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## A Roadmap for the Foreign Terrorist Organizations List

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Although the *Foreign Terrorist Organizations* list has a set of criteria for designating groups, there is little clarity in practice about the process for revocation. Even after organizations have renounced terrorism for many years, their designations persist without a clear explanation, and are based on the assumption that historical violence indicates future potential.

A November 2007 court ruling by the UK's Proscribed Organizations Appeals Commission (POAC) ordered the British government to remove the People's Mujahedeen of Iran -- known to the U.S. government as Mujahedeen-e Khalq (MEK) -- from its terrorist organizations list. This decision, along with a similar decision by the European Court of First Instance (a level below the European Court of Justice), and the mandatory review of the group's designation by the U.S. State Department in October 2008, provides an opportunity to evaluate how terrorist designation is assessed. According to the 2004 Intelligence Reform and Terrorism Protection Act, if no designation review is conducted during a five-year period, the U.S. secretary of state must determine whether a revocation is appropriate.

### The Role of Non-Terrorist Criteria

Any designation review should be based only on terrorism issues, not on the general U.S. government view of the organization in question. If the decision to designate a group is made on foreign policy considerations rather than evidence, then the list will be branded as a political instrument, thus reducing its utility as a means for encouraging other governments to take action against certain terrorist organizations. This is what happened to the list of terrorism-sponsoring states, which simply looks like a set of countries the U.S. government does not like.

In the MEK's case, its designation should not be based on the group's political stance or worries about U.S.-Iranian relations, nor should it be a reward for its reports on Iran's nuclear activities. Over the past three years, the State Department's *Country Reports on Terrorism* have cited no alleged MEK terrorist activity since 2001, yet have increased allegations pertaining the group's non-terrorist activities. The 2007 edition of the *Reports*, due out by the end of April 2008, is bound to continue this trend.

These allegations -- support for the U.S. embassy takeover in Tehran in 1979, allegiance to Islamic Marxism, suppression of Iraqi Kurds and Shiites, participation in the oil for food scandal, and the self-immolation of its supporters during protests -- are not related to the legal criteria for terrorist designation and are probably meant to discredit the MEK. These allegations are irrelevant, and some are also based on contestable evidence. This example of irrelevant information reinforces the need for the State Department to create explicit guidelines by which it moves a group from designation to revocation.

### Dealing with History

History plays an important part in terrorist designation, especially when considering groups that no longer participate in violent activity. The Palestine Liberation Organization (PLO) is one such example. The PLO

clearly used to be a terrorist group, but now enjoys good relations with the United States. Since the PLO complied with the 1993 Declaration of Principles and renounced terrorism, the organization was not listed on the State Department's first edition of its Foreign Terrorist Organizations list in 1997 or in President Clinton's 1995 Executive Order 12947 on Middle East terrorism. Since the reevaluation of the PLO designation preceded the creation of the State Department list and the subsequent legislation regulating the process of review, the PLO case provides little insight into how revocation would occur under the current system.

In contrast, the November 2007 POAC ruling is a more recent and relevant example of terrorist designation review. In fact, the 144-page POAC ruling addresses the historical actions of the MEK in detail. Regarding the past seven years, the POAC finds,

Whatever the accurate characterization of the organization's activities between 1980 and 2001, the position in 2006-2007 is radically different, and has been so since 2001. The [MEK] has conducted no military activity of any kind since about August 2001, whether in Iran or elsewhere in the world. This is attributable to a deliberate decision of the [MEK] made at an extraordinary congress held in Iraq in June 2001, namely, to abandon all military action (or activities) in Iran. There is no evidence that the [MEK] has at any time since 2003 sought to re-create any form of structure that was capable of carrying out or supporting terrorist acts. There is no evidence of any attempt to "prepare" for terrorism. There is no evidence of any encouragement to others to commit acts of terrorism. The above factors, combined with the 5 years that had since passed since the summer of 2001, demanded the conclusion that continued proscription could not be lawfully justified.

Inherent in the POAC order to revoke MEK's designation -- an order the UK government is appealing -- are three principles: the organization's formal decision to renounce violence, the cessation of terrorist activity, and the five year period of peace. Perhaps the Department of State does not want to use these particular principles when re-evaluating a group's terrorist designation, but it should adopt a set of guidelines and explain them to the public. It should also explain how it applies those principles in each case; if the MEK is designated, some specific reasons should be given. Preferably, the State Department should provide a road map for what a designated group must do to be removed from the list. For the MEK, what, if anything, must it do to show it has renounced terrorism in practice as well as in theory.

## **Conclusion**

While the State Department routinely reinstated MEK's designation as a terrorist group on April 8, it must do a more formal and in-depth review by October 2008. That review's decision should be based on two factors. First, the State Department should only decide if the group is or is not a terrorist group, and not bring in irrelevant information. The criteria should be used in an unbiased, professional manner, relying on evidence rather than prejudice or rumor.

Second, the decision should be based on clear set of rules regarding how the U.S. government revokes this kind of designation. At present, it seems that past terrorist activities -- no matter how old or far removed -- are susceptible to being interpreted as evidence of future potential, consequently justifying a group's continued designation. In contrast, the POAC has set forward several useful principles for evaluating an organization's violent past and peaceful present; the U.S. government should do the same.

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