

EU's Terrorist List and Hezbollah: Hard Decisions, Soft Consequences

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Abstract. Hezbollah is a large and complex organization: it is one of the most influential political parties in Lebanon, partner in the current coalition government; it runs a number of educational centers, social services, and shelters; and it operates a 15,000-strong private army-militia that fought a successful war against Israel in 2006. In July 2013, the European Council unanimously passed a controversial Decision to designate ESO – the Hezbollah's military wing – a terrorist organization, after a deadly terrorist attack in Bulgaria was blamed on the organization. Without formal distinction between Hezbollah's military, political and humanitarian wings, however, the EC Decision is questionable, to the least. The current research examines the legislative basis behind this controversial legislation, and assesses its policy consequences for both the EU and Hezbollah, in the context of the global financial support the group is capable to amass through variety of activities, from donations, to crime, to drug trafficking, to direct Iranian financial, logistic and military sponsorship.

Keywords: Terrorist, Hezbollah, Hard Decisions, Soft Consequences.

1. Introduction

Without proper and stable financing, arguably no organization can succeed in its goals. To use a metaphor, money enables an organization to operate in the same way gasoline enables vehicles to run. To this end, the European Council's recent Decision to list as terrorist organization the military wing of the Lebanese group Hezbollah, the External Security Organization (ESO), a.k.a. "Jihad Council," is both momentous and puzzling. After a long and protracted investigation of a deadly bombing on an Israeli tourist bus in the Bulgarian coastal town of Burgas in July 2012, which came in addition to two allegedly foiled terrorist plots in Bulgaria and Cyprus earlier the same year, the EU painstakingly arrived at an unanimous consensus to put ESO on its terrorist blacklist.

But there is a paradox. Neither Hezbollah leaders, nor their opponents and enemies recognize a sensible difference between the organization's wings and fractions. Some European governments hailed the act as an important step to curtail the potential expansion of Hezbollah's activities inside the EU. But critical reactions were overwhelming. Critics were haste to point that the decision will have only limited, if any, consequences for the organization. The former Canadian justice minister Irwin Cotler, for example, told *The Jerusalem Post*, "[it is] a paradox that the EU wins the Nobel Prize for peace, holds itself out as the human rights leader as a linchpin of its foreign policy, but has not put Hezbollah on its terrorist list... it is shocking that it has not happened yet."^[1] Similar criticism was voiced also by the Israeli Prime Minister Benjamin Netanyahu: "Israel sees Hezbollah as a unified organization with no distinction between its wings."^[2] In the same time, Sheikh Hassan Nasrallah, the Hezbollah leader, himself mockingly said about the legislation, "Soak your terrorist list in water and drink it,"^[3] while the spokesman for the organization, Ibrahim Mussawi stated, "Hezbollah is a single large organization, we have no wings that are separate from one another."^[4]

The current research assesses the policy effectiveness and consequences of the Council's recent decision, and puts it in the context of the global financial support Hezbollah is capable to amass in order to function and achieve its political and military goals. The research examined the legislative basis behind the European terrorist blacklist, various testimonies to the US and Australian Congresses, Canadian, British, Cyprian and Bulgarian Parliaments, and a number of investigations by the world money laundering watchdog, the Financial Action Task-Force (FATF), and by domestic financial intelligence units, such as US' FinCEN,

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UK's SOCA, and France's Tracfin. In addition, the author conducted phone interviews with investigators at the treasury departments and special anti-money laundering and financial fraud units in a number of countries, in attempt to assess the impact of the Decision on the financial strength and operational ability of Hezbollah, and the impact the EU legislation will have on the organization's operational ability.

During the research process, the information available in the public domain from testimonies, reports, and investigations was cross-referenced and complemented with in-depth interviews with EU intelligence officers, former and acting EU member countries' government officials, analysts and experts on Lebanon, Hezbollah, terrorism, and financial monitoring and control. As often widely acknowledged, collecting reliable and accurate data about the financial dealings of Hezbollah, or any similar organization for that matter, through a field research is very difficult, almost impossible task for the scope of a mundane social research project.^[5] The organization's secretive nature and prevalent use of clandestine and shady activities as source of funding, necessitates the research to rely on published reports and investigations, and sometimes even to entertain investigation reports and anecdotal accounts from newspapers and magazines. Thus, the research is inevitably complemented by the use of number of secondary sources and journalistic reports.

The findings underscored the highly adaptive nature of Hezbollah, which by preempting the risks of exposure has managed to diversify successfully its activities across the globe and avoid serious consequences from being placed on the terrorist list of a number of countries. The findings also elicited Hezbollah's leadership pragmatic recognition of the unique position the group occupies in the Middle East as a conductor of various interests, by struggling to balance its own goals with the need to cater to the strategic tasks of its sponsors, most notably the governments in Iran and Syria. The conclusions from the research clearly point to the political rather than pragmatic nature of the EU's decision. In light of the recent events in Bulgaria and Cyprus, and the growing albeit still murky evidence for Hezbollah's culpability in the deadly bus explosion in Burgas, the EU was pressured to bow to the extraordinary duress from the U.S., Israel and Canada, and to the internal lobbying from UK, the Netherlands and Germany, to take action. Its ambivalent stance, however, is symptomatic for the emerging rift between the Western allies on both sides of the Atlantic Ocean with regard to their respective views for the future of the Middle East, and their own role in reshaping of the region. It is also indicative for the EU's growing internal rifts and disagreements in formulating a single common foreign and security policy.

2. "Terrorist Lists" as Counter-terrorism Instruments

Using tougher financial regulations, and concerted international effort to dry out funds destined for terrorist organizations has been a long, albeit elusive goal for both states and international organizations. Some counter-terrorism (CT) theories make a clear distinction between "offensive" and "defensive" policies, where the former can be seen as preventive, and the latter as preemptive kind of measures.^[6] Financial regulation falls in the former group. Similarly, coming from public policy perspective, some talk about "proactive" and "defensive" measures, where the former target terrorists' support base, including recruitment, safe heavens, operational bases, and financing therefore limiting the terrorist group's ability to act, while the latter aims at enhancing the protection of potential targets of terrorism.^[7] This framework underlines the decision many countries and some international organizations took to compile terrorism lists of individuals and organizations, and use them as a basis for actions.

The U.S. State Department began compiling the first such list, the Foreign Terrorist Organizations (FTO) list under the Anti-terrorism and Effective Death Penalty Act, in 1996. The Act requires the State Department to update it each year. In UK, under the Terrorism Acts of 2000 and 2006 the Home Office mirrored the U.S. example of designating groups to a "terrorist and terrorism glorifying lists." Currently 51 groups under Act 2000 and two groups under Act 2006 are designated as terrorist in the UK. Canada's Anti-terrorism Act of 2001 lists "terrorist entities" such as groups and individuals engaged in acts of terrorism, or sponsoring terrorism. In all three cases the measures taken against such groups or individuals are practically identical – seizure of assets, freeze of accounts, forfeit, and embargo ban for individuals and companies to do business with the groups, or their representatives.

The three cases mentioned above are not exemptions, but rather the norm. A large number of countries, among them Australia, China, France, India, Russia, and Turkey, have now similar anti-terrorism legislations,

and impose similar financial sanction regimes. A common shortcoming for all of them is the piecemeal approach to CT. In their essence, these are all domestic legislations and cannot be enforced outside the respective countries. Many states list groups that others do not recognize as terrorist, or even provide support for them as “revolutionaries” and “freedom fighters.” Even when names in these lists coincide, however, concerted action is often difficult or impossible due to lack of proper bilateral agreements. The three abovementioned countries, for example, designate Hezbollah in its entirety as a terrorist organization. Still, the group’s operatives have freely roamed all three of the countries, and others, soliciting donations, and engaging in criminal activities to raise money.^[8]

To bridge the limitations on bilateral cooperation, the U.S. and some of its close allies have pressed a number of Intergovernmental organizations (IGO) to mimic the state level terrorism list example and to compile lists of their own. In December 1999, the UN General Assembly adopted the International Convention for the Suppression of Financing of Terrorism. The Convention obliges its parties to take measures for active identification, detection, freezing and seizure of any funds linked to individuals or groups listed as terrorist, and criminalizes the provision or collection of funds for the purpose of terrorist acts.^[9] To date, the Convention is ratified by 185 UN members, with only 11 rejecting it, among them Iran, Lebanon, South Sudan, Somalia, Chad, Burundi, and East Timor. Unlike a UNSC resolution, however, the Convention does not have universally enforcing character, but only applies to its ratifying parties.^[10]

Comparing national and international lists reveals that they overlap on many accounts. For example, despite that terrorism has been around for over 130 years, it was only in late 1990s when using terrorist lists for freezing organizations’ funds and limit their members’ ability to travel became a regular CT instrument, both on national and intergovernmental levels. Lists’ use, in fact, skyrocketed after 9/11 mainly because of pressure from Washington around the globe to step up the “war on terror.” The problem is, as it has long been acknowledged, definitional. Different countries’ lists share similar criteria and procedures for listing groups and individuals as terrorists. And, they all prescribe similar measures, such as targeting groups’ finances fund raising and mobility ability, freeze of assets, and ban on travel for affiliated individuals. But both, states and IGOs, often fail to agree on who should be designated on those lists. Other shortcomings are also commonplace. States, for example, have no jurisdiction to extend and enforce their measures outside their respective borders. Even when bilateral and multilateral agreements exist, such exchange is practically non-existent due to the highly sensitive nature of information sharing and synchronization required for such procedures. Similarly, on IGO level, while the UNSC resolutions are mandatory for all members of the General Assembly, the Anti-terrorism Convention’s provisions are valid only for the ratifying parties. Interpretations of how international law synergizes with domestic law are also often used as safety exits by states to slip out of specific obligations. Other notable problems include the lack of trust and cooperation between states, free rider problems, lack of common enforcement mechanisms, and conflicting individual states’ political interests over joint action.

3. Hezbollah and the EU Terrorist List

In comparison to both states and UN lists, the EU list is very different with regard to its potential. Because the EU’s primary and secondary legislation is superior to domestic, groups put on the EU lists could experience far-reaching consequences. Currently, the EU uses two separate lists of terrorist organizations: a specific one for al-Qaeda and the Taliban, and an “autonomous” one for everybody else.^[11] The origins of both lists are linked to implementing preexisting UNSC resolutions. The first list was adopted in 1999 as a response to UNSC Resolution 1267, and it was directly aimed at the Taliban in Afghanistan, al-Qaeda, and Osama bin Laden.^[12] The EU established a second, more comprehensive, list in the wake of the 9/11, in order to comply with, and implement, UNSC Resolution 1373.^[13] EC’s Common Position No 2001/931 laid down the criteria for listing persons, groups, or entities involved in terrorist acts. They became subject to EU-wide assets freeze and various other sanctions, including arrest warrants and ban on travel.^[14] In addition, the single *European Arrest Warrant* (EAW) makes it possible to apprehend and extradite individuals between the EU countries, and to freeze their assets Europe-wide without the need for additional bilateral or multilateral agreement and enforcement. With the help of *Europol*, the leading EU agency in the fight against terrorism, and *Eurojust*, the European judicial cooperation body, and with the support of a wide

network of European agencies, including the *European Border Agency* (Frontex), the *European Police College* (CEPOL), the *Police Chiefs Operational Task Force* (PCOTF), and networks such as *Critical Infrastructure Warning Information Network* (CIWIN) and the *European Network of Experts on Radicalization* (ENER), EU has managed to turn the terrorist list into a potent CT instrument. As of July 2013, ESO – Hezbollah’s military wing – is bound not to feel restrictions from all of the abovementioned agencies.^[15] This is not the first time EU takes action against Hezbollah. In May 2002 it put seven individuals associated with Hezbollah on its list, including the infamous military commander Imad Mughniyeh. Initially Hezbollah had denied the existence of Mughniyeh, but after his assassination in 2008 by Israeli secret forces it began to glorify him, and vowed to revenge his death. The deadly bombing in Burgas in July 2012, and the foiled plots in Bulgaria and Cyprus earlier that year, are alleged as cases of retaliation.^[16] In 2005 the European Parliament passed a non-binding resolution recognizing existing evidence for Hezbollah’s terrorist activities.^[17]

Despite the impressive outreach of the list and the enforcing agencies in Europe, the research current findings indicate that the latest EU measure has only a tangential impact on Hezbollah. In fact, it will have none as a direct consequence. Currently, Hezbollah’s budget is estimated at anywhere between \$450 and \$600 million, ranking only second after the Afghani Taliban (over \$750 million), and far ahead of FARC’s, Hamas’, al-Qaeda’s, or any other group.^[18] Hezbollah raises only a small portion of this revenue in Europe.^[19] Most of the money coming from Europe is either from diaspora donations (*zakat*),^[20] or from drug trafficking,^[21] diamonds-smuggling commissions,^[22] and money laundering schemes. Recent research has identified at least six common ways for financing terrorism.^[23] In its global outreach Hezbollah seems to explore all of them. In addition, the group receives direct funding from Iran, conservatively estimated at about \$250^[24] to \$350^[25] million a year. Without either *de jure*, or *de facto* distinction between Hezbollah’s wings, the Lebanese diaspora in the EU will be able to continue to raise money for the organization’s humanitarian, social, educational and political activities. Except for a small number of known military leaders involved with ESO, Hezbollah’s operatives of all ranks will have no much difficulty to travel to Europe. Much of Hezbollah’s financial dealings passing through Europe are in fact already linked to criminal activities, and as such are persecuted on criminal grounds, anyway. For example, the case with the €8 million funds seized in Frankfurt airport in 2008, and the arrested Lebanese citizens involved in it, were persecuted under a cocaine-smuggling court case.^[26] Hezbollah has already diversified its sources of funding. Currently, it is estimated that the group raises much of its revenue from a various activities in Western Africa – most notably Ghana, Sierra Leone, Benin, and Cameroon – from racketing on Lebanese businesses, to extortion and ransom for family members at home, to cuts and commissions in trafficking South American cocaine to Europe via routes in West Africa.^[27]

4. EU in Lebanon

The latest UN’s peacekeeping operation in Lebanon (UNIFIL) was established with UNSC Resolution 1701 in 2006, in the aftermath of the war with Israel. The force operates along the Israeli border in Southern Lebanon – Hezbollah’s stronghold. One reason for the Council’s decision to be political, but without much practical consequences for Hezbollah, is the large presence of EU in Lebanon as part of UNIFIL. Currently 3,872 peacekeepers from EU states are deployed in Lebanon - the largest EU participation in a peacekeeping mission in the world.^[28] For the past six years member states with the largest participation in UNIFIL, most notably Italy, France, Spain, Austria, and Ireland, were vehemently resisting attempts by UK and the Netherlands to list Hezbollah as a terrorist organization, out of concerns for retaliation. In addition, the stakes for the EU as a whole are very high in this operation to allow to be endangered. If UNIFIL succeeds, it will become a model for future border-related disturbances. But the success hinges on the mission’s ability to maintain balance between operational forces and local popular environment. The EU halfhearted decision from July was recognition of the block’s precarious position as being “between the rock and the hard place.”

5. Conclusion

Three main conclusions came out from the research findings. First, despite their shortcomings, terrorist lists have serious potential as CT instruments. Second, due to its nature, EU’s terrorist list has enormous

potential impact, superseding states' and other IGOs' lists. And third, over the past 15 years Hezbollah's leadership has demonstrated great flexibility and creativity and innovativeness, adapting to growing limitations and preempting measures that could seriously cripple its ability to operate. To that end, the organization's acts are challenging the conventional approach to terrorism financing, which rejects the potential proclivity of political goals-and-ideals-driven terrorist organizations to engage in joint ventures with profit-driven criminal gangs.

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