



THE “FOREIGN TERRORIST DESIGNATION” OF BOKO HARAM

Case Study

*by Ryan McCannell, USAID Advisor to the
U.S. Army War College/PKSOI*

Case Study # 0417-02

PKSOI TRENDS GLOBAL CASE STUDY SERIES

Author Biographical Sketch

Ryan McCannell is the U.S. Agency for International Development (USAID) senior advisor to the U.S. Army War College, serving as a professor and member of the Peacekeeping and Stability Operations Institute (PKSOI) team at Carlisle Barracks, Pennsylvania. Ryan previously served as the division chief for Conflict, Peacebuilding and Governance in the USAID Bureau for Africa. In that role, he oversaw a team of 12 subject-matter experts who manage regional programs and advise USAID Missions in sub-Saharan Africa on democracy, human rights, governance, conflict mitigation, and civil-military relations, as well as countering violent extremism, terrorism, and human and narcotics trafficking. Before joining USAID in 2004, Ryan spent eight years at the National Democratic Institute for International Affairs (NDI), where he was responsible for designing and managing democracy support programs in Nigeria, Côte d'Ivoire, Burkina Faso, Sierra Leone, Malawi, South Africa, and the Central African Republic. In 2002-03, he served as NDI's chief of party in Benin and Togo, where he organized training for political parties prior to elections in those two countries. Before NDI, Ryan worked as a democracy researcher for USAID. He received a bachelor's degree and certificate in African Studies from Georgetown's School of Foreign Service, a masters in Geographic and Cartographic Sciences from George Mason University, and a masters in Strategic Studies, with distinction, from the U.S. Army War College.



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The “Foreign Terrorist Designation” of Boko Haram¹

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“We are writing to urge you to immediately designate the Nigerian Islamist group Boko Haram a Foreign Terrorist Organization (FTO)... We are deeply concerned that Boko Haram’s tactics, targeting, and fundraising operations appear to be increasingly international in scope, including within the U.S. Homeland.... We must ensure that the Federal government does not become complacent and allow bureaucratic stovepipes to prevent us from addressing a critical terrorist threat.”

– Text of a letter to Secretary of State Hillary Clinton
from Reps. Peter King (R-NY) and Patrick Meehan (R-PA)
U.S. House of Representatives Homeland Security Committee
March 30, 2012

Introduction

In the spring of 2012, with U.S. elections approaching, the Republican majority members of the U.S. House of Representatives Committee on Homeland Security introduced a bill called the “Boko Haram Terrorism Designation Act of 2012.” The bill’s aim was to mandate then Secretary of State Hillary Clinton to determine whether or not Boko Haram, an emergent violent insurgent network in northeastern Nigeria, met the legal criteria defining a Foreign Terrorist Organization, or FTO. Such a designation would open several new avenues for investigating, prosecuting, and applying political pressure on those providing financial and material support to the network.

Why was the bill even necessary? On the face of it, the FTO designation decision might seem like a no-brainer: an obvious action to take against such a dangerous Islamist extremist group. After all, in the previous three years, Boko Haram’s self-proclaimed jihad against the Government of Nigeria – a key U.S. ally in West Africa – had already killed hundreds of Nigerians and resulted in a deadly attack against a United Nations compound in Nigeria’s capital, Abuja. But in fact, this decision involved several U.S. government agencies and vocal outside groups in a fierce debate, with powerful advocates both for and against the FTO designation. This case study explores the arguments made by each side of the Boko Haram FTO designation debate to illustrate the challenges involved in effectively countering violent extremist organizations (VEOs).

Boko Haram in a Nutshell

Centered in north-eastern Nigeria, Boko Haram – whose nickname roughly translates to “Western education is forbidden”² – began as a religiously oriented protest movement aimed at purifying Muslim communities in response to the perceived corruption of northern Nigeria’s traditional elites and its secular government. Following the mysterious death of its founder, Muhammadu Yusuf, while in police custody in 2009, Boko Haram declared a holy war against the government and traditional leaders. By May 2012, the group had gained international notoriety for numerous bombings and other attacks against Nigerian government and civilian targets, causing hundreds of deaths.

Boko Haram also claimed responsibility for an August 2011 car bomb at the United Nations (UN) local headquarters in Abuja, the Nigerian capital, which killed 23 people and injured 75 others.³

The Requirements and Rationale for FTO Designation

According to section 219 of the Immigration and Nationality Act (INA), as amended, the decision to designate an FTO resides with the secretary of state.⁴ FTO designation has three core requirements:

1. The group in question “must be a foreign organization.
2. The organization must engage in terrorist activity, as defined [by various U.S. statutes], or retain the capability and intent to engage in terrorist activity or terrorism.
3. The organization’s terrorist activity or terrorism must threaten the security of U.S. nationals or the national security (national defense, foreign relations, or the economic interests) of the United States.”⁵

According to the Department of State’s website, “FTO designations play a critical role in our fight against terrorism and are an effective means of curtailing support for terrorist activities and pressuring groups to get out of the terrorism business.”⁶ In practical terms, an FTO designation would have three principal consequences:

1. It would make it “unlawful for a person in the United States or subject to the jurisdiction of the United States to knowingly provide “material support or resources” to a designated FTO.”⁷
2. It would prohibit U.S. entities from doing business with Boko Haram and “cuts off access to the U.S. financial system for the organization and anyone associating with it.”⁸
3. It would demonstrate U.S. resolve in fighting an emerging terrorist group as part of the Global War on Terror. As a consequence, FTO designation “also serves to stigmatize and isolate foreign organizations by encouraging other nations to take similar measures.”

Arguments For and Against FTO Designation

As of May 2012, Boko Haram had never targeted U.S. personnel or interests in Nigeria or elsewhere. Indeed, a December 2011 report published by the Homeland Security committee acknowledged that “[u]ntil recently, Western intelligence services did not widely view Boko Haram as a potential threat. Even after the U.N. attack, Nigerian experts remain skeptical about Boko Haram’s intent and capability to strike U.S. interests and the homeland.”⁹ However, the same report asserted that “the U.S. Intelligence Community has underestimated the intent and capability of other terrorist groups to launch attacks against the U.S. homeland” and concluded that it would be prudent for the U.S. Government to thoroughly and carefully examine the extent of the threat from Boko Haram.”¹⁰ On May 17, 2012, the Reuters news agency reported that Assistant Attorney General Lisa Monaco had written to Department of State senior officials to urge a decision, stating that “Boko Haram meets the criteria for a foreign terrorist listing, in that it either engages in terrorism which threatens the United States or has a capability or intent to do so.”¹¹

On the other hand, a wide variety of actors with decades of experience working in Nigeria – aid workers, academics, career U.S. diplomats, and the Government of Nigeria itself – argued against FTO designation. For example, in a letter to Secretary of State Hillary Clinton on May 21, 2012, a group of 21 American “scholars with a special interest in Nigeria and broad expertise on African politics” stated, “an FTO designation would internationalize Boko Haram, legitimize abuses by Nigeria’s security services, limit the State Department’s latitude in shaping a long term strategy, and undermine the U.S. Government’s ability to receive effective independent analysis from the region.”¹² Meanwhile, the Nigerian ambassador in Washington argued forcefully against the Boko Haram bill in an op-ed piece in *The Hill* newspaper: “Recognition through FTO designation by a sovereign the size and stature of the United States would give Boko Haram the title they seek and status they desire, stimulating a fundraising effort that has not yet been attainable from their current perch in northern Nigeria. Make no mistake — Nigeria will continue to collaborate with the United States in the fight

against Boko Haram. Yet a unilateral designation of the group as an FTO by the United States would risk undercutting our shared goal of a secure and prosperous Nigeria.”¹³

Role Playing Exercise

As the pressure builds for a decision on whether or not to designate Boko Haram as an FTO, how would you, in your role as a stakeholder in the outcome, argue your case to the secretary of state?

Case Study Actors:

Secretary of State: The faculty instructor or an outside expert will play this role in class. Your job will be to present a succinct and convincing argument to him or her on whether or not to designate Boko Haram as an FTO.

Under Secretary of State for Policy (optional): If an outside expert plays the Secretary of State role, the faculty instructor may play this role instead, serving as the facilitator, time manager, and referee to keep things moving.

Student Roles will be assigned by the faculty instructor. They will include various U.S. government agency representatives, as well as non-governmental interest groups with a position on the FTO designation question.

Readings: Please read the brief sources below for background on the case.

1. Text of “Boko Haram Terrorism Designation Act of 2012”: <https://www.congress.gov/bill/112th-congress/house-bill/5822/text>
2. Executive summary of 2011 House Homeland Security report on Boko Haram threat: <https://www.gpo.gov/fdsys/pkg/CPRT-112HPRT71725/pdf/CPRT-112HPRT71725.pdf>
3. News report on Justice Department’s May 2012 letter to Secretary of State Clinton: <http://www.reuters.com/article/us-usa-security-bokoharam-idUSBRE84H01I20120518>
4. Academic experts’ letter to Secretary Clinton: <http://carllewan.com/wp-content/uploads/2012/05/Boko-Haram-FTO-letter-to-Clinton4.pdf>
5. Nigerian ambassador’s op-ed: <http://thehill.com/policy/international/250777-nigerian-ambassador-adebow-ale-adebeye-radical-islamists-cannot-be-defeated-by-military-means-alone#ixzz320QOyf>
6. CNN, “Boko Haram Fast Facts” through February 2012. (handout)

Notes:

¹ All electronic sources identified in this case study were accessed on March 3, 2017.

² CNN Online, “Boko Haram Fast Facts,” updated October 31, 2016. <http://www.cnn.com/2014/06/09/world/boko-haram-fast-facts/>.

³ Ibid.

⁴ Department of State Bureau of Counterterrorism web page, “Foreign Terrorist Organizations.” <http://www.state.gov/j/ct/rls/other/des/123085.htm>

⁵ Ibid.

⁶ Ibid.

⁷ Ibid.

⁸ <https://www.washingtonpost.com/news/fact-checker/wp/2014/05/19/boko-haram-inside-the-state-department-debate-over-the-terrorist-label/>

⁹ U.S. House of Representatives Subcommittee on Counterterrorism and Intelligence, *Boko Haram: Emerging Threat to the U.S. Homeland* (Washington: U.S. House of Representatives, December 2011): 1.

¹⁰ *Ibid.*, 2.

¹¹ Reuters, "U.S. Justice Dept urges terror label for Nigerian militants," May 17, 2012, <http://www.reuters.com/article/us-usa-security-bokoharam-idUSBRE84H01I20120518>.

¹² <http://carllevan.com/wp-content/uploads/2012/05/Boko-Haram-FTO-letter-to-Clinton4.pdf>. Four additional scholars endorsed the original letter after its presentation to Secretary Clinton.

¹³ Nigerian Ambassador Adebawale Adefuye, "Radical Islamists Cannot Be Defeated by Military Means," *The Hill*, September 20, 2012, <http://thehill.com/policy/international/250777-nigerian-ambassador-adebowale-adebuye-radical-islamists-cannot-be-defeated-by-military-means-alone>