

Conflict Prevention and Resolution Forum

Tuesday, April 13, 2004
Rome Auditorium
School of International Studies (SAIS)
Johns Hopkins University

NGO Operations and U.S. Anti-Terrorism Statutes

Speaker: Roger G. Weiner (a short Biography of Mr. Weiner can be found in Appendix A)

Mr. Weiner states that his objectives today are: 1. To talk informally about anti-terrorism financing statutes and to explain how the problem of terrorist financing, which was festering for some time, required U.S. action in 1996; 2. To talk about how these statutes can impact the NGO community; and 3. to talk about the international response.

I. Statutes:

Sec. 2339A. - <http://www4.law.cornell.edu/uscode/18/2339A.html#FN1SRC>

Mr. Weiner said that this statute made it very hard for the U.S. Government to successfully prosecute, since first it must: 1. Prove that the defendant has given support to a Foreign Terrorist Organization (FTO); 2. That the support given went to support terrorist activity

Sec. 2339B. - <http://www4.law.cornell.edu/uscode/18/2339B.html>

2339B Made it a crime in 1996 for a U.S. entity to *knowingly* provide material support or resources to an organization designated by the Secretary of State as a terrorist organization

Of interest: As used in this section, the term "material support or resources" means currency or monetary instruments or financial securities, financial services, lodging, training, expert advice or assistance, safehouses, false documentation or identification, communications equipment, facilities, weapons, lethal substances, explosives, personnel, transportation, and other physical assets, except medicine or religious material

Background: With no existing list and no model to work from, the designation process was begun in 1996. The Secretary of State choose groups believed to be engaged in terrorist activity, gathered a supporting administrative record, consulted with the Secretary of the Treasury and the Attorney General and then proposed the designations to Congress. The supporting administrative records could include classified information, open source materials, grand jury information or any other acquired materials. After submission of the list to Congress, there is a one-week period for objections. In October of 1997, the Department of State notified Congress of its intention to designate 30 groups

as foreign terrorist organizations. The designations last two years, and after that period must be re-designated or they lapse and fall off the list. There are currently 37 groups on the list. (*See Appendix B for current list of terrorist organizations*)

Foreign Terrorist Organizations based in the U.S. are given due process in accordance with Constitutional requirements as imposed by the courts and by the Antiterrorism and Effective Death Penalty Act. Due process generally requires designees with a US presence be afforded an opportunity to present information to the Secretary of State that counters the notion that the organization is a proper candidate for designation.

<http://www.ustreas.gov/offices/eotffc/ofac/legal/statutes/aedpa.pdf>

The Impact of Being Designated as an FTO

18 U.S.C. 2339B makes it a crime for individuals or entities subject to U.S. law to knowingly provide resources to a designated foreign terrorist organization (FTO). . Members of a designated FTO can be deported or denied entry into the United States. U.S. companies or organizations that have custody of assets in which an FTO has an interest must immediately freeze the asset and notify the Treasury. A new development is that FTOs operating as non-profits will have their 501(c)(3) tax deductible charitable status revoked.

Most NGO's are subject to this statute and so cannot knowingly provide material support or resources (currency, monetary instruments, financial services, lodging, training, facilities, weapons, transportation, expert advice, personnel, *etc.*) or anything of value, to a FTO. The only exceptions are medicine or religious materials. Under AEDPA, even if an FTO is providing humanitarian assistance, if material support goes to an FTO, regardless of its intended purpose, it is a crime.

International Emergency Economic Power Act (IEEPA)

This act gives the President power to identify national security emergencies and then impose economic sanctions. For example, in 1995, the Middle East peace process was identified as an important national security concern and those who threatened this process were subject to sanctions under IEEPA. Under this act and its implementing Executive Orders, both entities and individuals can be designated, not just groups or organizations. To date, more than 400 organizations and entities are listed and subject to sanctions under the Executive Order 13224, issued in September 2001 and declaring a national emergency as the result of global terrorism. The E.O and the list of specially designated global terrorists can be viewed on the Treasury Department's website www.treas.gov/ofac or through a commercial website maintained at www.ofacompliance.com . This last list gives immediate notification if a group is placed on any of the IEEPA lists.

As a result of being placed on the OFAC list, any assets held by a custodial financial institution are immediately blocked. The assets are not seized, but are frozen and cannot be moved. Besides money, these assets can include real estate, rights of possession or any interest value. To date, \$138 million in assets have been blocked pursuant to E.O 13224. Anyone who is willfully involved in a transaction with a blocked entity is guilty of a crime. 50 U.S.C. 1705.

The US government relies on the authorities of IEEPA to implement UN Resolution 1373, which requires countries that are members of the UN to block the assets of terrorists and terrorist organizations. It is broadly accepted by the international community and expands the IEEPA worldwide.

II. NGOs and the Potential Threat They Pose in a Terrorist Environment

The government considers NGOs to be a great asset as long as they operate within the law. With a few exceptions, most cases of NGOs providing assistance to terrorists and terrorist organizations have been instances of unwitting assistance.

The presence of NGOs gives people a reason to be in areas that are home to and experience terrorist activity. NGOs give their members/employees reason to travel between these areas and could provide cover for those assisting terrorists. The fiscal infrastructure of an NGO can be used unwittingly or wittingly by terrorist groups, as can the established communications infrastructure, office space, contacts, business partners/relationships and fundraising mechanisms.

The U.S. Response

The US government's objective is to prevent NGOs from either wittingly or unwittingly providing assistance to terrorist groups. The government is trying to educate organizations on these potential problems and encourage them to take steps to prevent it from happening. There is a multi-pronged approach to dealing with this issue:

1. The first is to require NGOs that accept grants from USAID to certify that they have not, are not, and will not have relationships with terrorist organizations. Grantee NGOs should institute a process that enables them to make the required certification. The grantee must certify to the US government to guarantee there is no affiliation to a terrorist group. A certification form is now part of every USAID grant agreement. AADP 04-07 revises certification regarding terrorist financing. A copy of the new certification was distributed to program participants and a copy of the certification can be found on the USAID website or at:

http://www.pngo.net/activities/cond_funding/Certification_Terrorist_Financing.pdf

2. The second possible prong of the US government's response is to initiate internal vetting by various agencies of the U.S. government. When the granting agency and the grantee identify the parties to be involved in the project, they will notify the government which will compare the names with appropriate intelligence databases.

3. The third possible prong of the US response is to add a termination for convenience provision, which allows the US to terminate a grant for the convenience of the government. This provision should allow the government to end a grant agreement without revealing classified upon which it is relying to make that decision.

This multi-pronged approach is not finalized.

III. The Institutionalization of the Approach

In addition to UN Resolution 1373, the G8 and OAS have similar approaches regarding the financing of terrorist activities.

IV. Q & A with Mr. Weiner (*Though questions were asked throughout Mr. Weiner's presentation, they appear here in succession for reference purposes*)

1. Question: Hypothetically, if one of the Alliance's member organizations who was working in the Middle East, offered an FTO training on how to settle arguments peacefully, would this be a violation of 18 U.S.C. 2339B?

1. Answer: It could be, depending on whether the organization providing training was subject to US jurisdiction, and if they were knowingly providing material support.

2. Question: Conflict Resolution activities may engage terrorists in a confidence-building roundtable. Is that training? What is the definition of training in these circumstances?

2. Answer: We define training as broadly as possible, but we also reserve prosecutorial discretion. While this may not be as comforting to you, remember that we understand your objective, and if we recognize the legitimacy of these objectives then it is extremely unlikely that anyone will ever bring charges. However, you must be careful to take steps to protect your organization from criminal culpability.

3. Question: When and how often is the FTO list reviewed? How long is the process for designation?

3 Answer: Every October, the department takes action to re-designate the original group of 30. However, organizations are added to the list whenever it is necessary. Once a group has been on the list for 18 months, a decision is made whether to renew the designation. The process itself is an elaborate and time-consuming project. Materials must be collected to substantiate that the group is foreign, engaged in terrorist activity and that such activity threatens the national security of the United States or the safety of U.S. nationals. This process is so time-consuming that Congress is being asked by the administration to extend the designation period from two years to six years with an annual review.

4. Question: Can the government just tell NGOs what activity is allowed (ex. conflict prevention trainings, workshops)?

4. Answer: The U.S. Government is not specifically targeting NGO's for prosecution under this statute, but the government generally does not offer advanced immunity for activity in such circumstances which may violate the law. Organizations are responsible for making sure they do not break the law. Advice should be sought from legal counsel. Of course, prosecutors generally do not want to bring charges against people or organizations promoting peace. It is advisable that NGOs take steps to prevent abuse by terrorist groups and to ensure that they are working to protect the organization and recipients from criminal prosecution.

5. Question: Can you give some practical advice on how to comply with the anti-terrorism statutes?

5. Answer: Organizations should run through the materials I distributed to ensure no one they are working with is listed. They should add a due diligence component to the review process and make it a policy to know their grantees/contractors. It is also important to keep a clear record of the steps your organization has taken to prevent any problems and it helps to have a systemic and institutionalized approach to compliance. There should be the best possible effort made to prevent abuse. In the government's view, willful blindness equals knowledge.

6. Question: Are there actions the banking industry is taking that might serve as a model for NGOs?

6. Answer: Every US based financial institution must have someone dedicated to anti money laundering compliance.

* There is a study "Tracking the Money 101" by John Fosset of USIP that would be useful (email grants@usip.org for a copy).

7. Question: What can NGOs use as a resource when putting together compliance standards?

8. Answer: It is helpful to have people with expertise in this area, such as the USAID counsel's office. The Department of Justice can provide very limited guidance. It is important to get advice from people you trust and who are knowledgeable about the law. There is also a Handbook on Counter Terrorism Actions on the InterAction website, the Red Flags for Financial Transactions (handout) and the Council on Foundations website has a best practices document available. In addition, the Financial Action Task Force (FATF) on Money Laundering has a best practices paper regarding its special recommendation #8 for nonprofit organizations and charities, which can be found at www1.oecd.org/fatf/pdf/SR8-NPO_en.pdf

9. Question: What do you do if you suspect someone of having ties to a terrorist organization? What do you do about the duplicate name problem?

9. Answer: You should contact the FBI if you suspect someone of being a part of or aiding a terrorist organization. People abroad can contact the FBI Legal Attache in most U.S. embassies. Those in the States can contact the FBI field office for their area or FBI HQ in Washington. There are mechanisms to deal with the duplicate name issue. Before putting a common name on the list, OFAC will try to include other identifying factors (such as birth date, Social Security number, etc.)

Disclaimer: These notes appear as an informal interpretation by rapporteurs Tamlin Bason and Noel Dingboom. This report should be treated as information, rather than attribution.

Appendix A

ROGER G. WEINER rejoined the United States Department of Justice's Criminal Division in 1997 to lead its Counterterrorism Section in planning and implementing strategies to detect, deter, prevent and punish terrorist financing under the Antiterrorism and Effective Death Penalty Act of 1996, and later, under the USA PATRIOT Act. He is also involved in other anti-terrorist financing matters, including bi-lateral and multi-lateral *fora*, such as the United Nations, the Organization of American States, and the Financial Action Task Force on Money Laundering (FATF). He supervises terrorist prosecutions in the north/central region of the United States as Regional Coordinator of the United States Attorneys' Antiterrorism Advisory Councils.

From 1991 to 1997, Mr. Weiner was the Deputy Director of the Treasury's Office of Financial Enforcement and the Assistant Director of the Treasury's Financial Crimes Enforcement Network (FinCEN), where he administered and enforced the Bank Secrecy Act (BSA), the cornerstone of the U.S. anti-money laundering program. Before joining the Treasury, Mr. Weiner was a trial attorney in the Department of Justice's Money Laundering and Asset Forfeiture Sections and served extended terms as a Special Assistant United States Attorney in the District of Columbia and in the District of Puerto Rico.

Mr. Weiner has written and lectured on terrorist financing, financial crime, money laundering and asset forfeiture. His publications include, *Money Laundering and Terrorist Financing*, U.S. Department of Justice, (February 2002), co-authored with David Nissman, et al; and *The Financing of International Terrorism*, The Money Laundering Monitor, United States Department of Justice (June 2000). Mr. Weiner graduated with honors from the University of Santa Clara School of Law and from the State University of New York at Buffalo.

He is a member of the bars of the State of California, the Northern District of California, and the United States Supreme Court.

Appendix B

Compilation of Designated Foreign Terrorist Organizations

1. Abu Nidal Organization (ANO)
2. Abu Sayyaf Group
3. Al-Aqsa Martyrs Brigade
4. Armed Islamic Group (GIA)
5. Anar al-Islam
6. Asbat al-Ansar
7. Aum Shinrikyo
8. Basque Fatherland and Liberty (ETA)
9. Communist Party of the Philippines/New People's Army (CPP/NPA)
10. Gama'a al-Islamiyya (Islamic Group)
11. HAMAS (Islamic Resistance Movement)
12. Harakat ul-Mujahidin (HUM)
13. Hizballah (Party of God)
14. Islamic Movement of Uzbekistan (IMU)
15. Jaish-e-Mohammed (JEM) (Army of Mohammed)
16. Jemaah Islamiya organization (JI)
17. al-Jihad (Egyptian Islamic Jihad)
18. Kahane Chai (Kach)
19. Kurdistan Workers' Party (PKK)
a.k.a. Kurdistan Freedom and Democracy Congress (KADEK)
20. Lashkar-e Tayyiba (LT) (Army of the Righteous)
21. Lashkar i Jhangvi
22. Liberation Tigers of Tamil Eelam (LTTE)
23. Mujahedin-e Khalq Organization (MEK)
24. National Liberation Army (ELN)
25. Palestinian Islamic Jihad (PIJ)
26. Palestine Liberation Front (PLF)
27. Popular Front for the Liberation of Palestine (PFLP)
28. PFLP-General Command (PFLP-GC)
29. al-Qa'ida
30. Real IRA
31. Revolutionary Armed Forces of Colombia (FARC)
32. Revolutionary Nuclei (formerly ELA)
33. Revolutionary Organization 17 November
34. Revolutionary People's Liberation Army/Front (DHKP/C)
35. Salafist Group for Call and Combat (GSPC)
36. Shining Path (Sendero Luminoso, SL)
37. United Self-Defense Forces of Colombia (AUC)

Appendix C

Attendees:

David Shipler
Steve Riskin
Joseph McGhee
Mike Van Hall
Roz Grace
David Flickinger
Stephanie Young
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Ona Dosunmu
Lucy Brown
Leah Oosterhouse
Marta Seres
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Daisy Francis
April R. Hall
Judy Barsalou
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European Commission
NAS
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American Red Cross
World Vision
Lutheran World Relief
Nat'l Peace Foundation
Catholic Relief Service
USIP
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