



Yemen's Houthis and the Terrorist Designation System

Lucy van der Kroft

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Policy Brief

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Abstract

In its last hours in office, the administration of former US president Donald Trump designated Yemen's Houthi rebels as a Foreign Terrorist Organisation (FTO), prompting uproar that the resulting sanctions would worsen Yemen's dire humanitarian situation. Trump's successor Joe Biden swiftly reversed the move amid fears of imminent famine, but the policy shift caused consternation elsewhere among those who argued it would embolden the rebel group. This article examines what an FTO listing (and other categories in the current US designation system) means in both practical and symbolic terms. It discusses the challenges that arise when listed groups control territory, both in terms of the impact on civilian populations and the way in which designations can reduce rather than increase the prospects for workable peace negotiations. The article goes on to discuss the particular dynamics of the Houthi case, which provides a compelling illustration of the intensely political and symbolic nature of the terrorist designation system.

Keywords: Yemen; Houthis; terrorist designation; FTO; sanctions; peace process

Parting shot

On 19 January 2021, former US Secretary of State Mike Pompeo designated the Yemeni rebel group known as the Houthis as a foreign terrorist organisation (FTO). The move, which came into force hours before US President Trump handed power to his successor Joe Biden, was described as ‘pure diplomatic vandalism’ by the head of the International Rescue Committee. It provoked uproar among a broad range of international and local actors; the UN and NGOs feared that the designation and its associated sanctions regime would make it even harder to get food and medical assistance into Yemen, where the UN World Food Programme categorises more than 16 million people as ‘food insecure’.¹

The designation reflected a last attempt by the Trump administration to lash out at its arch foe Iran, who it accused of using the Houthis as a proxy; it had the added bonus for Trump that a designation would complicate Biden’s stated intention to revisit the US position both in Yemen and in the wider region. The Biden administration quickly reversed the move, pausing a ban on transactions in Houthi-controlled areas on 25 January, and announcing on 16 February that the FTO designation on the Houthis – also known as Ansarallah - had been fully revoked.²

While the humanitarian community welcomed the policy change, Yemen’s neighbour Saudi Arabia drew a direct link between the revocation and a subsequent barrage of Houthi attacks on Saudi territory.³ The internationally-recognised Yemeni government also opposed the move, arguing that it emboldened the Houthis to escalate their military campaign in strategic Marib province. If Biden wants to end the conflict in Yemen, why would he remove this apparent leverage against one of the main players? What does FTO designation actually mean? Why did Biden reverse it? And what are the consequences of the delisting for the Houthi threat going forward?

Before trying to answer these questions, some context is needed on the Houthis, their relationship with the US, and their perceived place in the web of competing regional alliances.

Who are the Houthis?

The Houthis take their name from Hussein al-Houthi, a religious leader of the Zaydi sect who launched a campaign for religious revival in the 1990s.⁴ Alongside his efforts to modernise the Zaydi religion and reduce external influences, al-Houthi and his supporters accused the central government led by the late former-president Ali Abdullah Saleh of corruption and failing to provide services to the northern provinces where the Houthi movement was based. Al-Houthi was killed by government forces in 2004, after which the conflict intensified. He was succeeded by his brother Abdul Malik al-Houthi.

Although extremely damaging to civilians in affected areas, the various waves of conflict between

¹ “Aid agencies make unprecedented and united call for Biden administration to revoke Ansar Allah terrorist designation”, Reliefweb, 24 January 2021,

<https://reliefweb.int/sites/reliefweb.int/files/resources/Joint%20INGO%20designation%20statement%2024%20Jan%202021%20FINAL.PDF>

² State Department statement, 12 February 2021. Available at <https://www.state.gov/revocation-of-the-terrorist-designations-of-ansarallah/>

³ Al-Jazeera, “What is behind the rise in Saudi-Houthi tit-for-tat attacks?” 8 March 2021, <https://www.aljazeera.com/news/2021/3/8/explainer-why-are-the-houthis-intensifying-attacks-saudi-arabia>

⁴ For a more detailed history of the group, see for example International Crisis Group, “Rethinking Peace in Yemen”, 2 July 2020 <https://www.crisisgroup.org/middle-east-north-africa/gulf-and-arabian-peninsula/yemen/216-rethinking-peace-yemen>

the Houthis and the central government in the 2000s remained fairly localised. The Houthis developed intensely anti-US rhetoric, particularly after the US invasion of Iraq in 2003. However, this hostility remained at a rhetorical level and the group had no track record of attempting to carry out terrorist-type attacks against US or Western targets inside or outside Yemen.

It was only after an uprising against Saleh in 2011 during the Arab Spring, and a subsequent recalibration of political and military power, that the Houthis evolved into a key player at the national level. The group took part in the 2011 demonstrations and the subsequent National Dialogue Conference that attempted to negotiate a new political settlement for the country. They gradually increased their influence during the 2012-14 period, dexterously tapping into tribal grievances to expand their support base.⁵

The Houthis eventually made an unlikely alliance with their former foe Saleh, who had been removed from power and replaced with his deputy president Abd Rabbu Mansour Hadi. Looking for revenge, Saleh partnered with the Houthis to launch a military campaign that in September 2014 captured the capital Sanaa.⁶ The Houthis now govern over an estimated 70 percent of the Yemeni population, though statistics of this type are notoriously unreliable in Yemen. The Houthis have an appalling human rights record in areas under their control and frequently use indiscriminate force in civilian areas during their battles with other factions.

Saudi Arabia, which borders Yemen to the north, views the Houthis as an Iranian proxy, and in the kingdom's perceptions, the Houthis' military expansion represented an existential threat right on its southern border. Saudi Arabia in March 2015 launched what it thought would be a quick intervention to reverse Houthi territorial gains and degrade their military capabilities. The intervention has instead proved an expensive military failure, and Saudi Arabia has been accused of causing both civilian casualties and damage to civilian infrastructure. Previously a relatively low profile regional player, this 2015 intervention entangled Yemen in the complex web of regional power plays between the US, Saudi Arabia and its Gulf allies on the one side, and Iran and its allies such as Hezbollah on the other.

When examining the dynamics of the US approach to the Houthis, and the reasoning behind the initial FTO policy, the group's relationship with Iran is key. The exact nature of this relationship is heavily contested. Accusations of extensive Iranian support to the Houthis used to be heavily exaggerated, but the Saudi intervention has changed this, and more substantial Iranian support to the group has become something of a self-fulfilling prophecy.⁷ There is evidence to suggest Iran provides military training and some weaponry to the Houthis;⁸ the levels of support have increased notably since 2015. However, the Houthis are not a direct proxy group that merely follow Iran's orders.⁹

The sectarian aspect of the Houthi-Iran alliance is often overblown¹⁰ - the Houthis' practice the Zaidi form of Islam that, although a branch of the Shia sect, is far closer to the Sunni practices in Yemen than the Twelver Shia branch championed by the Iranian regime. The alliance is tactical

5 See for example Gamal Gasim, "Ali Abdullah Saleh's assassination and Yemen's tribes", 12 January 2018, Al-Jazeera, <https://www.aljazeera.com/opinions/2018/1/12/ali-abdullah-salehs-assassination-and-yemens-tribes>

6 Michael Knights, "The Houthi war machine: From guerrilla war to state capture", *CTC Sentinel*, Vol 11, Issue 8, September 2018, <https://ctc.usma.edu/houthi-war-machine-guerrilla-war-state-capture/>

7 Gregory D. Johnsen, "Foreign Actors in Yemen: The History, the Politics and the Future," Sana'a Center for Strategic Studies, 31 January 2021, <https://sanaacenter.org/publications/main-publications/13042#Iran>

8 UN Security Council, Letter from the Panel of Experts on Yemen addressed to the President of the UN Security Council, January 22, 2021, p.13. Available at <https://digitallibrary.un.org/record/3898851?ln=en>

9 Ali Watkins, Ryan Grim, Akbar Shahid Ahmed, "Iran Warned Houthis Against Yemen Takeover," *Huffington Post*, April 20, 2015, https://www.huffingtonpost.com/2015/04/20/iran-houthis-yemen_n_7101456.html

10 See for example Farea al-Muslimi, "Iran's Role in Yemen Exaggerated, but Destructive", The Century Foundation, 19 May 2017, <https://tcf.org/content/report/irans-role-yemen-exaggerated-destructive/?session=1>

rather than ideological, though the use of pro-Shia and pro-Iran propaganda could eventually create its own momentum, making communal reconciliation further down the line even harder.

For Iran – Saudi Arabia’s intervention in Yemen was something of a gift; Iran has no crucial national security interests in Yemen, but the Saudi intervention offered a low-cost opportunity to open an extra front against their main regional challenger, along with another source of leverage with regard to the US.

For its part, aside from ongoing counter-terrorism operations (primarily directed against al-Qaida in the Arabian Peninsula – AQAP – who have an extremely hostile relationship with the Houthis), key decision-makers in the Trump administration saw Yemen almost entirely through the prism of their ‘maximum pressure’ campaign on Iran. These officials had little interest in understanding the complexities of Yemen’s domestic environment, despite numerous instances in the recent past highlighting that instability there can only benefit AQAP and its ideological brethren.¹¹

New US administrations often bring more of a change in tone in the Middle East rather than concrete policy shifts. However, there appears to be a genuine change in Biden’s approach to Yemen, backed up with political will and bureaucratic momentum. There is genuine concern over the entirely man-made humanitarian disaster, and an acceptance that the US policy has in recent years contributed to the worsening situation. In addition to intelligence sharing, US weapons have been widely used and US planes have helped Saudi jets with refueling during bombing runs.

Biden announced an end to US military support to the Saudi campaign on 5 February, though it is unclear to what extent that has been followed through amid fears of a major Houthi advance in central Yemen.¹² Indeed, after an initial focus on reigning in Saudi Arabia’s disastrous military campaign, reports suggest a recalibration is underway; the Biden team now seems concerned that blocking Saudi Arabia’s military operations might result in a key Houthi victory in Marib that could hasten Yemen’s territorial disintegration and scupper the potential for a workable peace agreement for years to come. The US has also stepped up criticism of the Houthis, with regard to their use of indiscriminate violence in civilian areas and their obstruction of negotiations among other things.¹³

It is important to stress that these external dynamics represent only one of many complex layers in the conflict in Yemen. At the national level, the conflict has led to an extensive fracturing of authority in what was already a very fragile state in which the central authorities had only a tenuous hold on power. The various armed factions on the ground have not yet reached a stalemate. They still think there are military gains to be made and the Houthis in particular have been on the offensive, attempting to capture hydrocarbon-rich Marib province, the fall of which would be a huge symbolic and strategic blow to the already weak UN-backed government of President Abd Rabbu Mansour Hadi. Hadi’s government is in theory temporarily located in the southern city of Aden but the city is currently controlled by the Southern Transitional Council (STC). Hadi’s camp and the STC are on paper part of the same government under the terms of the so-called Riyadh agreement of 2019, but in reality, they remain rivals between whom fighting periodically breaks out.¹⁴

¹¹ That is not to say that parts of the US government were not interested in these issues or attempting to craft policies to address them. The point is that those ultimately responsible for the decisions often appeared overly influenced by their focus on Iran and on the clearly partial advice of regional allies.

¹² Ali Harb, “Is US still involved in Yemen war? Biden’s envoy says he doesn’t know”, 21 April 2021, Middle East Eye, <https://www.middleeasteye.net/news/yemen-war-us-still-involved-biden-envoy-says-does-not-know>

¹³ Reuters, “US says Yemen’s Houthis bear ‘major responsibility’ in conflict”, 4 June 2021, <https://www.reuters.com/world/middle-east/us-says-yemens-houthis-bear-major-responsibility-conflict-2021-06-04/>

¹⁴ For further details on the complexities of the security environment see for example Mareike Transfeld, Mohamed

What does the FTO designation actually mean?

The US maintains several partially overlapping terrorist lists,¹⁵ each with their own specific legal implications.¹⁶ Media reports often conflate the various categories, but all of them have potentially far-reaching implications for those listed. The most high profile of them - the FTO list - has its legal basis in the Antiterrorism and Effective Death Penalty Act (AEDPA) of 1996, which amended the Immigration and Nationality Act.¹⁷ The law authorises the Secretary of State to designate (and thereby impose sanctions on) non-US organisations that are involved in terrorist activities as a means of denying them financial and material support. The three criteria for FTO designation are broad; in addition to being foreign, the organisation must engage in terrorist activity or have the intention to do so, and the organisation's activity must threaten the security of US nationals or the national security of the US (which can include threats to its foreign relations or economic interests).

Inclusion in the list results in three key legal consequences. Firstly, it is illegal for anyone subject to US jurisdiction to knowingly provide “material support or resources” (the definition of which is broad, but excludes religious material and medicine) to the group. Secondly, members of the group are denied entry to the US. Finally, US financial institutions must freeze funds in which FTOs have an interest and register them with the Office of Foreign Assets Control (OFAC) of the US Department of the Treasury. As of June 2021, there are 72 groups on the FTO list.

After the September 2001 attacks in the US, the sanctions regime targeting terrorist groups was augmented by Executive Order 13224, which brought into force another list – that of Specially Designated Global Terrorists (SDGT).¹⁸ The SDGT is based on similar criteria to the FTO but adds that sanctions can be applied to individuals or entities who are ‘otherwise associated with’ certain individuals or entities designated under the order. This latter wording in particular is extremely broad and as we will see below, can put humanitarian and civil society groups working in conflict zones in a difficult legal position.¹⁹

The SDGT order also gave the Treasury expanded powers to obstruct access to US financial institutions and markets by any non-US banks that were not seen to be cooperating fully with US counter-terrorist financing efforts, as well as potentially freezing the US held assets of such banks.²⁰

Members of FTOs and SDGTs appear on a combined list administered by OFAC and known as the Specially Designated Nationals and Blocked Persons List (SDN). A further grouping – the Terrorist Exclusion List (TEL) – was established by the 2001 Patriot Act with the aim of preventing entry to the US by persons associated with terrorist activity (or a means of expelling any such

al-Iriani, Maged Sultan and Marie-Christine Heinze, “Local Security Governance in Yemen in Times of War”, Yemen Policy Center and Carpo, April 2021, <https://www.yemenpolicy.org/local-security-governance-in-yemen-in-times-of-war/>

¹⁵ The author has intended that this section serve as a brief summary of relevant statutes rather than a comprehensive overview of the legal framework.

¹⁶ State Department, Terrorist Designations and State Sponsors of Terrorism, <https://www.state.gov/terrorist-designations-and-state-sponsors-of-terrorism/>

¹⁷ Immigration and Nationality Act, as amended § 219 (8 USC 1189), <https://www.congress.gov/104/plaws/publ132/PLAW-104publ132.pdf>

¹⁸ Executive Order 13224 of September 23, 2001. Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten To Commit, or Support Terrorism, <https://www.govinfo.gov/content/pkg/CFR-2002-title3-vol1/pdf/CFR-2002-title3-vol1-eo13224.pdf>

¹⁹ Ibid

²⁰ Sean D Murphy, “International law, the United States, and the Non-military ‘War’ against Terrorism”, *European Journal of International Law*, Vol. 14, No. 2, 2003, pp. 351-352, <http://www.ejil.org/pdfs/14/2/419.pdf>

persons who are already in the country).²¹ This classification has similar criteria for inclusion as FTOs or SDGTs.²² The US also maintains a State Sponsors of Terrorism list, which currently includes Cuba, North Korea, Iran and Syria.

Is there evidence that terrorist designations reduce violence?

Former Director of National Intelligence James Clapper has said that the designation architecture is of primarily symbolic importance and that the practical impact is less consequential.²³ The evaluation of counter-terrorism policy is notoriously difficult, while the challenges of gathering data in the conflict zones in which many of these groups operate are significant. OFAC publishes periodic Terrorist Asset Reports that give an indication of the level of financial assets confiscated under the terms of the FTO and SDGT systems. The latest available report from 2019 for example indicated that \$22,826,728 had been blocked in the US in connection with Hezbollah, while AQAP's figure was \$52,168.²⁴

The impact of terrorist designations unsurprisingly varies significantly depending on the local context and in particular, whether a group depends on private support that flows through the international financial system or on funding from local sources. A recent study using statistical analysis of attacks by FTO groups between 1970 and 2014 found that groups that were not dependent on private funding actually carried out more attacks following designation rather than less.²⁵ This dynamic is relevant to the Houthis, because as we will see below, the group accumulates funds through resource theft and illegal taxation, limiting the impact of international sanctions. Another recent study found that the average number of fatalities per attack actually saw a significant jump in the first two years after a terrorist designation, though then began to decrease.²⁶

Politicised process

Designation decisions are highly political. The criteria for inclusion on the various lists are broad. Some obvious candidates for inclusion have never been listed (for example, the Taliban which was listed as an SDGT in 2002 but never as an FTO), while others that represent only a tangential threat to US interests have made the cut. Decisions are based on the policy priorities of the US at any given time rather than a structured process. Likewise, the relatively rare delisting of groups appears largely ad hoc. A quick review of high-profile cases gives an indication of the dynamics at play; these include designations being used to send a symbolic message to foes, or as a quid pro quo as part of negotiations with partners or rivals over other issues.

²¹ Section 411 of the USA PATRIOT ACT of 2001 (8 U.S.C. § 1182), <https://www.congress.gov/107/plaws/publ56/PLAW-107/publ56.htm>

²² Bureau of Counterterrorism, "Terrorist Exclusion List", US Department of State, N.D., <https://www.state.gov/terrorist-exclusion-list/>

²³ Lee Jarvis and Tim Legrand, "The Proscription or Listing of Terrorist Organisations: Understanding, Assessment, and International Comparisons", *Terrorism and Political Violence*, Vol 30, Issue 2, 2018, pp. 199-215. <https://www.tandfonline.com/doi/full/10.1080/09546553.2018.1432199?src=recsys>

²⁴ OFAC, Terrorist Asset Report 2019. Available at https://home.treasury.gov/system/files/126/tar2019_0.pdf

²⁵ Hyeran Jo, Brian J Phillips and Joshua Alley, "Can Blacklisting Reduce Terrorist Attacks?", in *The Power of Global Performance Indicators*, edited by Judith G Kelley and Beth A Simmons, Cambridge University Press, 2020, p. 289.

²⁶ Seth Loertscher, Daniel Milton, Bryan Price and Cynthia Loertscher, "The Terrorist Lists: An examination of the US government's counterterrorism designation efforts", *Combating Terrorism Center at West Point*, September 2020, <https://ctc.usma.edu/wp-content/uploads/2020/09/The-Terrorist-Lists-report.pdf>

For example, the Nepalese Maoist movement could not be said to pose a significant threat to US interests at the time of its inclusion on the SDN list in 2003. The case of the East Turkistan Islamic Movement (ETIM), which was added to the TEL in September 2002, is another example. The move was interpreted by many observers as being a favour to China in return for its cooperation (or lack of obstruction) of the US's broader war on terror agenda.²⁷ While radicalised Uighurs from China's Xinjiang region have been involved in extremist groups in various Middle Eastern and Asian countries, China's claims over the group's nature and strength are questionable.²⁸ ETIM was removed from TEL list in November 2020. The State Department commented at the time that there had been no credible evidence the group posed a threat or even existed for the last 10 years, raising the question of why it was only then being removed. Where the initial ETIM designation was seen as a concession to China, the group's removal was likely the opposite: at the time US-China tensions were extremely high and the group's delisting was intended as a way to express displeasure with China, which uses overblown claims of terrorist activity to justify its extensive crackdown on its Uighur population.²⁹

Other designations that have raised eyebrows include the listing of the Islamic Revolutionary Guard Corps (IRGC) as an FTO in April 2019, a move that should be seen within the context of the Trump administration's 'maximum pressure' policy towards Iran. It was the first time that a military agency of a foreign government had been designated. While there is widespread acknowledgement that the IRGC is actively involved in supporting terrorist activity through its various regional proxy groups, the designation highlighted the political and symbolic nature of the process. Iran is already under such a wide-ranging sanctions regime that the FTO designation had minimal, if any, additional practical impact.³⁰

As indicated by the ETIM example, the de-listing process is also somewhat opaque; the criteria for revocation are vaguely worded and consideration for de-listing appears more closely linked to political considerations rather than a regular systematic review.³¹ One example that highlights the changing political fortunes of designated groups is that of the Mujahedin-e Khalq Organisation (MEK) of Iran. The MEK, originally designated as an FTO in 1997, has a complicated backstory including extensively documented violent activity (albeit not in recent years). It was delisted in 2012 in the context of US officials' desire to end a lengthy dispute over the groups' presence at a military base in Iraq in the context of the US military drawdown in the area.³² A number of high-profile US foreign policy hawks (many of whom had received payments to speak at MEK events) argued that by supporting the MEK they were supporting a credible opposition group that was challenging the Iranian regime. This claim is considered laughable by many analysts because of the group's extremely negative reputation inside Iran and lack of support base there.³³

27 Sean R. Roberts, "Why did the United States take China's word on supposed Uighur terrorists?" *Foreign Policy*, 10 November 2020, <https://foreignpolicy.com/2020/11/10/why-did-the-united-states-take-chinas-word-on-supposed-ughur-terrorists/>

28 Franz J Marty and Ted Callahan, "Tilting at windmills: Dubious US claims of targeting Chinese Uyghur militants in Badakhshan," Afghanistan Analysts Network, March 2018, <https://www.afghanistan-analysts.org/en/tag/etim/>

29 *Deutsche Welle*, "US removes separatist group condemned by China from terror list", 7 November 2020, <https://www.dw.com/en/us-removes-separatist-group-condemned-by-china-from-terror-list/a-55527586>

30 James Dorsey, "Destabilizing Iran", April 2019 https://www.researchgate.net/publication/332555866_Destabilizing_Iran_MEI

31 Since 2004 the State Department is required to review whether groups should stay on the list every five years; prior to that it was every two years. See <https://www.state.gov/foreign-terrorist-organizations/>

32 Arron Merat, "Terrorists, cultists or champions of Iranian democracy?" *The Guardian*, 9 November 2018, <https://www.theguardian.com/news/2018/nov/09/mek-iran-revolution-regime-trump-rajavi>

33 Daniel Benjamin, "Giuliani took money from a group that killed Americans. Does Trump care?," *Politico*, 23 November 2016, <https://www.politico.com/magazine/story/2016/11/giuliani-mek-terrorist-group-money-bolton-iran-214479/>

The recent case of Sudan being taken off the State Sponsors of Terrorism list appeared to be based on more credible factors. The designation was lifted in December 2020 following an uprising in 2019 that overthrew long-time leader Omar al-Bashir and led to an ongoing political transition. Sudan had been designated in 1993 for among other things providing safe haven to Osama bin Laden; the country was subsequently linked to the 1998 attacks on US embassies in Kenya and Tanzania. Negotiations over the country's delisting reportedly involved Sudan paying compensation to victims of those attacks, highlighting the way listings can in certain circumstances be leveraged; in this case the whole country was under sanction, making the delisting a big win for the new Sudanese government.³⁴ The delisting issue was reportedly also part of the talks surrounding Sudan's signing of a normalisation deal with Israel in October 2020.³⁵

The recent policy changes around the Houthi case fit within these existing patterns of highly politicised decision making around terrorist designations. Trump viewed the Houthis solely through the prism of their relationship with Iran. Similar to the designation of the IRGC in 2019, the Houthi listing was likely to have limited practical impact because Iranian support for the Houthis does not flow through the international financial system. He knew Biden wished to reopen negotiations with Iran over its nuclear program and hoped the designation would be yet another obstacle to Biden succeeding. The fact it would have had a devastating impact on civilians living under Houthi control appeared of little concern to him. Trump was prepared to endanger Yemeni civilians for the sake of a symbolic gesture towards Iran and to place obstacles in his successor's path, using US counter-terrorism policy as a tool against his domestic political opponents. The system in its current form remains wide open to further posturing of this type.

Why did Biden reverse the listing?

In order to fully understand Biden's reversal of the Trump position, it is useful to examine some of the downsides and unintended consequences of terrorist designations.

In addition to the clear politicisation of the designation process, terrorist designations have been criticised for being a somewhat blunt counter-terrorism tool that can cause a raft of unintended consequences. These include the likelihood that groups use the listing as a 'badge of honour' and recruitment tool,³⁶ and that designation increases anti-US feeling (and therefore motivation to attack US targets). There is also the potential that designations result in increased transnational ties between groups who pool resources to evade sanctions (and who otherwise wouldn't cooperate), and that sanctions result in a switch to criminality³⁷ to replace funding that previously came from private donations or other sources blocked by the sanctions regime.

When proscribed groups control territory another set of challenges come into play. If designated groups conduct a quasi-governmental role, any interaction with them becomes potentially open to charges of supporting terrorism. Sanctions complicate the work of humanitarian agencies providing emergency assistance in such areas, and have been responsible for a so-called 'chilling effect', where NGOs scale back programs, or avoid certain areas altogether because of the legal

34 Lara Jakes, Declan Walsh and Eric Schmitt, "State Dept. to Remove Sudan From List of Terrorist States", *New York Times*, 19 October 2020, <https://www.nytimes.com/2020/10/19/world/africa/sudan-trump-israel-terrorism.html>

35 Ibid

36 Moses Rono, "Boko Haram: Is terror designation a badge of honour?" BBC, 15 November 2013, <https://www.bbc.com/news/world-africa-24959207>

37 See for example Hyeran Jo, Brian J Phillips and Joshua Alley, "Can Blacklisting Reduce Terrorist Attacks?", in *The Power of Global Performance Indicators*, edited by Judith G Kelley, Beth A Simmons, Cambridge University Press, 2020, p 272.

and reputational risks stemming from terrorist designations.³⁸

In the Yemeni case, humanitarian agencies argued that an FTO designation would have created a hugely complex environment for agencies and private sector traders involved in getting food and other essential supplies into Houthi controlled areas.³⁹ There were fears that traders and shipping companies might suspend operations in these areas for fear of falling foul of US sanctions. Banks providing letters of credit and other services, and insurance companies covering shipments of goods might also have found the risk too great and refused to do business in Houthi-controlled parts of Yemen.⁴⁰ Aid workers also feared they would be accused of supporting terrorism if they continued to provide desperately needed assistance in these areas. These fears have now eased following the change in policy, but they highlight what can go wrong if policy decisions are made without a full assessment of the potential impact. The US can issue special licenses and waivers for humanitarian groups operating in affected areas, but these can be difficult to navigate and agencies have argued that it is often unclear exactly what activities are covered by such exemptions.⁴¹

The designation of a group that controls territory can also complicate conflict resolution efforts. The intensification of anti-US feeling among designated groups reduces the likelihood that factions within the broader movement will emerge that are open to talks. If the leadership of a designated group has no interest in engagement, there may be other more moderate power centres within the group who might be open to talking and who may eventually evolve into valuable partners if encouraged through mediation and peace-building activities.⁴²

While the US's own diplomats may be confident that they will not get into legal peril while mediating in conflicts, the kind of peace building and conflict resolution activities conducted by local civil society or facilitated by international NGOs could potentially become open to charges of supporting terrorism.⁴³

NGOs have tried to challenge the wording of the terrorist designation statutes to address these challenges. In a long-running case originally brought back in 1998 and in which a final ruling was made in 2010, the Humanitarian Law Project argued that the wording on providing 'material support' was too broad and put civil society groups at risk of being charged with supporting terrorism if they carried out workshops or training on peacebuilding and mediation.⁴⁴ NGOs

38 Kate Mackintosh and Ingrid Macdonald, "Counter-terrorism and humanitarian action", Humanitarian Practice Network, August 2013, <https://odihpn.org/magazine/counter-terrorism-and-humanitarian-action/>

39 Reliefweb, "Aid agencies make unprecedented and united call for Biden administration to revoke Ansar Allah terrorist designation", 24 January 2021, <https://reliefweb.int/sites/reliefweb.int/files/resources/Joint%20INGO%20designation%20statement%2024%20Jan%202021%20FINAL.PDF>

40 ACAPS, "US terrorist designation of Ansar Allah: Risk alert and humanitarian impact", 14 January 2021, pp.4-6. https://www.acaps.org/sites/acaps/files/products/files/210114_acaps_yemen_risk_alert_ansar_allah_fto_designation_0.pdf

41 Reliefweb, "Aid agencies make unprecedented and united call for Biden administration to revoke Ansar Allah terrorist designation", 24 January 2021, <https://reliefweb.int/sites/reliefweb.int/files/resources/Joint%20INGO%20designation%20statement%2024%20Jan%202021%20FINAL.PDF>

42 Joshua Gross, "Proscription Problems: The Practical Implications of Terrorist Lists on Diplomacy and Peacebuilding in Nepal", *Praxis: The Fletcher Journal of Human Security* Vol. 26, 2011, p. 47, <https://sites.tufts.edu/praxis/files/2020/05/3.-Gross.pdf>

43 Naz K. Modirzadeh, Dustin A. Lewis & Claude Bruderlein, "Humanitarian Engagement Under Counter Terrorism: a conflict of norms and the emerging policy landscape", *International Review of the Red Cross*, Vol 93, Number 883, 2011, <https://www.icrc.org/es/doc/assets/files/review/2011/irrc-883-modirzadeh-lewis-bruderlein.pdf>

44 Naz K. Modirzadeh, Dustin A. Lewis & Claude Bruderlein, "Humanitarian Engagement Under Counter Terrorism: a conflict of norms and the emerging policy landscape", *International Review of the Red Cross*, Vol 93, Number 883, 2011, pp.7-12, <https://www.icrc.org/es/doc/assets/files/review/2011/irrc-883-modirzadeh-lewis-bruderlein.pdf>

argued that providing this type of training and support could not be seen as in any way furthering the violent activities of designated groups, and indeed was intended to train them in peaceful ways to achieve their aims. The case went through various rounds of appeals but ultimately failed to change the criteria.⁴⁵

In Yemen's complex and multi-layered conflict, Biden needs flexibility if he is to have any hope of improving the situation on the ground. Mediators need to be able to respond with agility to emerging dynamics and explore creative solutions amid the ongoing disintegration of the Yemeni state. Had the FTO designation on one of the major players to the conflict remained, it would have greatly complicated negotiations by potentially criminalising engagement with Houthi representatives. Negotiators and members of civil society working on peace-building and conflict resolution would have faced a potentially prohibitively complex legal environment. Had the FTO designation remained, this would have been particularly damaging in the Yemeni context because of the immense challenges of securing a workable national peace deal, and the urgent need for the careful crafting of local stabilisation efforts.⁴⁶

The impact of Biden's reversal on the threat posed by the Houthis

Despite the humanitarian and peace-process considerations set out above, many Yemenis and commentators strongly opposed Biden's decision. They viewed it as granting the Houthis a major concession before peace talks had even started, and further weakened the already very limited leverage the international community has against the group. On the one hand, this argument may overstate the impact that the FTO designation would have had on the Houthis economically and militarily. As discussed above, groups that draw their funding largely from the geographical area in which they operate are far less impacted by sanctions than those whose funding comes from diaspora or private overseas supporters. The Houthis fit firmly into the former category, with the exception of the support they receive from Iran. The extent of Iranian support is very difficult to assess,⁴⁷ but it falls outside the formal international financial system because of Iran's own sanctions situation and therefore would have been largely unaffected by an FTO listing.

A UN expert panel has previously found that Houthi leaders operate largely in cash, have few or no assets abroad and rarely travel outside Yemen. The Houthis get their funds from economic profiteering, resource theft and illegal taxation rather than through international channels.⁴⁸ As such, the practical impact of the FTO designation on their operations - and therefore on their decision-making - would likely have been limited.

On the other hand, the Hadi government and others maintain that - despite the limited practical consequences - the psychological and symbolic impact of the listing would have been a useful tool in negotiations. Furthermore, anti-Houthi groups argue that the combination of the delisting and the US pressure on Saudi Arabia to significantly dial down its military campaign in Yemen gave the Houthis a huge boost – both practical and psychological, that contributed to their intensified military campaign in the first half of 2021.

45 Ibid

46 See for example, Daniel Egel, Trevor Johnston, Ashley L Rhoades, Eric Robinson, "Building an Enduring Peace in Yemen. Lessons from five years of RAND research", Rand Corporation, 2021, https://www.rand.org/pubs/research_reports/RRA733-1.html

47 UN Security Council, Letter from the Panel of Experts on Yemen addressed to the President of the UN Security Council, 22 January 2021, p.13. Available at <https://digitallibrary.un.org/record/3898851?ln=en>

48 UN Security Council, UN Panel of Experts on Yemen report, January 2016 pp. 33-35 <https://digitallibrary.un.org/record/819771?ln=en>

Current sanctions picture

Media coverage of the Houthi delisting often failed to mention that other sanctions remain in place. Biden did not remove all sanctions on the group and has since added more. These target individuals rather than the Houthis as a whole, an arguably more nuanced and effective strategy compared to the sledgehammer approach of a group designation. In addition to the FTO designation, the Trump administration added the Houthis as a group, plus three individual Houthi leaders to their SDGT list; the individuals concerned are Abdul-Malik al-Houthi (the group's leader), Abdullah Yahya al Hakim (second in command) and Abd al-Khaliq al-Houthi (a military commander). While the FTO and group SDGT designations have been revoked, the individual SDGT designations remain in force.⁴⁹ As explained above, the wording of the SDGT framework is very broad and grants US officials the authorisation to target individuals or groups with links to named individuals as well as those actually on the list.

OFAC, on 2 March, additionally designated Mansur Al-Sa'adi and Ahmad 'Ali Ahsan al-Hamzi, leaders of the Houthis' naval and air forces respectively, under Executive Order 13611, "Blocking Property of Persons Threatening the Peace, Security, or Stability of Yemen." The 13611 order was an Obama-era law designed to sanction those who obstructed efforts to negotiate a peaceful solution to Yemen's various conflicts. The designation of these two individuals likely reflects concern over the growing threat posed by Houthi drone and missile programs, as well as their alleged use of remote-controlled, explosive-laden boats to target shipping and port infrastructure in the Red Sea (discussed below).

Sanctions continue to expand, with two more Houthi officials listed on 20 May. Muhammad Abd Al-Karim al-Ghamari, Chief of the General Staff, was designated under Executive Order 13611 (the Yemen-specific order); Yusuf al-Madani, commander of the 5th military zone and son-in-law of the late Houthi founder Hussein, was designated under Executive Order 13224, meaning he is now listed as a SDGT.⁵⁰ Both individuals are said to play a key role in ongoing fighting in Marib province.

What does all this mean for the nature of the terrorist threat posed by the Houthis?

What then are the ultimate consequences of the listing and delisting for the Houthi threat going forward? In short, the designation policy shifts have generated media interest but have changed little in terms of the Houthis' ability to conduct attacks or continue their war effort. The way in which the group operates limits the extent to which the FTO designation would have influenced Houthi behaviour had it remained in place. The US still holds some cards against key players through targeted individual sanctions, but these won't in themselves change the course of the conflict or the Houthis' ability to launch attacks against Saudi Arabia.

Of greater relevance to the group's military capabilities will be the extent to which the US supports or obstructs Saudi military operations, the way in which the Houthi-Iran relationship evolves

⁴⁹ The Houthis and forces linked to the late former-president Ali Abdullah Saleh also remain subject to an arms embargo imposed by UN Security Council resolution 2216 (2015). Members of the Houthi leadership and family members of former president Saleh are also subject to UN sanctioned asset freezes and travel bans as set out in Security Council resolution 2511 (2020).

⁵⁰ "Treasury Sanctions Senior Houthi Military Official Overseeing Group's Offensive Operations", 20 May 2021, <https://home.treasury.gov/news/press-releases/jy0191>

(particularly in the context of ongoing US-Iran negotiations over the Iranian nuclear program), and of course future developments in the Yemeni civil war. If Iranian support stopped tomorrow, this would be a setback but not an existential threat; the transfer of knowledge has already happened and the Houthis are in possession of sufficient materiel to keep their campaign going. The US approach to the Saudi military intervention will be far more consequential to the future direction of the Houthi's military campaign.

What kind of a threat do they pose from a terrorism perspective?

The debate over the rights or wrongs of the Houthi terrorist designation highlights a key paradox about the Houthis' organisational character and the evolution of the threat they pose from a terrorism perspective. Prior to the Saudi intervention in 2015 (with the possible exception of occasional low-level border 'incursions' into Saudi Arabia in the 2000s), the Houthis operated as a domestic insurgency rather than a terrorist group. Despite their violent anti-Israel and anti-US rhetoric they displayed no signs of pursuing a transnational agenda. With the exception of small-scale border skirmishes, Houthi attacks targeting military bases or energy infrastructure inside Saudi Arabia were unheard of.

One of the many damaging consequences of the Saudi military intervention is that it has increased rather than decreased the terrorist threat to Saudi Arabia, as well as the threat to maritime traffic in the strategically important seas around Yemen. The Houthis now conduct frequent and relatively sophisticated drone and missile attacks on Saudi Arabia (see Appendix 1), and are also accused of being behind a growing pattern of attacks on shipping in the Red Sea (see Appendix 2). With Iranian help, the Houthis have developed a range of relatively crude but nevertheless dangerous drones, missiles, sea mines and remote-controlled explosive-laden boats.⁵¹ These weapons have on occasion caused damage to oil infrastructure and temporarily interrupted processing and export operations. Most attacks target areas close to the Yemeni border in south-western Saudi Arabia, but the Houthis also have the capability to launch periodic operations targeting the capital Riyadh and the strategically important Eastern Province, where much of key oil industry infrastructure is based.

But what of the future outlook? The fluidity of the conflict makes it difficult to predict how the terrorist threat from the Houthis will develop in future. With the exception of maritime attacks in the Red Sea, which target Saudi vessels but could easily accidentally affect other shipping, Houthi external operations are likely to remain focused on Saudi Arabia for the time being. The Houthis can be expected to periodically intensify attacks against Saudi Arabia to gain leverage in negotiations (which they argue they should conduct with Saudi Arabia directly, rather than with the Hadi government). They will frame these as retaliation for the Saudi bombing campaign and blockade rather than terrorist incidents, in line with their narrative of fighting a defensive war against a foreign aggressor.

With the exception of the group's fight against Saudi Arabia, which the Houthis claim is solely linked to Saudi's intervention in Yemen, the Houthis' focus remains largely domestic. Their priority is getting external actors out of Yemen and maximising their political power at home. Transnational rhetoric is just that, and they are unlikely to represent a transnational terrorist threat to other parts of the region or the wider world. Although currently on the downlow after a wave of territorial and personnel losses, AQAP remains a far more likely Yemeni source of

⁵¹ Robert J. Bunker and Alma Keshavarz, "Made in Yemen: Houthi Exhibition Showcase New Drones, Missiles, and Naval Mines", 8 April 2021, *Small Wars Journal*, <https://smallwarsjournal.com/jrnl/art/made-yemen-houthi-exhibition-showcase-new-drones-missiles-and-naval-mines>

problems of that type, at least in the longer term.

The longer the conflict goes on, the more it will spawn additional security challenges. These might well include a further fracturing of power, and the emergence of offshoots from the broader Houthi umbrella who have the know-how to produce air and seaborne explosive devices that they are prepared to use outside of the scope of the fight with Saudi Arabia.

Conclusion

The Houthi case provides a compelling illustration of the intensely political and symbolic nature of terrorist designation system. The criteria for inclusion on terrorist lists are very broad, while those for removal or delisting are even more vague and arbitrary. If the lists had only symbolic importance this would be of limited consequence. However, the listings can have very real and serious consequences for civilian populations living in areas controlled by proscribed groups, or otherwise caught up in the resulting sanctions regimes. The Yemen situation was reversed quickly because of immense international pressure related to the desperate humanitarian situation. Other groups that attract less international attention have been left on the list for extended periods, with potentially negative consequences for civilian populations. Even when decisions are taken after a more credible process than the Houthi FTO listing, group terrorist designations are a very blunt policy tool that is of limited utility in today's complex conflicts.

Recommendations

- Avoid blanket group designations for groups that control territory where civilian populations live. Use more targeted sanctions against key leaders and military personnel instead.
- Where broader designations are considered the only means of cutting off terrorist funding, ensure that waivers and licenses are issued to ensure that humanitarian aid and legitimate commercial activity is not interrupted.
- The terms and practicalities of the waiver and licensing process need to be easily available and understandable to prevent NGOs and businesses from avoiding certain areas for fear of falling foul of sanctions.
- Notwithstanding the challenges of providing assistance in Houthi areas because of Houthi interference with aid delivery, seek ways to support to crucial local civil society organisations and humanitarian agencies to navigate any residual legal issues resulting from the remaining sanctions regime in Yemen.
- The designation regime would benefit from a thorough review. Reforms should include setting out clearer processes for listing and delisting, and a requirement for proper impact assessments to be made. It is a credible scenario that Biden will be succeeded by a president who follows a similar foreign policy approach to Trump in 2025. The system in its current form could result in further irresponsible and damaging posturing.
- Targeting patterns and evolving tactics targeting Saudi Arabia and shipping in the Red Sea should be carefully tracked.

- Don't forget about AQAP. While the FTO policy and recent fighting in Marib have focused attention on the (anti-AQAP) Houthis, there are other long-term terrorist threats emanating from Yemen that need to be closely watched. AQAP has a track record of lying low to regroup and seizing operational space when opportunities arise. The ongoing fragmentation of Yemen will surely present them with such opportunities in the coming years. Policy makers should ensure the group and its various offshoots are closely monitored for signs of operational expansion.

Appendix 1: Selected recent Houthi attacks on Saudi Arabia⁵²

Date	Incident
13/5/2021	Saudi Arabia said it had intercepted eight drones and three missiles. The Houthis claimed they had targeted sites in Najran province including an Aramco facility.
15/4/2021	Saudi Arabia said it had intercepted four drones and five ballistic missiles overnight, some of which targeted the Jizan area. The Houthis claimed to have launched a total of 11 drones and missiles which they claimed targeted oil installations and Patriot anti-missile systems.
7/3/2021	The Houthis launched a series of drone and missile attacks at locations across Saudi Arabia. Targets included an oil storage facility at Ras Tanura and a compound used by the Saudi Aramco oil company near Dhahran, both located in Eastern Province. The Houthis claimed to have launched attacks on additional locations the same day including on the south-western city of Asir and the port city of Jizan north of the Yemeni border.
28/2/2021	Saudi Arabia reportedly used patriot missiles to intercept a ballistic missile over the capital Riyadh. Media reports suggested that missile fragments caused damage to at least one residential building.
10/2/2021	A Houthi attack using armed drones damaged a civilian aircraft at Abha international airport in south-western Asir province. Saudi Arabian officials claimed to have thwarted a further drone attack on the same airport three days later.
25/10/2020	Saudi Arabia said it had intercepted a number of armed drones in recent days launched by the Houthis towards 'civilian areas' north of the Yemeni border.
12-13/7/2020	The Houthis claimed to have launched drone and missile attacks against numerous targets in south-western Saudi Arabia, including an oil refinery near Jizan. Saudi Arabia claimed that four missiles and six armed drones had been intercepted.
23/6/2020	The Houthis launched attacks directed at the Saudi capital Riyadh. The targets reportedly included the Ministry of Defence and an army installation.
14/9/2019	The Houthis claimed responsibility for a drone swarm attack in Saudi Arabia's Eastern Province that caused extensive damage and major disruption to oil infrastructure in Abqaiq and Khurais. There was skepticism at the time that the Houthis would have had the capability to conduct such a sophisticated operation; Saudi Arabian officials accused Iran of responsibility.

⁵² These lists of incidents were put together by the author based on local and international media reports. Media reports on such incidents can often be traced back to single official statements from the Saudi-led coalition with occasional eye witness accounts. Given the nature and location of the incidents it is difficult to verify details with regard to the accuracy of attacks and the damage caused.

Appendix 2: Selected maritime incidents

Date	Incident
27/4/2021	There were unconfirmed reports that a ship was damaged during a remote-controlled boat attack off the coast of Yanbu, a Saudi Arabian port on the Red Sea. Saudi Arabian officials claimed to have intercepted a boat packed with explosives.
14/12/2020	An explosive-laden boat targeted a fuel tanker that was moored at the Saudi port of Jeddah. The attack caused a fire and minor damage to the hull, while minor damage was also reported to water and fuel tanks at the port.
9/12/2020	Saudi Arabia claimed to have intercepted two explosive-laden boats in the Red Sea area. They alleged that the boats had been launched from Hodeida province.
25/11/2020	A Maltese-flagged oil tanker was damaged in an incident near the Saudi port of Shuqaiq. Some reports indicated that the incident was caused by a mine, while Saudi officials claimed the vessel had been attacked by a remote-controlled boat laden with explosives.
11/11/2020	Saudi Arabia claimed it had destroyed two explosive-laden boats in the Red Sea. Officials later said that the incident had caused a small fire that affected a floating platform in the Jazan oil terminal.
9/7/2020	Saudi Arabia claimed to have destroyed two remote controlled boats rigged with explosives in the sea just off the coast of Yemen's Salif port. A Houthi representative said that the boats were civilian vessels.
3/3/2020	Saudi Arabia claimed that four remote controlled boats attempted to attack an oil tanker in the Arabian Sea. The Saudi authorities released pictures of small skiff type vessels apparently approaching a tanker.
30/9/2018	Saudi Arabia claimed to have foiled an attack on Jizan port by destroying two remote-controlled vessels.
30/1/2017	A Saudi Arabian frigate was attacked in the Red Sea. Two sailors were reportedly killed in the incident, which caused minor damage. Saudi officials initially believed it was a suicide attack, but the US navy later assessed that it was carried out by a remote-controlled device.

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About the Author

Lucy van der Kroft

Lucy van der Kroft (Jones) is a freelance analyst with a focus on the Middle East and Afghanistan. She has worked as a Senior Middle East Analyst for a leading UK-based risk consultancy, as a program officer at a policy research organisation in Kabul and as an Afghanistan researcher at Amnesty International. She has a Masters degree in Middle East and Central Asia Security Studies from the University of St Andrews and a Bachelors degree in Arabic with Middle Eastern and Islamic Studies from Durham University.

**International Centre for Counter-Terrorism - The
Hague (ICCT)**

T: +31 (0)70 763 0050

E: info@icct.nl

www.icct.nl