U.S. Lawfare Options for Helping Bring Hamas to its Knees

Pressuring Qatar and Turkey to Quickly Detain Hamas Leaders

By Orde F. Kittrie

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President Joe Biden has repeatedly called for holding Hamas accountable for its October 7 massacre and ending the terrorist group’s rule over Gaza.1 Israel’s efforts to achieve those objectives militarily are increasingly being criticized, in Washington and elsewhere, for resulting in too much bloodshed. Yet the Biden administration and Congress have yet to deploy their own powerful yet bloodless tools for holding Hamas accountable and ending its rule over Gaza: heavy pressure on Qatar, Turkey, and any other country hosting top Hamas leaders.

Whereas the United States has little to no direct leverage over Hamas, Washington has very strong and direct leverage over Qatar and Turkey, which have long housed most of Hamas’s top leaders. This leverage could help bring the terrorist organization to its knees with minimal bloodshed.

The United States could, for example, press Doha and Ankara to detain Hamas leaders and threaten to turn them over to the United States unless Hamas releases all of its hostages and surrenders in Gaza. Even if Hamas forces in Gaza continue to fight, the detention of so many of their top leaders could severely disrupt and demoralize the organization, making it possible for Israel to defeat it militarily with far less bloodshed.

Some top Hamas leaders are reportedly relocating, or preparing to relocate, from Qatar to Algeria. Others might soon depart for Iran or Russia.2 To hinder Hamas leaders from fleeing Qatar and Turkey, American officials could declare that any country that harbors Hamas leaders will suffer serious consequences. But swift U.S. action is essential, as Washington has more leverage over Qatar and Turkey than it does over any of the reported potential subsequent destinations.

Background

Qatar has for years been the residence of numerous Hamas officials, including the organization's top leader, Ismail Haniyeh. Video circulating on social media reportedly shows Haniyeh, his deputy Saleh al-Arouri, and other Hamas officials monitoring and celebrating the October 7 massacre in Israel from the group's offices in Doha.

The United States has named both Haniyeh and al-Arouri as Specially Designated Global Terrorists subject to robust financial sanctions. In addition, the United States has long offered a reward of up to $5 million for “information leading to the identification or location” of al-Arouri. But there is no indication that the United States has directly and significantly pressured Qatar to turn over either Haniyeh or al-Arouri.

Several other senior Hamas officials reside in Turkey and use it as a base of operations. At least a dozen officials reportedly use Turkey for recruitment, plotting terrorist attacks against Israel, and conducting military training.

Numerous senators and representatives have raised the idea of pressuring Qatar and Turkey to crack down on Hamas. For example, H.R. 5961, which passed the House on November 30 in a bipartisan 307-119 vote, includes a provision stating the “sense of Congress” that Qatar should “turn Hamas leadership over [to] the United States or Israeli control.” However, the bill does not specify any consequences should Qatar fail to do so.

In addition, an October 16 letter from 113 representatives — 63 Democrats and 50 Republicans — urged the president to “put significant pressure on Qatar and Turkey to cease their support for Hamas and expel Hamas leadership that they host.” The letter did not include particular ideas for imposing such pressure.

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4. Edward Malnick and Susie Coen, “Rishi Sunak urged to sanction Qatar, where Hamas leaders live in five-star luxury,” The Telegraph (UK), October 15, 2023. (https://www.telegraph.co.uk/politics/2023/10/14/rishi-sunak-sanction-hamas-leaders-luxury);
By contrast, a few bills have been more specific. The one with the most support is H.R. 340, which passed the House on November 1 by a 363-46 vote.\(^{11}\) It would impose an arms sale ban and other sanctions on a foreign state that the president determines “materially contributes, directly or indirectly, to the terrorist activities of Hamas.” While the bill mentions neither Qatar nor Turkey by name, they are its obvious targets.

Qatar has been credited with helping secure the November deal that resulted in release of some of the hostages and a temporary pause in fighting. But the Qatari neutral broker process appears to have exhausted its utility.

Whatever U.S. and Israeli pressure led Hamas to release hostages between November 24 and December 1 was clearly insufficient to achieve further results. As Secretary of State Antony Blinken explained, the negotiations “came to an end because of Hamas. Hamas reneged on commitments it made.”\(^{12}\) Blinken said Hamas, before the pause in fighting expired, “committed an atrocious terrorist attack in Jerusalem,” which killed two women and an elderly man, “began firing rockets” at Israel, and “reneged on commitments it had made in terms of releasing certain hostages.”\(^{13}\) As of December 13, Hamas was reportedly continuing to reject further hostage negotiations.\(^{14}\)

The United States has a long menu of options, listed and analyzed below, for immediately increasing pressure on Qatar, Turkey, or any other country that hosts Hamas leaders. The United States could ramp up pressure incrementally, commencing with actions directly, and relatively narrowly, related to the Hamas leaders currently residing in those countries. Or it could start with more drastic steps, by threatening fundamental change in U.S. relations with the hosting country.

**U.S. Options Directly Related to Hosting Hamas Leaders**

**Prosecution**

The United States could start by immediately announcing prosecutions of, and demanding that Qatar and Turkey (or another hosting country) turn over, Haniyeh and the other principal Hamas leaders currently in those countries. U.S. law authorizes prosecution of any person who “seizes or detains” or conspires with others to seize, detain, or continue to detain a U.S. citizen as a hostage outside the United States.\(^{15}\)

Even if a particular Hamas leader was initially unaware that U.S. citizens were kidnapped, he certainly became complicit in the continuation of this offense. All principal Hamas leaders could therefore be successfully prosecuted


for Hamas holding hostage in Gaza all the U.S. nationals (including the eight who remain hostages) whom Hamas seized in Israel on October 7.16

Under these circumstances, longstanding Department of Justice practice calls for the United States to request immediately that Qatar and Turkey (or any other hosting country) provisionally arrest and detain those culpable Hamas leaders to facilitate U.S. custody for criminal prosecution.17 Such a move would be consistent with the bill, passed by the House on November 30, which calls for Qatar to turn Hamas leaders over to U.S. or Israeli control.

On December 6, Attorney General Merrick Garland very briefly announced, without providing any details, that the Department of Justice is investigating the October 7 murders and seizures of Americans by Hamas.18 There has been no indication that the investigation extends to Hamas leaders outside Gaza and no reported request that Qatar and Turkey detain them.

Secondary Sanctions

The United States should immediately supplement its already existing direct sanctions on Hamas leaders with secondary sanctions that would apply to those who do business with them in Qatar, Turkey, and elsewhere. U.S. Treasury officials have repeatedly said that top Hamas officials outside Gaza “live in luxury.”19 A British newspaper recently underscored that “[f]or years, Hamas’s architects of terror have been running the bloodthirsty unit while living in five-star luxury in Qatar.”20

Both luxury living and terrorist plotting inevitably involve numerous providers of banking, communications, lodging, transportation, and other services. Federal law authorizes the U.S. government to block the assets of individuals and entities that provide support, services, or assistance to, or are “otherwise associated with,” designated terrorists and terrorist organizations.21

The U.S. government has sometimes aggressively implemented its secondary sanctions authorities. For example, the Obama administration imposed billions of dollars in fines on banks that engaged in illicit transactions with Iranian and other clients.22 Aggressive implementation of secondary sanctions on those who provide services to Hamas leaders could both directly constrain their ability to operate and indirectly pressure Qatar and Turkey (or a subsequent host country) to expel them.

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17. Ibid.
64d851f794a6de4c6d40968da5f0320)
“Terrorist Sanctuary” Designation

Both Qatar and Turkey clearly meet the definition, under U.S. law, of a “foreign country whose territory is being used as a sanctuary for terrorists or terrorist organizations.” Each of their governments “allows, tolerates, or disregards” Hamas’s use of its territory for “training, fundraising, financing, and recruitment” or “as a transit point.” U.S. law thus requires the Department of State to start listing Qatar and Turkey as terrorist sanctuaries and report to Congress on U.S. “strategies for disrupting or eliminating the security provided to terrorists by such sanctuaries.” Doing so could powerfully place at risk whatever current and future goodwill the Qataris have acquired with the billions of dollars they have invested in enhancing their image in the United States.

Enforcing Existing Qatar-related Violations of U.S. Law

Al-Jazeera

According to members of Congress from both parties, Al-Jazeera has since September 2020 been in violation of a U.S. Department of Justice order that its social media wing, AJ+, register as a foreign agent within 30 days because of its “political activities” on behalf of Qatar. According to the Justice Department, “Al Jazeera Media Network and its affiliates are controlled and funded by the Government of Qatar.”

Secretary Blinken reportedly asked the Qatari government to “turn down the volume on Al Jazeera’s coverage because it is full of anti-Israel incitement.” The U.S. government can and should also act directly against Al-Jazeera. Willful violation of the Foreign Agents Registration Act is punishable by up to five years in prison. It is past time to enforce the law.

Donations to Higher Education

Qatar is the single largest foreign funder of American universities, according to a 2022 study by the National Association of Scholars which estimated $4.7 billion in such Qatari funding over the prior two decades. Notwithstanding a federal law requiring federal reporting of foreign gifts and contracts, U.S. executive branch officials, Members of Congress, and numerous outside commentators have raised questions as to the true scope


Section 117 of the Higher Education Act requires nearly all U.S. colleges and universities to publicly report foreign gifts and contracts the value of which is $250,000 or greater. But an October 2020 study by the U.S. Department of Education discovered over $6 billion in previously unreported funds and concluded that such funding had been “massively underreported.”\footnote{U.S. Department of Education, Office of the General Counsel, “Institutional Compliance with Section 117 of the Higher Education Act of 1965,” October 2020. (https://www2.ed.gov/policy/highered/leg/institutional-compliance-section-117.pdf)} The study singled out “the concerning nature of contracts with China, Qatar and Russia,” and suggested that Qatari entities had, in specific cases, inappropriately used their leverage over American educational institutions.\footnote{Ibid.}


### Threaten Fundamental Change in U.S. Relations

### Impose Arms Sale Ban and Other Sanctions on States Supporting Hamas

As mentioned above, H.R. 340, which passed the House on November 1, would impose an arms sale ban and other sanctions on a foreign state if the president determines it “provides significant material support to Hamas” or “materially contributes, directly or indirectly, to the terrorist activities of Hamas.”\footnote{Hamas International Financing Prevention Act, H.R.340, 118th Congress (2023-2024). (https://www.congress.gov/bill/118th-congress/house-bill/340/text)} While the bill mentions neither...
Qatar nor Turkey by name, publicly available information indicates that both meet the threshold for sanctions under the bill. However, the bill both requires a presidential determination before the application of penalties and authorizes a waiver of any such penalties. Presidents have long refused to make inconvenient determinations or issue waivers to avoid the consequences.

If the Biden administration wants to impose such sanctions on a Hamas-supporting country, it need not await this bill’s passage. Existing laws, including the Arms Export Control Act and the International Emergency Economic Powers Act, already provide the president all the necessary discretionary authority to impose both an arms sale ban and financial sanctions on Hamas-supporting countries. If Congress wants such sanctions imposed, it would be much faster to impose them directly rather than authorize and await discretionary presidential action.

**State Sponsor of Terrorism Designation**

Numerous commentators have called for Qatar to be designated as a state sponsor of terrorism. Countries that the Secretary of State determines to have repeatedly provided support for acts of international terrorism are designated pursuant to three laws: section 1754(c) of the National Defense Authorization Act for Fiscal Year 2019, section 40 of the Arms Export Control Act, and section 620A of the Foreign Assistance Act of 1961.

Designation of a particular country under these authorities triggers sanctions, including restrictions on U.S. foreign assistance; a ban on defense exports and sales; certain controls over exports of dual-use items; and miscellaneous financial and other restrictions. In addition, a special exception to the Foreign Sovereign Immunities Act authorizes U.S. courts to order designated state sponsors of terrorism to pay monetary damages to U.S. victims of terrorist acts that the state committed or for which it provided material support or resources. Under this exception, U.S. courts have awarded tens of billions of dollars in damages against Iran and other designated states.

As currently phrased, the three designation laws do not define the term “international terrorism” and thus provide the Secretary of State with very broad discretion as to when and if to designate.

There are four countries currently designated: Cuba, Iran, North Korea, and Syria. There is considerable publicly available evidence of Qatari support for Hamas.

39. Ibid.
If the Department of State does not designate Qatar as a state sponsor of terrorism, Congress could do so through legislation. In the absence of such definitive steps, the Biden administration could ramp up pressure on Qatar by publicly ordering an assessment of whether Qatar should be designated as a state sponsor of terrorism.

**Revoke Designation of Qatar as a Major Non-NATO Ally**

Biden designated Qatar as a “major non-NATO ally” (MNNA) of the United States in March 2022. The U.S. law creating this category provides the president with full discretion to both designate a country as an MNNA and terminate such a designation. MNNA status confers several privileges under U.S. law. As the Department of State notes, those privileges include eligibility for some types of cooperative research, development, testing, and evaluation; prepositioning of stocks; training; excess defense articles; and ammunition. Designation can also render the respective country eligible for cooperative research and development projects related to defense equipment; allow firms of the MNNA to bid on certain maintenance-related contracts outside the United States; and allow potential funding for projects under the auspices of the Department of State’s Technical Support Working Group.

If the President does not revoke Qatar’s status as an MNNA, Congress could do so through legislation. In the absence of such definitive steps, the Biden administration could ramp up pressure on Qatar by publicly ordering an assessment of whether Qatar should continue to be designated as an MNNA.

In addition, the United States could consider publicly announcing that it will assess whether Turkey should be expelled from NATO. Several members of Congress and even Mark Esper, while serving as U.S. defense secretary, have threatened such expulsion in prior circumstances. Although the North Atlantic Treaty does not explicitly include a suspension or expulsion mechanism, at least one leading expert has suggested that a member could be expelled if they were found to be in material breach of the treaty.

**Threaten to Move U.S. Airbases**

Several commentators have suggested that the United States withdraw, or threaten to withdraw, its forces from the Incirlik Air Base in Turkey. Turkish governments, including the Erdogan administration, have long attempted to use the U.S. presence at Incirlik as leverage over U.S. policy.

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48. Ibid.


Incirlik is reportedly less valuable to the United States than it was in the past. However, such a withdrawal would still impose significant costs on the United States as well as Turkey.

Separately, various commentators have suggested that the United States withdraw, or threaten to withdraw, its forces from Al-Udeid air base in Qatar. The U.S. government reportedly considered alternatives to Al-Udeid in 2017, amid tensions between Qatar and its neighbors.

Al-Udeid is reportedly less valuable to Washington now than it was prior to the American departure from Afghanistan. However, such a withdrawal would still impose significant costs on the United States as well as Qatar.

If the U.S. government believes it would be imprudent for Washington to immediately withdraw, or threaten to withdraw, its forces from Incirlik and/or Al-Udeid, it could publicly announce — or Congress could legislatively mandate — contingency planning for such a withdrawal.

**Conclusion**

There is a broad menu of options available to the U.S. government should it decide to use its leverage over Qatar and Turkey, which house most of Hamas’s top leadership, in order to hold the terrorist group accountable and end its rule over Gaza. Whichever pressure options the Biden administration or Congress prefer, they must move quickly. The longer the United States waits to publicly prosecute, and demand the detention of, culpable Hamas leaders in Qatar and Turkey, the more time they will have to flee to destinations over which the United States has less leverage. It would be tragic to lose this powerful opportunity to help achieve the president’s goals of holding Hamas accountable and ending its rule over Gaza while minimizing bloodshed.

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