

# **ON TUESDAY, GENERAL PETRAEUS ACHIEVED VICTORY IN OCEANIA; ON WEDNESDAY, HE LED US TO WAR AGAINST EASTASIA**

The day after Obama declared victory (sort of) in Iraq, the Administration announced a whole package of sanctions against the Pakistani Taliban, Tehrik-e Taliban. The sanctions:

- Designate TTP as a Foreign Terrorist Organization
- Designate TTP as a Special Designated Global Terrorist Organization
- Designate TTP's two leaders, Hakimullah Mehsud and Wali Ur Rehman, as Special Designated Global Terrorists
- Offer of \$5 million reward leading to Mehsud or Rehman's arrest
- Charge Mehsud in connection with the Khost killings

Forgive me if I dismiss what are real measures against a genuinely dangerous organization. But I can't help but suspect this lays the ground work to ensure we have a war against terror to fight (and with it, expanded executive powers) beyond July 2011.

## **Charging a formerly dead guy**

Perhaps my favorite comment on the criminal charges came from reporter James Gordon Meek:

DOJ charges Pak #Taliban emir Hakimullah Mehsud in absentia for killing 7 CIA officers in #Afghanistan 12/09. Anybody tell CIA's drone unit?

Presumably, Meek is referring to claims a US drone strike killed Mehsud in January, a claim the CIA once judged to have a 90% likelihood of being correct. There's not much point in arresting Mehsud if he's been dead nine months.

But the mention of CIA's drone campaign in Pakistan raises a bunch more problems with DOJ's charges. For starters, Mehsud's wife—a civilian—was reportedly killed in that January drone strike too. Both the uncertainty the CIA has about its purportedly scalpel-like use of drones and the civilian deaths they've caused illustrate the problem with drones in the first place. Civilians—CIA officers—are using them in circumstances with significant collateral damage. It would be generous to call the use of drones in such situations an act of war; some legal experts have said the CIA officers targeting the drones are as much illegal combatants as al Qaeda fighters themselves.

The affidavit describing the evidence to charge Mehsud doesn't say it, but underlying his alleged crime is the potential US crime of having civilians target non-combatants in situations that cannot be described as imminently defensive.

### **Charging someone for revenge on CIA's illegal killing**

Which leads us to the crimes for which they're charging Mehsud: conspiracy to murder and conspiracy to use a WMD (bombs) against a US national while outside of the United States. Basically, DOJ is charging Mehsud with conspiring with Humam Khalil Mulal al-Balawi, the Jordanian doctor who committed the suicide bombing at Khost that killed 7 CIA officers and contractors.

Now, there's not much doubt that Mehsud did

conspire with al-Balawi. I just doubt whether it could be fairly called a crime. The affidavit describes two videos in which Mehsud stands side by side with al-Bawali. In one, both al-Balawi and Mehsud describe the upcoming attack as revenge for killings in the drone program—most importantly, of Mehsud’s brother Baitullah Mehsud from a CIA drone strike in August 2009.

Al-Balawi then continues alone: “This itishhadi [martyrdom-seeking attack] will be the first of the revenge against the Americans.” After additional declarations of revenge by al-Balawi, MEHSUD resumes speaking in Pashtu, explaining the motive for the upcoming suicide attack by al-Balawi, that is the death of the former emir of the TTP, Baitullah Meshud [sic] which MESHUD [sic] attributes to the Americans.

Remember, too, that al-Balawi was a double agent. The Americans believed he was helping them target people, people just like Mehsud. That means al-Balawi (and presumably through him, Mehsud) knew he was specifically targeting those behind the earlier killings in Pakistan when he killed them.

So al-Balawi successfully killed people who were either civilians, in which case their own strikes at Baitullah Mehsud and others may be illegal, or people who were acting as soldiers, in which case the attack on their base was presumably legal under the law of war. And for helping al-Balawi, DOJ is now charging Mehsud with conspiracy.

The affidavit, of course, neglects to mention any of these details. Here’s how they describe the US presence in Afghanistan:

In an effort to stabilize Afghanistan, the United States has maintained a presence in Afghanistan since the removal of the Taliban at several facilities throughout the country,

including bases located along the Afghanistan-Pakistan border.

It's a convenient description, given as how it might vaguely justify the drone strikes in Pakistan. Yet it doesn't mention the actual legal purpose for US presence in Afghanistan authorized by the AUMF, which is to get the people who hit us on 9/11. That obviously can't include the TTP, since even this affidavit said they formed in 2007 in what could fairly be read as a response to US actions in Pakistan tied to the Afghan war.

TTP's primary purpose is to force withdrawal of Pakistani troops from the FATA of Pakistan—which is located along the Pakistan-Afghanistan border—unite against NATO forces in Afghanistan, and establish Sharia—or Islamic law—in the tribal territories.

It's not a crime to advocate for sharia. TTP's other two described goals—to force the withdrawal of Pakistani troops placed there at US behest, and to “unite” against NATO forces “in Afghanistan” which (the affidavit doesn't say) support drone strikes in Pakistan are responses to US actions. Granted the TTP are dangerous creeps. But even this affidavit is largely describing them as an entity reacting in defensive fashion to US actions.

As to the killing of Baitullah Mehsud? The affidavit simply says he died, without any explanation of the drones that illegally (if their suggestion that al-Balawi targeted civilians is true) or legally (if they concede that al-Balawi struck a military target) struck in Pakistan.

The Tehrik-e-Taliban Pakistan (TTP) is a Taliban-inspired alliance of Pakistan-based Sunni tribal militants formed in or about late 2007 by Baitullah Mehsud, who was killed in August 2009.

[snip]

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Of course, they have to depict Baitullah Mehsud as just dying, with no further discussion. Because if they included such a discussion, then either the al-Balawi attack would not be a crime, or the CIA civilians killed in it were acting illegally when they committed the act that brought Mehsud to retaliate. (Note, too, that when State Department Counterterrorism Coordinator Daniel Benjamin was asked yesterday about ties between TTP and ISI, he claimed to know nothing.)

But no matter. We now officially have a new, named target, one to match Anwar al-Awlaki in Yemen, and one who (unlike Osama bin Laden, Ayman al-Zawahiri, or Mullah Omar) we might stand a chance of getting. Now the American people have a villain to root against.

#### **Why impose these sanctions now**

Which may be why the Administration has taken these steps, up to and including the dubious charges against Mehsud.

To a large degree, this is a reaction to Faisal Shahzad's attempt to bomb Times Square in May. Yet curiously, the charges are not related to that strike, even though if the TTP was genuinely involved, it would be more clearly terrorism than the Khost strike. Though a YouTube initially had the TTP claiming credit for the strike, shortly after Shahzad's arrest, the TTP said it did not train him. Video later surfaced showing Shahzad and Mehsud together. And Shahzad himself said he had been trained by the TTP before his strike. The affidavit against Mehsud says that TTP has claimed responsibility for the attack, but makes no charges relating to it.

(Note, the government's claims about TTP also repeatedly mention the Benazir Bhutto assassination, though they very carefully couch that claim in terms of what Pakistani authorities have claimed about TTP, not what TTP has claimed or the US has evidence to support.)

It may be tied to General Petraeus' assumption of the command in Pakistan—though he has pushed for the listing of the Haqqani network more strongly than the TTP.

Ultimately, though, I suspect this is an effort to establish ties between the al Qaeda—those covered in the AUMF in Afghanistan—and the Pakistani Taliban not legally included in the AUMF before the justification for remaining in Afghanistan to fight the dozen al Qaeda members still in the country begins to look utterly ridiculous.

The TTP is very much part of the most dangerous terrorist threat the United States faces. The TTP and al-Qaida have a symbiotic relationship. TTP draws ideological guidance from al-Qaida while al-Qaida relies on the TTP for safe haven in the Pashtun areas along the Afghan-Pakistani border. This mutual cooperation gives TTP access to both al-Qaida's global terrorist network and the operational experience of its members. Given the proximity of the two groups and the nature of their relationship, TTP is a force multiplier for al-Qaida.

While the terrorist designations undeniably gives law enforcement agencies the ability to prosecute anyone knowingly working with the TTP going forward (thus making it easier to try any Americans seeking out ties with them), it also seems to point to a lot of the problems with our hybrid legal-military strategy.