

Submission to the Joint Parliamentary Committee on Intelligence and Security

To begin, we would like to thank the Committee for taking new submissions on such an important matter, thereby taking into consideration a much wider array of voices than those providing testimony for the original recommendation. This is especially the case given the profound impact that the proscription of the entirety of Hamas could have on millions of people around the world, especially the two million people who live under Hamas rule in the Gaza Strip and have no choice but to interact with the movement as governing authorities.

This submission has been co-written by Associate Professor Tristan Dunning, Professor Jeroen Gunning, Dr Anas Iqtait, Dr Tareq Baconi, Dr Martin Kear, and Dr Imad alSoos. The content is based on our combined expertise, the breadth and depth of which is represented by the fact that we include the authors of four peer-reviewed books¹ and five PhDs² on Hamas, a PhD³ and forthcoming book on Palestinian political economy,⁴ a former senior researcher for the International Crisis Group and a former employee of the United Nations Office for the Coordination of Humanitarian Affairs in the Occupied Palestinian Territories (OCHA). Four of the undersigned have taught courses on Middle East studies, terrorism studies, conflict resolution, and the Palestinian-Israeli conflict at Australian and internationally renowned Universities (King's College London, Durham University, the University of Queensland, the University of Sydney, and the Australian National University, among others). Collectively, the undersigned have advised and taught policy makers and public servants from the US, the UK, the EU, Canada, Bangladesh, and Australia in the fields of terrorism, Middle East studies, governance, and the Palestinian-Israeli conflict.

In March 2022, the Australian Federal government announced its intention to designate the entirety of Hamas, the Islamic Resistance Movement in Palestine, as a terrorist organisation following an earlier recommendation from the Joint Parliamentary Committee on Intelligence and Security. This follows similar moves by the governments of the United States and the United Kingdom. Until now, Australia has only designated the movement's armed wing, the Izz ad-Din al-Qassam Brigades, as a terrorist organisation, marking a clear separation between the movement's armed and socio-political wings. The Qassam Brigades have been listed as a terrorist organisation in Australia since 2003.

We write to argue against the listing of Hamas as a terrorist organisation in its entirety due to concerns regarding how the decision was made and its potential impact in Palestine, Australia, and elsewhere. In this submission, we will address the following seven points:

- 1) Bias of previous evidence and process
- 2) Bias of terrorist designation
- 3) Lack of utility and potential cost to Australia

¹ Gunning, J. 2006/7. *Hamas in Politics: Democracy, Religion, Violence*. New York: Columbia University Press/Hurst; Dunning, T. 2016. *Hamas, Jihad and Popular Legitimacy: Reinterpreting Resistance in Palestine*. London: Routledge; Baconi, T. 2018. *Hamas Contained: The Rise and Pacification of Palestinian Resistance*. Stanford, California: Stanford University Press; Kear, M. 2018. *Hamas and Palestine: The Contested Road to Statehood*. Routledge.

² Gunning, Durham University, 2000; Dunning, The University of Queensland, 2013; Baconi, King's College, London 2014; Kear, The University of Sydney 2017; alSoos, Free University of Berlin, 2017

³ Iqtait, The Australian National University, 2020.

⁴ Iqtait, A. 2022, *Funding Palestine: Rents and the Quest for Sovereignty*, Palgrave Macmillan, New York, forthcoming.

- 4) Potential impact on Palestinian Diaspora in Australia
- 5) Potential impact on Gazan population
- 6) Potential impact on international humanitarian aid organisations
- 7) Potential impact on political solution

1) Bias of previous evidence and process

We believe the process followed by the Committee to arrive at the recommendation to list the entirety of Hamas as a terrorist organisation was flawed on procedural grounds. Procedurally, there was a lack of transparency and fair representation in the hearings that led to the Committee's decisions. Prior to the re-opening of this case, no Palestinians had been invited to give evidence before the Committee. Following the decision, the Australia Palestine Advocacy Network - 'a national coalition harnessing the passion of Australians for Palestinian human rights, justice, and equality'⁵ - informed the authors that they had not even been informed the hearing was taking place. Of the non-governmental witnesses providing evidence, only experts and advocacy groups with known pro-Israel positions were given a hearing. Specifically, these were representatives from the Zionist Federation of Australia, Australia/Israel and Jewish Affairs Council, and the Executive Council of Australian Jewry. Expert opinion was provided by Jonathon Schanzer, Senior Vice President for Research at the Foundation for Defense of Democracies, a Washington-based think tank which considers nuclear-armed Israel to be "America's most valuable and vulnerable ally in the Middle East."⁶ The one-sidedness of the witnesses called thus far is extremely worrying and casts doubt on whether or not the process was done in good faith.

2) Bias of 'terrorist' designation

This potential perception of procedural bias is further evidenced in the way the 'terrorism' label is used to obscure the political context on the ground in the Occupied Palestinian Territories (OPT) and criminalise only Palestinian parties to the conflict. Indubitably, the Qassam Brigades have committed numerous atrocities throughout their history, including the targeting of civilians. However, the 'terrorist' labelling ignores why some Palestinian actors resort to armed actions, which should be understood within the context of an illegal fifty-five year military occupation of the OPT that has been condemned by dozens of legally binding UN Security Council Resolutions. Israel's settler-colonial activities in the occupied West Bank, with over 700,000 settlers living on occupied Palestinian land,⁷ are illegal under international law, which prohibits the capture of territory by force⁸ and the transfer of civilians into occupied territory. United Nations Security Council 242, the basis for a two-state solution to the Palestine-Israel conflict, for instance, stipulates "the inadmissibility of the acquisition of territory by war" while demanding "Withdrawal of Israeli armed forces from territories occupied in the recent conflict" and "Termination of all claims or states of belligerency." Although this directive was issued in 1967, Israel continues to occupy the West Bank and East

⁵ See <https://apan.org.au/>

⁶ See Foundation for the Defense of Democracies, Israel Program. See: <https://www.fdd.org/projects/israel-program/>

⁷ United Nations Human Rights Council. 2022. Report of the Special Rapporteur on the situation of Human Rights in the Palestinian territories occupied since 1967. 21 March. See: https://www.ohchr.org/sites/default/files/2022-03/A_HRC_49_87_AdvanceUneditedVersion.docx

⁸ See United Nations Security Council 242. 1967.

Jerusalem expanding its settlements in both territories and carrying out practices of *de facto* annexation of this territory. Despite withdrawing settlements from the Gaza Strip in 2005, Israel's ongoing blockade of the enclave means that the UN still considers Gaza to be under Israeli occupation, with all of the rules and responsibilities attendant on occupying powers.⁹ Israel's colonial activities are also arguably in breach of Article 49 of the Fourth Geneva Convention and the Rome Statute of the International Criminal Court.¹⁰ Armed resistance against foreign occupation (including the siege of Gaza), moreover, is legitimate under international law with Palestinians having the right to political self-determination and to resist foreign occupation. UN General Assembly Resolution 2708 XXV, Rights of Peoples to Self-Determination, for instance, asserts "the legitimacy of the struggle of colonial people and people under alien domination to exercise their right to self-determination and independence by all the necessary means at their disposal,"¹¹ thereby legitimising armed resistance – if not necessarily the individual acts of violence undertaken. To put this in context, Western states, including Australia, have recently reaffirmed the right to armed resistance and provided extensive material support to Ukrainians exercising their right to take up arms against Russian aggression.

While the killing of Israeli citizens by the Qassam Brigades is a justifiable criticism, it needs to be viewed within the context of the asymmetric struggle of Palestinians against Israeli occupation. The Israeli human rights organisation B'Tselem estimates that six times as many Palestinian civilians have been killed as Israelis during the course of the conflict,¹² while the United Nations Office for the Coordination of Humanitarian Affairs estimates that since 2008 that figure is 24 times as many.¹³ The asymmetric context of these killings cannot be overlooked. Israel, as the occupying power of the West Bank, including East Jerusalem, and the Gaza Strip, where the majority of Palestinian deaths have occurred, possesses an advanced and well-armed military. Contrary to its duties under international law, which holds the occupying power responsible for "enabl[ing] the inhabitants of an occupied territory to pursue as "normal" a way of life as possible" under occupation and specifically prohibits such practices as the destruction of property outside military necessity, extraction of resources and collective punishment,¹⁴ Israel has constructed an overarching system of control over all

⁹ See, for instance, the designation of the Gaza Strip as occupied territory by the United Nations Office for the Coordination of Humanitarian Affairs at <https://www.ochaopt.org/>

¹⁰ International Committee of the Red Cross. 1949. Convention (IV) relative to the Protection of Civilian Persons in Time of War. Article 49 - Deportation, Transfers, Evacuations. Geneva, 12 August. See: <https://ihl-databases.icrc.org/ihl/WebART/380-600056>; International Criminal Court. 2020. Situation in the State of Palestine. 14 March. See: https://www.icc-cpi.int/sites/default/files/RelatedRecords/CR2020_01038.PDF

¹¹ United Nations General Assembly. 1970. Rights of People to Self-Determination. Resolution 2708, XXV. See: <https://www.un.org/unispal/document/auto-insert-185486/>

¹² Depending on whether Palestinians killed in the West Bank since 2009 are included (B'Tselem stopped differentiating between those participating in hostilities and those who did not in the West Bank from 2009); B'Tselem. N.d. See: <https://statistics.btselem.org/en/all-fatalities/by-date-of-incident?tab=overview>

¹³ United Nations Office for the Coordination of Humanitarian Affairs. 2022. Data on Casualties. 11 May. See: <https://www.ochaopt.org/data/casualties>

¹⁴ Amnesty International. 2003. 'Iraq: Responsibilities of the occupying powers.' See: <https://www.refworld.org/pdfid/3f1306a57.pdf>. See also: ICRC. 2004. 'Occupation and international humanitarian law: questions and answers' at <https://www.icrc.org/en/doc/resources/documents/misc/634kfc.htm>. See also: Permanent Observer Mission of Palestine to the United Nations. 1999. 'Israel's Belligerent Occupation of the Palestinian Territory, including Jerusalem and International Humanitarian Law'. Paper presented to the Conference of the High Contracting Parties to the Fourth Geneva Convention on Measures to Enforce the Convention in the

aspects of life of its occupied subjects, which has been described as apartheid, a crime against humanity under international law, by B'Tselem (The Israeli Information Centre for Human Rights in the Occupied Territories), Amnesty International, and Human Rights Watch, among others.¹⁵

All of this raises the question why the Australian government's measures are only aimed at one side of the conflict. A more balanced approach might include providing support to the International Criminal Court (ICC) in investigating the extent to which all parties to the conflict have committed war crimes. Indeed, preliminary investigations by the ICC and human rights organisations argue that both Israel and the Qassam Brigades may have committed war crimes during the periodic conflicts that erupt centred on the Gaza Strip.¹⁶ The UN has also documented potential instances of Israel carrying out war crimes against non-violent resistance, particularly in the Gaza Strip, as well as enabled the expansion and proliferation of violent settler-attacks in the occupied West Bank against Palestinians.¹⁷ Blacklisting only one side to the conflict casts doubt on Australia's commitment to human rights and international law.

3) Lack of utility and potential cost to Australia

The proposal also has no benefits domestically because there is no evidence that Hamas operates in Australia. Indeed, the Australian National Security website states, "there are no known direct links between the Brigades and Australia."¹⁸ In his testimony to the committee, Director-General of Security of the Australian Security Intelligence Organisation, Mike Burgess, stated that the proscription of Hamas in its entirety would be of no operational benefit to Australian intelligence efforts.¹⁹ In brief, Hamas is no threat to Australia.

Conversely, if applied consistently, the designation may negatively impact Australia's foreign relations. Qatar, for instance, periodically injects large amounts of financial aid to enable the Hamas government in Gaza to function. Hamas has also received support from Iran and Turkey, amongst others. Hamas leaders are regularly hosted at various Arab and international capitals for political discussions. The movement further has representatives and political bureaus *inter alia* in Qatar, Turkey, Iran, Lebanon, and Egypt, raising the question of how the terrorist designation will affect Australia's relations with these states. More broadly, it is likely to have a detrimental effect on Australian influence in the Middle East and relations with

Occupied Palestinian Territory, including Jerusalem. Geneva. July. See:

<https://www.un.org/unispal/document/auto-insert-199015/>

¹⁵ B'Tselem. 2021. 'A regime of Jewish supremacy from the Jordan River to the Mediterranean Sea: This is Apartheid.' 12 January. See: http://www.btselem.org/publications/fulltext/202101_this_is_apartheid; Amnesty International. 2022. 'Israel's apartheid against Palestinians: a cruel system of domination and a crime against humanity.' 1 February. See: <https://www.amnesty.org/en/latest/news/2022/02/israels-apartheid-against-palestinians-a-cruel-system-of-domination-and-a-crime-against-humanity/>; Shakir, O. 2021. 'Israeli Apartheid: A Threshold Crossed.' Human Rights Watch, 19 July. See:

<https://www.hrw.org/news/2021/07/19/israeli-apartheid-threshold-crossed>

¹⁶ Human Rights Council. 2019. Report of the detailed findings of the independent international Commission of inquiry on the protests in the Occupied Palestinian Territory. 18 March. See: https://www.un.org/unispal/wp-content/uploads/2019/06/A.HRC_.40.CPR_.2.pdf

¹⁷ Ibid. For more on settler violence, see B'Tselem. 2021. "Settler Violence = State Violence." 25 November, https://www.btselem.org/settler_violence.

¹⁸ Criminal Code (Terrorist Organisation – Hamas' Izz al-Din al-Qassam Brigades) Regulation. 2018. 2 August, p.11.

¹⁹ Parliament of Australia. Hamas' Izz al-Din al-Qassam Brigades. See: https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Intelligence_and_Security/Fiverelistsings2021/Report/section?id=committees%2Freportint%2F024791%2F77781

Muslim majority countries in general. Australia's relations with Palestinians overall will be further compromised if Hamas and the internationally backed Fatah-led Palestinian Authority eventually reconcile.

The designation is also likely to negatively affect academic and journalistic freedom, which will both hurt Australia's international standing and its ability to gain a deeper understanding of Hamas and Gaza. We note that the United Kingdom's designation of Hamas as terrorist is extraterritorial and prohibits individuals from even arranging private meetings with Hamas members.²⁰ Most of us, through our research and work experiences, have interacted at length with Hamas officials or other individuals who could reasonably be assumed to be associated or supportive of Hamas, within the context of our academic pursuits. Proscribing the entirety of the organisation, including its civilian aspects, could impede research on the movement, render outside actors ignorant of ongoing changes within the organisation, and thereby leave outside actors poorly informed and without leverage.

4) Potential impact on Palestinian Diaspora and pro-Palestinian initiatives in Australia

The terrorist designation may also have dire implications for the Palestinian Diaspora and initiatives in Australia in support of Palestinian rights considering the difficulties of ascertaining who is and is not linked to Hamas. This is especially the case for anyone dealing with Gaza from abroad, as they will need to go through the Hamas-led government. Under Australian counterterrorism laws, any individual found guilty of offences related to terrorism, including membership, recruitment, training, soliciting funds, even support or association, could face up to 25 years imprisonment.

Remittances from the Palestinian Diaspora constitute a key element of the Palestinian economy. According to the World Bank, personal remittances accounted for 17% of GDP in Gaza and the West Bank in 2020.²¹ Are those who send remittances to their families to help ameliorate the debilitating economic situation in Gaza potentially guilty of terrorism-related offences?

The potential crime of association is further complicated by the fact that Hamas is the de facto government of Gaza. According to Dr Ben Saul, an advisor to the United Nations and the Challis Professor of International Law at the University of Sydney, "The Australian law is saying that anyone who provides support, funding, training or assistance to the Hamas public administration, even... to help civilians in Gaza, is breaking Australian counterterrorism laws."²² This has profound implications not only for the Palestinian Diaspora and pro-Palestinian initiatives in Australia but for international humanitarian organisations (see 6).

5) Potential impact on Gazan population

In practice, it is hard to see how such a ruling could be enforceable in any consistent fashion beyond the blanket designation of some two million Palestinians in the Gaza Strip, who rely on Hamas to provide government and social services. As such, it will only make life more

²⁰ Lovatt, H. 2021. 'Why the UK's blacklisting of Hamas hurts its own peace policy', *+972 Magazine*, 25 November. See <https://www.972mag.com/hamas-uk-terrorism-peace/>

²¹ World Bank, Personal Remittances, received (% of GDP) – West Bank and Gaza. See: <https://data.worldbank.org/indicator/BX.TRF.PWKR.DT.GD.ZS?locations=PS>

²² Gillespie, E. 2022. 'Concern Australia's listing all of Hamas as a terrorist organisation will harm ordinary Palestinians.' SBS News. 17 February 2022. See: <https://www.sbs.com.au/news/article/concern-australias-listing-all-of-hamas-as-a-terrorist-organisation-will-harm-ordinary-palestinians/xw39px5ri>

difficult for the tiny coastal enclave with one of the highest population densities in the world, 75% of whom are refugees, and which has been subject to a crippling siege since the Hamas-backed list won internationally recognised free and fair elections in 2006. Over 44% of Palestinians voted for Hamas in 2006 – will they now be guilty of terrorism-related offences, as a form of collective punishment, which is illegal under international law?

Since then, Gaza has been subjected to repeated Israeli bombardments in the context of ongoing hostilities between Israel and Palestinians, killing thousands, rendering tens of thousands homeless, and destroying thousands of buildings. Israeli operations in the Gaza Strip have been called, by the admission of Israeli officials themselves, exercises in “mowing the grass”, a practice of bombarding the Gaza Strip either for punitive motivations or to attempt to pacify the population and prevent further resistance to the ongoing siege.²³ The siege has also crippled Gaza’s economy. By 2021, over 50% of the population were unemployed²⁴ with an estimated 64% of Gazans living in poverty.²⁵ Gaza is subject to chronic electricity shortages having access to only four hours of electricity per day – two hours in the morning and two hours in evening, partially caused by Israel’s repeated bombardment of Gaza’s only electrical power plant.²⁶ There is also a lack of clean water, partly caused by Israel’s water management policies contributing to the depletion of Gaza’s main aquifers.²⁷ Furthermore, Gazans are unable to acquire materials to rebuild destroyed buildings. In brief, the current status quo is untenable and criminalising Gaza’s government is only likely to worsen the situation.

Since the violent confrontation between Fatah and Hamas in 2007, Hamas has been the *de facto* government of Gaza, even if it is not recognised by much of the international community. The proposed designation of the entirety of Hamas ignores the ubiquity of the government’s role in the everyday lives of their constituents.

Hamas runs the public services: the bureaucracy, the schools, the hospitals, the firefighters, the civilian police, even the street sweepers and garbage collectors. The *de facto* Hamas administration pays their salaries. The public sector – i.e., the Hamas-led government and the Palestinian Authority – account for approximately 37% of Gaza’s workforce.²⁸ Given Gaza’s high unemployment rate, an exponentially larger percentage of the population is also dependent on these salaries. The proscription of Hamas in its entirety raises key questions about the utility and application of the Committee’s decision. For instance, are these individuals or anyone who supports members of the public service (for example, a family member in Australia providing financial support through remittances) or is dependent on them potentially guilty of terrorism-related offences? Hamas collects taxes. Does a business paying import/export tariffs to the

²³ See Rabbani, M. 2014. “Israel mows the lawn.” *London Review of Books*, 31 July. In doing so, Israel has consistently targeted medical institutions, journalistic operations, and other vital infrastructure. In the most recent escalation, Israel targeted the offices of the Associated Press in Gaza. See Federman, J. 2021. “‘Shocking and horrifying’: Israel destroys AP office in Gaza.” *Associated Press*, 16 May.

²⁴ Gisha – Local Center for Freedom of Movement. 2021. ‘Gaza unemployment rate soars to 50.2% in months following May escalation.’ 13 December. See: <https://gisha.org/en/gaza-unemployment-rate-soars-to-50-2-in-months-following-may-escalation/>

²⁵ United Nations, ‘The Question of Palestine – In Facts and Figures’. Accessed 10 May 2022 at <https://www.un.org/unispal/in-facts-and-figures/>

²⁶ Human Rights Watch. 2014. ‘Gaza: Widespread Impact of Power Plant Attack’, 10 August. See <https://www.hrw.org/news/2014/08/10/gaza-widespread-impact-power-plant-attack>

²⁷ Weinthal et al. 2005. “The Water Crisis in the Gaza Strip: Prospects for Resolution”. *Ground Water*, 43(5), pp. 653–660; Amnesty International. 2017. “The Occupation of Water”, November 29. See: <https://www.amnesty.org/en/latest/campaigns/2017/11/the-occupation-of-water/>

²⁸ Gisha – Local Center for Freedom of Movement. 2019. ‘Unemployment in Gaza in q2 of 2019 is 46.7%’, 4 September. See: <https://gisha.org/en/unemployment-in-gaza-in-q2-of-2019-is-46-7/>

Hamas government potentially constitute acquiring funds for a terrorist organisation? Hamas provides social services. Are beneficiaries of these guilty of association? To date the Australian government has not indicated how it would reconcile such dilemmas.

The multi-faceted nature of Hamas, including notionally associated charities, such as orphanages, medical clinics, youth associations, and educational institutions, means that the crime of association is extremely problematic. The blanket designation of Hamas would potentially blacklist all of these charities and thereby exacerbate the dire humanitarian situation in Gaza by criminalising international support for such charities.

Research has shown, however, that the charities colloquially considered to be affiliated with Hamas are typically organisationally distinct from the political and resistance wings of the movement, with their 'own administration and... answerable to [their] own board of trustees'.²⁹ While some detractors maintain that these charities are a source of recruitment, often on the basis of highly ambiguous evidence,³⁰ Pascovich notes that, 'examples of military operatives becoming integrated into Hamas's charitable committees are quite rare' and 'no clear-cut evidence of money transfers from committees to the military wings can be found'.³¹

The designation of Hamas-supported initiatives as those of a terrorist organisation also belies the complicated and multi-faceted nature of modern public administration with governments routinely outsourcing projects and hiring consultants. Are all those providing outsourced services to the Hamas government guilty of breaking Australian counter-terrorism laws?

6) Potential impact on international humanitarian aid organisations

As the *de facto* government in Gaza, Hamas coordinates with international humanitarian agencies and charities. Again, this raises key concerns about their relationship with the Australian government in light of the Committee's recommendation and the previous government's stated intention to proscribe the entirety of Hamas. How much will the terrorism designation complicate their efforts to alleviate the humanitarian crisis in Gaza? Approximately 80% of Gazans are dependent on humanitarian aid,³² much of which stems from UN bodies, such as the United Nations Relief Works Association for Palestinians in the Near East (UNRWA). The Committee's decision unnecessarily complicates Australia's relations with international organisations operating in Gaza such as UNRWA, but also the World Bank, UNOPS, and OCHA all of which have recently received funding from DFAT.³³ Hamas affiliation with highly regarded NGOs, employment of Hamas members in UNRWA and other humanitarian organisations, and contributions of aid organisations such as the UNDP, the

²⁹ Gunning, J. 2008. 'Terrorism, Charity and Diasporas: Contrasting the Fundraising Practices of Hamas and al Qaeda among Muslims in Europe', In *Countering the Financing of Terrorism*, edited by T.J Biersetker and S.e. Eckert. London; Routledge. 2008. p.100. Roy, S. 2011. *Hamas and Civil Society in Gaza: Engaging the Islamist Social Sector*. Princeton, NJ: Princeton University Press.

³⁰ E.g. Levitt, M. 2006. *Hamas: Politics, Charity, and Terrorism in the Service of Jihad*. New Haven, CT: Yale University Press; For a detailed examination of the dubious nature of such claims, see Dunning, *Hamas, Jihad and Popular Legitimacy*, pp.138-144

³¹ Pascovich, E. 2012. 'Social-Civilian Apparatuses of Hamas, Hizballah and Other Activist Islamic Organizations' *Digest of Middle East Studies*, 21(1), p. 133

³² International Labour Organization. 2021. The Situation of workers of the occupied Arab territories, Report of the Director General, p.45. See: https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_793285.pdf

³³ Department of Foreign Affairs and Trade. 2019. Aid Program Performance Report 2018-19, Palestinian Territories., September. See: <https://www.dfat.gov.au/sites/default/files/palestinian-territories-appr-2018-19.pdf>

World Food Programme, USAID, Save the Children, Médecins sans Frontières, Medical Aid for Palestine, to Hamas-affiliated charities or zakat committees makes the blanket terrorist designation of Hamas potentially deeply destructive for Gazan civil society and those who dependent on it.³⁴

It also leaves these organisations open to charges of supporting terrorism, as has been the case with several charities in the United Kingdom and the United States. Accusations of funding terrorism do not have to be founded to cause significant costs and disruption, as can be seen from the impact of such accusations levelled at the UK-based charities Islamic Relief Worldwide and Interpal, both of which have been cleared, one by an independent audit, supported by the UK's Disasters Emergency Committee, the other by the UK Charity Commission, but not before considerable resources were spent on audits and court cases, and substantial disruption to aid to Palestinians.³⁵ In the US, pro-Israel organisations have increasingly used what have been called lawfare tactics against charities supporting Palestinians, preventing them from operating or severely disrupting their ability to work, illustrating the potentially deeply damaging effect of a blanket designation of Hamas.³⁶ Lawfare practices have also been used to attempt to prevent financial service providers to undertake audits for Palestinian entities (e.g. PwC Palestine in a UK case) or transfer money (e.g. NatWest in a US case).³⁷ It is worth noting that the clearance of the UK charities discussed above occurred before the UK government's decision to designate the entirety of Hamas as terrorist organisation in its entirety.

7) Potential impact on a political solution

Blacklisting the entirety of Hamas will all but preclude meaningful engagement with the governing authorities in Gaza and thus constitute a key impediment to resolving the wider Palestine/Israel conflict.

The proscription does not help anyone in practical terms, not even Israel. Israel relies on Hamas to maintain internal order in the Gaza Strip and preventing it from collapsing into anarchy. Israel also manages its policies vis-à-vis the Gaza Strip via consistent negotiations and engagement, albeit indirectly, with Hamas. That even Israel needs to coordinate with Hamas to manage its relations with the Gaza Strip calls into question the wisdom of the Committee's decision and highlights the necessity for communication, a facility that may be impeded by the

³⁴ Gunning 'Terrorism, Charity and Diasporas', p.100; Benthall, J. *The Palestinian Zakat Committees 1993-2007 and Their Contested Interpretations*. Geneva: Graduate Institute of International and Development Studies. 2008, p.11; Lundblad, L. 2008, 'Islamic Welfare, Discourse and Practice; The Institutionalization of Zakat in Palestine.' In *Interpreting Welfare and Relief in the Middle East*, edited by N. Naguib and I.M Okenhaugh. Leiden: Brill pp. 206-7

³⁵ 'Islamic Relief defies Israeli ban and continues operations in Palestine', *The Guardian*, 11 September 2014; 'Islamic Relief to contest Israeli 'terrorism' allegations in court', *The Guardian*, 27 July 2020; 'UK Charity Commission: Interpal Not Supporting Terror Group', *Charity & Security Network*, 9 April 2009; 'Why is the Muslim charity Interpal being blacklisted as a terrorist organisation?', *The Telegraph*, 26 September 2014.

³⁶ 'The Alarming Rise of Lawfare to Suppress Civil Society: The Case of Palestine and Israel', *Charity & Security Network*, 28 September 2021, <https://charityandsecurity.org/wp-content/uploads/2021/09/The-Alarming-Rise-of-Lawfare-to-Suppress-Civil-Society.pdf>. See also 'Medical Aid for Palestinians' statement on complaint by UK Lawyers for Israel and the Lawfare Project', MAP, 20 October 2018, <https://www.map.org.uk/news/archive/post/928-medical-aid-for-palestinians-statement-on-complaint-by-uk-lawyers-for-israel-and-the-lawfare-project>

³⁷ 'UK government dismisses latest attempt by UK Lawyers for Israel to harm Palestinian civil society', European Legal Support Center, 11 October 2021.

Committee's recommendation and the subsequent decision to follow through on this by the previous government.

Previous decisions by the Committee, moreover, note the operational independence of the Qassam Brigades and its distinct separation from Hamas' wider socio-political and civilian activities. In 2018, for instance, the Committee reported that: "The Brigades are structured as a distinct military wing separate from Hamas's other structures, which include its Political Bureau and security agencies. Accordingly, the Brigades operate with a significant degree of independence in their decision making."³⁸ Further, the Committee previously noted that the Qassam Brigades sometimes act against the wishes of the political leadership. Indeed, there are numerous instances where the Political Bureau were apparently unaware of the military considerations the Qassam Brigades were pursuing and were blind-sided by their military operations.³⁹ In other cases, even the Qassam Brigades leadership were unaware of what local cells were doing, as was the case with the kidnapping and killing of three Israeli teenagers near a cluster of Israeli settlements north of Hebron, which triggered the 2014 war on Gaza.⁴⁰

It is unclear what has changed since 2018, especially given that the current decision was made during a period of decreased tension between Hamas and Israel, which included allowing workers from Gaza back into Israel – an outcome indicating an increased level of trust and political confidence between the opposing parties (which has since come under pressure due to increased tensions and violence in Israel, Jerusalem, and the West Bank).⁴¹

The *de facto* separation between armed and socio-political activities, which has a long history in Hamas,⁴² is deliberate and a pragmatic approach for all parties involved insofar as it allows public political engagement with armed non-state organisations seeking to address socio-political grievances, such as an end to occupation and the right to political self-determination. Analogies with Sinn Féin and the Provisional Irish Republican Army (PIRA) or the African

³⁸ Parliament of Australia. 2018. Al-Shabaab, Hamas' Izz al-Din al Qassam Brigades, Lashkar-e-Tayyiba and Palestinian Islamic Jihad. 20 September. See: https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Intelligence_and_Security/5TerroristOrgs/Report/section?id=committees%2Freportjnt%2F024208%2F26438

³⁹ There are frequent instances of rocket fire from the Gaza Strip that are carried out by rogue officers, or by al-Qassam operatives, without the knowledge of the political wing, which then becomes embroiled in escalations. For more context on some of the recent skirmishes and ensuing ceasefires see "Rebuilding the Gaza Ceasefire," *International Crisis Group*, Middle East and North Africa Report, 16 November 2018.

⁴⁰ Eldar, S. 2014. 'Accused kidnappers are rogue Hamas branch', *al-Monitor*, 29 June. See <http://www.al-monitor.com/pulse/originals/2014/06/qawasmeh-clan-hebron-hamas-leadership-mahmoud-abbas.html#> ; Frenkel, S. 2014. 'Three Kidnapped Israeli Teens are Found Dead', BuzzFeed News, 1 July. See <http://www.buzzfeed.com/sheerafrenkel/three-kidnapped-israeli-teens-are-found-dead>; Goldberg, J.J. 2014. 'Unruly Hebron Clan Pushes Hamas – and Israel – to Brink.' *Forward*. 2 July. See: <https://forward.com/opinion/201172/unruly-hebron-clan-pushes-hamas-and-israel-to/> ; See also the comments made to BBC Correspondent Jon Donnison by Israeli police spokesman Mickey Rosenfeld about the incident at <https://twitter.com/jondonnisonbbc/status/492632584736612353> and <https://twitter.com/JonDonnison/status/493096916624756737>

⁴¹ Boxerman, A. 2022. 'Israel set to raise work permit quotas for Gazans to 20,000.' *Times of Israel*. 26 March. See: <https://www.timesofisrael.com/israel-set-to-raise-work-permit-quotas-for-gazans-to-20000/> ; However, there have been increased tensions and conflict in the weeks preceding this submission. See: France24, 2022, Israel hits Gaza after rocket attack as Jerusalem tensions escalate, April 2022. See: <https://www.france24.com/en/middle-east/20220419-israel-hits-gaza-after-rocket-attack-as-jerusalem-tensions-escalate>

⁴² See, for instance, Hroub, K. *Hamas: A Beginner's Guide*, 2006, pp.120-123; Pascovich, 'Social-Civilian Apparatuses of Hamas' pp.133-134

National Congress (ANC) in South Africa, among others, are useful here. Nelson Mandela, the leader of the armed wing of the ANC, later became the first post-apartheid President of South Africa and the ANC continues to be the ruling party today. In a similar vein, Sinn Féin received the highest number of first preference votes in the most recent elections in both the Republic of Ireland and Northern Ireland. Sinn Féin leader Martin McGuinness who was known for his previous activities in the PIRA was elected both to Westminster and then later served in a number of ministerial positions in the Northern Ireland Assembly election. Former Israeli Prime Ministers Menachem Begin and Yitzhak Shamir were wanted ‘terrorists’ under the British Mandate of Palestine. All of this underlines the capacity of militant organisations and leaders to evolve over time.

The argument made by previous testimony to the Committee that Hamas and the Qassam Brigades are one and the same because former Qassam leaders – for instance, the current head of Hamas in the Gaza Strip Yehya al-Sinwar, one of the founders of Hamas’s security apparatus – have become political leaders must be treated with scepticism. Members of the Qassam Brigades who are elected to Hamas’s Shura Council or Political Bureau, have to garner votes like any other Hamas leader and, once elected, the demands on them and the interests they represent are different from when they were military leaders. For instance, under Sinwar’s leadership, notwithstanding him being a hardliner and inciting violence when it suits his or Hamas’s interests, Hamas has (indirectly) negotiated ceasefires with Israel, kept the border calm for extended periods, supported popular protests at the border, and focused on state-building (within the limited means available).⁴³ The ‘Great March of Return’, for instance, began with Hamas’s support, as a peaceful movement (that was met with lethal sniper fire from Israeli soldiers from day one, against journalists and civilians).⁴⁴

There is substantial research suggesting that the ‘terrorism’ label impedes conflict resolution. In the Philippines, the government refrained from proscribing the Moro Islamic Liberation Front, despite US pressure, on the grounds that it did not want to scupper the peace process. In the Northern Ireland conflict, the legitimisation of Sinn Féin and the political grievances it represented was key to a meaningful peace process being made possible. Indeed, as Toros argues, ‘the start of talks with and the legitimisation of Sinn Féin... may have contributed to the end of IRA terrorist violence in at least three ways: by opening an alternative way to change for the republicans; by strengthening the factions favouring talks; and by offering the republicans the possibility to transform themselves into a legitimate entity.’⁴⁵ As Gunning has shown in the case of the aftermath of Hamas’ 2006 victory, the international boycott of Hamas and the refusal of the international community to engage Hamas politically contributed to the weakening of those within the Hamas leadership favouring a political solution.⁴⁶

In a ground-breaking study of the impact of terrorist labelling on third-party engagement with armed non-state groups, Haspeslagh similarly concluded, on the basis of workshops and interviews ‘with high-level mediators, counterterrorism policy-makers and diplomats’ as well

⁴³ Hamas keeps its guns silent for a change’, *Kuwait Times*, 12 May 2018; ‘Does anybody know what is really going on with Israel and Hamas?’, *The Jewish Chronicle*, 13 May 2021; ‘Hamas losing deterrence against IDF’, *Al-Monitor*, 23 July 2018; ‘Hamas and Israel agree end to cross-border bombing in Gaza’, *The Guardian*, 20 August 2021.

⁴⁴ ‘Hamas losing deterrence against IDF’, *Al-Monitor*, 23 July 2018; Baconi, T. 2019. ‘The Deadly Political Paralysis behind the Gaza Flare-up’, International Crisis Group, 7 May.

⁴⁵ Toros, H. 2008. “‘We Don’t Negotiate with Terrorists!’: Legitimacy and Complexity in Terrorist Conflicts.” *Security Dialogue* 39(4): 407–26.

⁴⁶ Gunning, J. 2010. “The Conflict and the Question of Engaging with Hamas.” In *Examining European Involvement in the Arab-Israeli Conflict*, Chaillot Papers, ed. Esra Bulut Aymat. Paris: European Union Institute for Security Studies.

as ‘policy actors and non-governmental peace-building organisations’, that the designation as terrorist hinders third-party engagement with armed groups by ‘affect[ing] preconditions of access and trust, thereby narrowing the possibilities for third parties to effectively understand groups, influence them, affect their strategic calculations and train them in conflict resolution’.⁴⁷

In protracted conflicts, there is typically no military solution. Both Israeli former intelligence chiefs⁴⁸ and the UN⁴⁹ have asserted that there is no military solution to the Israel-Palestine conflict. More broadly, Jones and Libicki (2010) found that in 43% of cases involving ‘terrorist’ groups the violence ended because they had been able to join the political process. This is particularly the case for armed groups that already function as political parties and enjoy grassroots support.

Hamas has its roots in non-violent pre-Intifada welfare, charitable and economic interventions amongst Palestinians, specifically centred around the organisation *Mujamma al-Islamiya* (or Islamic Centre).⁵⁰ This socio-economic base was then augmented by creation of Hamas including separate political and military wings. Since then, the various wings of Hamas have acted separately, and the movement has enjoyed the support of a significant section of the population. It won the internationally recognised 2006 Palestinian election with over 40% of the popular vote and it continues to enjoy between 30-40% of support in Palestinian opinion polls by the internationally respected Palestinian Center for Policy and Survey Research.⁵¹

Moreover, Hamas has shown that it can be responsive to political engagement. In the lead-up to the 2006 parliamentary election, it moved from categorically condemning the two-state solution to publicly recognising that it had to accept the two-state solution and work on that basis if that was the national consensus. Since having been elected, it has de facto acted within a two-state framework and policed Gaza’s border for long periods between hostilities. Hamas has consistently worked to prevent operations from within the Gaza Strip, leading to Israeli officials publicly acknowledging their dependency on Hamas to maintain calm in the Gaza Strip. This has also led to the emergence of militant groups within Gaza that accuse Hamas of pacification, and have taken aim against the movement.⁵²

In 2017, it replaced its 1988 founding Charter with a new Manifesto, which, while reiterating that ‘Hamas rejects any alternative to the full and complete liberation of Palestine, from the river to the sea’, added the important caveat that:

without compromising its rejection of the Zionist entity and without relinquishing any Palestinian rights, Hamas considers the establishment of a fully sovereign and independent Palestinian state, with Jerusalem as its capital along the lines of the 4th of June 1967, with the

⁴⁷ Haspeslagh, S. 2013. “‘Listing Terrorists’: The Impact of Proscription on Third-Party Efforts to Engage Armed Groups in Peace Processes – a Practitioner’s Perspective.” *Critical Studies on Terrorism* 6(1): 189–208.

⁴⁸ Myre, G. 2003. ‘4 Israeli Intelligence Experts Call for Political Solution.’ *New York Times*. 14 November. See: <https://www.nytimes.com/2003/11/14/international/middleeast/4-israeli-intelligence-experts-call-for-political.html>

⁴⁹ United Nations News. 2021. Israel-Palestine: Political solution only way to end ‘senseless’ cycles of violence. 27 May. See: <https://news.un.org/en/story/2021/05/1092902>

⁵⁰ Abu-Amr, Z. 1993. ‘Hamas: A Historical and Political Background,’ *Journal of Palestine Studies* 22(4): 5-19

⁵¹ Cf. PSR Polls 79-83, June, September, December 2021 and March 2022; see <https://www.pcpsr.org/>

⁵² For more on this, see “Averting War in Gaza,” *International Crisis Group*, Middle East and North Africa, 20 July 2018; “Gaza and Israel: New Obstacles, New Solutions,” *International Crisis Group*, Middle East and North Africa, 14 July 2014; “Radical Islam in Gaza,” *International Crisis Group*, Middle East and North Africa, 29 March 2011. See also Baconi, *Hamas Contained: The Pacification of Palestinian Resistance*.

return of the refugees and the displaced to their homes from which they were expelled, to be a formula of national consensus.

Through this careful political manoeuvring, Hamas signalled to the international community its willingness to acquiesce to partition along the 1967 lines, and to allow the establishment of a Palestinian state on 22% of historic Palestine – a marked contrast with its efforts in the past to undermine such a political settlement from proceeding. This is a more developed political stance than the majority of the political parties in Israel have taken, given their refusal to countenance any Palestinian state.⁵³

International engagement with Hamas can similarly be constructive, as the Swiss government's post-2006 engagement with Hamas showcased under extremely adverse circumstances. As Gunning details,

The Swiss government... has worked with Hamas, and others, to further develop the concept of '*hudna*', or long-term ceasefire – which leaders such as Ahmad Yassin and Ismail Abu Shannab had mooted as early as the 1990s – to see whether this could constitute a basis for restarting the peace process. It led numerous discussions on Gaza's border management to develop an alternative to the siege policy, to which all parties, Hamas, Fatah and Israel, could agree. It has provided Hamas with copies of previous agreements between Israel and the PLO as well as documents relating to the Geneva Accord. Finally, it has made direct interventions on particular policies, such as Hamas's appropriation of UNRWA goods in the wake of *Operation Cast Lead*, or the Chief Justice's decree that all female lawyers wear a *hijab* in court – in both instances contributing to the policy being reversed.⁵⁴

Switzerland was working under inauspicious conditions in the context of an international boycott which had strengthened Hamas's hardliners while weakening its pragmatists and as a small state with little political, economic, or military leverage in the region. However, the Swiss experience shows that, even under such conditions, Hamas was responsive to political engagement. Conversely, the designation of the entirety of Hamas, as proposed by the Australian government, may be counterproductive in terms of isolating Hamas more and strengthening hardliners, thereby weakening more pragmatic voices.

Concluding remarks

Against the Australian Government's longstanding support for a negotiated political settlement based on the two-state solution, the proscription of Hamas would encourage Israel to continue with the status quo and not negotiate with Palestinians. It would support the continuation of Israel's occupation of the West Bank, East Jerusalem, and Gaza Strip and impede the possibility of Israel accepting a return to direct and genuine negotiations with the Palestinians it occupies. The decision would undermine internal Palestinian efforts, between the Palestinian Authority and Hamas, at unifying their political leadership for a more assertive role in restoring Palestinian rights. Australia's relations with Palestinians in general will be compromised if Hamas and the internationally backed Palestinian Authority eventually reconcile. In this regard, the decision to proscribe Hamas is inconsistent with Australia's acknowledgment in December

⁵³ For further examination of Hamas, Israel and the peace process, see Dunning, T 2019. 'Hamas: Religion, Israel and Peace' pp.177 – 211 edited by T. Dunning, *Palestine: Past and Present*. New York: Nova Science Publishers.

⁵⁴ Gunning, J. 2010. "The Conflict and the Question of Engaging with Hamas." In *Examining European Involvement in the Arab-Israeli Conflict*, Chaillot Papers, ed. Esra Bulut Aymat. Paris: European Union Institute for Security Studies. See [https://www.iss.europa.eu/sites/default/files/EUISSFiles/cp124-European Involvement in the Arab-Israeli Conflict 1.pdf](https://www.iss.europa.eu/sites/default/files/EUISSFiles/cp124-European%20Involvement%20in%20the%20Arab-Israeli%20Conflict%201.pdf)

2018 of the aspirations of the Palestinian people for a future state with its capital in East Jerusalem.

Given the evidence provided in this submission, it appears that the practicalities and potential consequences of designating the entirety of Hamas as a terrorist organisation have not been thought through. The one-sided composition of the earlier witnesses to the parliamentary committee, gives rise to the suggestion that the decision has been purposely pursued to silence engagement with or advocacy in support of Gaza in Australia, and by extension the Palestinian cause in general, thus inhibiting any meaningful involvement in furthering a political solution to the politically induced humanitarian crisis in Gaza. Moreover, such efforts are in line with those taken elsewhere by pro-Israeli groups with one goal in mind: to silence any engagement or advocacy on Palestine within Australia, given the chilling effect that a designation would have on those calling for an end to Israel's occupation.⁵⁵

There is also the possibility of this decision putting Australian governments at odd with key international institutions, such as the United Nations, charged with maintaining international peace and security, and key US allies such as the State of Qatar, which periodically injects large amounts of financial aid into Gaza to enable the Hamas government to function.

Palestinian society is small, tightly knit, and interconnected, and the proscription of Hamas will indubitably have knock-on effects for Palestinians in East Jerusalem, the West Bank, Israel, and the diaspora. Connections between Palestinians at home or in the diaspora and individuals or organisations notionally associated with Hamas – whether genuine, apparent, or confected – will be extremely difficult, if not impossible, to disentangle in any clear-cut manner and has the potential to incriminate them vis-à-vis the crime of association. In brief, who will determine if a Palestinian is a member of or associated with Hamas? Will Australia create an independent commission that investigates such claims or depend on Israeli military courts' classifications – which, according to Human Rights Watch, “have a near-100 percent conviction rate” for the hundreds of thousands of Palestinians incarcerated since 1967 and are therefore clearly partisan.⁵⁶

The designation of Hamas as a terrorist organisation will be inconsequential to Australia's counterterrorism efforts as Hamas does not operate in Australia, while potentially criminalising the lives of millions of Palestinians who happen to live under its rule. It will further stifle efforts at alleviating the politically induced humanitarian suffering in the Gaza Strip by potentially criminalising or severely complicating international and Australian humanitarian efforts.

If the Australian government is concerned about political violence, including indiscriminate targeting and violence against civilians, it can support international efforts at upholding international law in Israel and Palestine. A more constructive engagement would see Australia respecting the human rights of Palestinians including supporting the uplifting of the almost two decades' old blockade on Gaza.

⁵⁵ See “Timeline: Shrinking Space in Israel-Palestine,” *Diakonia: International Humanitarian Law Centre*, 13 December 2021, <https://www.diakonia.se/ihl/news/timeline-shrinking-space-civil-society-israel-palestine/>.

⁵⁶ Human Rights Watch. 2017. ‘Israel: 50 Years of Occupation Abuses,’ 4 June. See: <https://www.hrw.org/news/2017/06/04/israel-50-years-occupation-abuses>

Author Biographies

Dr Tristan Dunning is an Associate Professor of Political Science and Public Administration at the American University of Afghanistan and an honorary research fellow at the University of Queensland. He is the author of *Hamas, Jihad and Popular Legitimacy: Reinterpreting Resistance in Palestine* (2016) and the editor of *Palestine: Past and Present* (2019). Tristan has published in the academic journals *Critical Terrorism Studies*, *Terrorism and Political Violence*, and *Small Wars and Insurgencies*, as well as for the Australian Parliamentary Library. His work has also been published in numerous other outlets including the Australian Broadcasting Corporation, the Fairfax stable of publications (i.e., *The Sydney Morning Herald*, *The Age*, *Brisbane Times* and *The West Australian*), *Australian Outlook* for the Australian Institute of International Affairs, and *The Conversation*, among others. His research examines armed non-state actors and governance in Middle East.

Dr Jeroen Gunning is Visiting Professor of Middle East Politics and Conflict Studies at Aarhus University and the London School of Economics. He has held positions at King's College London, Durham University, Aberystwyth University, and the University of Oxford. With Morten Valbjørn, he is co-director of the research project TOI: 'Bringing in the Other Islamists - comparing Arab Shia and Sunni Islamism(s) in a sectarianised Middle East'. His publications include *Hamas in Politics: Democracy, Religion, Violence* (Hurst/CUP 2007/2008) and, with Ilan Baron, *Why Occupy a Square? People, Protests and Movements in the Egyptian Revolution* (Hurst/OUP 2013/14). He has published numerous book chapters and articles on Hamas, including in *International Relations*.

Dr Anas Iqtait is a lecturer at the Australian National University in the Centre for Arab and Islamic Studies and a non-resident scholar with Program on Palestine and Palestinian-Israeli Affairs at the Middle East Institute (Washington D.C.). He is the author of the forthcoming book titled *Funding and the Quest for Sovereignty in Palestine*. His policy publications and analyses have appeared with leading national and international outlets such as *Foreign Policy*, BBC, Aljazeera International, ABC, SBS, Channel NewsAsia, and Sky News Australia.

Dr Tareq Baconi is the president of the board of Al-Shabaka and a Senior Analyst at the Institute for Palestine Studies. Tareq is the former senior analyst for Israel/Palestine and Economics of Conflict at the International Crisis Group, and author of *Hamas Contained: The Rise and Pacification of Palestinian Resistance* (Stanford University Press, 2018). Tareq's writing has appeared in the *London Review of Books*, the *New York Review of Books*, the *Washington Post*, among others, and he is a frequent commentator in regional and international media.

Dr Martin Kear is an early career researcher of Middle East politics and international relations, contemporary Islamist movements, contentious politics, and political violence. He is the author of the book *Hamas and Palestine: The Contested Road to Statehood* (2019). He has published articles on Hamas in the academic journals *Democratization* and the *Australian Journal of International Affairs*, as well as several chapters, most recently in the *Routledge Handbook on Political Parties in the Middle East and North Africa*.

Dr Imad Alsoos is a research fellow at the Max Planck Institute for Social Anthropology. He has published in the academic journals *Middle Eastern Studies* and *Mediterranean Politics*, as well as for the Carnegie Endowment for Peace, *The Washington Post* and *Australian Outlook*. His research focuses on a comparative study of Hamas and an-Nahda in Tunisia and their methods of internal and external mobilisation.