

Peacebuilding Exemption Letter

Attached is a letter to Secretary of State Hillary Clinton requesting an exemption of peacebuilding activities aimed at preventing or resolving conflicts from the material support prohibition. An Appendix with examples of lost opportunities for peacebuilding is included.

The letter is endorsed by 18 organizations and 27 individuals.

The organizations are:

3D Security Initiative	The Fund for Global Human Rights
Alliance for Peacebuilding	Human Rights First
American Friends Service Committee	Humanitarian Law Project
Berghof Foundation	Institute for Multi-Track Diplomacy
Center for Justice and Peacebuilding	International Center for Religion and Diplomacy
Campaign for Innocent Victims in Conflict	Peace Appeal Foundation
The Constitution Project	Rockefeller Brothers Fund
Eastern Mennonite University	The Rutherford Institute
Fund for Constitutional Government	Search for Common Ground

The individuals are (affiliations are listed for identification purposes only):

Hrair Balian, Director, Conflict Resolution Program of the Carter Center
Andrea Bartoli, Dean, School for Conflict Analysis and Resolution, George Mason University
Andrew Carl, Executive Director, Conciliation Resources
Diana Chigas, Co-Director of Reflecting on Peace and Practice Project, CDA Collaborative Learning Projects, and Professor of Practice, Fletcher School of Law and Diplomacy, Tufts University
Jonathan Cohen and Ellie Friedman, Co-Founders, New Israel Fund
Steve Darvill, Executive Director, CDA Collaborative Learning Projects
Robin Festch, Director, JEB Stuart Educational Foundation, Inc.
Mari Fitzduff, Director, Master Program in Coexistence and Conflict, Brandeis University
Ambassador Thomas Graham, Jr., Executive Chairman, Lightbridge Corporation
David Hart, Director, Security Programs, Physicians for Social Responsibility and former CEO of Association for Conflict Resolution
Steve Hayes, Former Assistant Administrator for Public Affairs, USAID
Michael Hirschorn, Jacob and Hilda Blaustein Foundation
Jocelyn Kelly, Women in War Research Coordinator, Harvard Humanitarian Initiative
William Lowrey, Peacebuilding Consultant and former Director of Peacebuilding, World Vision International
Bob McEwen, Former Congressman, Ohio's 6th District
Carrie Menkel-Meadow, Professor of Law, Georgetown University Law Center and University of California, Irvine Law School
Andrew Natsios, Former Administrator, USAID and Professor in the Practice of Diplomacy, Georgetown University School of Foreign Service
Ambassador Ronald E. Neumann (ret.), President, American Academy of Diplomacy
Karin Ryan, Director, Human Rights Program, The Carter Center
Robert F. Schubert, Former President, American Red Cross
Julian Shepard, Attorney and Council-at-Law PLLC
Jolynn Shoemaker, Executive Director, Women in International Security

Ambassador Nancy E. Soderberg, President, The Connect U.S. Fund

Peter Weiss, Americans for Peace Now

Peter Woodrow, Co-Director, Reflecting on Peace and Practice Project, CDA Collaborative Learning Projects

I. William Zartman, Professor Emeritus, Paul H. Nitze School of Advanced International Studies

Craig Zelizer, Associate Director, Master of Arts in Conflict Resolution Program, Georgetown University and Co-founder, Alliance for Conflict Transformation

If you have any questions about the letter to the Secretary or about its signatories, please contact Kay Guinane, Director of the Charity and Security Network at (202) 729 6791 or at kguinane@charityandsecurity.org.

May 12, 2011

The Honorable Hillary Clinton
Secretary of State
U.S. Department of State
2201 C Street NW
Washington, DC 20520

Dear Secretary Clinton,

For many years, U.S. organizations and private individuals have paved the way for peace by helping to bring fighting factions together and providing alternatives to violence as a means of redressing grievances. We know that these initiatives can be the key to success in resolving conflicts. When organized armed groups lay down their weapons, the local population and the national security of the United States both benefit.

Unfortunately, provisions in U.S. law forbidding “material support” of terrorism undermine these efforts. When conflicts involve groups on the U.S. terrorist lists, conflict resolution experts are prohibited from helping build peace. The problem was exacerbated by the June 2010 Supreme Court decision in *Holder v. Humanitarian Law Project* that upheld application of these laws to criminalize conflict resolution activities.¹ However, in its ruling, the Court deferred to Congress and the executive branch to make judgments about the scope of the prohibition because national security interests are involved. In other words, the court held that the law *may* impose such restrictions, *not that it must*.

Congress has, in turn, deferred to the Secretary of State through a statutory provision that empowers you to exempt expert advice or assistance, training, and personnel from the material support prohibitions when you find these activities will not further terrorism.² Activities directly aimed at preventing or resolving conflicts fit this criteria.

We call on you to use your statutory authority to exempt these activities from the prohibition. Without such a course correction, opportunities to end violence will continue to be lost.

In 2010, the South African government asked the United States Institute of Peace (USIP) to help it facilitate a meeting between leaders of Hamas and Fatah, and former Israeli generals/officials, but USIP could not participate because of the material support prohibition. The opportunity for progress that might have been made was lost. There are many more examples of the negative impact application of the material support prohibition to peacebuilding activities has had, and continues to have, on U.S. interests and world peace (see the attached Appendix). Because of the law's extraterritorial jurisdiction, peacebuilding groups in other countries with strong U.S. ties are also feeling constrained.

¹ *Holder v. Humanitarian Law Project* 130 S. Ct. 2705 (2010)

² TITLE 18 § 2339B. Providing material support or resources to designated foreign terrorist organizations

(j) Exception.— No person may be prosecuted under this section in connection with the term “personnel”, “training”, or “expert advice or assistance” if the provision of that material support or resources to a foreign terrorist organization was approved by the Secretary of State with the concurrence of the Attorney General. The Secretary of State may not approve the provision of any material support that may be used to carry out terrorist activity (as defined in section 212(a)(3)(B)(iii) of the Immigration and Nationality Act).

Peacebuilding is designed to reduce or eliminate the frequency and severity of violent conflict or to reduce its impact on noncombatants. We believe that expert advice and assistance, training and provision of personnel provided in the course of such efforts should be exempt from the material support prohibition.

We stand ready to assist in this process, and request a meeting to discuss it with you. To that end, Kay Guinane of the Charity and Security Network will contact your office to follow up.

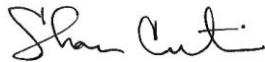
Sincerely,



3D Security Initiative
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Harrisonburg, VA



Alliance for Peacebuilding
Chic Dambach, President and CEO
Washington, DC



American Friends Service Committee
Shan Cretin, General Secretary
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Berghof Foundation
Johannes Zundel, CEO
Berlin, Germany



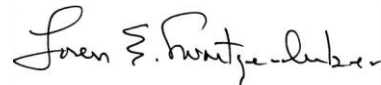
Center for Justice and Peacebuilding
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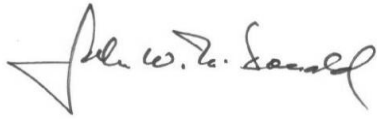


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s/Ralph Fertig
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Institute for Multi-Track Diplomacy
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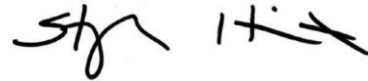
Peace Appeal Foundation
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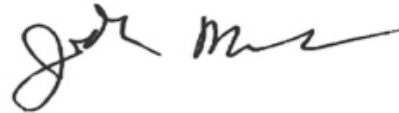
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International Center for Religion and Diplomacy
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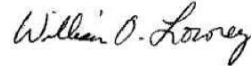
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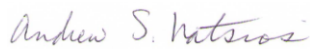


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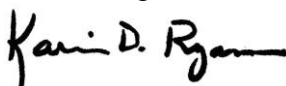
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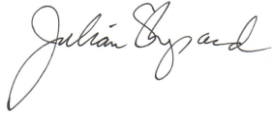
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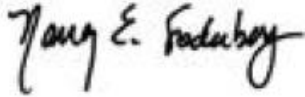
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s/Craig Zelizer
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CC:

Harold Koh, Legal Advisor, Department of State
Eric H. Holder, U.S. Attorney General
Thomas E. Donilon, National Security Advisor

Appendix:

- 1.) Proposed Exemption Language
- 2.) Examples: Impacts of Material Support Prohibition on Peacebuilding

Appendix 1: Proposed Exemption Language

From: Hillary Rodham Clinton, United States Secretary of State

Notice: Approval of Peacebuilding Activities

Date: [X]

The Secretary of State, pursuant to 18 U.S.C. 2339B(j), having consulted with the Attorney General, orders that the provision of expert advice or assistance, training, and personnel designed to reduce or eliminate the frequency and severity of violent conflict, or to reduce its impact on noncombatants, are exempt from the prohibition in 18 U.S.C. 2339B, so long as the advice, training or personnel are intended and designed to further only lawful, peaceful and nonviolent activities.” Such activities include:

- Expert advice or assistance that facilitates dialogue and promotes opportunities for parties to armed conflict to discuss peaceful resolution of their differences, and logistics necessary to support such dialogue.
- Training, including in-person, written and virtual presentations, aimed at demonstrating the benefits of nonviolent methods of dispute resolution and providing the skills and information necessary to carry it out.
- Expert advice, assistance and dialogue aimed at increasing the human security of noncombatant civilians under international humanitarian law, and logistics necessary to carry this out.

Secretary of State Authority for this Action:

TITLE 18 § 2339B Providing material support or resources to designated foreign terrorist organizations (j) Exception.— No person may be prosecuted under this section in connection with the term “personnel”, “training”, or “expert advice or assistance” if the provision of that material support or resources to a foreign terrorist organization was approved by the Secretary of State with the concurrence of the Attorney General. The Secretary of State may not approve the provision of any material support that may be used to carry out terrorist activity (as defined in section 212(a)(3)(B)(iii) of the Immigration and Nationality Act).

Appendix 2

Examples: Impacts of Material Support Prohibition on Peacebuilding

Contributors:

Alliance for Peacebuilding
American Friends Service Committee
Africa Action (formerly American Committee on Africa)
The Carter Center
Eastern Mennonite University's Graduate Center for Justice & Peacebuilding
Interfaith Encounter Association
Peace Appeal Foundation
The Project on Justice in Times of Transition
Summer Peacebuilding Institute at Eastern Mennonite University
United States Institute of Peace
University of Notre Dame's Kroc Institute for International Peace

Lost Opportunities for Peace

3D Security Initiative

There are peace processes in many countries around the world, including Guatemala, South Africa and Bali. The ones that succeed have all the key stakeholders trained in principle negotiations. This is a key factor in the success of the peace processes. In one such effort, Lisa Schrich, Director of the 3D Security Initiative, works with a Canadian network of peacebuilding organizations on the Afghanistan Pathways to Peace project. They work in collaboration with Afghan non-governmental organizations that do a range of aid work, from humanitarian, to community development, to conflict resolution and peacebuilding. The goal of the project is to foster a public peace process in Afghanistan that is more inclusive of civil society, women's groups, human rights groups, development groups and includes their issues, analysis and agenda items in the national peace process.

An important phase of the project is facilitating civil society meetings. But it is never clear when, sitting down in a large room in Kabul to facilitate communication, set the negotiation agenda or teach negotiation techniques, someone associated with the Taliban may be present. As a result, Schrich, the sole American in the project, has been forced to withdraw from participation in such meetings, in order to avoid violating the prohibition on material support. The process loses her expertise and the reputation of the U.S. is harmed.

Alliance for Peacebuilding

Executive Director Chic Dambach held a collaborative session with a group of NGOs working in Sri Lanka in 2008-2009, before the country's conflict with the Liberation Tigers of Tamil Eelam (LTTE) escalated. The purpose was to bring about a dialog between the government and the LTTE. The meetings were tense, as a representative of the government was present, and many of the NGOs feared retaliation for any statements involving support for government-LTTE dialog.

Progress was made, however, when Dambach was able to summarize the NGOs' views on the potential for dialog to the Sri Lankan Ambassador to the U.S. The Ambassador retired shortly after that, but then approached Dambach with a proposal for assembling a peacebuilding task force that would bring the LTEE and government together. At that point, Dambach had to decline to pursue the project, because the LTTE is listed as a Foreign Terrorist Organization and the kinds of communications he would need to have in order to bring them into a dialog are prohibited under the material support laws.

American Friends Service Committee (AFSC)

The communist insurgency in the Philippines has a very long and bloody history. Despite numerous and expensive attempts by third parties to bring the parties to the conflict out of the country and together for negotiations, all attempts had failed. A local NGO working in the conflict zone wanted to try another approach, since it could see that all parties to the conflict were frustrated by the stalemate and by the endless cycle of violence and poverty. AFSC was not able to help them build on their success because proscribed groups were involved.

The local commander in a faction of the Communist Party of the Philippines New People's Army [CPP/NPA] agreed to work with the local NGO, the mayor of the largest town, and the military to negotiate a grassroots peace agreement, in order to alleviate the economic suffering and reduce the violence in the area. As a result, the leadership of the CPP/NPA put him on a death list. He also remains wanted by the Philippines government.

The NGO and the mayor acted as intermediaries between the two armed groups. Their goal was to interest and involve both groups in supporting community development projects and in creating conditions that allowed local farmers to grow and market their crops with a sense of security. The mayor also tried to interest the Philippines Peace Commission in the process and gain their support. The NGO conducted a series of trainings for both the military and the CPP/NPA faction on community development and local planning processes. The CPP/NPA active members are small in number and the Communist party is no longer able to provide direct support to 'their' communities, as they did in the 1980s. This faction agreed to support efforts by communities in their area to gain access to government funds and services, provided the military treated people respectfully and ended abuses. They would not interfere with attempts at re-integration of communities or individuals or with military efforts to repair roads, water systems, and power grids. The NGO then intensified and expanded its training to military personnel to make sure that all levels of personnel in the military units understood and acted properly in their new role.

The local agreement has led to a much greater sense of security and much improved economic activity in the area. The mayor set up his own 'social integration program' for rebels who wanted to lay down their arms and access government services. Although the ultimate goal of a recognized peace agreement has not yet been reached communities are no longer labeled and punished as 'terrorist strongholds,' open confrontations have been greatly reduced, and military commanders report that NPA rebels in their area 'have returned to the fold of the law'.

An AFSC staff person met with some of the people involved and has talked with the local NGO about their desire to build on and also disseminate their experience of grassroots work with armed actors. At

one point AFSC considered supporting the main actors to come to Cambodia in order to discuss the process and strategize over next steps to try to get their process more formally recognized by the central Government. The plan never went forward. AFSC would have been in violation of the material support law because the CPP/NPA is on the U.S. list of terrorist organizations.

Africa Action (formerly the American Committee on Africa)

Africa Action reports that a moderate faction in Hamas, which may eventually be prepared to recognize Israel's existence, has engaged in back channel discussions with organizations in the Israeli peace movement. U.S. organizations are prevented from contacts with such organizations in Israel on the ground that this could constitute an indirect violation of the material support law.

The Carter Center

The Carter Center, which counsels regional organizations about peaceful conflict resolution, wanted to create a student "parliament" among the universities located in Gaza. Students would be trained to adjudicate disputes through peaceful dialogue rather than violence. Although this activity is intended to help reduce terrorism, it places the Carter Center at risk. If any of the students participating are known or likely to be members of a designated Foreign Terrorist Organization (FTO), the Carter Center could be prosecuted for material support of terrorism.

Eastern Mennonite University's Graduate Center for Justice & Peacebuilding

The material support law has hindered the work of Eastern Mennonite University's (EMU) Graduate Center for Justice & Peacebuilding, particularly in the Middle East. For example, in Afghanistan and Pakistan the Center works with former U.S. Fulbright scholars who received Master of Arts degrees in conflict transformation and peacebuilding at EMU. Faculty regularly visits them and helps with their projects. In Afghanistan and Pakistan, where U.S. Embassy personnel cannot leave their compounds, EMU faculty travel around the country giving lectures and coaching former students as they work to foster moderation and develop community level consultation mechanisms for stemming or ending the war.

The Taliban is listed as a proscribed group and is active in both Afghanistan and Pakistan. In community meetings and other sessions involved in the peacebuilding process, it is difficult or impossible to know if any of the participants are members. This leaves EMU faculty unsure of their potential legal liability.

When faculty talks with U.S. military and U.S. Embassy people about this dilemma, they offer their enthusiastic support for what EMU is doing, noting it is in U.S. interests to promote peace and end the war. At the same time they sympathize, noting they have no way of knowing whether conflict resolution trainings will be considered as providing material support to terrorists. As faculty teaches a whole new generation of conflict resolution experts, they wonder whether they could be punished by the U.S. government simply for practicing their profession.

Interfaith Encounter Association

The Interfaith Encounter Association, an Israeli group, has a project that brings together Jewish and Muslim religious leaders, specifically aiming at people who are not yet involved in dialogue. In one encounter, a group of Salafi Sheikhs who consider Hamas, from a religious perspective, as moderates, participated in the dialogue. They had never met with any Jews before. But at the encounter they were kind and wanted to continue the dialogue. These are religious figures with influence on the thousands of people. A change in tone towards Jews and Israelis will have a great influence. This effort cannot expand to include leaders who are associated with Hamas, due to the prohibition on material support.

Peace Appeal Foundation

Peace Appeal Foundation (PAF) engages with all parties of a violent conflict to help facilitate peacemaking efforts. In Sri Lanka, PAF aided Sri Lankan stakeholders in establishing a confidential multi-party dialogue process between Sinhalese, Tamil, and Muslim political stakeholders in a peace process called the “One Text Initiative.” This process initially received strong support from USAID’s Office of Conflict Management and Mitigation, which cited the project as a “best practice.”³ However, after the LTTE assigned a proxy representative to participate, USAID and the U.S. embassy began a long drawn out process to determine whether funding for the initiative could continue. U.S. support for the process was ultimately withdrawn, dealing a severe blow to the effectiveness of the talks. After the substantial investment in time and energy that had been put into the One Text Initiative, the withdrawal of funding created a crisis environment that was extremely detrimental during a sensitive period. No other donor agency in Sri Lanka had been able to establish a similar initiative with all stakeholders.

In Nepal, PAF helped establish the Nepal Transitions to Peace Initiative with USAID’s strong support. This initiative provided a forum allowing representatives of Nepal’s different political parties, ultimately including the Unified Communist Party of Nepal (Maoist), a U.S. Specially Designated Global Terrorist since October 2003, to discuss issues related to resolving Nepal’s two-decade old violent conflict.

Both the embassy and USAID staff were uncertain about whether funding could be used to support the travel of Nepalese and foreign advisors to attend vital confidential talks in New Delhi with Maoist representatives prior to Jana Andolan II. Prior to authorizing each trip, the embassy had to cable Washington for clearance allowing project funds to be expended to support travel by Nepalese and a senior technical advisor to the talks. In one instance, this clearance came in time to provide financial support to the trip. In another instance it did not, resulting in the cancellation of the senior technical advisor’s trip joining a critical interlocutor with the Maoists. That senior Nepalese interlocutor found himself calling the senior technical advisor by cell phone throughout the discussions in New Delhi, which detracted from the potential effectiveness of this rare opportunity.

3 Excerpted from USAID/Sri Lanka, Annual Report, FY 2005, June 16, 2005 http://pdf.usaid.gov/pdf_docs/PDACD906.pdf

The Project on Justice in Times of Transition

The Project on Justice in Times of Transition (PJTT), an international conflict resolution and diplomacy organization, has been working for nearly 20 years assisting leaders in divided societies that struggle with the effects of conflict and seeking reconciliation and societal change. PJTT facilitates direct contact with leaders who have successfully addressed similar challenges in other settings. Between 2005 and 2008, PJTT had an active program in Colombia. Originally PJTT came into Colombia to help the Ejercito de Liberacion Nacional (ELN) leadership increase support within the ELN to lay down their arms and enter normal life (ELN is listed as a terrorist organization). When the peace talks broke down, it focused on bridging the divide between the government of Colombia and the ELN with hopes of restarting the peace process. PJTT's programs were centered on sharing the experiences of senior leaders who negotiated the Central American Peace Accords and former Northern Irish paramilitary leaders who were part of the Good Friday Agreements with the principle actors involved in the Colombian government-ELN peace process. These former militants serve as examples of successfully negotiated ends to conflict. During small workshops and informal meetings with actors from both sides, participants highlighted the challenges of negotiating with their enemy, managing the transition from paramilitary organization to non-violent political party, disarmament and demobilization, as well as building political will for dialogue.

The Supreme Court's Humanitarian Law Project decision makes this type of work impossible for PJTT, despite its end goal of fostering a peaceful resolution to a 50-year-old conflict, a goal that matches the interests of the U.S. government. PJTT's work was encouraged by the U.S. Embassy in Bogota, which saw it as valuable, since the Embassy was unable to speak with the ELN itself. PJTT briefed the Embassy on its efforts and remained in close contact with them throughout the program. The ELN leadership said the workshops were incredibly useful as they sought to understand the personal experience of others who also wanted begin a peace process and how to plan for a future non-violent political role in Colombian society.

United States Institute of Peace (USIP)

In 2006 a deputy minister in the Palestinian Ministry of Religious Affairs asked USIP for help in training religious school teachers on non-violence and religious pluralism. USIP did not pursue the project because it quickly became apparent that it would require working with individuals with ties to Hamas. An opportunity to help reduce Hamas' belligerence was lost.

About five years ago when the Norwegian government was bringing the different parties in Sri Lanka together, a request from the LTTE passed through an intermediary to USIP asking it to provide training to LTTE leadership on conflict analysis and negotiating skills. Because of the material support restrictions, USIP was unable to respond positively.

University of Notre Dame's Kroc Institute for International Peace

George Lopez, the Rev. Theodore M. Hesburgh, C.S.C. Professor of Peace Studies at the University of Notre Dame's Kroc Institute for International Peace Studies, indicates⁴ the *Holder v. Humanitarian Law*

⁴ <http://www.americamagazine.org/content/signs.cfm?signid=474&comments=1#> Monday, July 19, 2010 by Catholic News Service

Project ruling puts some international peace organizations that collaborate with Catholic groups “in a very odd situation.” For example, “We're allowed to work with the Colombian bishops, but we're not allowed to work with them in the same room when they are working with (groups on the terrorist list),” Lopez told Catholic News Service in a telephone interview. “What happens to that relationship with the local bishops' conference or a local Caritas organization that's dealing with the rebels ... is there guilt by association? This ruling leaves that very, very nebulous.”

Historically Civil Society Has Made Positive Contributions to Peacebuilding

American Friends Service Committee (AFSC)

In the 1940s and 50s, the American Friends Service Committee (AFSC) maintained a strong commitment to engagement with Communist China. From 1946 through 1949, AFSC provided staff and supplied medical clinics in both communist and nationalist controlled areas during the civil war. After the communist victory in 1949, the U.S. refused to recognize the new regime and threw its military, economic and political support behind the Chinese nationalists based in Taiwan. However, through the Chinese members of the Friends Service Unit, AFSC maintained a presence in China until late 1951. At the height of the McCarthy era, AFSC shipped medical supplies to China, not directly from the U.S. but rather from Britain, where it went to Hong Kong and then to transfer into China. Throughout the 1950's and 60's AFSC invited the Communist Chinese regime to send young diplomats to the Quaker sponsored Conference for Diplomats program, a dialogue designed “to bridge international chasms and to help to bring about international understanding.” This program was held in Switzerland and AFSC was a key organizer and financial contributor. U.S. recognition of Communist China did not take place until 1971.

Africa Action (formerly the American Committee on Africa)

For 12 years during the 1960s and 1970s, Peter Weiss served as the President of the American Committee on Africa (now called Africa Action). Living in Riverdale, South Africa, he and his colleagues provided anti-colonial and anti-apartheid advocates with legal services, contacts with UN and U.S. officials and facilitated their lodging and communications. Some of these activists, including Oliver Tambo, the acting president of the African National Congress (ANC) while Nelson Mandela was imprisoned on Robben Island, were members of organizations included on the State Department's terrorist list. Many would go to become prominent officials in their home countries.

Summer Peacebuilding Institute at Eastern Mennonite University

Sue Williams, Director at the Summer Peacebuilding Institute at Eastern Mennonite University worked for peace for 20 years in Northern Ireland. At various points, both republican and loyalists groups were proscribed: the IRA, the INLA, and the UVF, among others. Working for Quaker Peace and Service, she met frequently with these groups, conveyed their views to politicians and government, and ensured that the proscribed groups knew about the range of views and options among political actors. Indeed,

the U.S. government sometimes played this role itself, particularly in engaging the IRA, both through the U.S. Consulate in Belfast and through the President's various St. Patrick's Day events in Washington. Part of this engagement was with the Irish Diaspora in the U.S., some parts of which had been (knowingly or not) funding arms purchases for the IRA, and ultimately transformed that funding into the International Fund for Ireland. Many of these contacts would be illegal under current legislation and current interpretation. Certainly, the U.S. government would not have played the constructive and sometimes creative role that it did play.