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Review of the re-listing of five organisations as terrorist organisations under the Criminal Code

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Submission to the Review of the re-listing of five organisations as terrorist organisations under the Criminal Code

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Recommendations

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Recommendation 2: I strongly recommend that the Parliamentary Joint Committee on Intelligence and Security urge the Minister for Home Affairs to list the entirety of Hamas as a terrorist organization.

Introduction

I thank the committee for the opportunity to contribute to its review of the re-listing of Hamas' Izz al-Din al-Qassam Brigades, the so-called "armed wing" of Hamas.

I serve as senior vice president for research at the Foundation for Defense of Democracies (FDD), a Washington, DC-based nonpartisan, non-profit research institute focusing on national security and foreign policy. FDD conducts actionable research intended for consumption by governments, intelligence agencies, the military, the private sector, academia, and journalists. Our work draws upon our skills and experience in foreign languages, economics, law, technology, the military, and more. Since its founding in 2001, FDD has shared its expertise with the Bush, Obama, Trump, and Biden administrations and congressional offices on a bipartisan basis.

I previously worked as a terrorism finance analyst at the U.S. Department of the Treasury, and I have spent more than a decade researching and writing about terrorist groups and rogue states in the Middle East. In 2008, I published the book *Hamas vs. Fatah: The Struggle for Palestine*, which remains the only book on the market analyzing the ongoing Palestinian civil war. In 2013, I published the book *State of Failure: Yasser Arafat, Mahmoud Abbas, and the Unmaking of the Palestinian State*, which examines the political dysfunction and mismanagement of the Palestinian Authority. Over the years, I have testified before the U.S. Congress numerous times on Hamas and other Palestinian groups.

I offer the following based on my knowledge of and research on the subject matter.

Hamas' Izz al-Din al-Qassam Brigades Continue to Meet the Definition of a Terrorist Organization

According to Sec. 102.1 of Australia's Criminal Code, a terrorist organization is "an organisation that is directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of a terrorist act." Hamas' Izz al-Din al-Qassam Brigades continue to meet this definition and should remain listed as a terrorist organization in Australia.

As the committee noted in its September 2018 [report](#), the Qassam Brigades "engaged in small-arms, rocket and mortar fire at Israel and communities in the vicinity of Gaza," and "engage[d] and operate[d] with other terrorist organisations including Hizballah's External Security Organisation and Palestinian Islamic Jihad's Al-Quds Force."

This assessment remains true. Hamas has escalated its terrorist activities since 2018. Beginning in March 2018, the terrorist group has coordinated a series of violent protests along Israel's border with the Gaza Strip, often using children as "human shields" for Hamas' paramilitary activity. Hamas terrorists [breached](#) the security fence and threw stones and other objects at Israel Defense Forces (IDF) soldiers during those protests. Hamas operatives "sent hundreds of incendiary devices into Southern Israel by kite and balloon, resulting in more than 7,000 acres burned, including a forest preserve and numerous farmed fields," according to the U.S. Department of State's [2018 Country Reports on Terrorism](#). Hamas' tactic of dispatching incendiary devices blindly into civilian areas, with no specific target, meets the threshold of terrorism.

In 2019, according to a U.S. State Department [assessment](#), Hamas and other Palestinian militant groups launched over 1,000 rockets and mortars from Gaza into Israel, killing at least six Israelis and causing millions of dollars in damages. The Izz al-Din al-Qassam Brigades coordinated or led many of these rocket and mortar attacks, which are acts of terrorism. Even for the attacks not conducted by the Qassam Brigades, Hamas bears responsibility. The group has controlled the Gaza Strip since its military takeover in 2007 and is therefore culpable for attacks launched from that territory.

The latest round of Hamas-initiated violence, the 11-day rocket war that began on May 10, 2021, presents strong evidence of the group's continued terrorism. According to open-source reports confirmed by the Israeli government, Hamas and other Palestinian militant groups fired [approximately 4,500 rockets](#) and mortars at Israeli civilian centers from the Gaza Strip. Those attacks directly resulted in 13 Israeli deaths and 168 non-fatal injuries.

In re-listing the Brigades, the committee should note that Australia's closest partners in the Five Eyes alliance also list Hamas' Izz al-Din al-Qassam Brigades as a terrorist entity, including the United Kingdom (first [listed](#) in 2001) and New Zealand (first [listed](#) in 2010).

Recommendation 1: I strongly recommend that the Parliamentary Joint Committee on Intelligence and Security support the re-listing of Hamas' Izz al-Din al-Qassam Brigades under the Criminal Code and not disallow the legislative instrument.

All of Hamas Should Be Listed as a Terrorist Organization

Beyond the narrow re-listing of the Izz al-Din al-Qassam Brigades, Hamas in its entirety also meets the Australian Criminal Code's definition of a terrorist organization. I urge the Parliamentary Joint Committee on Intelligence and Security to recommend that the Minister for Home Affairs list Hamas in its entirety.

In truth, there are no “wings” of Hamas. This is a false distinction. A very large body of literature supports the fact that the organization operates cohesively. Indeed, the purported division between Hamas' political and military wings is a narrative often wielded by governments that seek to maintain engagement with the group despite its terrorist activities. The political operatives within Hamas directly support the activities of its warfighters, and vice versa.

Hamas has maintained a degree of [secrecy](#) surrounding its leadership, making the group's precise organizational structure somewhat opaque. However, it is known that Hamas' global shura (consultative) council [elects](#) a 15-member executive committee. The executive committee selects seven to 12 of its members to form the politburo, which oversees Hamas' daily operations. Apart from that, Hamas has four regional [shura councils](#), which appoint their own political bureaus. These subdivisions are Gaza, the West Bank, the diaspora, and Israeli prisons. The Izz al-Din al-Qassam Brigades, which answers to Hamas' political leadership, [operates](#) its own structure in Gaza.

In expanding its listing to include the entirety of Hamas, Australia will more closely align with key likeminded countries around the world that have taken this important and necessary step.

Successive U.S. administrations from both parties, including the [Bush](#), [Obama](#), [Trump](#), and [Biden](#) administrations, have maintained that Hamas is a terrorist organization. The United States first [designated](#) Hamas, in its entirety, as a Specially Designated Global Terrorist (SDGT) under President Bill Clinton in January 1995. The U.S. State Department [designated](#) Hamas as a Foreign Terrorist Organization (FTO) in 1997. In October 2001, the U.S. Department of the Treasury, under President George W. Bush, [designated](#) Hamas as a Specially Designated Global Terrorist (SDGT) pursuant to Executive Order 13224. Each of these designations blocks U.S. persons from providing financial or other material support to Hamas and bars U.S. financial institutions from transacting with Hamas-affiliated entities or individuals.

Canada first [listed](#) the entirety of Hamas as a terrorist organization in November 2002 and most recently re-listed the group in June 2021. The European Union [has imposed](#) financial sanctions on “Hamas, including Hamas-Izz al-Din al-Qassem,” for its terrorist activities. Israel [has listed](#) Hamas in its entirety since 1989. More recently, in May 2021, following the Hamas-initiated Gaza conflict, the Organization of American States, the 35-member coalition of countries in the Americas, [designated](#) Hamas in its entirety as a terrorist organization.

Hamas' organizational structure, the involvement of its current and former political leaders, its withholding of remains and fundraising activities, its documented history of terrorist activity, and its guiding political documents provide concrete evidence that the group, in its entirety, meets the definition of a terrorist organization according to Australia's Criminal Code.

Hamas Is a Unitary Terrorist Organization

Founded in 1987, Hamas is a Palestinian Sunni Islamist terrorist organization that receives much of its financial backing from the Islamic Republic of Iran. Hamas' stated goal is the destruction of the State of Israel and the violent "liberation" of historic Mandatory Palestine. The militant group has repeatedly rejected a two-state solution, presenting itself as an Islamic-nationalist alternative to the Fatah-dominated Palestinian Authority formed originally by Yasser Arafat and currently led by Mahmoud Abbas.

Hamas formed its Politburo in 1992. According to the [U.S. Congressional Research Service](#), the body is a "15-member political bureau." However, Hamas' governance structure presides over all of the organization's activities, including attacks carried out by the Izz al-Din al-Qassam Brigades.

Hamas leaders have, in fact, declared that the Politburo cannot be separated from the group's military wing. In July 2001, Abdel Aziz al-Rantisi, then a senior Hamas leader and spokesman, articulated this in starkly antisemitic terms, [saying](#), "The [Hamas] political leadership has freed the hand of the [Izz al-Din al-Qassam Brigades] to do whatever they want against the brothers of monkeys and pigs." In May 2002, Salah Shehada, a Hamas military commander, publicly [stated](#) that "the political apparatus is sovereign over the military apparatus, and a decision of the political [echelon] takes precedence over the decision of the military [echelon], without intervening in military operations." Politburo member Mousa Abu Marzook reinforced Hamas' indivisibility in August 2014, [saying](#) the group "is one organization with two wings or two departments, if you want clarification."

Hamas Political Leadership's Involvement in Terrorist Activities

Several senior Hamas officials have served in the organization's political and military departments, demonstrating that there is no firewall between the two.

The U.S. Department of State [designated](#) Yahya Sinwar as an SDGT in 2015, citing his role "in founding the forerunner of the Izzedine al-Qassam Brigades, the military wing of Hamas, a designated Foreign Terrorist Organization (FTO) and SDGT." The Israeli government previously [sentenced](#) Sinwar to four life sentences for the capture and murder of two Israeli soldiers in 1988. Israel released him as part of the 2011 prisoner swap for kidnapped IDF soldier Gilad Shalit. In 2017, Sinwar was elected leader of Hamas in Gaza. Sinwar's election demonstrates not only the continuing crossover within Hamas between political and military branches, but also the [increasingly dominant position](#) of militant commanders within Hamas' senior political leadership in recent years.

Saleh al-Arouri is another figure who has held positions within both the military and the political organs of Hamas. Arouri was [imprisoned](#) in Israel from 1992 to 2010 for terrorist activities. According to a [Times of Israel article](#), he was one of the founders of the Qassam Brigades and served as "the military commander of the West Bank." Arouri [ordered](#) the kidnapping and killing of three Israeli teens, helping spark the 2014 Hamas-Israel war. Arouri has served as a conduit

for Hamas' relations with Iran and its proxy Hezbollah. Today, he is the deputy chairman of Hamas' Politburo.

Ahmed Jabari simultaneously served in both military and [political leadership](#) positions within Hamas, including in the Al-Nur Prisoner Society, an association for “martyrs and prisoners.” He [served](#) as a senior military commander, including during the Second Intifada. Jabari led Hamas' military activities during its 2007 conquest of the Gaza Strip as well as during successive attacks against Israel. In April 2012, [Hamas appointed](#) him to its Politburo. Israel killed him in an airstrike later that year.

Finally, Khaled Meshal, the former head of Hamas' Politburo and [current head](#) of the group's diaspora office in Qatar, operates on behalf of both Hamas' political and military establishments. In 2003, the U.S. Department of the Treasury sanctioned Meshal, [noting](#) that the Hamas leader was “responsible for supervising assassination operations, bombings and the killing of Israeli settlers.” Treasury [said](#) Meshal “provide[d] instructions to other parts of the Hamas military wing” and “maintain[ed] a direct link” to Hamas' then-deputy leader Abdel Aziz al-Rantisi.

Withholding Remains

Hamas also blurs the line between politics and paramilitary operations by withholding the remains of fallen Israeli soldiers. Under customary [international human rights law](#), the withholding of remains may constitute a war crime. Hamas' policy of refusing to repatriate remains is coordinated across the organization's political and military departments.

In July 2014, Hamas militants [killed](#) IDF soldier Oron Shaul in Gaza City; the Izz al-Din al-Qassam Brigades [claims](#) to have captured Shaul's remains. Then, in August 2014, Hamas militants ambushed and killed IDF soldier Hadar Goldin, capturing his body. The Hamas political leadership has deliberately refused to repatriate either soldier's remains. The official Hamas policy is to retain their bodies until the group secures the release of imprisoned Palestinians convicted of murdering Israeli citizens. In October 2018, Yahya Sinwar, Hamas' leader in Gaza, [described](#) such a deal as “vital” and “imperative” for Hamas. In May 2021, Sinwar [hinted](#) at his role in continued negotiations.

Terrorism Finance and Military Assistance From Iran

Senior Hamas Politburo officials routinely travel to the Islamic Republic of Iran to fundraise on behalf of Hamas, with the Izz al-Din al-Qassam Brigades as a beneficiary.

In 2019, the U.S. Department of the Treasury [designated](#) financial facilitators “responsible for moving tens of millions of dollars between Iran's Islamic Revolutionary Guard Corps-Qods Force (IRGC-QF) and Hamas' operational arm, the Izz-Al-Din Al-Qassam Brigades in Gaza.” According to Sigal Mandelker, then-undersecretary for terrorism and financial intelligence, the facilitators funneled the money through Hezbollah, a U.S.-designated FTO, to be used “for terrorist attacks originating from the Gaza Strip” and in Hamas' “continued violent campaign against innocent civilians and the state of Israel.”

In July 2019, nine Hamas officials [traveled](#) to Tehran and met with the Islamic Republic of Iran's Supreme Leader Ayatollah Ali Khamenei. The delegation, which included Saleh al-Aroui, the deputy chief of Hamas' Politburo, requested that Tehran increase its financial contributions to a reported \$30 million per month.

In May 2021, Hamas' political representative to Tehran, Khaled al-Qaddumi, [acknowledged](#) that "the Islamic Republic of Iran ... has helped a lot in transferring knowledge and expertise" as well as "rockets," enabling Hamas to develop "local capabilities to produce such advanced technology." Qaddumi's remarks underscore the close internal coordination between Hamas' military and political officials as it relates to terrorist activities such as manufacturing and procuring of rockets. The fundraising activities of Hamas' political leaders directly correlates to the ability of the Izz al-Din al-Qassam Brigades to carry out terrorist attacks. As these fundraising activities constitute "planning, assisting in or fostering the doing of" terrorism, Hamas more than reasonably satisfies the definition of a terrorist organization pursuant to Section 102.1(2) of Australia's Criminal Code.

Hamas Terrorism

Hamas, in its entirety, has been and continues to be directly engaged in terrorist attacks, thereby meeting the definition set out in Australia's Criminal Code.

Hamas began widespread campaigns of terrorism in the 1990s to destabilize the budding Israeli-Palestinian peace process. Hamas claimed responsibility for and/or was reported to have carried out bombings from 1994 to 1997 that killed over 130 Israelis. A Hamas suicide bomber [murdered](#) 21 Israelis and one Dutch national in an attack in Tel Aviv on October 19, 1994. Two suicide bombings within a week of each other in early 1996 on the No. 18 bus in Jerusalem left [43 dead](#), mostly civilians.

Hamas' terrorist activities intensified during the Second Intifada in the early 2000s, causing the deaths of over [1,000 Israelis](#). Hamas bombed discotheques, restaurants, shopping malls, and buses. On June 1, 2001, a Hamas-affiliated suicide bomber [killed](#) 21 Israelis, mostly teenage girls, at a nightclub in Tel Aviv. Perhaps the most infamous bombing of the Second Intifada came on March 27, 2002, when a Hamas terrorist [detonated](#) a suicide bomb at a crowded Netanya hotel, killing 30 people celebrating the Passover Seder.

As Israel neared completion of its West Bank security barrier in 2005, Hamas became less successful at carrying out bombing attacks. Instead, Hamas preferred to launch mortars, rockets, and other projectiles indiscriminately at Israeli civilian areas from within population centers in Gaza. Palestinian militants have fired thousands of rockets from the Hamas-controlled Gaza Strip.

During its May 2021 conflict with Israel, Hamas reportedly used [human shields](#), including by locating military tunnels under a school and [adjacent](#) to a kindergarten, mosque, and [hospital](#). Hamas reportedly placed weapon stockpiles in houses and [positioned](#) rocket launch [sites](#) next to civilian structures. On May 20, 2021, UN Secretary-General [Antonio Guterres](#) "urge[d] Hamas and other militant groups to stop the indiscriminate launching of rockets and mortars from highly

populated civilian neighbourhoods into civilian population centres in Israel, also in clear violation of international humanitarian law. Densely populated civilian areas must not be used for military purposes.”

Hamas has also terrorized Palestinians under its rule in Gaza. In the most recent round of fighting, approximately [680 rockets](#) fired by Palestinian militant groups in Gaza fell short and landed in Gaza. Some of these rockets injured and even killed Palestinians. Additionally, Hamas has [executed](#) at least 54 Palestinians in Gaza since 2009. The UN Office of the High Commissioner for Human Rights has [condemned](#) these summary executions.

Hamas’ Guiding Political Documents

In May 2017, Hamas issued a new [policy document](#) in Qatar delineating the group’s outlook. The document was part of a concerted effort to soften Hamas’ international image and present the group as having moderated. However, the document did not replace or supersede Hamas’ founding charter from 1988.

The [1988 charter](#), which remains the overarching political document defining Hamas’ principles and methods, calls for the violent destruction of Israel. The charter’s preamble posits that “Israel will exist and will continue to exist until Islam will obliterate it, just as it obliterated others before it.” The charter also includes vehemently antisemitic language, asserting that Jews “take control of the world media,” were behind “most of the revolutions” throughout modern history, and use “money to establish clandestine organizations which are spreading around the world, in order to destroy societies and carry out Zionist interests.”

Hamas’ 2017 policy document — issued on behalf of the entire group, not just the Izz al-Din al-Qassam Brigades — reiterates the group’s original genocidal aim of annihilating the State of Israel. The document declares, “Hamas rejects any alternative to the full and complete liberation of Palestine, from the [Jordan] river to the [Mediterranean] sea.” In other words, Hamas continues to seek to wipe Israel completely off the map. Thus, while the new policy document may have included some cosmetic changes, it still promotes terrorism and irregular warfare against the State of Israel. Hamas’ efforts to present itself as more moderate to international observers mirror the group’s attempts to present a false dichotomy between its so-called military and political “wings.”

Recommendation 2: I strongly recommend that the Parliamentary Joint Committee on Intelligence and Security urge the Minister for Home Affairs to list the entirety of Hamas as a terrorist organization.

On behalf of the Foundation for Defense of Democracies, I thank you for the opportunity to submit this analysis. If necessary, I am willing to appear before a public hearing of the Committee.