

Statement of
The Honorable Patrick Leahy

United States Senator
United States Senate
September 21, 2011

I commend Senator Whitehouse for convening this hearing today, and thank the witnesses for their testimony. The investigation of terrorist financing activities is a critical element of preventing and prosecuting terrorism, and yet tracking funds can be difficult and time intensive. The 9/11 Commission reported that al Qaeda moved, stored, and spent money in traditional ways as it plotted the 9/11 attacks. Its tradecraft was not particularly sophisticated and yet it eluded detection. Al Qaeda also allegedly engaged in illegal activities to finance its organization, such as trafficking in drugs, or trading in hard-to-trace commodities like "blood diamonds." As difficult as it may be in this arena, a tried and true investigative tool is to follow the money, and that is what our terrorist financing laws must enable us to do.

I strongly support the efforts of Federal law enforcement to investigate and prosecute terrorist financing, and I want to ensure that our investigators have the tools they need to prevent and prosecute illegal acts. I fully agree with the Department of Justice that the prohibition on material support for terrorism, including financing, is an important counterterrorism tool, and one that has brought many terrorists and supporters of terrorists to justice. However, the material support law has been modified repeatedly over the past decade, and is now so broad that it imposes unintended constraints on legitimate humanitarian assistance efforts.

This past summer, as U.S.-based humanitarian relief agencies tried to respond to the famine in Somalia, many expressed genuine fear that those agencies would run afoul of the law if some of their aid was diverted, without their knowledge, to al-Shabab, an al Qaeda affiliate in Somalia. A great deal of energy was expended seeking a solution as the famine put lives in grave danger. I commend the State Department and the U.S. Agency for International Development for requesting a license from the Treasury Department so that relief agencies receiving funds from the U.S. Government could operate in Somalia without violating the law. But this will not be the only humanitarian emergency we face. We need greater clarity in the law so that, in the future, Government officials and reputable humanitarian relief agencies need not delay the delivery of desperately needed aid while they scramble for a license.

The material support for terrorism law also limits the actions of individuals and non-governmental organizations engaged in unofficial diplomacy and peace building. These actors often engage in informal negotiations that serve United States interests, and pave the way for formal settlements of conflicts. The Supreme Court's 2010 ruling in *Holder v. Humanitarian Law Project* left many individuals and organizations uncertain as to the scope of permitted activity under the law because their activities might be construed as providing expert advice and assistance to terrorist groups. These groups have sought clarification from the Departments of State and Justice. The Department of Justice recently stated in a letter to me that it has not prosecuted individuals or entities engaged exclusively in legitimate good-faith efforts to promote the peaceful resolution of conflicts. That is welcome news, but I believe the Attorney General should issue prosecutorial guidelines that remove the uncertainty over the scope of the material

support law and establish a process by which actors may seek exemptions. I ask unanimous consent to include my exchange of letters with the Department of Justice in the Record. Today's hearing provides an excellent opportunity to explore how our terrorism financing laws are working and how they might be modified, both to prosecute nefarious criminal acts and to protect innocent humanitarian activities. We can do both, and I look forward to working with the witnesses to address these issues.

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