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Holy Land Mistrial: Judging a Designated Terrorist Entity

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Recently, the Palestinian Authority (PA) shut down several Islamic charity committees in the West Bank, stating that Hamas was using them as a means to transfer funds to the group's activists there. Meanwhile, on October 22, the U.S. federal trial of the Dallas-based Holy Land Foundation (HLF) and several of its officers -- accused of financing Hamas (a U.S.-designated terrorist group) by funding some of these same charities -- ended in mistrial.

The defendants and their supporters immediately trumpeted the verdict, claiming their innocence and arguing that the foundation's 2001 terrorist designation must be similarly flawed. Many other critics have also pounced on the outcome, charging the government with overreaching in a manner similar to other "failed" terrorism financing prosecutions. Although the mistrial was a major setback for the government, it was hardly the victory depicted by the defendants (who all remain under a standing indictment and are likely to be retried), and it will not affect Washington's previous blacklisting of the foundation.

Designation Process

The U.S. designation of HLF as a terrorist entity in 2001 was based on a significant body of evidence -- some classified, some public -- that the foundation supported Hamas. Such designations are the product of a robust interagency process that considers strength of evidence, diplomatic concerns, and many other factors. The evidentiary record produced to support a designation then undergoes several rounds of review by lawyers representing various U.S. departments. Although several designations have been challenged in court, not one has been overturned.

The Treasury Department produced the evidence against HLF in a seven-volume, 3,130-page, exhaustively reviewed administrative record. When this record was challenged in court, a federal district judge determined -- and an appellate court later affirmed -- that the evidence "provides substantial support for [Treasury's] determination that HLF acts for or on behalf of Hamas."

HLF made use of the ample opportunities to challenge the designation and submit material in its defense. According to the U.S. district court for Washington, D.C., the Treasury Department included in the record "a significant portion of HLF's evidence challenging [Treasury's] factual determination." The court also noted that HLF "was afforded an opportunity to submit further evidence to [Treasury], but failed to do so." In other words, whatever the final verdict in its criminal trial, HLF's terrorist designation stands on its own merits.

Defending a Mixed Prosecution Record

In charging that the HLF case was only the latest example of the government's overreaching, critics have also distorted the government's record in prosecuting terrorism financing cases. For example, in 2005, Sami al-Arian was in fact acquitted on most charges in a similar case in Tampa, Florida. Yet, he then pled guilty to conspiracy in providing funds or services to Palestinian Islamic Jihad.

Similarly, two men charged with financing Hamas were acquitted in a Chicago case earlier this year, but were convicted on lesser terrorism-related charges. Abdulhalim Ashqar, who was convicted of obstruction of justice and criminal contempt, was sentenced last week to 135 months in prison and a \$5,000 fine. The judge arrived at the sentence by applying sentencing guidelines in conjunction with the evidence that showed Ashqar's activities for, and knowledge of, Hamas. And in July, the other defendant in that case, Muhammad Salah, was sentenced to twenty-one months in prison for lying under oath in a civil trial concerning the murder of an American teenager in Israel by Hamas terrorists.

Other cases have been more successful. For example, Muhammad Shorbagi, a Georgia man who served as the local HLF representative, pled guilty and was sentenced to seven years in prison earlier this year for providing material support to Hamas through HLF. According to the Justice Department, Shorbagi "knew that some or all of the money was, in fact, destined for Hamas . . . in part because he was a Georgia representative for HLF and [had] attended HLF meetings at which high-level Hamas officials made presentations condemning Israel," and also because he "had hosted high-level Hamas officials at a Georgia mosque where he served as Imam."

Still, these cases clearly demonstrate the difficulties prosecutors face in attempting to convict individuals who provide material support to terrorist groups under the cover of humanitarian or political activity. Supporters do not simply write checks out to "Hamas," and it is extremely difficult to trace an American dollar to a terrorist's bomb. Fortunately, U.S. law does not require prosecutors to draw a definitive line between funds raised in the United States and buses blown up abroad -- giving money to any part of a designated terrorist organization is illegal.

HLF's Proven Ties to Hamas

In the HLF trial, defense lawyers argued that the government must designate each and every component of a "foreign terrorist organization" -- such as the Hamas-run charity committees in the West Bank and Gaza -- before funding them can be deemed illegal. But this should not be the case. Donors and charities have an obligation to ensure that they are not funding entities tied to designated terrorist organizations. The Holy Land Foundation funded charities publicly tied to Hamas by the PA, the Israeli government, the U.S. government, and even by senior Hamas leaders themselves.

Indeed, evidence presented at the HLF trial revealed that the foundation's leadership was well aware it was funding Hamas charities. For example, a 1991 report sent by an unindicted co-conspirator to HLF's chief executive officer, Shukri Abu Baker, specifically listed charity committees controlled by Hamas: Ramallah Zakat and the Islamic Charitable Society of Hebron were described with the phrase "All of it is ours"; the Jenin and Qalqiliya Zakat committees were noted as "guaranteed." Later, at a 1993 meeting featuring HLF officials, Muin Shabib, a member of Hamas's terrorist Qassam Brigades, categorized the institutions tied to Hamas as educational, social, charitable, cultural, medical, and religious. He then proceeded to name specific charities and organizations that he described as "our institutions." At the top of the list was "The Islamic Complex," a well-known Hamas institution funded by HLF.

Conclusion

Without a doubt, terrorism financing cases are difficult to prosecute. But the failure of the Dallas jury to reach a decision on HLF the first time around is no exoneration -- it is simply an initial setback in an ongoing case. The prospect of a retrial should make the defendants very nervous, given the extensive evidence indicating that the foundation's leadership was well aware it was funding Hamas charities. And whatever the outcome of the next round of court proceedings, the foundation's terrorist designation will continue to stand.

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