



COMMONWEALTH OF AUSTRALIA

Proof Committee Hansard

PARLIAMENTARY JOINT COMMITTEE ON INTELLIGENCE AND
SECURITY

**Re-listing of five organisations as terrorist organisations under the Criminal
Code**

(Public)

FRIDAY, 1 OCTOBER 2021

CANBERRA

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PARLIAMENTARY JOINT COMMITTEE ON INTELLIGENCE AND SECURITY

Friday, 1 October 2021

Members in attendance: Senator Paterson [by video link] and Dr Aly [by video link], Mr Dreyfus [by audio link], Ms Hammond [by video link], Mr Leeser [by video link] and Mr Tim Wilson

Terms of Reference for the Inquiry:

Section 102.1A of the *Criminal Code Act 1995* provides that the Committee may review a regulation which lists an organisation as a terrorist organisation and report its comments and recommendations to each House of the Parliament before the end of the applicable disallowance period for the House. The disallowance period is 15 sitting days from the day the regulation is tabled.

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[by video link]

Committee met at 10:00

CHAIR (Senator Paterson): I declare open this public hearing of the Parliamentary Joint Committee on Intelligence and Security for its review of the relisting of Hamas' al-Qassam Brigades as a terrorist organisation under the Criminal Code as part of its large review into the relisting of five terrorist organisations. These are public proceedings, although the committee may agree to a request to have evidence heard in camera or may determine that certain evidence should be heard in camera. I remind all witnesses that in giving evidence to the committee they are protected by parliamentary privilege, unless of course you are giving evidence from outside Australia. It is unlawful for anyone to threaten or disadvantage a witness on account of evidence given to a committee, and such action may be treated by the parliament as a contempt. In accordance with the committee's resolutions of 4 July 2019, this hearing will be broadcast on the parliament's website and proof and official transcripts of the proceedings will be published on the parliament's website.

I now welcome Dr Jonathan Schanzer from the Foundation for Defense of Democracies. Although the committee does not require you to give evidence under oath, I should advise you that this hearing is a legal proceeding of the parliament and therefore has the same status as proceedings of the respective houses. The giving of false or misleading evidence is a serious matter and may be regarded as a contempt of parliament. The evidence given today will be recorded in Hansard and attracts parliamentary privilege, as I've mentioned, for witnesses within Australia. I now invite you to make a brief opening statement before we proceed to discussion and questions.

Dr Schanzer: Thank you very much. Good morning, or good evening over here in suburban Washington DC. I thank all of you on the committee for the opportunity to contribute my testimony today. The Foundation for Defense of Democracies are a Washington DC based, non-partisan, non-profit research institute focusing on national security and foreign policy. Since our founding in 2001, FDD has shared its expertise with the Bush, Obama, Trump and Biden administrations, as well as congressional offices on a bipartisan basis. As for my background, I previously worked as a terrorism finance analyst at the US 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, with a focus on Hamas.

I come to you with two recommendations today. First, I strongly recommend that the Parliamentary Joint Committee on Intelligence and Security support the relisting of Hamas' Izz al-Din al-Qassam Brigades, the so-called 'armed wing' of Hamas, under the Criminal Code and not disallow the legislative instrument. Second, 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 organisation.

Recognising that I only have about two minutes left for my remarks, I wish to address one thing primarily, and that is the cohesive nature of Hamas. There is no separating the Qassam Brigades from the broader organisation. This is a fiction perpetuated by those who wish to engage with elements of the terrorist group. The fact remains that senior leaders like Yahya Sinwar, the leader of Hamas in Gaza; or Saleh al-Arouri, the deputy of the politburo, have served in both political and military roles, and they go back and forth with ease. The group receives funding from the likes of Iran, Qatar and perhaps even Turkey, and it makes no distinctions or earmarks for how that money is spent, so those funds are commingled. The political figures of the organisation advocate for the use of human shields by those carrying out terrorist acts. This practice is a war crime. So is the practice of holding the bodies of Israeli soldiers with the intent to use them as leverage in future negotiations, and this is done by the so-called political figures of Hamas in concert with those that have carried out attacks. Finally, it should be noted that the thousands of unguided rockets fired by Hamas over the years into civilian areas in Israel have taken place with the blessing of the political leaders of this terrorist group.

In summary and in short, Hamas is not bifurcated. It is cohesive and coordinated. Both the Qassam Brigades and the entirety of Hamas should be listed as terrorist groups in Australia and around the world. On behalf of FDD, I thank you for your time and certainly look forward to any questions that you may have.

CHAIR: Dr Schanzer, thank you very much for that opening statement and for joining us today. We're very grateful to have access to your expertise as part of this inquiry. I understand that Hamas has been a very strong focus in your career and that you're an author of two books on Palestinian politics, one of which was substantially focused on Hamas, so we will be very reliant on the evidence that you give to us.

As you alluded to in your opening statement, the minister has relisted the al-Qassam Brigades as a terrorist entity. I wouldn't want to get ahead of my committee colleagues, but I doubt there will be much quarrel with that.

I think it's more likely that our questions today will be about whether or not it would be appropriate to recommend to extend that listing to Hamas more widely. You may be aware that we held a similar series of hearings into Hizballah's listing and the government's decision to list only the external security organisation, and we did recommend that that listing be broadened, and we are awaiting the government's formal response to that report.

One of the key issues in that inquiry, as in this one, is the extent to which the military wings of either of these terrorist organisations operate independently or whether they are centrally controlled. It has been noted in some public commentary that there are times at which the al-Qassam Brigades disagree with or don't follow the orders of Hamas leadership. In your experience, is that true? If it is true, do you think that is significant in demonstrating whether or not they are a unitary organisation?

Dr Schanzer: I think we have certainly seen some evidence of friction without a doubt inside the organisation. There are external figures that are based in places like Turkey, Qatar or Iran. There are internal figures that are based in the Gaza Strip as well as the West Bank. Some have closer ties to the various patrons in Iran, Qatar, Turkey and even Malaysia. Then there are of course the distinctions that are political and military, at least as their tasks have been defined internally by the organisation.

There is tension among all of these various factions. We see tension between the West Bankers and the Gazans. We see tension between the Qatar based activists and the Iran based activists. There are divisions throughout. It is not an organisation that I would describe as—how would I put it? It doesn't operate like a Western government or a Western military. These are not disciplined people. They are part of a terrorist organisation where disagreements do arise and we see the occasional rogue element. But I think it's important to stress here that the military wing of Hamas operates within the jurisdiction of the so-called political wing or the political government inside the Gaza Strip. If that political class does not want a war, there will not be one. If they acquiesce to having a war, then it happens. You don't typically see the Qassam Brigades just launch a war out of nowhere without coordination with the rest of the group.

CHAIR: Is there a financial relationship between the Hamas organisation more broadly and al-Qassam Brigades, or are they completely independently financed?

Dr Schanzer: My understanding is that the funds are very much commingled. You have funds that come in from the likes of Iran primarily with the goal of launching attacks, and those funds are often given not to a representative of the so-called military wing; they are given to political figures who then disperse those funds. So again I think we get a clear sense of how this all works: that, when Iran wishes to support the organisation, it doesn't make earmarks or distinctions; it continues to fund the organisation more broadly. We see the same—I think to a lesser extent—with the likes of Qatar and Turkey.

CHAIR: One of the tests for listing a terrorist entity in Australia is obviously the planning and preparation of a terrorist act, and the al-Qassam Brigades clearly meets that. But part of the test is also whether or not they're involved in advocacy and encouragement of terrorist activity. It's probably not too controversial a statement to say there are plenty of on-the-record comments from Hamas leadership who are ostensibly part of the political wing advocating violence as a legitimate political tactic, is it?

Dr Schanzer: Absolutely the case. We've also actually seen some very cynical things done on the part of the so-called political class or the political figures of Hamas. There is an ongoing effort right now to send children to the border with Israel to basically get in the line of fire of Israeli soldiers. I visited Israel just in June, and the Israelis have told me that these children are paid to do it by political figures within the organisation—not military, but the military wing takes advantage of this. So it's not only these terrible statements that are made in support of violence; over the last year or two, we have seen children being used as human shields and being encouraged to move to the front as cover for military activity.

CHAIR: Is there any evidence that Hamas's political leadership seek to distance themselves from the al-Qassam Brigades? Have they condemned the violence that they undertake or disowned it in any way?

Dr Schanzer: There was a time—I want to say it was 2016, or maybe 2015; I'd have to go back and look at my notes—when the Hamas leadership based out of Qatar rolled out a new document. It was described as perhaps a new vision for the organisation. What was interesting, though, was that it did not supplant the charter. The charter was released in 1988, and the charter is just dripping with violent sentiment: the endorsement of jihad, the encouragement of murder and the encouragement of genocide, to be frank, in calling for the destruction of the entire State of Israel. This new document that was released was an attempt to perhaps put a softer side to Hamas, to create perhaps a different identity, but afterwards we saw statements released by the organisation's leadership, saying that this document did not change the initial goals of Hamas as articulated in that 1988 charter.

So there have been attempts to perhaps create a little bit of distance. That effort has been primarily shepherded by the leadership of Qatar, where there is a significant political presence. The Qataris, by the way, have done this with a number of other organisations, including the al-Qa'ida affiliate in Syria, as well as more recently the Taliban—this idea that there are radicals and moderates within various terrorist organisations. In my view, this is a very cynical ploy and one that we've seen used over and over again, but I don't think it ever truly reflects the truth. This is a terrorist organisation at its core, and I think its political leaders know that and really do not have a problem with it.

CHAIR: A final question from me, and then I'll go to Mr Dreyfus. On the contrary to that previous question, is there any evidence of Hamas's civilian political leadership taking credit for its violent acts against the State of Israel?

Dr Schanzer: A really salient example of that was in 2014. You'll recall there was a significant war that took place between Hamas and Israel in the summer of that year; it lasted for nearly two months. There was a group of political figures that was based in Turkey at the time—and here I think it's really instructive. There was a man by the name of Salah al-Arouri who was a political figure in Turkey. He was engaging very regularly with the Turkish leadership, but he also happened to have the role of the West Bank Qassam Brigades leader. He got up in front of roughly a thousand people at the end of that conflict, including the Deputy Prime Minister of Turkey, claimed credit for that initial attack—the kidnapping and killing of three teens in the West Bank—and received immense applause. But I think the moral of that story is that he was playing a political role inside Turkey while also preparing and dispatching terrorists to carry out attacks in the West Bank just months before.

CHAIR: Thank you, Dr Schanzer. I really appreciate that. Mr Dreyfus?

Mr DREYFUS: Thank you very much, Chair, for the call. Thank you, Dr Schanzer, for appearing before the committee and for giving us the benefit of your undoubted expertise, and thank you for the written submission that you provided to the committee. As the chair foreshadowed, I am one of those members of the committee who are not going to be expressing any disagreement with the relisting of Hamas' Izz al-Din al-Qassam Brigades, but I am wishing to explore with you the second recommendation you made to us in your written submission, to the effect that this committee, the intelligence committee of the Australian parliament, should be recommending to the Minister for Home Affairs that she list the entirety of Hamas as a terrorist organisation. You have helpfully noted in your submission that the United States, our ally, has listed the whole of Hamas since 1997. Canada, another of our Five Eyes allies, has listed the whole of Hamas since November 2002. Other organisations of states such as the Organization of American States also list all of Hamas. Of course Israel and the European Union do as well.

You've made clear your own view that Hamas is a unitary terrorist organisation. You've referred to a number of leaders of Hamas, including Yahya Sinwar, Saleh al-Arouri, Ahmed Jabari and Khaled Mashal, all of whom have served both in military positions and in political leadership. Sorry for this very long introduction to the question, but I'm trying to get to the point. I wanted to ask you about what the Minister for Home Affairs, on behalf of the Australian government, has said in her statement of reasons accompanying the listing, going to this point of separateness. I'm going to read you a couple of propositions from the statement of reasons. The first proposition is this. She is writing in the statement of reasons about the Hamas' Izz al-Din al-Qassam Brigades and says:

The Brigades exist within the overall organisational structure of Hamas ...

I take from what you have said that you don't have any disagreement with that.

Dr Schanzer: I do not.

Mr DREYFUS: The next part of her sentence is:

... subordinate to its political leadership ...

So she is saying in the statement of reasons that the brigades are subordinate to Hamas's political leadership. I take it you wouldn't disagree with that either.

Dr Schanzer: I would not.

Mr DREYFUS: I want then to ask you about the next part of the statement. The minister says:

... structured as a distinct military wing. While decisions of the political leadership probably take precedence, the Brigades operate with a significant degree of independence and are unlikely to seek approval from the political leadership for operational activities.

I appreciate that you're not the author of that statement, and the committee is going to have the opportunity to ask officials from the Department of Home Affairs about this statement of reasons, but, to my reading, that statement of reasons is at odds with the evidence you are giving to the committee.

Dr Schanzer: I would agree with your assessment.

Mr DREYFUS: I'm asking you to comment on the proposition:

... the Brigades operate with a significant degree of independence and are unlikely to seek approval from the political leadership for operational activities.

Dr Schanzer: I see where you're pointing out the friction and I agree that there is friction with what is written there and the way that I would assess things. I think the assumption there is that you are likely to see the Qassam Brigades go off and do something wildly independent of the rest of the organisation, and they have a wide berth to do so. I don't think that that is something that happens often. Certainly we could see moments where the Qassam Brigades carry out an attack or fire a rocket when an individual or even a small group of people are looking to independently stoke violence, but I think an instructive way of looking at this is from the most recent war with Gaza.

The Israelis discovered what is now commonly understood or referred to as a 'metro' system of underground tunnels. Those tunnels were hundreds of kilometres long and snaked throughout the Gaza Strip underneath homes, hospitals, apartment buildings, mosques, kindergartens—you name it. The goal was to create a labyrinth so that, when Israeli troops came in on the ground, they would be surprised, they would be shot, they would be kidnapped and they would be killed. This could not have been done without close coordination between the political people that run the Gaza Strip—those that deal with sewage, water, trash and electricity. All those people who are engaged in those activities were undoubtedly aware of the fact that the so-called military wing was digging right beneath them. So what we're talking about here is a of extremely close coordination for the purpose of military activity.

In fact, I would say that, if you go back and look at the charter and the statements—even recent statements by Hamas leaders—they will all say the same thing: that the *raison d'être* of the organisation is war with Israel, is violence. So trying to make an argument that the military wing might have some operational independence, I think, misses the broader picture, which is that the two co-operate very closely because their goals are one and the same.

Mr DREYFUS: That leads me to the only other question I have. Let's look at the whole question from another angle. Even if it might be true—and I'm not accepting that, based on your evidence and from what we know of Hamas's activities—that there is some level of separateness in these paramilitary operatives who badge up as the brigades, there is ample basis from the known activities of the Hamas organisation as a whole for listing the Hamas organisation as a whole as a terrorist organisation for the purposes of Australian law. Would you agree with that?

Dr Schanzer: Absolutely. Again, the notion that they have different goals, different objectives and different ideologies—one cannot make those arguments. They believe in the same things. Their goals are the same. Their tactics and strategies are, in fact, the same. They coordinate incredibly closely. In fact, I really don't see a firewall between them at all. In every military action we see, you will find evidence of coordination either in the act of violence itself or in the pursuit or planning of that act of violence. For example, look at the rockets that have been smuggled into the Gaza Strip. They're fired by the so-called armed wing, but they are smuggled in with the knowledge and coordination of those that run the territory in Gaza. Again, you will see evidence of coordination at various points along the process leading up to the attacks that are undoubtedly terrorist in nature, so trying to make these distinctions—I still find myself surprised that such an argument has been made and continues to be made in light of everything we know about the way the organisation runs itself.

Mr DREYFUS: To go back to my question, to some extent it could be said that it's a distraction to try and look for distinctions between the brigades and Hamas as a whole, but I'd propose that, even if you could point to some distinctions or some separateness, there are ample activities by Hamas, as a whole—controlling, as it does, the territory of Gaza and permitting and financing terrorist operations against Israel to be launched from Gaza—to make it clear that the listing of Hamas, as a whole, is warranted.

Dr Schanzer: I agree with that statement 100 per cent.

Mr DREYFUS: Thanks very much.

CHAIR: Mr Leeser.

Mr LEESER: Dr Schanzer, thank you very much for your evidence. I'll echo the comments of both the chair and Mr Dreyfus. I'm another member of the committee who's persuaded by your recommendation, and I support what the Minister for Home Affairs has done in relation to the partial listing. I'm another member who's interested in exploring the broader listing. I really only have a question around the difference between the position in the United States and the United Kingdom. When we were considering, as the chair referred to, the listing of

Hizballah in its entirety, one of the things that certainly had a real impact on my mind was the fact that the UK had changed its position and decided to list Hizballah in its entirety. What's the reason that the United Kingdom doesn't list Hamas in its entirety? Are you able to help the committee with that?

Dr Schanzer: I wish I had insider information as to what drives UK policy, as I work here in the US. What I can say is that there has been a good bit of disagreement within our two governments. The transatlantic relationship has definitely found some strain in the debates surrounding Hamas. In fact, as to some of the other terrorist organisations, bilateral cooperation has been generally very good. What we have found, though, is that the UK government has been reluctant to designate or list certain charities that have been operating inside the UK which relate to Hamas or are connected back to Hamas, and there has been a general reticence to go after this organisation in a full-throated manner. I believe that a lot of that is political; I believe that it might have something to do with constituents inside the UK. As far as the US is concerned, the law is extremely clear. The analysis is extremely clear.

This is probably one of the only areas that I find surprising about UK policy, given that we are really aligned on so many other issues, but I don't think the assessment really differs that much. I believe it's probably splitting hairs, and, as I said my opening statement, I believe that, often, perpetuating this fiction allows for political engagement and opens a door for working with the other side of the Palestinian divide. I should note, though, that from a political perspective, it could end up being harmful. The reason why is this: there is a very stark division right now among the Palestinians. As I'm sure this committee is aware, the West Bank is controlled by the PLO and the Palestinian Authority, and then you've got Gaza under the thumb of Hamas. When you begin to provide a certain amount of legitimacy to Hamas, what you do is ultimately undermine the political legitimacy of the Palestinian Authority. If what we're trying to do right now—and I believe that this is the stated policy of the Australian government; it is also the policy of the UK government—is to try to encourage a two-state solution, there is only one party out of the divide from the civil war in the Palestinian Authority that is willing to engage, and that is the PA—the West Bank government. Lending legitimacy to the Hamas government in Gaza is undermining peace and undermining the PA. So, ultimately, I think this is a serious disagreement between the UK and the US.

Mr LEESER: Thanks, Dr Schanzer. There are no further questions from me.

CHAIR: Mr Wilson.

Mr TIM WILSON: When we were discussing the listing of Hizballah, a lot of the discussion was focused on the unitary nature of the organisation. I am wondering, when it comes to the discussion around the unitary nature of Hamas et cetera, how do you see the capacity for enforcement from the hierarchy of the system to justify claiming it's a unitary organisation which can then compel or oblige its members to stay consistent with its behaviour from the decisions at the top?

Dr Schanzer: If I understand your question, you're trying to get at the decision-making—

Mr TIM WILSON: The decision-making apparatus, but how do they enforce the application of decision-making down the system? Because when we're talking about Hizballah, we often have this conversation: it was unitary and that there were pathways for enforcement, which reinforced the idea that it was a unitary organisation, not just in spirit but in practice. Would you say the same occurs in this circumstance?

Dr Schanzer: I would say that it is important to note that Hizballah has been around a bit longer and it also has a more direct connection with the Islamic Republic of Iran. Both organisations, by the way, are funded almost entirely by Iran. Hamas has a little bit more of a division within, but, within Hizballah, we see a certain discipline, with large numbers of fighters that have been trained and they operate very clearly within that structure. Within Hamas, we see a slightly different perspective. There is still a unitary mission. What is interesting though are the divisions within that I mentioned, external versus internal—those that have loyalty to Iran; those that have loyalty to Qatar, to Turkey, to Malaysia; those that operate in the Gaza Strip versus the West Bank. It's a dispersed organisation. What's fascinating to me is that they still find consensus. The organisation, even with all of its various factions and even with somewhat of a lower level of discipline, continues to find consensus, continues to work together toward a common goal. So I would not say that we're dealing with apples and apples here, so to speak; these are apples and oranges. They are still funded by Iran and they have many things in common, including the weaponry training, counter sources et cetera, but they operate differently, primarily because of Israeli disruption, because of the fact that a number of their leaders have been forced outside of the territories and because there is that territorial divide between the West Bank and the Gaza Strip. What we find is the leadership are still respected. They happen to often make their decisions based on a consensus, which is a little bit more informal than what most people are used to, but, again, what we find is that they agree more than they disagree and they rally around the flag when decisions are ultimately made.

CHAIR: Would there be any negative consequences for Australia if we broadened our listing to cover the entirety of Hamas? Would our national interest, in your judgement, be damaged in any way?

Dr Schanzer: No. I would say, again just to reinforce this question of a two-state solution, if what you're trying to do is empower the more pragmatic faction within the Palestinian political divide, that is not Hamas; Hamas has no interest whatsoever in making peace. In fact, if you look back at its history, it really came of age in the 1990s in a campaign to disrupt the peace process with suicide bombings and other acts of violence. The idea of engaging with this organisation, given its long history of violence and its opposition to the peace process, would only lend credence to the idea that maybe you don't want peace. That is effectively the message that one sends when one engages with Hamas and treats it as a political entity that is distinct from the violence that it is known for. It truly perfected the art of suicide bombing in the 1990s. Hizballah initiated it with the help of Iran, but Hamas truly perfected that war crime, and to give political legitimacy to that organisation is something that is unthinkable to me. In terms of other political fallout, I would say that more and more in the Arab world, if you're thinking about Australia's foreign relations, there are more and more countries that are rejecting Hamas

Sudan is currently purging Hamas assets from the country after years of tolerating it there. The UAE, Bahrain, Morocco have all just engaged in normalisation agreements with Israel and they also view Hamas in a dim light. Even countries like Saudi Arabia, which were former patrons of Hamas in the 1990s, are now eschewing the organisation; they're rejecting it. We're seeing that, in the Arab world, yes, there are still rejectionists like Iran, Syria, Turkey, Qatar and Malaysia. Those are countries that still see some value in trying to prop up Hamas. But they're also—perhaps, other than Iran and Syria—rogue states. These other countries will still engage with you; they will engage in international relations with Australia, whether you designated Hamas in its entirety or not.

CHAIR: To conclude that, are you aware of any damage to the national interests of the United States or Canada or the European Union when they made the decision to list it in its entirety?

Dr Schanzer: None whatsoever. We have certainly seen continued efforts in all these jurisdictions for Hamas to raise funds, which obviously is illegal, and we have seen crackdowns on that. By the way, it's another indication of when political activists raise money and then send it back to the Gaza Strip for the purpose of carrying out attacks; that's one of the reasons why it's illegal in this country. We've seen the need for law enforcement, but I don't think we've ever seen Hamas driven attacks, or nothing that would impact the security of these countries. Really, I think, just a policy that is consistent with all the other listings that we've seen here in the US and in Canada as well.

CHAIR: Great. Dr Schanzer, thank you for your attendance. Your evidence has been very helpful. I don't think you did receive any questions on notice, but it's possible you might receive some in writing after the hearing. If you do, it would be helpful if you could return answers by Wednesday 6 October because we have a tight deadline to report to the parliament on the disallowance motion.

Dr Schanzer: It will be my great pleasure.

CARLILL, Dr Bren, Director of Public Affairs, Zionist Federation of Australia [by video link]

LEVIN, Ms Naomi, Senior Policy Analyst, Australia/Israel and Jewish Affairs Council [by video link]

RUBENSTEIN, Dr Colin, Executive Director, Australia/Israel and Jewish Affairs Council [by video link]

WERTHEIM, Mr Peter, Co-Chief Executive Officer, Executive Council of Australian Jewry [by video link]

[10:37]

CHAIR: I welcome representatives of the Australia/Israel and Jewish Affairs Council, the Zionist Federation of Australia and the Executive Council of Australian Jewry. I know Mr Leeser wants to make a declaration, so I will invite him to do that at this point.

Mr LEESER: Thanks, Chair. I just wanted to declare, as I've done on previous occasions, that before my election to the parliament I was a councillor at the Executive Council of Australian Jewry.

CHAIR: Thank you. Although the committee does not require you to give evidence under oath, I should advise you that this hearing is a legal proceeding of the parliament and therefore has the same standing as proceedings of the respective houses. The giving of false or misleading evidence is a serious matter and may be regarded as a contempt of parliament. The evidence given today will be recorded by *Hansard* and attracts parliamentary privilege. Since we have three organisation and a limited amount of time, I wonder whether each of you wants to make an opening statement and, if so, how brief it will be. Dr Rubenstein, do you or Ms Levin want to make an opening statement?

Dr Rubenstein: Yes. If there's time, I am prepared to make a very short one.

CHAIR: That would be fine. Dr Carlill, you've advised that you have a short opening statement. Mr Wertheim, do you have a short opening statement?

Mr Wertheim: Yes, three minutes.

Dr Carlill: Thank you very much for the opportunity to present evidence this morning, following our written submission. I'll be very brief. Obviously, we support the minister's decision to relist PIJ and the decision to relist Hamas Brigades, in short. The focus of my brief remark here is that this committee should recommend the Minister for Home Affairs seek additional information with a view to extending the listing of the Hamas Brigades to the entirety of Hamas. As our submission I think demonstrates, Hamas's political leadership really has very extensive command and control over the Hamas Brigades' terrorist operations—at worse, they actively and directly participate in them.

In essence, there is no differentiation between the Hamas Brigades and the Hamas political leadership at all in reality, as both, allegedly separate elements of Hamas, share the same personnel, resources and goals and their individual members shift fluidity between political and military command. In a sense, they perform both sets of roles simultaneously. The group's founder and successive eminent figures in Hamas reject any distinction and it's current leadership is comprised of the same individuals that recruited, trained, funded and partook in the Hamas Brigades.

I endorse the strong point that Dr Schanzer made, and I refer to this committee's recommendation to the Australian government to give consideration to extending the listing of Hizballah as a terrorist organisation to the entirety of Hizballah as well. Similarly, I think there are very good grounds for a similar recommendation to extend the listing of the Hamas Brigades to the entirety of Hamas, and we have already heard which nations already list the entirety of Hamas. Just to add to what Dr Schanzer said, in the Middle East, Hamas has a dwindling number of friends, with those remaining largely tied to the Iran-Turkey bloc.

The UAE, which a year ago was instrumental in creating the historic Abraham Accords, has identified the threat posed by Hamas very, very clearly. In June this year, for example, Abdullah bin Zayed, the Minister for Foreign Affairs of the UAE, said: 'When you look at groups like al-Qa'ida or ISIS, it is easy for most of the international community to talk about that. It is very unfortunate that countries are more likely to talk about groups like Hizballah or Hamas or the Muslim Brotherhood in a clearer manner. But obviously it has been funny when countries designate the same entity, its military wing as a terrorist group and its political wing as a non-terrorist group and then says that there is no difference between the military and political wing'—he concluded diplomatically. Similarly, as Dr Schanzer alluded to, whilst not officially designated as a terrorist organisation by Saudi Arabia, the Saudis have arrested Hamas officials operating locally and strongly criticise Qatar for its ongoing support for Hamas, noting this support undermines stability in the Middle East.

I am aware that my time is probably just about up, but I would like to add the point made in our submission, which was that it would likely assist law enforcement in this country in preventing fundraising by Hamas in

Australia if the listing was extended. I think that's a very important point to take into account. The more jurisdictions cut off Hamas's fundraising ability, the lower the chance Hamas can pursue its violent goals.

Finally, in contrast to a claim that maybe it's moderated in recent times, I think nothing could be further from the truth. The Hamas charter still prevails. In fact, on 26 May this year, leader Sinwar basically said, 'We still support the eradication of Israel through armed Jihad.' Thank you for this opportunity. As you can see, we strongly recommend the listing of the entire Hamas organisation. Thank you.

CHAIR: Thank you Dr Rubenstein. Dr Carlill.

Dr Carlill: Thank you, Chair, and good morning to all. I want to make three points in my introductory remarks, and they are quite similar to Dr Rubenstein's. The first is that the conversation you are having today has many parallels to the conversation you had in June when you reviewed the re-listing of Hizballah's external security organisation. As you did with Hizballah, the minister, on the advice of the public service, has maintained that there is the distinction between the armed part of Hamas and those parts of Hamas that do not bear arms. But this distinction is a fiction. The history, actions and statements of the Hamas leadership prove this. My second point is that even if one is determined to maintain this fictional distinction, the political wing of Hamas meets the definition of terrorist organisation in and of itself. The political wing of Hamas might not directly engage in terrorist acts but it fosters, assists, prepares and plans and indeed finances terrorism.

This leads me to my final point. The Australian parliament has made clear as to what constitutes a terrorist organisation. It is obvious that Hamas meets that definition, just like it is obvious that Hizballah meets the definition, which is why this committee recommended that the minister prescribe the entire organisation. But the minister is being advised differently by the Public Service. In June this committee repeatedly asked the relevant senior public servants as to why they maintain that Hizballah in its entirety doesn't meet the definition. They refused to give a straight answer in the public hearing. Hopefully, their answers in the classified hearing were satisfactory. If not, I urge the committee to press these public servants as to why the definition provided by the Australian parliament is not being applied by the Public Service when it comes to Hamas and Hizballah. This is especially the case since other terrorist organisations with multiple wings, including an organisation currently under review by this committee, are prescribed in their entirety in line with the meaning and intention of Australian legislation.

Thank you for your time. I would be delighted to answer any questions.

CHAIR: Thank you, Dr Carlill. Mr Wertheim?

Mr Wertheim: Good morning to all. The Executive Council of Australian Jewry supports the relisting of Hamas' Izz al-Din al-Qassam Brigades and Palestinian Islamic Jihad as terrorist organisations, for substantially the same reasons as are set out in the minister's statement of reasons. Our submission argues that the listing of the al-Qassam Brigades should be extended to Hamas in its entirety. For most of its history Hamas as an organisation has made no attempt to hide or disguise the full enormity of what it stands for. It not only calls for the destruction of Israel as a state but its founding charter, the Hamas covenant, openly advocates in article 7 the killing of Jews and in article 13 the indiscriminate use of violence. Article 13 also repudiates negotiations and compromise of any kind. Article 28 declares that the Jews control 'the Freemasons, the Rotary and Lions clubs and other sabotage groups' and 'that Israel, Judaism and Jews challenge Islam and the Moslem people'. Much of this language would not be out of place in a Nazi manifesto. There is no attempt to hide behind weasel words about Zionism and Zionists. The hostility is openly directed at Jews and the Jewish people.

The Hamas charter has been acted out time and again in acts of murder and mayhem. In the 1990s these took the form of suicide bombings inside civilian buses, at a pizza parlour, at a family restaurant and inside a teenage disco. For the last 20 years, whilst shielding themselves behind their own Palestinian civilians in Gaza, operatives of Hamas have fired thousands of rockets at Israel's cities and towns with the clear intention of causing maximum civilian casualties.

Unlike authentic national liberation movements, Hamas is not primarily dedicated to achieving political independence for its own people. Whatever its political, religious and ideological goals may be, they are predicated upon the destruction of another people—that is, upon the extermination and expulsion of most of Israel's current Jewish population. Authentic national movements have at times embraced terrorism but not genocide.

In 2017 Hamas supposedly adopted a new policy document, yet nothing has changed. There has been no let-up in its appalling racist rhetoric or its blood-soaked actions. Its leaders boast about the essential unity of the organisation. All of its facets, including the al-Qassam Brigades, are under one ultimate command. Hamas is

imbued through and through with a culture of terrorist violence. Criminality lies at the heart of the way Hamas acts against Israelis and the way it rules over the Palestinians in Gaza. It should be prescribed in its entirety.

CHAIR: Thank you very much, Mr Wertheim. I thank you all for those brief but helpful opening statements. I'll ask a couple of initial questions and then I will offer the call to my colleagues. I will direct them to all witnesses who feel they can assist.

As I was discussing with Dr Schanzer, there are two components to a terrorist listing. One is that they are directly or indirectly engaged in preparing, planning, assisting or fostering the doing of a terrorist attack. The second is that they advocate the doing of a terrorist act. Even if we weren't able to meet the test of directly engaging in those things, I think you could probably make the argument quite persuasively that they were indirectly engaged in those things. Surely it's a very easy test to meet that they advocate the doing of a terrorist attack. Some of you shared this in your opening statements, but perhaps you could go to some of the public comments from Hamas leaders about the terrorist violence that it advocates.

Ms Levin: I am happy to go first, if you'd like. There is a comment here that I think it goes to the heart of what you are saying. It was made by Yahya Sinwar, who is the head of Hamas in Gaza, Hamas's main territory, on 26 May 2021, at the tail end of the most recent conflict between Israel and Hamas in Gaza. He told Al Jazeera: We support the eradication of Israel through armed jihad and struggle. This is our doctrine.

This is not a man who is leading the brigades; this is a man who is leading Hamas as a full entity and sits on the politburo in Gaza, their main territory. I think that goes to the heart of exactly your question.

CHAIR: And ostensibly, at least, that's someone who has a civilian political role, not someone who has a military role—not currently, anyway—

Ms Levin: Certainly.

CHAIR: Clear and open advocacy for the destruction of a people.

Ms Levin: Exactly. Sinwar has previously had a significant role in the brigades, but these days, to international observers, he is part of the political wing of Hamas.

CHAIR: That second component is that a lot of the allegedly civilian or political leaders have strong military pasts. 'Military' is probably putting it in a more formal and generous sense than it should be. It's a terrorist past; they have engaged in in terrorist violence directly. They now say that they have a civilian or political role, but I don't think there is any evidence that they have abandoned their previous beliefs or tactics, is there?

Ms Levin: That's exactly right. There's a lot of fluidity—I think Colin used that word—in the movement between the leadership of the political wing, if we want to call it that, and the brigades. So there is movement to and fro. There is also fundraising activity; members of the political wing will engage in fundraising. As we know, money is fungible. There is no certainty that the fundraising done by the political wing is not for the military wing, if we want to put it in those terms. So there is fluidity in terms of personnel and funds, and that back-and-forth certainly exists.

CHAIR: Thank you. Any other members of the panel want to contribute on either of those issues?

Dr Carlill: Naomi mentioned a very good example, but there are so many others. Fathi Hammad in May this year called on the people of Jerusalem to cut off the heads of Jews. Hammad runs Al-Aqsa TV, which is—

CHAIR: Just before you move on from that previous point, Dr Carlill, that is quite a specific. That's incitement; it's not just a generic, 'We are opposed to the State of Israel,' kind of rhetoric. It is a specific instruction to undertake a specific act within another country's territory against civilians. Surely that's textbook terrorist advocacy?

Dr Carlill: That's right. He didn't even bothered to say 'Israelis'; he said 'Jews'. In the same month he said:

The Jews are a treacherous people. There can be no peace with the Jews. There can be no peace with the Zionists. The only thing we have for the Zionists is the sword. The only thing we have for the Zionists is the Ayyash 250 rocket.

He is quite specific. This is the guy who runs Al-Aqsa TV, which is Hamas's television station, and that has a long history of explicit incitement to violence and indoctrination of children to incite them to violence. There were also concerns that it was using its broadcast to help the brigades pinpoint where the rockets were landing and to therefore improve their aim as well. So Al-Aqsa TV has been indirectly involved in the violence in and of itself.

CHAIR: Again, a broadcaster is ostensibly a civilian component of Hamas, and yet it is engaged in very specific acts of advocating terrorist violence. Mr Wertheim, did you have anything to add to this?

Mr Wertheim: If you regard the forcible expulsion of Jewish civilians from Israel as an act of terrorism—I would argue that it very clearly is—then there are other statements you can also rely on from people like

Mahmoud al-Zahar and, more recently, the deputy chair of the Hamas political bureau, Mousa Abu Marzook. The Mahmoud al-Zahar comment came in 2017 and was quite revealing. He said that 'removing the Jews from the land they occupied 1948'—meaning the Israel heartland—is an 'immutable principle' because it appears in the book of Allah. In other words, he is elevating the forcible expulsion of Jewish civilians from the country as a religious principle. Then you have the more recent statement of Marzook, which was in May this year, where he said of the hostilities at that time:

This is just one of a [series] of wars, and a war will come when we negotiate with them about the end of their occupation, and their leaving of Palestine. Israel will come to an end just like it began ...

So, in terms of advocating for the forcible expulsion of civilians, it's very clear that they have a continuous history of making those sorts of statements, and their actions are perfectly consistent with those statements; in fact, it's very difficult to conceive of those actions in any other way.

CHAIR: Another important thing about some of these quotes is that these are not historical quotes from 20 or 30 years ago; these are very contemporary, very recent quotes, including quotes from after this period of so-called moderation in 2019.

Mr TIM WILSON: I just have two quick questions. I saw that Dr Rubenstein was on the call when the previous witness appeared prior to all of you; I presume you were all on the call. Do you have any reflections on his contribution? I presume there is agreement by the representatives that they agree with the sentiments?

Dr Rubenstein: Yes. I thought Dr Schanzer was compelling in his analysis. Particularly important were his comments about divisions within the Palestinian world and the increased activity of Hamas in the West Bank in particular, and the deliberate attempts to undermine the Palestinian Authority, to destabilise the Palestinian Authority and to gain control over the West Bank and the Palestinian leadership, and that that is leading to a dead end. That would mean there is absolutely no possibility of pursuing the option of a two-state outcome with Hamas, with this unremitting illogical instability to the very existence of Israel as well as its virulent anti-Semitism that came to dominate the whole Palestinian people. So the people supporting Hamas, or ignoring its extremism, are undermining any prospect of moving toward some type of peaceful resolution going forward. I think it is extremely important to be aware of this—that support of Hamas is undermining the best interests of Palestinians generally, as is their very extreme rulership in Gaza and their willingness to misuse Palestinian civilians, and children in particular, as civilian shields, and their whole modus operandi. I think those comments by Dr Schanzer really struck.

Mr TIM WILSON: I have one other quick question. For completely understandable reasons, the organisations you represent are particularly concerned with the issues between Hamas and Israel. Are there any other groups with which you believe Hamas engages in terrorist actions that should be on the record outside of Israel, based on your experience?

Ms Levin: As far as we know, Hamas isn't engaged anywhere outside of Israel but it is certainly part of a network of terrorist organisations in the Middle East. You've got comments from Iranian commanders like, 'We have six external armies', and Iran considers Hamas to be one of its external armies along with Hizballah and some others in the region. It is certainly seen as a tool that can be used by Iran in a particular territorial area, but there is no evidence, as far as I'm aware, that Hamas is active outside the territory of Israel and the Palestinian territories.

Mr TIM WILSON: Okay, thank you.

Dr Carill: I'll add to those comments, if I may? Hamas's treatment of Palestinian civilians within Gaza is atrocious. It persecutes Christians and there are complete restrictions on freedom of speech, freedom of mobility and all sorts of other things—obviously, LGBTI rights. That might not speak directly to the Criminal Code with regard to terrorism but it adds to the character witness of Hamas as an organisation.

Mr Wertheim: I'll add one thing to that. Hamas is part of the Muslim Brotherhood association, which is an organisation which operates throughout the Middle East. In the past, that has been a point of tension with the Egyptians, because the Muslim Brotherhood has a chequered history in Egypt—one that is about the stability and security of the government in Egypt. To the extent that Hamas has given support to the Muslim Brotherhood in the past, that has been a major point of contention and a source of instability for the Egyptians which the Egyptians themselves have acted on.

Mr TIM WILSON: Thank you.

CHAIR: I think Mr Dreyfus has rejoined us, so we'll go to him.

Mr DREYFUS: Thank you, Chair. I don't know what happened—I got cut off. But I was able to tune in online so I haven't missed what has been said by the three witnesses. I have a question that I would invite all three

organisations to comment on—perhaps you could comment in turn in the order that you introduced yourselves in, which was Dr Rubenstein first, then Dr Carlill and then Mr Wertheim.

I want to ask you all to comment on the particular statutory criteria that are provided in the Criminal Code Act for listing of a terrorist organisation, as they apply to Hamas. In a sense, I simply want to sidestep the exact status of the brigades and question whether or not they're directly subject to the control of Hamas leadership. My question focuses on Hamas as an organisation, as a whole—that is, the organisation that has been in control of the Gaza Strip since 2006. All of you have gone to some trouble in your three submissions to list a range of statements, a range of activities and a range of facts, including financing, about Hamas as a whole. The question is this: the Criminal Code Act provides that the Minister for Home Affairs, in order to take the decision of listing a terrorist organisation 'must be satisfied on reasonable grounds that the organisation: (a) is directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of a terrorist act; or (b) advocates the doing of a terrorist act'. So just to comment on a standalone basis, it's possible to see that advocating the doing of a terrorist act is a sufficient reason in itself for a listing. Are any of you in any doubt, based on what you've written in the three submissions, that Hamas, as a whole, satisfies the requirements?

Dr Rubenstein: Thanks, Mr Dreyfus. I am in no doubt whatsoever that Hamas meet these requirements in division 102 of the Criminal Code. In all of our submissions and in what we've said today—and certainly from the testimony of Dr Schanzer—it's clear that there's a complete linking between the so-called political leadership and the military or terrorist leadership. They're performing the roles virtually simultaneously. The politburo effectively presides over the rest of the organisation, including the Hamas Brigades. It's inconceivable that the Hamas Brigades could be continuing to undertake various terrorist activities both in Israel, as we've seen over the border, with kites, balloons, ongoing terrorist rocket attacks, as well as in the West Bank with these deliberate attempts to undermine not only the Palestinians but with the continued violence we saw in a major thwarted terrorist attack even last weekend, on 26 September. The short answer to your question is: the ineluctable conclusion, the very firm position that certainly AIJAC takes and, I believe, my colleagues take, is that we are dealing with a unitary organisation that definitely meets the requirements of the legislation to be branded as a terrorist organisation as such.

Mr DREYFUS: Thanks, Dr Rubenstein. Dr Carlill or Mr Wertheim, do you wish to comment?

Dr Carlill: I am in no doubt and the ZFA is also in no doubt. But I might add that, as you yourself drew out with your conversation with Dr Schanzer, the government's statement of reasons states, 'The brigades undertake military activities on behalf of Hamas,' and that the brigades exist within the overall organisational structure of Hamas that honours that political leadership. So all the examples that we're talking about, the government simply summarises the key point in a statement of reasons, and that is the answer.

Mr Wertheim: I also have no doubt that it fulfils both criteria. But I think the evidence is overwhelming that both of the criteria of a terrorist organisation are fulfilled by Hamas as an entire organisation. The idea that there is some sort of operational autonomy by the al-Qassam Brigades, if it applies at all, is very limited. All of the evidence is that major operations, the major policy direction of the organisation, the major decisions about terrorist actions wherever they're carried out and whenever they're carried out, all come from the same source, the ultimate command. Indeed, many of those who are ostensibly in the political organisation have themselves participated in those actions in the past—in the not-too-recent past, I might add. In terms of [inaudible], that's ongoing, so that would [inaudible] both of those criteria are met, and I don't really think there's any serious suggestion to the contrary.

Mr LEESER: I have two quick points. Dr Rubenstein, in his evidence, referred to fundraising occurring in Australia in relation to Hamas. The minister's statement of reasons in relation to links to Australia makes no reference to any of the fundraising. Is that because the fundraising is alleged to occur to Hamas globally, and the minister's statement of reasons may just refer to the brigade? Is part of your point that splitting the organisations makes dealing with organisations that fundraise for Hamas for the ultimate use of terror more difficult to deal with in an Australian context?

Dr Rubenstein: Yes, the problem is that legitimate fundraising for genuine purposes is often abused in terms of effectively ending up subsidising the terrorist and militaristic activities of Hamas proper. Law enforcement in Australia have made it clear, certainly in reference to the Hizballah inquiries which you held, that this can be a problem. Stopping this improper use of genuine charitable fundraising given for correct purposes and prescribing the entire organisation would eliminate this option

I should also add, by the way, that I don't think any of us are opposed to fundraising for genuine humanitarian purposes. It is highly unlikely that prescribing Hamas in its entirety would or should have any impact on

Australia's ability to support Palestinian people through genuine charitable efforts and developmental aid allocations.

Mr LEESER: My second question is on the point I put to Dr Schanzer around Britain's decision not to list Hamas in its entirety. When we looked at the Hizballah listing, certainly the fact that Britain had decided to list Hizballah in its entirety was a significant matter for me in thinking about these issues more broadly. Do any of the other witnesses want to make any comment about why Britain has not listed Hamas in its entirety and, indeed, whether Britain is able to use that for any greater leverage over the behaviour of Hamas than anyone else?

Ms Levin: I'd be prepared to take that on notice. Maybe the other organisations could comment, but the debate in the UK is not something AIJAC has looked at extensively. I'd be prepared to take that on notice and get back to you in the next week.

Mr Wertheim: Mr Leeser, could I add something on your earlier question about fundraising. My understanding is that Hamas in its entirety is already listed within the consolidated list, which is kept for separate purposes to those that we are looking at today. As I understand it, it would effectively prevent fundraising in Australia for Hamas as an organisation. That's not to say there would in any sense be a limit on raising funds for humanitarian purposes in any of the Palestinian territories or on Australia providing humanitarian assistance. I support what Dr Rubenstein just said about that, but, in terms of fundraising, that is already dealt with. Our concern is a slightly different one, and that is that street demonstrations and other public manifestations of support for Hamas in Australia, which we have seen from time to time, can act as a lightning rod for disaffected youth to be drawn into terrorist networks. We've seen that in other contexts. That is possibly one other avenue which would be of concern, in my view, which is made possible by the fact that Hamas as a whole is not prescribed.

CHAIR: Can you envisage any harm to Australia's national interests from extending the listing to cover Hamas in its entirety? What possible damage could that do to our security or national interests?

Mr Wertheim: I'm happy to answer that. I think the answer is no. In fact, I think it could benefit Australia's interests. Some of the countries in the Middle East with whom Australia is now extending its trade, particularly the Gulf states, would probably welcome an extension of the listing. Even if they don't do it themselves, they would certainly see that as something that is consistent with their own interests. They're concerned about their own internal stability all the time—in particular, the destabilising influence of Iraq, which extends, as we've heard from many sources, to organisations like Hamas. So, far from harming Australia's national interests, I believe it would enhance them—in terms of trade and possibly in other areas as well.

Dr Rubenstein: It would certainly enhance Australia's security standing at a time when we have a range of global concerns we are well aware of. I think the Prime Minister's historic visit to the United States last week consolidates alliances and the stance of our allies and friends, particularly the United States—and in this case obviously Canada, the European Union and others. Prescribing the entire organisation would be to the benefit of Australia standing and credibility. I also think it's important and completely consistent with Australia's bipartisan stand to condemn the inculcation and promotion of anti-Semitism in all its guises. Quite clearly, Hamas is talking about Palestine from the river to the sea. As we've seen from the mouths of its political leadership very recently, it's talking very explicitly about the eradication of the State of Israel. So I think it will only enhance Australia's standing and be to our benefit to prescribe the entire organisation for a number of reasons, including those.

Ms Levin: I'll make one further point on Australia's developmental aid to the Palestinian territories. AIJAC has done some research, and this is unlikely to have any material impact on Australia's developmental aid. Most of it is being provided to the people of the Palestinian territories by either UN agencies or international NGOs. So prescribing the entirety of Hamas wouldn't have a material effect on being able to continue that humanitarian support.

CHAIR: Thank you. Colleagues, are there any further questions?

Dr ALY: On that final point that Ms Levin made about international support: the political wing of Hamas overtakes the distribution of that support within Gaza. Would listing the entirety of Hamas then impact on that support in that it could then be argued that that support is actually providing support to Hamas?

Ms Levin: It's a good question. As far as I can see, most of Australia's bilateral aid in terms of supporting Palestinian NGOs has ceased or is on its way to ceasing. The majority of Australian aid to assist Palestinian humanitarian causes is being delivered through UNRWA, UNOPS, and also through the International Committee of the Red Cross. It's unlikely that any of those bodies would be engaging directly with Hamas beyond the practicalities of Hamas being the governing authority. But, as far as we can tell, with the current aid situation it wouldn't make any material difference.

Dr ALY: Have you done any research on the impact of listing Hamas in its entirety on some of those movements here in Australia that support Gaza? For example, we see protests with people chanting ‘from the river to the sea’. Would it have any impact on the ability of those organisations to coordinate here in Australia protests or any kind of activities in support of Hamas?

Mr Wertheim: I don't think it would impact on their ability to organise or to engage in legitimate protest, but I think it would send a very clear signal from the government that the kind of rhetoric that Hamas engages in, which unfortunately we see replicated on the streets of Sydney occasionally, and in social media and in certain publications and on websites, is considered in Australia as repugnant. To that extent, at least, I would hope it would ameliorate the prevalence of that kind of rhetoric, which unfortunately feeds the level of anti-Semitism in Australia and, from that, social cohesion generally. I would hope that, by sending that sort of a signal, we would see some amelioration at least in the tone of public rhetoric about it and an improvement in the level of discourse.

Dr ALY: Should we take that path of listing the entirety of Hamas as a terrorist organisation? Would it be your stance that we should also follow that up with a definition of anti-Semitism?

Mr Wertheim: I think all three organisations at this session have very publicly and prominently supported the adoption of the International Holocaust Remembrance Alliance's working definition of anti-Semitism, which definitely covers the sort of threat that Hamas is notorious for. We would support that quite independently of the propositions that we've put to you in the context of this inquiry. But certainly they would have a reinforcing effect.

Dr ALY: Thank you. Thank you very much for your time today. Thank you, Chair.

CHAIR: Thanks, Dr Aly. Do any other colleagues have any further questions for our witnesses? If not, can I thank you very much for your time today, your submissions and the effort you put into assisting the committee in our work. We're very grateful for it. I think there might've been one question taken on notice and you may receive others in writing afterwards. If they could returned by Wednesday 6 October that would assist us to complete our deadline to the parliament for the disallowance consideration. Otherwise, thank you very much for joining us.

BURGESS, Mr Mike, Director-General of Security, Australian Security Intelligence Organisation [by video link]

[11:20]

CHAIR: Welcome. Mr Burgess, I know there was a possibility you would be joined by a colleague today. Do you have another colleague on the call?

Mr Burgess: There will be a backup. As you appreciate, Chair, I'm currently in hotel quarantine, so if something goes wrong with tech or I'm required to answer the door then my backup will join the meeting and carry on.

CHAIR: In that case we will welcome them officially when they join us. Do you wish to make an opening statement?

Mr Burgess: I do. Thank you, Chair—just a brief one.

CHAIR: Please.

Mr Burgess: Thank you again for the opportunity to appear today. ASIO protects Australia and Australians from threats to their security. Part of that role involves providing advice on terrorist organisations such as Hamas' Izz al-Din al-Qassam Brigades, which I will just refer to as 'the brigades'. ASIO assesses the brigades represent a capable and organised terrorist force in Gaza, which will continue to threaten the Israeli military and civilian targets. The brigades' use of terrorist tactics are in pursuit of Hamas' political objectives, namely the defeat of Israel.

In May this year Palestine militants, including members of the brigades, launched over 4,000 rockets into Israel from Gaza. The brigades claimed responsibility for multiple strikes against Israel during this period. Throughout August 2020 Palestine militants in Gaza launched hundreds of incendiary explosive balloons and at least 16 rockets into Israel. [inaudible] assistive brigades were involved in these attacks. The brigades also advocate others to use terrorist tactics to advance the Palestinian nationalist cause. On 24 April this year, in the brigades' press release supporting Palestinian demonstrations against restricted access to Jerusalem's access to the old city the group expressed support for tens of rockets fired from Gaza by nearby Israeli settlements, describing them as, 'A normal response to the crimes and restrictions in Jerusalem'. ASIO assesses the brigades are a highly capable terrorist organisation who are committed to the use of terrorist tactics targeting Israel. As a consequence they remain a security concern to ASIO and we support the listing. I'm happy to take your questions.

CHAIR: Thank you very much, Mr Burgess. I'm particularly grateful for you joining us from quarantine. I will ask some initial questions and I will offer the call to my other colleagues. You might remember when we were considering similar issues in relation to the Hizballah listing I asked you if the government were to decide to broaden the listing of Hizballah to cover the whole organisation whether there would be any negative implications for Australia's national security or any operational implications for ASIO. I wanted to put the same question to you. Should the listing of Hamas be broadened? In your view, could that cause any operational problems for ASIO or any problems for Australia's national security?

Mr Burgess: In my view, it would not cause an impact for ASIO to do its job, nor would it present broader national security concerns.

CHAIR: Just so we're very clear about that—that's a kind of straight neutral answer—do you think there would be any advantages in broadening the listing of Hamas? Would there be a range of conduct that could be captured by Australia's criminal law if it included Hamas?

Mr Burgess: Sure. Remember right now under the financial sanctions regime Hamas as a whole is listed, so terrorism financing is covered under that. If the whole of the organisation were listed there would be no operational benefit to my agency. But, of course, whether or not the whole organisation is listed is a matter for others, not for me.

CHAIR: Their could be operational benefits for other agencies, which I wouldn't ask you to comment on, such as the AFP and state police.

Mr Burgess: That's correct.

CHAIR: Those are my key questions. Mr Dreyfus, were you seeking the call?

Mr DREYFUS: I wasn't, but I would be very happy to thank Mr Burgess for checking in from hotel quarantine. I hope we are going some way to relieving the tedium of his day by having him at this hearing. Mr Burgess, given that division 102 of the Criminal Code Act includes as a ground for listing an organisation that it 'advocates the doing of a terrorist act', from what you know of Hamas as an organisation as a whole, it's pretty

clear that it would satisfy and indeed has satisfied over and over again in its more than 40-year history that criterion, isn't it—that Hamas is an organisation which advocates the doing of a terrorist act.

Mr Burgess: There is no doubt that Hamas advocates violence or acts of violence. In our view it is the brigades that actually carry out those acts of terrorism and violence, but there's no doubt the group as a whole does advocate for acts of violence.

Mr DREYFUS: Thanks very much.

CHAIR: Mr Leeser?

Mr LEESER: I don't want in any way to verbal the Director-General of Security, so I was going to try and have a look at his exact words in relation to the listing of Hizballah. I wonder whether I might put to you in a positive sense the chair's questions which were couched in a negative sense. Would you support the listing of the entirety of Hamas?

Mr Burgess: I would have no issue with that. Yes, I would support it. Obviously I'm not the decision-maker here, but my answer to your question would stand, of course.

Mr LEESER: Thanks, Chair—no further questions.

CHAIR: Dr Aly, you indicated you have questions.

Dr ALY: Director-General, I want to ask for your thoughts on the practical implications of listing the entirety of Hamas for pro-Palestinian supporters in Australia, particularly those who organise or attend protests. If we were to list the entirety of Hamas as a terrorist organisation, what implications would that have for activities in Australia that support Hamas? Would they then be subject to some of the counterterrorism laws that currently exist?

Mr Burgess: That's correct. It would be problematic for anyone. It would be unlawful for people to support Hamas if they were listed entirely. Of course, I could say—and I'm not the expert on this—that there is a difference between Hamas and people who consider themselves Palestinian. If they were directly supporting Hamas, then, if it was listed as a terrorist organization, they would be by default supporting a terrorist organization. It would be a problem as a matter of definition. Of course, I can recognise that being Palestinian is different to supporting Hamas.

Dr ALY: As an example, would protests where people are actively chanting 'from the river to the sea', which is a core part of the Hamas doctrine, subject them to some of the laws around supporting a terrorist organisation?

Mr Burgess: You'd have to ask someone else who has more expertise on whether such a nationalist slogan or phrase would mean they're actually supporting a terrorist organisation. ASIO, again for the record, does not focus on lawful protest in this country. Whether or not that act actually meant they were foul of the laws if the organisation was listed, you'd have to ask my Home Affairs colleagues who are coming next.

Dr ALY: Okay. Thank you so much, Director-General.

CHAIR: Thanks, Dr Aly. Mr Burgess, as usual, you were very efficient and direct and to the point, which we're grateful for. As there are no further questions, I thank you very much for your time, and I hope that was a brief interlude to your quarantine. Should you receive any questions in writing on notice after this, we'd ask that they be returned by Wednesday 6 October to allow us to complete our work.

Mr Burgess: Thank you, Chair, and committee. Yes, this has made my quarantine worthwhile. Putting on a tie in quarantine is a thing that keeps me in the game. Thank you very much for your time today.

CHAIR: Our pleasure. Colleagues, we're not due to move to our next witnesses until 12.15. I would propose that we suspend and resume at 12.15 with those witnesses because I don't think they can come forward significantly. So, unless I communicate otherwise, the committee will suspend and resume with the Department of Home Affairs and the Department of Foreign Affairs and Trade.

Proceedings suspended from 11:30 to 12:16

CHICK, Mr David, Assistant Secretary Counter-Terrorism Strategic Policy Branch, Department of Home Affairs [by audio link]

FEAKES, Mr Richard, First Assistant Secretary, Deputy Counter-Terrorism Coordinator, Department of Home Affairs [by audio link]

INNES-BROWN, Mr Marc, PSM, First Assistant Secretary, Middle East and Africa Division, Department of Foreign Affairs and Trade [by video link]

NOBLE, Mr Roger, Ambassador for Counter Terrorism, Office of the Ambassador for Counter Terrorism, Department of Foreign Affairs and Trade [by video link]

CHAIR: I welcome representatives of the Department of Foreign Affairs and Trade and the Department of Home Affairs to give evidence at this public hearing. Although the committee does not require you to give evidence under oath, I should advise you that this hearing is a legal proceeding of the parliament and therefore has the same standing as proceedings of the respective houses. The giving of false or misleading evidence is a serious matter and may be regarded as a contempt of parliament. The evidence given today will be recorded by Hansard and attracts parliamentary privilege. I now invite you to make a brief opening statement before we proceed to discussion and questions.

Mr Feakes: There is no opening statement from Home Affairs.

CHAIR: Mr Noble?

Mr Noble: No, thank you.

CHAIR: Great. I'll commence the questioning and then offer the call to some of my colleagues. Firstly, I have some purely factual questions for Home Affairs about the process around this relisting of al-Qassam Brigades. Was any consideration given to or any advice sought about a wider listing of Hamas?

Mr Feakes: No, this was a relisting of the brigades. As you probably know, the relisting was made to avoid the situation where the listing might lapse, which it would have on 4 August, but there was no consideration or engagement with agencies on an expansion of that listing. It was solely focused on relisting the brigades.

CHAIR: Is there currently any consideration occurring on a wider listing?

Mr Feakes: No, there isn't.

CHAIR: What can we deduce from that about the government's intentions? Did the government make a conscious decision to not list Hamas, and, if so, what were its considerations in doing so?

Mr Feakes: No, there's no conscious decision to not expand the listing. I won't reiterate what I said. This last relisting was focused on the brigades. It's certainly open to the Department of Home Affairs and other agencies to take forward an expanded listing through the usual quite rigorous process of nomination seeking legal advice, weighing up the non-legislative factors and then putting that to the Minister for Home Affairs. There's nothing precluding that, and there is no conscious decision in this most recent relisting not to do that.

CHAIR: Okay. I want to explore a little bit about your understanding of Hamas but, before I do that, just as a threshold issue I want to consider how a wider listing would engage with the act—with the legislative criteria. I'll come back to whether they're directly or indirectly involved in terrorist acts. It would seem to me, on the face of the evidence presented to the committee this morning by Dr Shanzer, the Zionist Federation, AIJAC and the ECAJ, that Hamas, in its totality, would meet the test of 'advocates the doing of a terrorist act'. There is extensive comment on the public record, as we have also heard in evidence, that it falls into both the category of generic and general advocacy of violence towards Israelis and Jews—the wipe-them-off-the-map style of rhetoric—and also the much more specific category of direct instructional incitement. For example, we were given a quote from May of this year in which supporters and followers of Hamas were encouraged to behead Jews in Israel. That seems a very specific level of advocacy, and it is coming from the so-called civilian or political arm of Hamas. Does that not, in and of itself, meet the legislative criteria, without even considering the other components?

Mr Feakes: I'd agree. On the face of everything you've just said and everything we heard this morning—and I listened very carefully, particularly to the compelling evidence given by your first witness—I'd say it is a compelling case, but we would need to seek legal advice to assure ourselves that the actions meet the legislative benchmarks. But, yes, on the face of it I agree.

CHAIR: And, going to the other leg, 'directly or indirectly engaging in, preparing, planning, assisting in or fostering the doing of a terrorist act', at the very least it seems that Hamas and the brigades have a degree of joint management and financial control. There is some debate about the extent of that. There are some who say that al-Qassam Brigades can and does act unilaterally, but it certainly appears that there is quite a fluid relationship

between those two entities. If we're considering those different entities, could it be considered that at the very least they are indirectly engaged in those terrorist acts?

Mr Feakes: Again, we'd need to satisfy ourselves from information from intelligence organisations and from consultation with the AGS, but on the fact of it I would agree.

CHAIR: I'll direct this to Mr Noble as well now. Is there any rationale that you're aware of as to why Australia wouldn't list it? Is there any way in which it would harm Australia's interests to broaden the listing?

Mr Feakes: No. There is no rationale that I'm aware of. As I think Dr Aly touched on with some of the previous witnesses, with organisations like Hamas and indeed Hizballah, which we've talked about previously—multifaceted organisations—prosecution through the Criminal Code takes effect in instances where there's recruitment, funding and training but also association. The consideration that goes into listing such organisations requires more careful consideration because of the implications and the consequences of that, particularly with regard to the association offence. I hope that answers your question.

CHAIR: It does.

Mr Feakes: I don't say all of that as a reason to preclude listing, just that the process for arriving at a decision requires perhaps more careful consideration than might be required for another organisation, one that doesn't have that multifaceted constitution.

CHAIR: Understood. Mr Noble, do you have anything to add to that? Are there any things that you're aware of that would be contrary to Australia's interest if the listing were broadened?

Mr Noble: I'd just remind the committee that, as I'm sure you know, Hamas in its entirety has been listed under Australia's financial sanctions regime since 2001, and a number of foreign ministers have renewed that—in 2010, 2013, 2016 and, most recently, 2019. It's a different regime to the Criminal Code, but we do list the entirety of Hamas under that. In terms of considerations about listing under the Criminal Code, I'll hand over to Marc Innes-Brown, who can give you an insight into those.

Mr Innes-Brown: Yes, there are just a couple of other considerations that I thought I'd bring to your attention today. They come in a number of categories against the consular interests in the region, particularly in Gaza, in the aid program.

CHAIR: Sorry, just before you go on—I'm interested in exploring each of these in turn. In terms of consular interests: are there many Australian citizens in Gaza?

Mr Innes-Brown: Yes, we have a small consular constituency in Gaza.

CHAIR: How many?

Mr Innes-Brown: It's in the low numbers. I was speaking to our mission in Tel Aviv yesterday and at this stage it's in the vicinity of 10. It's not a huge —

CHAIR: Ten.

Mr Innes-Brown: But the cases can be quite complex in terms of managing them. I can go into a bit more detail—

CHAIR: Sure.

Mr Innes-Brown: on consular. As I said, the cases can be complex. In managing cases, our embassy in Israel has no direct contact with Hamas. That is unique; we usually deal through COGAT, which is an entity under the Israeli Ministry of Defense, as well as the access coordination unit within the UN office of the current resident humanitarian coordinator, also known as UNOPS. If we were, hypothetically, to expand the listing that wouldn't change those arrangements in terms of who we deal with in consular cases, but we'd have to examine what the potential for interacting packs were in providing consular assistance.

On the aid program: that's another consideration. We do fund some aid activities in Gaza through various partners—UN and other. Our partners maintain an emerg contact policy with Hamas. If the listing were expanded it's difficult to predict with certainty what the implications of that would be but, hypothetically, there could be some difficulty for smaller partners. That's particularly if Hamas chose to retaliate against Australian flagged projects but, again—

CHAIR: Just on that, and before we go to the next one: the United States, Canada and the European Union have all listed Hamas in its entirety. Is there any evidence that you're aware of that their aid in Gaza has been disrupted by those listings?

Mr Innes-Brown: Not that I'm aware of. But, as I said, we'd just have to test that a bit further at the time—

CHAIR: Sure.

Mr Innes-Brown: before we go down that path.

The other thing is more just a practical issue. Were there to be legislation in this regard we'd have to examine whether it had any implications for the design and management of our programs. That's something we'd have to look into down the track, if we went down this path.

There are a couple of other areas to mention which we'd need to think about as well. There's the security of our diplomatic mission, particularly in Ramallah. At the moment, security in the West Bank is under the purview, obviously, of the Palestinian Authority security forces, not Hamas, and so on. We're dealing with hypotheticals here, but one thing I'd note is—and this is potentially a future issue—that there were signs that Hamas is going to run candidates in future Palestinian elections, including in the West Bank. There could be a scenario in the future where if they're represented in the West Bank and were involved in Palestinian Authority agencies in that area that it could have some implications for us. But that's something that all international partners will have to manage at the time.

CHAIR: Yes. To come back to the security of our mission, particularly in Ramallah: are you suggesting that if we were to list Hamas in its entirety there's a possibility that there could be an act of violence perpetrated by Hamas against our mission?

Mr Innes-Brown: That's one for ASIO, but it's just something to think about. It needs to be tested further, I think. It needs to be examined further. But, generally, it's always important to keep in mind that sometimes these decisions could have a security dimension, including—

CHAIR: I understand. We asked Mr Burgess about that, and he said, at least for his own operations, he didn't think it would have any adverse consequences. But, to be fair, we didn't ask him about other Australian government entities. If that was the concern, it would prove the point that, if we were to list Hamas as a terrorist organisation, it might engage terrorist violence against Australia.

Mr Innes-Brown: Fair point! On the final area—and it's a hypothetical, and probably will depend on the context at the time: there could be some wider foreign policy impacts at the time. In the region there are a range of regional governments that are strong supporters of the Palestinian cause, and some of them have close or cooperative relationships with Hamas. I don't want to overstate that, because, if there were to be any reactions, including in our own bilateral relations with those governments, we'd have to look at the context and assess it in the context at the time. So I don't want to overstate that.

CHAIR: No; I understand you're making a subtle, nuanced point. In the case of the European Union, the United States or Canada, are you aware of whether they have suffered any diplomatic issues in the Middle East as a result of listing Hamas?

Mr Innes-Brown: Not specifically.

CHAIR: Thank you very much. That was very helpful.

Mr DREYFUS: Can I pick up that point the representative from DFAT was making. Are you seriously suggesting that a potential security risk to our consular presence in Ramallah, which I think badges us a trade mission—the last time I looked it had seven staff who are associated with the embassy in Tel Aviv. Are you seriously suggesting that listing the whole of Hamas as a terrorist organisation under the Criminal Code might have implications for that mission in Ramallah, and, if so, that that would be a reason for not listing Hamas? I just want to get this clear.

Mr Innes-Brown: I was suggesting it is a consideration that needs to be factored in. I'm not precluding a course of action; I'm just suggesting it is an issue that needs to be borne in mind.

Mr DREYFUS: In what way? Just before your answer: reflect on the fact that we, as a country, have listed a whole range of terror organisations—ISIL chief among them, if we're looking at Islamist organisations—and that we have embassies in a number of countries where ISIL has operated, and certainly was operating, at the time of listing. Just to be clear: are you suggesting that, even if there was some security concern arising from the listing of ISIL, a security concern being that we have an embassy in Iraq, that would be a reason for not listing a terrorist organisation? Picking up the chair's point: doesn't it simply add to proof that it is a terrorist organisation?

Mr Innes-Brown: When there are events that impact on the security of our missions overseas, we always consider what they are and seek to take relevant action. So it is a consideration. But it's one of a range of factors, and, as I emphasise, I'm not precluding that we shouldn't do it if there is a risk; I'm just saying it's something we need to weigh amongst a range of factors.

Mr DREYFUS: Are you suggesting it is a reason for not listing a terrorist organisation—that it might have implications for the security of an Australian mission?

Mr Innes-Brown: I'm suggesting that we need to take it into account.

Mr DREYFUS: No, I'm sorry; you're evading the question. Are you suggesting that those security implications which you say have to be taken into account are a reason for not listing a terror organisation?

Mr Innes-Brown: No. My presentation was presenting that there are a range of issues from an international foreign policy perspective, and I have attempted to broadly sketch out some considerations.

Mr DREYFUS: I'm trying to pin this down to something a bit more specific and meaningful than simply saying, 'This is a consideration.' If it is a consideration, is it a consideration that is a reason for not listing a terror organisation under the Criminal Code?

Mr Noble: No, we're not suggesting that; we're just making the point that one of the factors the government will consider, when it makes a decision on listing, is risk to post. We're not saying that because there is a high risk to post you would not list an organisation. I think we're trying to give you the range of—

Mr DREYFUS: That's all I'm getting at. Let's imagine that you're considering risk to post, to use your term. You're not suggesting, however, that that would ever amount to a reason for not listing a terror organisation under the Criminal Code?

Mr Noble: I'm not suggesting that. It's a factor for the government to consider in the full set of whether it's going to list. Take Indonesia; the post was attacked a long time ago—

Mr DREYFUS: And, to use the Indonesian example, we have listed Jemaah Islamiyah as a terrorist organisation that operates in Indonesia and has killed Australians, particularly in Bali, and has threatened Australians in other parts of Indonesia. It is a listed terror organisation, isn't it?

Mr Noble: Yes.

Mr DREYFUS: Of course, all responsible Australian governments have to consider the safety of our diplomatic missions in all parts of the world. But what I'm trying to get to is: you're not suggesting that, even if there was some added risk able to be identified to one of our missions overseas from listing a terror organisation, that added risk would ever be a reason for not listing that terror organisation?

Mr Noble: The answer is: the government makes the decision. It would be a consideration. It's not just about the post—I think your point is true in relation to the post; it's a wider consideration as well of Australian interest and risk to Australians. That may influence the decision. But we're not suggesting that the security of the post is a driver on listing. It's a consideration, probably in practice—and I know this to be true—of how you announce it, the way that you do it and the preparations that you do prior to enacting it.

Mr Feakes: The point we need to get to is that it's one of management. There are factors and implications—one might be diplomatic security, another might be consular management—that need consideration in terms of how you are going to manage implications from listing. It doesn't preclude the listing; it just needs very careful thought about how you are going to manage those issues.

Mr DREYFUS: I'm indebted for that clarification, Mr Feakes. Of course one can imagine that one might like to time the announcement in a particular way, that one might like to up the level of security at a particular post and that one might like to harden the defences of a particular post, but I'm going to take what you've just said and what the DFAT representative has said as: not by any means are you suggesting that security implications would be a reason for not listing.

Mr Feakes: Correct.

Mr DREYFUS: The committee is being given—in the form of submissions from a US expert, Dr Schanzer, and from three Jewish community organisations here in Australia—a very large amount of material about Hamas's history, about Hamas's actions and about statements made not by people who are merely representatives of the Hamas brigades but by people who are directly and currently part of the leadership of the Hamas organisation as a whole. What I wanted to ask you directly is: given that very large amount of material, all of it on the public record and all of it well known for many years, why is it that Home Affairs hasn't already determined that Hamas as a whole satisfies section 102 of the Criminal Code Act, which, of course, refers to the two possibilities that the minister can be satisfied of—that the organisation is either directly or indirectly engaged in preparing, planning, assisting in or fostering the doing of a terrorist attack or advocates the doing of a terrorist attack? The witnesses that we had before the committee earlier today—and I speak personally, of course, and not for the whole committee—have left me not in any doubt that Hamas satisfies those two statutory criteria. How is it that Hamas as a whole has not already been listed by the Minister for Home Affairs?

Mr Feakes: I listened, as I said, carefully to that evidence from previous witnesses. It was all very compelling. I also listened to the director-general's evidence, and he was asked a question about Hamas as a terrorist

organisation, I believe. The brigades have been relisted eight times, and this is now, since 2003, the ninth time they've been listed. As I think you know and as the committee knows, what's required is a nomination from an intelligence organisation or a policy agency to take forward a listing which would then take us to AGS advice. As far as I'm aware, we haven't received a nomination. But, again, as I said to the chair to begin with, that doesn't preclude a nomination being made, and the inference shouldn't be that there is any conscious or unconscious decision not to nominate or take forward consideration of prescription.

Mr DREYFUS: Will a recommendation from our committee, if my colleagues are minded to make one, be sufficient reason for the Minister for Home Affairs to reconsider listing of the whole of Hamas and not merely the brigades—which, as you rightly note, have been listed and relisted on some nine occasions? And that's not the focus of today's hearing, I don't think, from any of my colleagues. Will a recommendation from the intelligence committee be sufficient to prompt that reconsideration?

Mr Feakes: That would be a question for the minister of course, and, if the minister were so minded, then Home Affairs with others—DFAT, intelligence agencies, ASIO—would gather the information, seek the legal advice and put a recommendation to the Minister for Home Affairs

I guess I'm saying that it's not for me to say whether the PJCIS's recommendation would be sufficient or not.

Mr DREYFUS: Right, but certainly—

Mr Feakes: I'm not trying to obfuscate; I'm merely saying that we're not the decision-maker and the government would form a view on the PJCIS's recommendation.

Mr DREYFUS: We'll have to see of course where we get to in the committee's deliberations that will follow, but, speaking for myself, I've read—to take a single example from May 2021—the statements of the leader of the Hamas organisation in Gaza, Yahya Sinwar, talking publicly about supporting the eradication of Israel through armed jihad and struggle. He said, 'This is our doctrine.' He also said, 'Firing a salvo of 250 rockets on Tel Aviv is easier for us than drinking water.' That's only a very small selection, but that seems to me to be as clear as you could want for both elements of the section of the Criminal Code: fostering the doing of a terrorist act and advocating the doing of a terrorist act. Anyway, we hope that the minister can take another look at this. Thank you very much, Mr Feakes.

Ms HAMMOND: I want to follow up on some of the questions that Mr Dreyfus was just asking. The brigades has been listed. This is its ninth listing. I don't think I caught it accurately. Who can make the nominations to the Department of Home Affairs?

Mr Feakes: Any agency. There is a list of agencies who the Department of Home Affairs convenes. That group includes those that you would expect: intelligence, law enforcement, DFAT—I won't go into them all. Any agency or department can make a nomination.

Ms HAMMOND: Does the department ever ask any of the agencies for new nominations? I see you nod.

Mr Chick: The process is an open one. Any agency can make a nomination at any point in time. There are occasions where issues arise—for example, as very publicly discussed by the Director-General of ASIO, the increasing caseload in relation to IMVE organisations means that we have led discussions in relation to possible nominations. In that case Home Affairs did lead a nomination in relation to Sonnenkrieg Division, which has now been listed as a terrorist organisation.

Ms HAMMOND: So the department has actually made a nomination itself?

Mr Chick: In the past, yes. It has made one nomination in relation to an organisation that is now listed. It has also made some other nominations.

Ms HAMMOND: I think you said that you're not responsible for making nominations. I don't want to put words in your mouth here, but I got the impression that you were at the whim of agencies and that you had no agency yourself in putting forward nominations. That's not correct, is it?

Mr Feakes: No, we're not. We, like others, can nominate. Unlike others, we also take that process forward.

Ms HAMMOND: Is there a reason why you haven't nominated the broader Hamas group?

Mr Chick: This was a relisting and it was to consider the relisting.

Ms HAMMOND: Okay, so because it was a relisting—

Mr Feakes: The answer is no. It would be open to us to nominate. As I said at the outset, this current relisting does not preclude that.

Ms HAMMOND: Okay. But you decided just to focus on the relisting and not actually look at the wider context, despite at least one of our Five Eyes partners having listed the entirety for some time now.

Mr Feakes: Yes. Two of our Five Eyes partners have.

Ms HAMMOND: Yes. I think that the process might need to be looked at, but I'll move on from there. I just want to clarify this. The director-general of ASIO also made a comment—as, I think, the Department of Home Affairs did earlier—about Hamas being listed under the financial legislation but not under the Criminal Code. What are the differences in considerations as to why it is under one and not under the other?

Mr Feakes: I might pass to DFAT there, who manage the CTUNA regime, if you're happy for me to do so.

Mr Noble: For the CTUNA criteria, which are different to the Criminal Code, it's the foreign minister's decision. Essentially, the minister must list an entity if satisfied on reasonable grounds that it is owned or controlled directly or indirectly by persons who commit terrorist acts or acts on behalf of or at the direction of such persons. For 20 years, starting in 2001, governments have decided that, under the financial sanctions code, that applied to Hamas in its entirety. Under the Criminal Code—I might go back to Home Affairs for correction and precision—the criteria for listing a terrorist organisation are that the organisation is directly or indirectly engaged in preparing, planning, assisting in or fostering the doing of a terrorist act. It's a much more prescriptive legal requirement, which I would get them to talk to. So they are different regimes with different purposes, and at their heart is a similar look at the organisation.

Ms HAMMOND: This is my final question. I'm sure there would be, but I'd like to have it confirmed: is there ever any matching up of those two regimes done across departments?

Mr Noble: I'll go first, and maybe Richard can follow me. We're constantly talking to each other about the threat set, and we're constantly briefing each other when there are new proposals under either of the regimes. In fact, in a practical sense, we do that every two weeks. So we would have the capacity—if I talk about our business, which is the financial sanctions—when we have a new proposal for a financial sanction, we'll brief everybody. And they do likewise back to us when they're looking at the Criminal Code. We have a forum where, in our case in particular, we discuss cases where other nations might put forward an idea or might be listing an entity that we don't list yet or that we might consider. So there's wider international sharing. It's pretty regular. There's a high level of awareness across the interagency team about what's being considered under each of the tools, and then we lead on financial sanctions and Home Affairs leads on the Criminal Code.

Ms HAMMOND: Thank you.

Dr ALY: Thank you to the witnesses. I just want to tease out a little bit and explore the nuances and the considerations of broadening the listing to the entirety of the Hamas organisation and the implications that it has here in Australia. The first question that I want to ask is in relation to association with a terrorist organisation under the Criminal Code, which was mentioned earlier. I just want to get your comment on the implications that that would have for organisations, individuals and community members who, for example, conduct protests during periods of conflict and use the 'river to the sea' slogan in those protests. Would it have implications for them? Could that be considered association with a terrorist organisation, should the listing be broadened to the entirety of Hamas?

Mr Feakes: I will turn to David Chick, who knows far more about this than I do, but my understanding is that demonstration would not invoke criminal prosecution through section 102 of the criminal act. Where activity goes to substantive support for an act of terrorism or membership, that would be a different question. But support such as waving a flag and that sort of thing, as far as I understand, would not invoke criminal prosecution.

Mr Chick: To elaborate on that: there's a confluence of ideas here. Section 102.8 deals with association with terrorist organisations, so these offences come into play where a terrorist organisation has been listed, as we're discussing today. That association is with another person who is a member of or who promotes the activities of the organisation. Walking down a street on your own with a flag or promoting the views of Hamas is not going to run you into this offence of association. But I should also talk about a separate offence: 102.7, providing support to a terrorist organisation. That's an offence where a person intentionally provides to an organisation support or resources that would help the organisation engage in an activity described in paragraph (a). That's an activity that is directly or indirectly engaged in preparing, planning, assisting in or fostering the doing of a terrorist act.

As Mr Feakes has said, the mere idea of protest probably is not going to hit that definition of 'support' that you would require in relation to division 102, where an organisation is listed. I would also point out that, under separate sections 100 and then 101, which creates the offence of terrorist acts, a terrorist act does not include advocacy, protest, dissent or industrial action where it is not intended to cause serious harm, cause a person's death, endanger the life of a person or create serious risk to the health or safety of the public or a section of the public. So there is that connection there between violence, threat and risk to the public or sections of the public. It

would only be if advocacy or a demonstration moved across that spectrum into that more dangerous field that you would be at risk of committing a terrorist offence.

Dr ALY: Can I please clarify this? If somebody were to march down the street with an ISIS flag, they would certainly be considered supporting terrorism and they would certainly, at the very least, draw some attention from our security agencies. Would they be prosecuted under those sections of the criminal act?

Mr Feakes: It will always depend on the circumstances. Everything I've said will always depend on the circumstances. Carrying an ISIL flag may be a demonstration of membership. Yes, it would be a flag for security agencies. It may enable that offence, but merely stating that you think ISIS has been hard done by or something of that nature, where you have no intention to cause physical harm—the laws at the moment wouldn't cover that in terms of creating a criminal offence.

Dr ALY: Have you also considered any implications for Australians travelling to Gaza?

Mr Feakes: Listings haven't been considered by government at this stage, so no.

Mr Innes-Brown: If we were to take forward a listing of those sort of factors, policy factors would be looked closely at.

Dr ALY: Perhaps this is outside of what any of you could comment on. I'd be interested if you have any information about how listing Hamas in its entirety would impact not only on the welfare and wellbeing of the people in Gaza but also on any kind of road map to peace. Do you have any analysis on whether it would increase tensions between the Palestinian Authority and Hamas in the West Bank and Gaza?

Mr Chick: One of the only comments I'd make is about the process for listing under the Criminal Code. Clearly, we get AGS advice on whether the legislative tests are met and the thresholds are met, but, as to the consideration of whether to list a terrorist organisation—because Australia does not list every terrorist organisation in the world—there are a number of non-legislative factors that get considered, and the engagement of the organisation in peace or mediation is a component of that consideration.

Dr ALY: Okay. That's it from me. Thank you, everyone.

CHAIR: That is great timing. I thank, very much, our witnesses from Home Affairs and DFAT for your assistance to the committee this afternoon. Please return responses to any questions you have taken on notice or might receive in writing after this by 6 October to allow us to meet our deadline for the disallowance consideration of the parliament.

Committee adjourned at 13:01