

The EU Still Has Issues with Hamas

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Brief Analysis

In addition to its political importance, the EU decision to keep blacklisting Hamas is legally significant in shaping how donor nations move forward on rebuilding Gaza.

On March 26, the Council of the European Union issued its latest review of the EU terrorism blacklist, a mandatory process conducted regularly to ensure that there are sufficient grounds to maintain bans on designated individuals and groups. Hamas was kept on the blacklist despite a December EU General Court ruling that called for the group's removal. The EU has appealed that ruling, but the process could take up to a year and a half, so the council decided to keep Hamas on the list in the meantime.

The EU clearly wanted the world to know that it stands by its terrorist designation of Hamas. After last week's decision was published in the *Official Journal of the European Union*, council spokeswoman Susanne Kiefer quickly tweeted, "Hamas stays on list during Council's appeal to December judgement." For its part, Hamas called the EU decision to appeal the General Court ruling "immoral."

TWO COURTS, TWO DECISIONS

On the same day that the EU blacklist review was released, an Egyptian court rescinded its February ruling that Hamas is a terrorist organization. The decision was technical, not based on any reassessment of the facts -- the lawyer who filed the original lawsuit decided to withdraw the case. This did not stop Hamas spokesman Sami Abu

Zuhri from welcoming the move as "an important step in the right direction."

Yet any positive publicity from the Egyptian situation was surely cut short by the EU decision. For Hamas, the issue is not just the decision itself -- since the EU clearly intended to keep the group blacklisted for now -- but rather the way in which the decision laid the legal and political groundwork for the EU's appeal of the court ruling.

A VICTORY FOR "COMPETENT AUTHORITIES"

In the preamble to Council Decision 2015/521/CFSP, the EU's adoption of the latest blacklist, the council took its first public swipe at the General Court's primary objections to designating Hamas: the nature of the evidence against the group and the "competent authorities" who make decisions based on that evidence. In its December ruling, the court asserted that Hamas had been listed based on information from the media and Internet, and it questioned whether the council had carried out sufficient checks in determining who qualified as a "competent authority" under EU Common Position (CP) 931, which provides the legal authority for terrorist designations.

The court's questioning of "competent authority" standards was odd given that CP 931 lays out its standards clearly:

"Common Position 2001/931/CFSP applies to persons, groups and entities involved in terrorist acts, when a decision has been taken by a competent authority in respect of the person, group or entity concerned. Such a decision may concern the instigation of investigations or prosecution for a terrorist act, an attempt to carry out or facilitate such an act based on serious and credible evidence or clues, or condemnation for such deeds. A competent authority is a judicial authority or, where judicial authorities have no competence in the area, an equivalent competent authority."

In adopting its latest list, the council preempted some of the expected challenges by noting that its decision "sets out the result of [its] review" of persons, groups, and entities under consideration for blacklisting. In other words, this was no automatic relisting, as evidenced by the fact that two entities were delisted. Based on this review, the council added, Hamas and other listed entities "should continue to be subject to the specific restrictive measures provided for therein."

Moreover, in a direct riposte to the heart of the court decision on Hamas, the council said it "has verified that competent authorities" as defined in CP 931 "have taken decisions with regard to all the persons, groups and entities on the list to the effect that they have been involved in terrorist acts." Between the lines of legalese, such statements affirm that the decision to designate Hamas was "based on serious and credible evidence or clues" from law enforcement, counterterrorism agencies, courts, and other competent authorities, not on some simple review of unverified media and web sources.

REAL-WORLD IMPLICATIONS

The EU's ongoing legal dispute has serious ramifications on the international community's efforts to deal with a Gaza Strip still ruled by Hamas. The group's various terrorist designations by the EU, the United States, and others have provided important leverage in weakening it.

Prior to last summer's conflict with Israel, Hamas had been brought to its knees financially by Egypt's crackdown on the smuggling tunnels connecting Gaza with the Sinai Peninsula. The group sought a lifeline by signing a reconciliation pact with its Fatah rivals in April 2014. One of the agreement's principal clauses dealt with the approximately 43,000 Hamas-affiliated public-sector employees in Gaza, over a third of which are police or Hamas Interior Ministry security forces. The group expected that the West Bank-based Palestinian Authority would begin paying these employees -- an expectation that proved to be false.

High-ranking PA financial officials interviewed at the time stated flatly that no such payments would be forthcoming -- not for political reasons, but due to legal and financial constraints. As upstanding members of the global financial system, Palestinian banks cannot transfer money to a designated terrorist group without risking sanctions.

Moreover, many of the PA's international donors consider Hamas a terrorist group, further complicating any direct salary payments.

Today, a year after the reconciliation agreement, Hamas employees in Gaza still have yet to receive a steady paycheck -- in contrast to the approximately 70,000 Fatah-affiliated civil servants in Gaza who have continued receiving salaries from the PA, despite most of them not working since the 2007 Hamas coup. Tellingly, the only significant financial relief the Hamas public sector has received came last October, when \$30 million of Qatari cash was trucked into Gaza from Jordan (via Israel) for partial payments to the group's non-security employees. This one-time payment was implemented outside the banking system and facilitated by the UN, which enjoys sovereign immunity.

More broadly, postwar reconstruction has ground to a halt because of continued Hamas-Fatah divisions. The international donors who convened in Cairo in October and pledged \$5.4 billion in aid to the Palestinians predicated their Gaza support on the PA reassuming control over the territory. Most donors continue to view Hamas as an illegitimate and/or illegal go-between for international assistance precisely because of its designation as a terrorist group. Moreover, they felt burned after previous Hamas clashes with Israel, when the group diverted significant reconstruction funds and materials away from civilian projects and used them to build over thirty cross-border tunnels intended for attacks against Israeli communities. (For more on these problems, see PolicyWatch 2369, "[Gaza Reconstruction Stalled by Fatah-Hamas Deadlock \(http://www.washingtoninstitute.org/policy-analysis/view/gaza-reconstruction-stalled-by-fatah-hamas-deadlock\)](http://www.washingtoninstitute.org/policy-analysis/view/gaza-reconstruction-stalled-by-fatah-hamas-deadlock)".)

CONCLUSION

The long-running Gazan public-sector saga is now in the hands of Swiss officials, who have been attempting to mediate between Hamas and the PA. Switzerland and Norway, as non-EU members, are able to maintain a technical relationship with Hamas, and the Swiss have put forward a detailed plan to vet Hamas public employees and rationalize Gaza's bloated public bureaucracy, a key concern for donor states. This plan has still not been officially adopted, as Hamas and the PA continue to negotiate the finer points. If media reports are accurate, however, the plan at least nominally holds out the possibility of incorporating Hamas security forces into a streamlined Gazan bureaucracy.

This fact, in addition to the rigorous vetting standards needed for Hamas-affiliated personnel in general, should be a key concern for the international community and the PA's European donors in particular. After all, it is still unclear who will foot the bill for the Gaza public sector if the Swiss initiative is implemented. European donors who deem Hamas a terrorist entity should demand full transparency to ensure that their financial aid is not used to support militant ends. Despite the worsening humanitarian situation in Gaza, this is the correct legal policy and the correct political choice. Hamas's continued violence and rejectionism should not be rewarded, let alone legalized, since doing so would only perpetuate the vicious cycle of war, suffering, and reconstruction.

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