

HAMAS – A Terrorist Organisation?

In or about October 2021 the PJCIS apparently listed Hamas as a terrorist organisation under the Criminal Code.

The PJCIS is now carrying out a review of such listing. This submission opposing the listing is made by the Australian Friends of Palestine Association (AFOPA), based in Adelaide.

AFOPA is unaware of the basis of the original listing. AFOPA believes however that the listing followed representations from the pro-Israel lobby, including ECAJ and AIJAC.

It is appropriate to consider what is a terrorist. Of course, one man's freedom fighter is another man's terrorist. Terrorism can be defined as the intentional use of violence against civilian sites, such as schools, hospitals, restaurants, buses, trains or planes. Hamas has engaged in forms of violence that is not terrorism. Hamas was within its rights to resist Israeli aggression and to do so with deadly violence, including by the use of rockets, the only form of resistance left open to it.

It is also appropriate to understand what is not a terrorist. Contrary to what Israel and its supporters promote

- a 10 year old boy with a stone is not a terrorist,
- a pregnant Palestinian woman is not, *per se*, a terrorist,
- any Palestinian is not, *per se*, a terrorist, and
- Hamas is not a terrorist organization.

To so categorise such as terrorists is a bid to discredit and silence opponents. It is a simple policy of de-humanisation that unfortunately appears to have considerable success with an unwary public.

It is not sufficient that other countries may have listed Hamas as a terrorist organisation. AFOPA understands that the U.S., the U.K. and Canada may have done so. Australia is a sovereign nation and must arrive at such decisions independently. If what other countries did was a consideration it would be relevant to note that the vast majority of the world's nations have not acted to list Hamas as a terrorist organisation.

What is Hamas?

Hamas is a Palestinian nationalist and Islamist movement in the West Bank and Gaza Strip that is dedicated to the establishment of an independent Islamic state in historical Palestine. Hamas ran in the 2006 elections for the Palestinian Legislative Council and won a victory over Fatah, the notional successor to the secular PLO.

Hamas opposes Israel, and its policies. It has every right and reason to do so. Israel presently illegally occupies the West Bank and the Golan Heights, and controls and restricts the sovereignty of Gaza.

Hamas also represents Palestinian refugees, ethnically cleansed from Israel and presently living in Gaza and elsewhere and prevented by Israel from returning to their homes, in defiance of UN Resolution 194. Hamas's ultimate objective is the liberation of Palestine. It is a *bona fide* resistance group.

Israel's record

Hamas's conduct must be compared with the conduct of its nemesis. Consider the record of Israel and its religious settlers:

- The murder of Palestinian civilians including children in the West Bank and Gaza on a continuous basis;
- Use of excessive force and recurrent military targeting of civilians and civilian homes, demolition of homes, killing thousands, arbitrary arrest and detention of children, fishermen and other vulnerable groups;
- Encouraging settlers to move, illegally, into the West Bank, and escalating settler violence;
- Forcibly transferring Palestinians from their homes and land, i.e. ethnic cleansing;
- Creating an apartheid State, as declared in 2021 by the New York based Human Rights Watch and the Israeli human rights organisation B'Tselem.

It is significant to note that in February 2022, after the listing currently under review, and hence a new factor to be taken into account, that Amnesty International made a determination that Israel is an apartheid state. Amnesty's report is entitled 'Israel's Apartheid Against Palestinians, a Cruel System of Domination and a Crime Against Humanity'. The Amnesty report documents hundreds of incidents, laws, regulations, etc., which compel the finding of apartheid. The most significant law of course is the 'nation state' law, in 2018, which enshrined Jewish supremacy over the country's Arab citizens. The reference to a 'crime against humanity' in the title is not without significance. The Rome Statute of the International Criminal Court describes apartheid as a crime against humanity. Apartheid itself is described as the implementation and maintenance of a system of legalised racial segregation in which one racial group is deprived of political and civil rights.

Today the religious right is in government in Israel and Naftali Bennett asserts: "There will never be a Palestinian state". Such an assertion renders impossible the much vaunted 'two State solution'. And one of the causes of the May 2021 conflict with the Palestinians was the militarised violence against the Al-Aqsa mosque and the forced displacement of Palestinians from Sheik Jarrah. These actions are an incitement provoking a response from Hamas.

AFOPA considers that it is appropriate to quote from an article written by Professor John Dugard in December 2021 under the auspices of the Balfour Project. John Dugard is Emeritus Professor of Law, Universities of Leiden and the Witwatersrand; Former Director of the Lauterpacht Centre for International Law, Cambridge; and a former UN Special Rapporteur on Human Rights in Palestine.

John Dugard:

(T)he actions of the Israeli Defence Force (IDF) feature most prominently in investigations by the international Criminal Court. After all, in its offensives against Gaza it has inflicted more harm, killed and wounded more persons and caused more damage than the militants of Hamas. The IDF has terrorized more Palestinians than Hamas's rockets have ever done to Israelis.

In 2008-9 in Operation Cast Lead the IDF killed over 1,400 Palestinians, of whom at least 850 were civilians (including 300 children and 110 women) and wounded over 5,000. Four Israeli civilians were killed by Palestinian rockets, ten soldiers were killed and 148 wounded. In 2014, in Operation Protective Edge, some 2,200 Palestinians were killed, of whom 1,492 were civilians (including some 500 children and 300 women), and over 10,000 wounded. Sixty-six Israeli soldiers were killed and six civilians were killed by rocket and mortar fire from Gaza. In 2018 in the course of Palestinian protests along the border of Gaza, dubbed the Great Return March, over 120 Palestinians were killed by live fire and tear gas and 13,000 wounded. From 10 to 21 May of this year 256 Palestinians were killed in Gaza (including 66 children and 40 women) and 2,000 wounded. In the West Bank 26 Palestinians were killed and 6,900 wounded. Thirteen Israelis were killed, including two children and six women.

Israel's above air and ground offences against Gaza can in no way be described as acts of self-defence. They were simply actions taken to enforce Israel's prolonged occupation of Palestine and to inflict collective punishment on the people of Gaza for their actions of resistance to occupation.

The statistics of Israel's indiscriminate offensives against Gaza show convincingly that the IDF, equipped with sophisticated modern weaponry, has killed, wounded and terrorized a disproportionate number of civilians. These actions more aptly qualify as crimes against humanity and war crimes than the relatively ineffective actions of Hamas, using unsophisticated rockets. In short, if either side is to be designated as 'terrorist' it is the State of Israel rather than Hamas.

Racism is behind it.

Racism must be confronted as it was in 1860 (slavery), continuing to today, with white supremacy through the southern United States, and giving rise, today, to the 'Black lives matter' campaign.

It must be confronted as it was in 1940-1945, Nazism and antisemitism.

It must be confronted as it was in 1970-1980, in South Africa, with the fight against apartheid.

And now racism must be confronted in Palestine. It is not necessary to go further than the Zionist catchcry: "A land without a people, for a people without a land". Between the lines, Palestinians, who had lived in "the land" for at least 3,500 years, are not 'people' - "a land without a people" – they are not "humans". They are sub-humans - shades of *terra nullius*. Just as people of African descent were there to do "the white man's work", so too in Israel you have prominent politicians saying that Palestinians, if some are to be in Israel, will be there to serve the Jewish population. In other words, they will be slaves.

Hamas has the right in international law to resist the crime of apartheid being carried out in its historic home.

Questions

What is the effect of not reviewing and withdrawing the listing? Would it mean that if AFOPA advanced monies to a hospital in Gaza it would be guilty of an offence under s.102.6 of the Criminal Code 1995 (the Code), i.e. getting funds to a terrorist organisation (maximum penalty 15 years imprisonment); or under s.103.2 of the Code, financing a terrorist (maximum penalty imprisonment for life)?

Would it mean that for AFOPA or one of its members to speak publicly in support of Hamas it would be guilty of an offence under s.102.7 of the Code, i.e. providing support to a terrorist organisation (maximum penalty 25 years imprisonment)?

Conclusion

Hamas's response to Australia's declaration that it is a terrorist organisation must surely be to say, simply, "Australia is biased". This must be correct. But Australia must not be biased. Australia must put aside any negative prejudice against Islamism. It must put aside any positive prejudice in favour of white Judeo-Christian connections, or self-indulgent guilt for what occurred to the Jewish people in the Holocaust. Australia must recognise the right of the Palestinian people, of whatever political party, let alone the party elected to office, to fight for the self-determination of its people.

Australia should be bolstering the capacity of the Palestinian people to seek such rights. It does not do so by declaring Hamas to be a terrorist organisation.

Paul Heywood-Smith QC

Australian Friends of Palestine Association