

# Implications of Counter-Terrorism for Conflict Resolution and Human Rights Work



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# Holder v. Humanitarian Law Project:

On June 21, 2010, a divided U.S. Supreme Court upheld the material support statute that bans support to designated terrorist organizations, even when that support involves using pure speech to resolve disputes through nonviolent means.

Ruling means Congress CAN make this the law, NOT THAT IT MUST BE THE LAW.



# Impact

- At first look, no change.
- But: focus for reform moves from courts to Congress and the administration.
- There are no loopholes in the HLP decision.  
Opinion talks about limiting the decision's reach to "coordinated" communications, but this is ineffective in the field.

## More impacts: Limits

- back channel communications to bring parties to conflict together
- arranging meetings, logistics
- facilitating use of international and other official bodies for proscribed groups to address grievances
- negotiating release of hostages and child soldiers
- entering territory in order to remove landmines
- U.S. staff working for peace groups based in other countries

# Prohibited “Material Support”

## Definition:

“any property, tangible or intangible, or **service**, including 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** (1 or more individuals who may be or include oneself), and transportation, ***except medicine or religious materials.***”

## Source:

18 U.S.C. 2339 A and B

Anti-Terrorism and  
Effective Death  
Penalty Act of  
1996, as amended  
in 2001 and 2004  
(AEDPA)

# Definitions of Key Terms

- **Expert advice and assistance:** advice or assistance derived from scientific, technical, or other specialized knowledge
- **Training :** instruction or teaching designed to impart a specific skill, as opposed to general knowledge
- **Personnel:** one or more individuals who may be or include oneself. A person must “work under that terrorist organization’s direction or control or to organize, manage, supervise, or otherwise direct the operation of that organization” to be found in violation.

# Knowledge Requirement and Sanctions

For conviction of a crime or listing by Treasury Department law requires:

- knowingly provide material support or resources to a foreign terrorist organization, or attempts or conspires to do so.
- A person must have knowledge that the organization is a designated terrorist organization that has engaged or engages in terrorist activity oethat the organization has engaged or engages in terrorist activity.

Penalty/Sanction:

- For criminal conviction fined or imprisoned not more than 15 years, or both, a
- If the death of any person results, imprisoned for any term of years or for life.

# Threat to Knowledge Requirement

Jury Instructions in Holy Land Foundation  
criminal case:

Allowed conviction if HLF assisted NON-listed  
group that was controlled by Hamas,

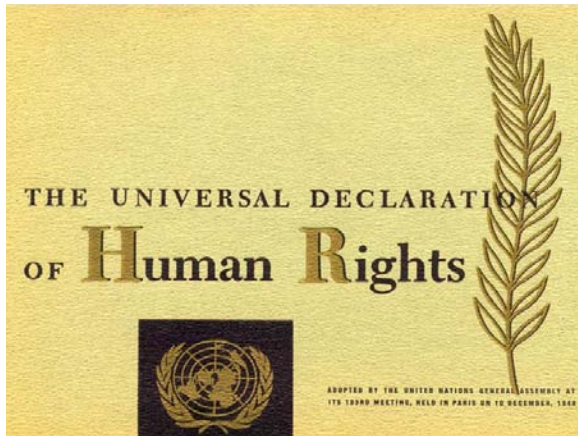
WITHOUT proving HLF officials knew or should  
have known of Hamas connection



# Material Support cont'd

- All support is presumed to further a listed organization's terrorist operations, regardless of its character.
- Exceptions are not permitted for humanitarian aid such as food, water, etc.
- The Secretary of State and Attorney General may approve exceptions for aid for "training," "personnel," and "expert advice or assistance"

# Conflicts with Human Rights Standards



- Non-discrimination in delivery of services and benefits, including factors such as ethnicity, religion, opinion, national origin, or the political or international status of the nation to which a person belongs (Article 2)
- Freedom of expression and communication (Article 19),
- Freedom of peaceful assembly and association (Article 20) and
- Participation in the democratic process (Article 21).

# International Covenant on Civil and Political Rights

limits restrictions that can be placed on:

- freedom to practice and express one's religion or beliefs (Article 18. 3) and
- protection of the right to freedom of association with others (Article 22.1).

# Proposals for Reform

- Sec of State exemption under current law: must be a general exemption
- Legislative fix to material support laws
- Executive Order



# Model Policy

Allow U.S. organizations and citizens to engage in nonviolent peacebuilding programs, assist groups wishing to use legal means to address their grievances

Permit humanitarian aid when such aid:

- is conducted in accordance with long-accepted standards of charitable practice, such as the Code of Conduct for the International Red Cross Red Crescent Movement and NGOs in Disaster Relief and the *Principles of International Charity*
- is provided only to noncombatants in need, with priority to the most vulnerable, and
- when contact, communications and logistical arrangements with a listed organization cannot reasonably be avoided

# The Political Climate



Executive Branch: Anniversary of Cairo speech passes without reform



Congress: First oversight hearing puts issue on the record, bill to be introduced



Supreme Court ruling upholding material support law against constitutional challenge is widely criticized

# CSN's Reform Campaign

U.S. Nonprofits  
Developed Model  
Standards and  
Policies

Advocacy Campaign  
Underway



# Reform agenda includes:

Adequate humanitarian exemption

Clear standards and proportional sanctions

Fair procedures to respond to charges of supporting terrorism

Replace freezing funds with UK style conservators to supervise charity





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