since it would reduce the room for creativity and flexibility on the part of individual UN actors. Participants noted that legal permission for engagement is rarely sought in specific circumstances, lest permission be denied.

Some participants noted that this reliance on tacit permissions and legal privileges has knock-on effects for other peacebuilding and humanitarian actors, who may not enjoy such protections. The UN works with a range of non-UN actors as important partners in working towards the peaceful settlement of conflicts and for humanitarian access. These include civil society organisations, private individuals, and community groups. These groups often lay the ground for UN efforts, work alongside the UN as implementing partners, and provide complementary services – often doing the things that are too politically sensitive for the UN.

Counterterrorism policies may curtail their ability to engage with proscribed armed groups even more than it constrains UN efforts. The listing of armed groups and proscription regimes appear to have had a chilling effect on their engagement, in particular for government-supported NGOs who feel they can no longer speak with whichever actors they think they should engage with. A number of peacebuilding organisations have had to either stop or decide not to undertake several projects, particularly in light of the US Supreme Court decision on material support. Many of these organisations would welcome and benefit from stronger UN leadership on these issues.

As several participants noted, a ‘don’t ask, don’t tell’ policy on the part of the UN does little to protect this space for these UN partners.

## **WHERE NEXT?**

A number of participants suggested that there might be an opportunity at present within the UN system to promote the idea that engagement can be a valuable complement to proscription and listing. Some participants thought this could be the right time for the UN to explore the possibility of increasing examples of engagement: “If we can set a precedent, we can consolidate on that”. Several participants suggested that other peacebuilding and humanitarian organisations would also benefit if the UN could provide a more constructive interpretation of engagement.

Several participants suggested that the UN system needed to work on this issue in a more coordinated fashion. No conclusions were reached, however, about where the right forum for developing this discussion might be found. One idea raised involves engagement with the UN's counterterrorism bodies: the willingness of the membership to explore a holistic approach to counterterrorism, with a particular emphasis on prevention of terrorism, creating a space for thinking about engagement, for example through the Counter-Terrorism Implementation Task Force's Working Group on Armed Conflict. At the same time, renewed attention to the UN's mediation role in armed conflicts may create space for considering examples of positive UN engagement with proscribed armed groups, for example through the Friends of Mediation group.

Overall, the discussion reflected a consensus amongst participants that the UN *should* have the space to engage with whomever it thinks it needs to engage with at any particular point in time to achieve the tasks that member states have set for it. The UN's strength is its access to all the players: "We need to protect our space for engagement."