

Congressional Testimony

A Dangerous Nexus: *Terrorism, Crime, and Corruption*

David Asher
Board of Advisors Member
Center on Sanctions and Illicit Finance, FDD;
Adjunct Senior Fellow
Center for a New American Security

The House Committee on Financial Services
Task Force to Investigate Terrorism Financing

Washington, DC
May 21, 2015



Center on Sanctions
& Illicit Finance

FOUNDATION FOR DEFENSE OF DEMOCRACIES

1726 M Street NW • Suite 700 • Washington, DC 20036

Chairman Fitzpatrick, Vice Chairman Pittenger, Ranking Member Lynch, and other distinguished members of the Committee, I want to commend you for forming a task force to take up the subject of terrorism financing. It is one of the most important subjects of inquiry for U.S. and international policy and an area where your attention to the details can have a substantial impact.

Over the last twenty years, I have been honored to be an active participant in a number of U.S. Government efforts to pursue the financial networks of terrorist groups, trans-national criminals, and state level adversaries. In this time, I have witnessed a veritable revolution in policy toward terrorism financing with the development and deployment of a wide range of tools, capabilities, and special measures that have been game changers. Moreover, our government has developed a cadre of counter threat finance Jedi knights who work tirelessly and selflessly in the shadows to follow the money of our most potent opponents and counter, protect, deter, and disrupt their ability to sustain their malevolent financing efforts. I have no doubt that the policies developed and efforts undertaken have had a substantial and positive effect at a disproportionately low cost to the American taxpayer.

This said, I am greatly concerned that our nation's legal and regulatory enforcement framework for counter threat finance has not kept up with the scale, scope, and sophistication of terrorism financing version 2.0. Version 2.0 represents a vast evolution above and beyond the traditional religious charities, mosques, and jihadi financiers and involves a substantial embrace of trans-national organized crime, trade based money laundering, and clandestine international business activity by terrorists groups. Despite protracted, carefully planned, and well-executed efforts, the U.S. and other governments are having insufficient success in countering, let alone substantially disrupting, trade based money laundering and financing schemes, even those which flow directly through the United States.

In this regard, I want to briefly highlight an interagency initiative to counter the narco-terror finances of Lebanese Hezbollah. I will be speaking from a personal perspective based strictly on information in the public eye and in no way will be conveying the views of any government department or agency.

Beginning in 2007, the Drug Enforcement Administration (DEA) began an undercover investigation into Lebanese money laundering for Colombian drug cartels called Operation Titan. Via this investigation, DEA uncovered a multi-billion dollar per year trade-based scheme for laundering the proceeds of tens of tons of Colombian cocaine being trafficked primarily in Europe but reaching as far afield as Australia. The laundering scheme involved the purchase of tens of thousands of used cars in the U.S. and Europe for export to car parks in West Africa, as well the purchase of electronics and textiles in China and Southeast Asia for export to the free trade zones in Panama and Curacao. Detailed analysis of commercial records from the trade based schemes reveals that neither is more than marginally profitable. If there were not huge amounts of dirty funds to be placed and laundered, the schemes would not be self-sustaining.

The scheme centered on the \$80 billion dollar Lebanese banking system—one of the world's largest offshore-dollarized financial centers, which historically has enjoyed unfettered access to the U.S. banking system. What made the Lebanese money laundering scheme truly new and

different to the DEA was the discovery over the course of the investigation that it was under the command and control of a global network of agents, officials, and business affiliates of Lebanese Hezbollah who had partnered with Colombian, Venezuelan, and Mexican cartels. In the middle of the money laundering conspiracy was the fastest growing bank in Lebanon, which, perhaps not surprisingly, had the fastest growing banking system in the world, even in the wake of the war in 2006 and an international financial crisis. That bank was the Lebanese Canadian Bank (LCB). LCB was a \$5.5 billion bank that was processing well over a billion dollars per year in illicit payments for money laundering drug Kingpins, including Ayman Joumaa, who represented the Colombian cartels and worked with both the Sinaloa and Los Zetas drug cartels. As court documents later illuminated, LCB was thoroughly infiltrated by Hezbollah and held over 249 accounts that Lebanon's Special Investigation Commission later identified as part and parcel of Hezbollah's global illicit financial web. LCB and Hezbollah could not be separated.

Moreover, over the course of the unclassified investigations and through revelations on mysterious websites such as www.stop910.com, it became increasingly clear that the element within Hezbollah that exercises control over the external illicit network and derives huge benefit from its activities apparently is none other than the infamous "Security Apparatus" that oversees military operations, domestic security, and external terrorism operations. Thus, not only was trade based money laundering benefiting the Hezbollah movement, but it represents the largest material support scheme for terrorism operations in the world. It appears that, for Hezbollah's External Security Organization, crime has become a valuable tool for spreading the resistance, encouraging the Shia diaspora to clandestinely provide their support in exchange for material gain. Drug trafficking also serves as a valuable tool for intelligence penetration and collection.

In spring of 2010, DEA began constructing a takedown strategy against the Lebanese Canadian Bank, affiliated exchange houses, the car parks, and the complicit used car brokers in the United States. I served as DEA's advisor in constructing the strategy, and we worked extremely closely with colleagues at the Department of Treasury, State, SOCOM, CBP, and the FBI. We created a true "effects based" counter threat finance and global enforcement strategy that harkened back to the work of the interagency taskforce I had led during the North Korean Illicit Activities Initiative from 2001 to 2005. Indeed, for the first time since the North Korea initiative, Treasury decided to revive the use of Section 311 of the USA Patriot Act and cut the Lebanese Canadian Bank off from the U.S. financial system, just as we had severed Banco Delta Asia's links to the U.S. in 2005 to considerable effect.

Over the course of 24 months, DEA and Treasury unleashed the financial furies against the Hezbollah money laundering network, while CBP and OFAC froze assets and access for Lebanese criminals tied to the scheme in the United States. In late January 2011, Ayman Joumaa was designated as a drug Kingpin for "laundering as much as \$200 million per month" through LCB and other Hezbollah affiliated channels. Simultaneously, the Lebanese exchange houses and the West African car parks central to the scheme were designated by OFAC. Then, in February 2011, Treasury designated LCB under Section 311. This triggered bank runs and panic inside LCB, and within three weeks the bank headed into state receivership.

Hezbollah, which had long acted with near financial and political impunity inside Lebanon, was rocked by the actions. However, this was only the start. In December 2011, the Southern District

of New York unsealed a historic \$483 million dollar civil forfeiture action against LCB. The 60-page forfeiture complaint, which deliberately reads like a criminal indictment, provides incredible detail on how LCB, the exchange houses, and the car parks were controlled by and provided systematic material support to Hezbollah. In August 2012, the DOJ sprang to action again, seizing \$150 million from a U.S. correspondent account of a Lebanese bank at which proceeds of the fire-sale of the Lebanese Canadian Bank were on deposit. The effort continues to this day, with DEA and partners in Europe, Australia, and Africa arresting dozens of drug traffickers and key super facilitators as well as seizing over 20 tons of cocaine.

By most signs the counter Hezbollah illicit financing effort was a great success. There was tremendous interagency cooperation. Law enforcement was applied strategically. Treasury yet again demonstrated that its authorities play an essential role in the deep fight against terrorists and their networks. State provided support at the highest of levels, including in the Office of the Secretary. And for those doubting Thomas's in the IC who may question that such a thing as narco-terrorism exists, a critical lesson should have been learned.

However, I'm here to deliver some bad news. Hezbollah's trade based laundering scheme has only expanded since the designations. Based on commercial imagery, the designated car lots in Benin have more cars in them than ever before. Based on commercial data records, the ownership of the lots has changed, but by all signs they remain under the Hezbollah network (and have the same phone, fax, and P.O. Box numbers). Worst of all, the trade statistics indicate that the amount of U.S. used cars being exported to Benin has increased dramatically, by one measure nearly doubling since 2011. As one of my friends in law enforcement quips, the narco-terrorists are laughing at us.

To defeat narco-terrorism financing, including that running right through the heart of the American financial system, we need better laws, better enforcement, and, frankly, humility when our strategy isn't working. This work isn't easy. The bad guys know our laws, our legal thresholds, and our insufficient resolve to upset the Lebanese banking system. They, not we, have the upper hand currently.

We can regain the high ground and crush this scheme while also improving our AML (anti-money laundering) enforcement efforts writ-large. I propose the temporary designation of the jurisdiction of Benin under Section 311 of the USA Patriot Act, imposing special measures one and two. Together these would require special record keeping and enhanced customer due diligence in regard to the used car trade as a class of transactions. I further advocate that special measure five (which can cut a bank or jurisdiction off from the US entirely) be threatened, unless and until the Beninese government can prove that Hezbollah is no longer extracting benefit and laundering narcotics funds through the used car trade with the US. Moreover, I believe Section 311 should be invoked against Lebanon's banking system with regard to the used car trade as a specific class of transaction and that special measures one, two, and four (related to the use of correspondent accounts of banks in the US) be imposed until such a time that the Secretary of the Treasury can verify that Lebanon is no longer acting as a banking safe haven for Hezbollah trade based money laundering schemes being carried out via the United States.

In addition to the strategic use of 311 to safeguard our nation's financial system from money laundering and terrorism financing, I commend the House for passing H.R. 2297, the "Hezbollah International Financing Prevention Act of 2015" and urge your Senate colleagues to do the same. This important piece of legislation contains numerous reporting requirements that will help compel the administration to crack down further on Hezbollah's illicit financial and operational networks around the world. Finally, I support a number of broader measures to help update our legal and regulatory infrastructure for anti-money laundering and financial law enforcement against terrorist groups. These steps include a revision of the Bank Secrecy Act to facilitate anti-money laundering data sharing among banks, the creation of a Federal watch list portal for terrorism financing and financiers that can be accessed by cleared bank Financial Intelligence Units, and the revival of DEA CENTAC task forces to take on trans-national criminal networks.

RICO

Drawing on the evidence gathered during the investigation of the Lebanese Canadian Bank and from over forty years of terrorist acts committed and documented against Americans, the Department of Justice should seek to indict and prosecute Hezbollah's Islamic Jihad Organization/Security Organization/"Military Wing" under The Racketeer Influenced and Corrupt Organizations Act (RICO).

The Racketeer Influenced and Corrupt Organizations Act (RICO) provides for extended criminal penalties and a civil cause of action for acts committed as part of an ongoing criminal organization. The RICO Act, unlike other federal statutes, provides law enforcement officials with the ability to charge the leaders of an organization with crimes that they orchestrated, directed and controlled. To that end, it also provides the context to charge unrelated individuals in the same conspiracy, as long as they are acting on behalf or at the direction or control of the organization. RICO includes "hub and spoke" conspiracies where one person or entity, the "hub," has different conspiratorial agreements with various "spokes" – i.e., people who sometimes have nothing to do with each other. In this case, Hezbollah as an organization is the hub and each co-conspirator is a different spoke. The significance is that separate spokes don't have to be aware or compliant with other spokes, only the hub – though, in the particular case of Hezbollah's illicit activities, there are countless examples of connectivity between the spokes. The hub does not have to be a single person and instead can be identified as leadership figures with the ability to make decisions on behalf of the group.

For example, if Hezbollah had agreements with forty different weapons providers, money launderers, drug traffickers, etc., their agreements would constitute their role as the hub. Hezbollah and their leadership are the one common entity among all of the agreements. On the surface, the spokes have nothing to do with each other; yet they all have agreements with the hub. Therefore, in this example, Hezbollah has forty different ongoing conspiracies which, without RICO, would mandate prosecutors to prove forty separate conspiracies. The RICO statute was passed by Congress to thwart this criminal isolation, allowing prosecutors to prove that the individual or organization (in this example Hezbollah) had a conspiracy with one of the spokes, and based on that agreement, all forty spokes could be successfully charged if in compliance with the guidelines more specifically described below.

Any person who has committed at least two acts of racketeering activity within a 10-year period that are related in one of four specified ways to an "enterprise" could be charged under the RICO statute. In addition, the racketeer (Hezbollah and its leaders) must forfeit all ill-gotten gains and interest in any business gained through a pattern of "racketeering activity." Despite its harsh provisions, a RICO-related charge is considered less problematic to prove in court, as it focuses on patterns of behavior as opposed to criminal acts.

The meaning of racketeering activity is set out at 18 U.S.C. § 1961. As currently amended it includes:

- Any violation of state statutes against gambling, murder, kidnapping, extortion, arson, robbery, bribery, dealing in obscene matter, or dealing in a controlled substance or listed chemical (as defined in the Controlled Substances Act);
- Any act of bribery, counterfeiting, theft, embezzlement, fraud, dealing in obscene matter, obstruction of justice, slavery, racketeering, gambling, money laundering, commission of murder-for-hire, and many other offenses covered under the Federal criminal code (Title 18);
- Embezzlement of union funds;
- Bankruptcy fraud or securities fraud;
- Drug trafficking;
- Criminal copyright infringement;
- Money laundering and related offenses;
- Bringing in, aiding or assisting aliens in illegally entering the country (if the action was for financial gain);
- Acts of terrorism.

There must be one of four specified relationships between the defendants (spokes) and Hezbollah (hub). The relationships are defined as:

1. the defendants invested the proceeds of the pattern of racketeering activity into the enterprise; or
2. the defendants acquired or maintained an interest in, or control over, the enterprise through the pattern of racketeering activity; or
3. the defendants conducted or participated in the affairs of the enterprise "through" the pattern of racketeering activity; or
4. the defendants conspired to do one of the above.

The U.S. Supreme Court has instructed federal courts to follow the continuity-plus-relationship test in order to determine whether the facts of a specific case give rise to an established pattern. Predicate acts are related if they "have the same or similar purposes, results, participants, victims, or methods of commission, or otherwise are interrelated by distinguishing characteristics and are not isolated events." The material support and conspiratorial activities of key officers, customers and owners of Lebanese Canadian Bank in support of Hezbollah, for example, fit nicely into the guidance provided by the Supreme Court.

Finally, RICO has massive financial punching power against the assets of a convicted organization. As summarized by the FBI, “Criminal forfeiture provisions such as those found in the Racketeer Influenced and Corrupt Organizations Act (RICO) and Controlled Substance Act (CSA) identify property that can be forfeited upon conviction of a defendant in broader terms than the provisions of law concerning most civil forfeitures. Criminal forfeiture laws name interests subject to forfeiture that are more complex, including property acquired or maintained in violation of RICO, and various types of legal interests in property that have afforded a source of influence over the illegal enterprise. The civil forfeiture laws generally name specific property that is integrally connected with prohibited activity, including conveyances used, money furnished, and real property used.” (http://www.fbi.gov/about-us/investigate/white_collar/asset-forfeiture). Through America’s extensive network of Mutual Legal Assistance Treaties (MLATs), assets that exist outside of the US can be sought for forfeiture. Moreover, in places like Lebanon, where the US does not have an MLAT in place, statutes like U.S. Code, Title 18, Section 981k can be used through Civil procedures to seize substitute assets in US correspondent bank accounts of financial institutions where funds being sought abroad are on deposit. Hezbollah would have no effective financial safe-haven from US law enforcement if RICO were successfully prosecuted. Of all the potential weapons in America’s arsenal against Iran and Hezbollah’s global terrorist enterprise, law enforcement is both the most potentially effective and the least utilized.

In closing, I commend the efforts of your task force and request that my revised and extended remarks, written statement, and PowerPoint slides be submitted for the Congressional record.