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Islamic Revolutionary Guard Corps

Designation as a Terrorist Organization

Mohseni, Amir ; Rahnama, Ali; Maghami, Faraz; Toghanian, Samira; Khishkar, Zohre; Khoshnood, Ardavan M.

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PO Box 117
221 00 Lund
+46 46-222 00 00



Islamic Revolutionary Guard Corps

**Designation as a
Terrorist Organization**

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Preface

As you engage with the contents of this booklet, it is essential to contextualize the Islamic Revolutionary Guard Corps (IRGC) within the broader spectrum of Iran's governance and international conduct. Since its establishment, the Islamic Republic in Iran has wielded power through stringent control and suppression, both internally and externally. The IRGC has been pivotal to the regime's grip on power, enacting harsh measures against Iranian citizens and extending the regime's geopolitical influence through various means.

Domestically, the IRGC functions as the regime's coercive arm, employing torture, imprisonment, and extrajudicial killings to quash dissent and maintain strict control over the populace. Internationally, it acts as a critical instrument of the Islamic regime's foreign policy, engaging in acts of terrorism, espionage, and other covert operations that threaten global stability and security.

The reach and impact of the IRGC extend far beyond Iran's borders, affecting nations worldwide, including implications for the security of the European Union. Instances of IRGC-operated drones in Ukraine and activities linked to terrorism and espionage in countries like Sweden underscore the global ramifications of their operations.

This seminar and the accompanying booklet are designed to equip policymakers with a clear understanding of the processes involved in designating the IRGC as a terrorist organization within the European Union framework.

About the Authors

Ali Rahnama is an attorney, social entrepreneur, and enthusiast of constitutional law and jurisprudence. Before joining the law firm of Kirkland & Ellis, he taught constitutional and public international law at Northeastern University in Boston, Massachusetts, United States of America. His resume includes work for the UN Special Rapporteur on Crimes Against Humanity, drafting several clauses of a proposed Convention on Crimes Against Humanity, collaborating with several African governments and non-governmental actors to improve local legal systems and prosecute human rights violators, and advising North African nations on drafting and revising their constitutions on comparative constitutional law issues.

Amir Mohseni is a member of the Swedish Bar Association. He is the Managing Partner of Bokwall Rislund Law Firm, the market-leading Swedish firm in EU and Competition Law. He specializes in EU and Competition Law and is ranked by all major international ranking institutes as one of the leading Swedish lawyers in this field.

Ardavan M. Khoshnood is an associate professor of emergency medicine at Lund University in Sweden and a criminologist who focuses on offender profiling and violent crimes, including terrorism. He holds degrees from Malmö University and Lund University in political science and intelligence analysis, respectively. He specializes in Iranian foreign policy, the Islamic Revolutionary Guard Corps, and the Ministry of Intelligence of the Islamic Republic in Iran.

Faraz Maghami is a barrister practicing from the Sydney Bar, Australia, and maintains an international advisory practice with clients in various Pacific nations, the United Kingdom, Europe, and, to a lesser extent, the United States. In addition to public international work and relevant academic endeavors, he regularly advises on national security and organized crime, anti-money laundering and counter-terrorism financing, aspects of military law, and provides appearances and advisory work for those summoned to appear before covert and intelligence gathering commissions and other clandestine government institutions. For over 19 years, he has been a familiar face in advocating for the rights and freedoms of not only Iranians but all those facing injustice and repression, including his work with the National Assembly of Iranian Jurists, a nonprofit public policy organization focused on democracy and justice in Iran.

Samira Toghianian is a health economist by profession with a Master of Science degree in International Economics from the University of Gothenburg in Sweden. She is actively involved in efforts for human rights in Iran.

Zohre Khishkar is a project manager with a Bachelor of Science in Industrial Economics from the University of Borås in Sweden. She is dedicated to advocating for human rights in Iran.

Abstract

The Islamic Revolutionary Guard Corps (IRGC), established in 1979 to safeguard Iran's theocratic regime, operates independently from the nation's regular military. It focuses on both domestic security and foreign missions, notably through its specialized Quds Force. Over the years, the IRGC has evolved into a formidable force engaged in global acts of terrorism and espionage. The downing of Ukraine International Airlines Flight PS752 in January 2020, orchestrated by the IRGC, has been officially classified as an act of terrorism by the Superior Court of Ontario, Canada. This incident exemplifies the criteria set under the European Union's 'Common Position 931' (CP931) for designating entities as terrorist organizations. CP931 mandates EU member states to enforce specific measures against groups involved in terrorism, incorporating a dual-step verification process: an initial decision by a competent national authority regarding the entity's involvement in terrorism, followed by a confirmation from the European Council. This process underscores the requirement for decisions to be both recent and legally robust, and it accommodates considerations for entities based outside of EU states. The judicial ruling by the Ontario Superior Court of Justice, asserting the IRGC's deliberate terrorist actions in the PS752 tragedy, aligns with the stipulations of CP931, positioning the IRGC as a viable candidate for inclusion on the EU's terrorist list.

Chapter 1: The Islamic Revolutionary Guard Corps - From Inception until Today

The 1979 Islamic Revolution in Iran ushered in a catastrophic paradigm shift in the Middle East's geopolitical landscape, significantly affecting all of the world's continents, notably through increased terrorism and violence (Ranstorp, 1996; O'Ballance, 1997; Jenkins, 2001). To safeguard the newly established totalitarian theocracy, Ruhollah Khomeini established the Islamic Revolutionary Guard Corps (IRGC) in May 1979 (Razoux, 2015). This move served a dual purpose: consolidating control over disparate Khomeini loyalist groups managing security in various cities and mitigating a potential threat from the existing military, suspected of harboring allegiance and loyalty to the Shah, Mohammad Reza Pahlavi (Khoshnood, 2020).

The IRGC's constitutional mandate, enshrined in Article 150, designates it as the guardian of the Islamic Revolution and its achievements. This translates to a broad portfolio encompassing regime security, and ideological defense. Furthermore, Article 110 designates the Supreme Leader, currently Ali Khamenei, as the commander-in-chief of the IRGC, solidifying its direct answerability to the highest authority in Iran (Islamic Republic of Iran, 1989).

The IRGC is thus a part of the Islamic regime's armed forces but remains fully independent from the regular military. As will be shown below, it pursues both domestic and foreign objectives.

1.1 Structure of the IRGC

Since its inception, the IRGC has been led by seven commanders, with Major General Hossein Salami assuming the role in 2019. The emblem of the IRGC (Appendix 1), which serves as a model for many terrorist organizations in the Middle East, features a fist clutching a rifle against a backdrop of the globe. Above the rifle, a verse from the Qur'an, Al-Anfal 8:60, is inscribed, which translates to English as: “Prepare Against them What Force You Can” (Khoshnood, 2020).

The IRGC, estimated to possess a manpower of at least 120,000, operates a complex organizational structure (Appendix 2) with several specialized branches (Wehrey et al., 2009). These include the Ground Forces, Navy, and Aerospace Forces, which parallel the objectives of the regular army (Khoshnood, 2020). On land, the regular army secures the borders, while the IRGC Ground Forces concentrate on internal security and organizing paramilitary groups and the Basij to crush domestic disturbances. The Basij serves as a volunteer militia, acting both as a domestic security force and a mobilization resource. The regular military's navy manages operations in the Gulf of Oman and beyond, whereas the IRGC Navy oversees the Persian Gulf, with both navies sharing responsibilities in the critical Strait of Hormuz. In terms of air power, the regular military controls combat aircraft within Iran, while the IRGC Aerospace Forces focus on the regime's missile and drone programs.

The IRGC's intelligence sector is divided into two independent units: the Organization for Intelligence, which is crucial for information gathering and conducting covert operations, and

the Counterintelligence Organization, responsible for counterespionage and protecting the IRGC from infiltration. Additionally, the IRGC includes the Security Organization, a separate entity vital for the protection of high-value individuals within the Islamic regime, including the Supreme Leader. This organization also secures significant sites like military bases and nuclear facilities, as well as the nation's airports. Another distinct and critical unit is the IRGC Cyber Security Command, also known as the IRGC Cyber-Electronic Command, which specializes in cyberattacks on, among other targets, the infrastructures of foreign countries.

Established in 1990, the Qods Force¹ (QF) is tasked with extraterritorial operations and clandestine activities to advance the Islamic Republic's strategic objectives abroad. Uniquely, the QF reports directly to the Supreme Leader, bypassing the conventional military hierarchy. This direct line of reporting emphasizes the QF's vital importance to the regime, particularly in its execution of foreign policy objectives.

The first commander of the QF was Brigadier General Ahmad Vahidi, who has been wanted by Argentina via Interpol (n.d., A) since 2007 for charges related to the bombing of the Asociación Mutual Israelita Argentina (AMIA) in 1994 in Buenos Aires, where over 80 individuals were killed. During Mahmoud Ahmadinejad's first presidential term (2009-2013), Vahidi served as the Minister of Defense. Currently, he is the Minister of Interior in Ebrahim Raisi's administration, having taken office in 2021.

¹ Qods is the Arabic name of Jerusalem.

The QF is, however, most notably associated with its influential long-serving leader, Major General Qasem Soleimani, who was killed in a US drone strike in January 2020. Soleimani was pivotal in shaping its strategies and operations. Currently, the QF is under the leadership of Brigadier General Esmacil Ghaani. As of 2006, the QF was estimated to have approximately 15,000 operatives. It wields considerable influence through a combination of overt and covert methods, strategically executing its operations to advance the agenda of the Islamic Republic (Smith, 2007).

1.2 A Network of Influence

The IRGC has through the years transcended its purely military origins, transforming into a multifaceted organization wielding significant influence across all sectors of the Iranian society. This influence is particularly pronounced in the economic realm. Not only does the IRGC own several prominent banks like Bank-e Sepah, Bank-e Ansar, Bank-e Tosey-e Taavon, but the IRGC controls every significant aspect of the Iranian economy (Dagher, 2020). In Iran, where poverty among the population has increased significantly, it is believed that the IRGC controls as much as—at least—60% of the economy in the country (Khoshnood, 2019; Milani, 2010).

The IRGC also controls the Khatam al-Anbiya Construction Headquarters, a major engineering complex with a vast workforce engaged in critical infrastructure projects. According to its webpage, the Construction Headquarters “follows the viewpoint of guarding the Islamic Revolution and emphasizes the Jihad spirit [...]” (Khatam al-Anbiya Construction Headquarter, 2024). This economic clout grants

the IRGC significant financial autonomy and operational independence.

Additionally, the IRGC controls multiple media outlets, effectively operating a vast propaganda network that shapes domestic narratives and disseminates the regime's ideology. Some of these media outlets are the Fars News Agency² and Tasnim News Agency³ inside Iran, as well as the Iranian Islamic Radio and Television Union and International Union of Virtual Media (U.S. Department of the Treasury, 2020, 2023). Both of the latter are directly connected to the QF and focus on reaching global audiences (U.S. Department of the Treasury, 2020). These efforts are part of a larger strategy by the IRGC to manipulate public opinion and promote the regime's geopolitical goals internationally.

1.2.1 Terrorism by the Islamic Republic

The IRGC and its QF play a pivotal role in the foreign policy of the Islamic regime in Iran; the IRGC controls the regime's unconventional warfare, playing a crucial role in promoting the Islamic revolution and providing military training, support, and weapons to Shia militant groups and governments aligned with the Islamic regime. Meanwhile, the elite QF leads covert operations, assassinations, and intelligence gathering to expand the regime's influence abroad (Wege, 1997, 2010; Wigginton et al., 2015). Covert operations, acts of terror, and the cultivation of proxy groups like Hezbollah and the Houthis are key components of the QF's strategy. These proxy groups

² <https://www.farsnews.ir/>

³ <https://www.tasnimnews.com/>

serve both as a channel for exporting the revolution and as a weapon against the Islamic regime's adversaries, capable of executing terror through targeted attacks (Khoshnood, 2020).

This influence though extends beyond Hezbollah and the Houthis. The QF has become a significant player in the Middle East by actively supporting Shia groups and governments. Its reach also includes Western Europe and America. All over the world, not least in the Western world, more than 200 Iranian dissidents, viewed as threats by the Islamic Republic in Iran, have been killed or seriously injured in assassinations conducted by operatives from the QF or the Ministry of Intelligence (Pluchinsky, 1997; Wege, 1997; Badey, 1998).

The specter of terrorism looms large over regime's foreign policy. Documented instances of state-sponsored attacks against Iranian dissidents and other targets have tarnished the Islamic Republics international image. For instance, the Mykonos assassinations in September 1992, where three leading Iranian opposition figures were killed in Berlin, involved Iranian agents linked to the QF (Iran Human Rights Documentation Center, 2007). German courts later implicated top officials of the Islamic Republic in Iran in these terrorist attacks, marking a significant stain on Iran's foreign policy.

Another instance of the regime's use of terrorism includes the 1994 bombing of the AMIA Jewish community center in Argentina, orchestrated by the QF. Several high-ranking Iranian officials are wanted by Interpol for this attack (Interpol, n.d., A, B, C, D). It was only recently, in April 2024, that an Argentine high court ruled the attack had been

“organized, planned, financed, and executed” by the Islamic regime in Iran (Politi, 2024).

While overt terrorist attacks in Europe have declined in the last two decades, this does not reflect a lack of intent or resources by Tehran. Instead, the focus has shifted to espionage, character assassinations, and kidnappings (Khoshnood & Khoshnood, 2024). Security services across Europe consider the Islamic Republic in Iran one of the largest and greatest intelligence and security threats to their countries and to Europe as a whole (Khoshnood, 2020, 2021).

Recent incidents underscore the regime's capability and willingness to engage in terrorism on European soil. In 2016, the Norwegian security service, *Politiets Sikkerhetstjeneste*, arrested an Iranian operative who was spying from the garden on a Norwegian man involved in a pro-Israel organization (Zaman, 2020). In March 2017, Haidar Sayed Mustafa from Pakistan was convicted in Berlin for spying for Iran and the QF, targeting individuals connected to Israel in Germany and France (RFERL, 2017). In February 2024, Swedish National Radio reported the arrest of an Iranian couple by Sweden's security service, *Säkerhetspolisen*, on charges of preparing a terrorist act, with the couple gathering information for assassinations of Jewish individuals in Sweden (Sveriges Radio, 2024). In a unique and highly unexpected move, the head of the Counterespionage section of *Säkerhetspolisen*, Mr. Daniel Stenling, stated in an interview with the Swedish National Radio that the couple was members of the IRGC (Öhman & Rosén, 2024).

1.3 Conclusion

The IRGC, and particularly its Quds Force (QF), remains a pivotal element of Iranian power and a key agent in shaping the country's foreign policy. The QF's influence transcends the military domain, permeating economic sectors, media landscapes, and internal security frameworks. Its engagement in regional conflicts and its extensive reach across continents, notably in Europe, alongside its employment of terrorism as an instrument of statecraft, intensify global security concerns. This poses a substantial threat to international peace and counterterrorism efforts. Despite adopting increasingly subtle tactics to extend its influence, the Islamic Republic in Iran continues to consider terrorism a viable strategy to advance its objectives, thereby sustaining its critical role in the regime's agenda.

Chapter 2: The Downing of Flight PS752 by the Islamic Revolutionary Guard Corps

On January 8, 2020, Ukraine International Airlines Flight PS752, carrying 176 passengers and crew members, including an unborn child, was tragically shot down shortly after takeoff from Tehran's Imam Khomeini International Airport, en route to Kyiv. This catastrophic event, which resulted in the loss of all on board, unfolded amid escalated military tensions in the region. The downing of the aircraft by Tor-M1 surface-to-air missiles, operated by the IRGC, occurred shortly after the Islamic regime in Iran launched missile attacks on the al-Asad Airbase in Anbar province, which housed American troops, and on an empty base in the city of Erbil. These assaults were perceived as a retaliatory act following the United States' targeted killing of IRGC General Qasem Soleimani in Baghdad on January 3, 2020. The Tor-M1 missile systems, implicated in this tragic incident, were acquired from Russia, with the delivery finalized in early 2007 following a formal agreement signed in November 2005 (Felgenhauer, 2007).

Despite the Islamic regime's subsequent publication of a Final Report by its Aircraft Accident Investigation Board (AAIB) in March 2021, which was met with skepticism and criticism by affected countries — including Ukraine, Canada, the United Kingdom, Afghanistan, and Sweden — as well as experts, many questions surrounding the incident remained unanswered (e.g. Government of Canada, n.d.; Government Offices of Sweden, 2024).

In response to the incomplete and confusing nature of the Islamic regime's official report, various subsequent investigations were conducted. Reports by Canadian officials, the UN Special Rapporteur, and other entities aimed to unveil the truth behind the downing. One notable initiative was undertaken by The Association of Families of Flight PS752 Victims (2021). They compiled a comprehensive analysis based on publicly available information, testimonies, and expert consultations, challenging Iran's assertions and calling for accountability. Some key conclusions made in the reports are highlighted below:

1. **Airspace Left Open:** Despite the IRGC's missile strikes on American bases in Iraq and the heightened state of alert, regime authorities did not close the airspace, effectively using civilian air travelers as a shield. This decision was made after explicit warnings from the US President and amidst declarations of a war situation by IRGC officials. A request to close the airspace was not approved by the relevant authorities.
2. **False Claim About Airspace Evacuation:** Contrary to claims in the Islamic regime's Final Report, the airspace over western Iran was not evacuated for passenger planes in anticipation of conflict. Analysis of the airspace traffic reveals that flights continued in the western corridors until 20 minutes before the downing of PS752, putting all flights in that region at risk from the time of the attacks on US bases until just before the incident.

3. **Highly Experienced Tor-M1 Operator:** The operator of the Tor-M1 system, who had extensive experience with short-range missile systems including service in Syria, was identified by Tehran's military court authorities. This raises questions about the claim that the operator could not differentiate between a cruise missile and Flight PS752, given his expertise.

4. **No Evidence of Communication Disruption:** The Islamic Regime has not provided evidence to support the claim that the Tor-M1 missile system was unable to communicate with the country's integrated defense network when it targeted Flight PS752. The possibility that the system was added to Tehran's air defense ring by the IRGC, independent of the integrated defense network, and was in contact only with top IRGC commanders, suggests a deliberate act. The black box of the air defense unit, which records all data including conversations between operators and commanders, is crucial for an independent investigation to determine who ordered the downing of the plane.

5. **Implausibility of Misidentification:** The likelihood that the Tor-M1 missile system operator mistook the aircraft for a cruise missile is highly improbable. The technical specifications of the Tor-M1 system and its location near Tehran's international airport make it difficult to confuse the distinct characteristics of a cruise missile with those of a Boeing 737-800 series aircraft, which has a larger size, different radar cross-

section, speed, altitude, and motion patterns.

6. **Implausibility of a 105-Degree Misalignment:** The claim of a 105-degree calibration error in the Tor-M1 missile system's true north orientation is questionable. Technical aspects of the system and inconsistencies in the Islamic Republic's Final Report suggest that the so-called misalignment, which the regime used to explain the plane's perceived direction change, may have been fabricated to support the narrative of "human error" as the cause of the tragedy.
7. **Screening For US Citizenship:** At Tehran International Airport, controlled by the IRGC, there were reports of Flight PS752 passengers being screened for American citizenship. Some families testified that travelers were questioned about possessing an American passport and their travel plans to the United States, suggesting that the IRGC may have been ensuring no American citizens were on board Flight PS752.
8. **Questionable 57-minute delay:** The delay of Flight PS752 is under scrutiny. The Islamic regime's Final Report attributes the delay to the unloading of baggage due to weight issues, but experts familiar with the airport's systems find this explanation insufficient for the 57-minute delay. Some victims reportedly saw passengers disembarking during this time. To clarify these events, an independent investigation examining the CCTV footage of the

aircraft at the airport is recommended.

9. **Rerouting of Atlas Global Flight:** Flight KK1185 of Atlas Global Airlines was rerouted on January 8, 2020, to avoid military sites linked to the missile launch against PS752. Although it had the same scheduled departure time as PS752, KK1185 left without delay and followed a different path than usual, bypassing the military sites. The release of communications between Flight KK1185 and air traffic control, as well as with Iran's Civil-Military Operational Coordination Center, could shed light on the reasons for this rerouting.

10. **Tactical Movement and Misidentification:** The claim that PS752 was the only flight misidentified as a hostile target is not supported by evidence, considering other flights had similar characteristics. The regime's assertion that the Air Defense Unit (ADU) was moved for tactical reasons, causing a misalignment error, and that it remained on standby mode for over an hour during a war situation is challenged by the Canadian Forensic team. They conclude that the ADU tracked four other flights after the alleged movement, which could have been mistakenly targeted like PS752. The lack of incidents with these flights suggests that the operators had opportunities to detect and correct any system errors, yet only PS752 was targeted. This scenario remains unproven without factual evidence.

11. **Systematic Cover-up:** There are allegations of a systematic cover-up by the Islamic regime, which initially claimed that Flight PS752 crashed due to technical failure. An audio recording and reports suggest that the regime's former Foreign Minister was pressured by high-level officials to support this narrative. The destruction of the crash site and the withholding of passengers' electronic devices are cited as further evidence of attempts to conceal the true cause of the downing of Flight PS752.
12. **Interference with Physical Evidence:** There are claims that some of the victims' electronic devices show signs of deliberate destruction beyond what would be expected from the crash. Many personal devices were reportedly looted and not returned, and those that were returned had targeted damage to key components, suggesting interference after the crash.
13. **Mishandling of Forensic Procedures:** There are allegations of mishandling in the identification of victims' bodies. Evidence suggests that DNA tests did not match the identifications provided by authorities in Iran, leading to psychological distress for families who received incorrect remains.
14. **Harassment of Families:** There are reports of the Islamic Republic in Iran intimidating and harassing families of PS752 victims, including confirmed cases of physical torture, detentions, and pressure to remain silent. The regime's actions also included labeling

victims as martyrs, taking over funerals, and obstructing legal actions.

15. Persecution of Peaceful Protesters and Mourners:

The Islamic regime has been accused of cracking down on individuals protesting and mourning the downing of PS752, with reports of detentions and harsh sentences, including long prison terms, following the admission that the plane was shot down by the IRGC.

16. AAIB Lacking Legitimacy: The legitimacy of the AAIB to investigate the downing of Flight PS752 is questioned based on its lack of independence from the regime, technical incompetence, and involvement in initial denial efforts.

Key findings of these investigations highlighted the Islamic Republic's failure to close airspace during heightened military tensions, inconsistencies in evacuation claims, and evidence suggesting a systematic cover-up by the regime.

The IRGC involvement in the downing of Flight 752 has been classified as an act of terrorism by the Superior Court of Ontario, Canada. This designation is supported by legal frameworks such as the State Immunity Act, the Justice for Victims of Terrorism Act, and the Criminal Code of Canada, which define such actions as "terrorist activity."

Chapter 3: Legal Basis for Designation of Terrorist Group under European Union Rules

The relevant legal instrument informing consideration for designating a group or entity as a terrorist organization, is ‘Common Position 931’ (hereafter referred to as “CP931”).⁴

Adopted by the Council of the European Union (the Union), CP931 (which, like other Common Positions, is aimed at improving coordination and cooperation among member states) requires EU member states to embrace national policies that are consistent with the approach laid down by the Union in a particular field. CP931 is, therefore, directly applicable in all member states and its implementation requires the adoption by each state of concrete domestic provisions in appropriate legal form to give force to the said instrument (Scheinin & Vermeulen, 2010).

CP931 was drafted and came into force in 2001 as a means of implementing U.N. Security Council Resolution 1373, which requires member states to implement measures to “prevent and suppress the financing of terrorist acts.” Under Resolution 1373, states are called upon to criminalize terror financing, freeze the funds or other assets of those who commit or facilitate terrorist acts “without delay,” and prevent those engaged in such activities from using one state’s territory to

⁴ Counsel Common Position of 27 December 2001 on the application of specific measures to combat terrorism (2001/931/CFSP), OJL 342/93.

“finance, plan, facilitate or commit terrorist acts against other states or their citizens.”

CP931 is prescriptive in its terms. Article 1 sets out the criteria for listing persons, groups or entities involved in terrorist acts and identifies the actions that constitute terrorist attacks.

Generally speaking, CP931 provides, inter alia, asset freezing measures against individuals, groups or entities “involved in terrorist acts” as defined under Articles 1 (2) and (3) and Article 1(4) sets out the prerequisite conditions/steps for the initially listing of a person, group or entity.

Article 1(1) of CP931 states that the Common Position applies to any person, group, or entity involved in terrorist acts and that is listed in the Annex to the CP 931 (popularly referred to as the ‘terrorist list’).

A prescribed list of legal requirements for being listed is set out in Article 1(2) to 1(4) of CP931. If a group or entity meets the listed requirements, then there can be no legal hindrances to list such a group in the Annex, i.e. adding the group to the ‘terrorist list’.

Article 1(2) sets out the definition of ‘persons, groups and entities involved in terrorist act’, stating that the definition includes, inter alia, persons who have committed, or attempted to commit, terrorist acts, and any group or entities that owned or controlled by such persons.

Article 1(3) concerns the definition of a ‘terrorist act’. The definition includes intentional acts, which, given its nature or its context may seriously damage a country or an international organization, as defined as an offence under national law.

Article 1(3) also sets out a number of examples of terrorist acts, such as ‘attacks upon a person’s life which may cause death’, ‘kidnapping and hostage tacking’ etc.

Article 1(3) also defines what constitutes a ‘terrorist group’, stating that it constitutes a structured group of more than two persons, established over a period of time, and acting in concert to commit terrorist acts.

Article 1(4) concerns the basis upon which a person, group, or entity (as defined under Article 1(2)) can be established to have been involved in terrorist acts (as defined under Article 1(3)). Article 1(4) states:

*‘4. The list in the Annex shall be drawn up on the basis of **precise information or material** in the relevant file **which indicates that a decision has been taken by a competent authority** in respect of the persons, groups and entities concerned, **irrespective of whether it concerns the instigation of investigations or prosecution for a terrorist act**, an attempt to perpetrate, participate in or facilitate such an act based on serious and credible evidence or clues, **or condemnation** for such deeds. Persons, groups and entities identified by the Security Council of the United Nations as being related to terrorism and against whom it has ordered sanctions may be included in the list.*

*For the purposes of this paragraph ‘**competent authority**’ shall mean a **judicial authority**, or, where judicial authorities have no competence in the area covered by this paragraph, an **equivalent competent authority** in*

that area. ‘

(emphasis added)

What is then clear from proper construction of Art 1(4) is that there is a two-step process which must be adhered to in order to initially list a person, group or entity, relevantly:

- a. The existence of a decision by a ‘competent authority’ which meets the definition of Art 1(4) (basically, a decision by a judicial authority – or another competent authority – where it contains a level of inquiry directed at the person, group or entity’s involvement in ‘terrorists acts’); and
- b. The European Council deciding to include the person, group or entity on the list on the basis of precise information or material in the relevant file which indicates that such a decision taken by a competent authority has been taken.⁵

The threshold is simply that there need to be sufficient material to establish that serious and credible evidence or material exist of the involvement by the person or entity concerned in terrorist activities, regarded as reliable by a

⁵ See e.g., judgment of 30 November 2022, *PKK v. Council*, T-316/14 RENV and T-148/19, EU:T:2022:727, paragraph 32; judgment of 14 December 2022, *PKK v. Council*, T-182/21, EU:T:2022:807, paragraph 16; judgment of 12 December 2006, *Organisation des Modjahedines du peuple d’Iran v Council*, T-228/02, EU:T:2006:384, paragraph 117 ; judgment of 23 October 2008, *People’s Mojahedin Organization of Iran v Council*, T-256/07, EU:T:2008:461, paragraph 131.

national authority, which has led them, at the very least, to adopt measures of inquiry.

As supported by relevant caselaw, the two-step process carries specific features, two of which have particular importance:

- a. The initial listing requires, as a prerequisite, the existence of a national decision by a competent authority⁶; and
- b. the European Council's burden of proving that the initial listing of a person, group or entity is legally justified, is a relatively easy to meet, as the Council is under an obligation (by reason of Art 1(4)) to defer to the assessment conducted by the competent national authority upon which it relies to list the person, group or entity⁷ and especially as it concerns the national

⁶ 30 November 2022 Judgment, *PKK v. Council*, T-316/14 RENV and T-148/19, EU:T:2022:727, paragraph 35; judgment of 14 December 2022, *PKK v. Council*, T-182/21, EU:T:2022:807, paragraph 19; judgment of 26 July 2017, *Council v LTTE*, C-599/14 P, EU:C:2017:583, paragraphs 59 to 61 ; judgment of 26 July 2017, *Council v Hamas*, C-79/15 P, EU:C:2017:584, paragraphs 37 to 39.

⁷ 30 November 2022 Judgment, *PKK v. Council*, T-316/14 RENV and T-148/19, EU:T:2022:727, paragraph 36; judgment of 14 December 2022, *PKK v. Council*, T-182/21, EU:T:2022:807, paragraph 20; judgment of 23 October 2008, *People's Mojahedin Organization of Iran v Council*, T-256/07, EU:T:2008:461, paragraphs 133 and 134; judgment of 4 December 2008, *People's Mojahedin Organization of Iran v Council*, T-284/08, EU:T:2008:550, paragraph 53; judgment of 14 December 2018, *Hamas v Council*, T-400/10 RENV, EU:T:2018:966, paragraph 282.

condemnation decisions taken into account at the time of the initial listing.⁸

The only tasks that the Council is obliged to undertake, is:

- c. to assess the facts contained in the national condemnation decision relied upon, to make sure that the acts complained of in those cases (and findings made by the ‘competent authority’) are acts that fall within some or all of the defined terms as contained in Article 1(3) of CP931 – i.e.: the acts that the competent authority took into account are in fact ‘terrorist acts’ as defined in Article 1(3); and
- d. to make sure that the acts or incidents (being terrorist acts – as defined) that the competent authority took into account are sufficiently recent – based on relevant case law, it seems that a period of five years between the most recent of the ‘terrorist acts’ and the consideration by the Council is considered to be sufficiently recent.⁹

In considering the term ‘competent authority’ it is clear that it can be a judicial authority or ‘where judicial authorities have

⁸ 30 November 2022 Judgment, *PKK v. Council*, T-316/14 RENV and T-148/19, EU:T:2022:727, paragraph 37; judgment of 14 December 2022, *PKK v. Council*, T-182/21, EU:T:2022:807, paragraph 21; judgment of 24 November 2021, *LTTE v Council*, T-160/19, EU:T:2021:817, paragraphs 240 to 242.

⁹ Judgment of 30 November 2022, T-316/14 RENV and T-148/19, *PKK v. Council*, EU:T:2022:727, in particular paragraphs 167, 186, 196 and 200 ; judgment of 14 December 2022, T-182/21, *PKK v. Council*, EU:T:2022:807, in particular paragraph 157.

no competence in the area covered by this paragraph, an equivalent competent authority in that area’.

As the relevant precedent stands based on the case-law, Article 1(4) of CP931 does not exclude taking into account decisions originating from administrative authorities where (i) those authorities are actually vested, with the power to adopt restrictive decisions against groups involved in terrorism and (ii) those authorities, although only administrative, may be regarded as ‘equivalent’ to judicial authorities.¹⁰

Administrative authorities may be regarded as equivalent to judicial authorities if their decisions are open to a judicial review that covers matters both of fact and of law¹¹, for

¹⁰ judgment of 30 November 2022, *PKK v. Council*, T-316/14 RENV and T-148/19, EU:T:2022:727, paragraph 51; judgment of 14 December 2022, *PKK v. Council*, T-182/21, EU:T:2022:807, paragraph 49; judgment of 16 October 2014, *LTTE v Council*, T-208/11 and T-508/11, EU:T:2014:885, paragraph 107; judgment of 14 December 2018, *Hamas v Council*, T-400/10 RENV, EU:T:2018:966, paragraph 259; judgment of 6 March 2019, *Hamas v Council*, EU:T:2019:138, T-289/15, paragraph 72; judgment of 10 April 2019, *Gamaa Islamiya Égypte v Council*, T-643/16, EU:T:2019:238, paragraph 111; judgment of 24 November 2021, *LTTE v Council*, T-160/19, EU:T:2021:817, paragraph 114.

¹¹ 30 November 2022, *PKK v. Council*, T-316/14 RENV and T-148/19, EU:T:2022:727, paragraph 52; judgment of 14 December 2022, *PKK v. Council*, T-182/21, EU:T:2022:807, paragraph 50; judgment of 23 October 2008, *People’s Mojahedin Organization of Iran v Council*, T-256/07, EU:T:2008:461, paragraph 145; judgment of 14 December 2018, *Hamas v Council*, T-400/10 RENV, EU:T:2018:966, para 260; judgment of 6 March 2019, *Hamas v Council*, T-289/15, EU:T:2019:138, paragraph 73; judgment of 10 April 2019, *Gamaa Islamiya Égypte v Council*, T-643/16,

example the UK Home Secretary has been regarded as a ‘competent authority’ within the meaning of Article 1(4).¹²

The European Court of Justice has similarly held in *Stichting Al-Aqsa* that the Sanctieregeling adopted by the Dutch Minister for Foreign Affairs qualified as a valid decision by a national competent authority.¹³

Furthermore, the European Court of Justice has held that the term ‘competent authority’, within the meaning of Article 1(4) of CP931, is not limited to the authorities of Member States but also includes the authorities of third States.¹⁴ However, before acting on the basis of a decision of an authority of a

EU:T:2019:238, paragraph 112; judgment of 24 November 2021, *LTTE v Council*, T-160/19, EU:T:2021:817, paragraph 115.

¹² Judgment of 10 September 2020, *Hamas v. Council*, C-122/19 P, EU:C:2020:690, paragraphs 43-45 ; judgment of 30 November 2022, *PKK v. Council*, T-316/14 RENV and T-148/19, EU:T:2022:727, paragraphs 50 to 67; judgment of 14 December 2022, *PKK v. Council*, T-182/21, EU:T:2022:807, paragraphs 48 to 67; judgment of 23 October 2008, *People’s Mojahedin Organization of Iran v Council*, T-256/07, EU:T:2008:461, paragraphs 144 and 145; judgment of 16 October 2014, *LTTE v Council*, T-208/11 and T-508/11, EU:T:2014:885, paragraph 106; judgment of 14 December 2018, *Hamas v Council*, T-400/10 RENV, EU:T:2018:966, paragraphs 258 to 285; judgment of 6 March 2019, *Hamas v Council*, T-289/15, EU:T:2019:138, paragraphs 71 to 96; judgment of 10 April 2019, *Gamaa Islamiya Égypte v Council*, T-643/16, EU:T:2019:238, paragraphs 108 to 133; judgment of 24 November 2021, *LTTE v Council*, T-160/19, EU:T:2021:817, paragraphs 112 to 138.

¹³ Judgment of 15 November 2012, *Stichting Al-Aqsa v. Council*, C-539/10 P and C-550/10 P, EU:C:2012:711, paragraphs 75-76.

¹⁴ Judgment of 26 July 2017, *Council v. LTTE*, C-500/14 P, EU:C:2017:583, paragraph 22.

third State, the Council must verify whether that decision was adopted in accordance with the rights of the defense and the right to effective judicial protection.¹⁵

In short, the following summarizes the requisite steps and considerations that need to be satisfied, prior to an initial listing by the Council:

- a. existence of a national decision by a competent authority within the meaning of Article 1(4) CP 931;
- b. the decision must concern the instigation of investigations or prosecution for a terrorist act, an attempt to perpetrate, participate in or facilitate such an act based on serious and credible evidence or clues, or condemnation for such deeds;
- c. the competent authority can be a judicial or administrative body;
- d. the competent authority might be one from a third (non-EU) State (subject to considerations noted above, namely that the decision was reached in accordance with the rights of the defence and the right to effective judicial protection);
- e. the decision relied upon must be based on facts that are sufficiently recent and meet at least one of the defined terms of Article 1(3), ie: the definition of terrorist act.

¹⁵ Judgment of 26 July 2017, *Council v. LTTE*, C-500/14 P, EU:C:2017:583, paragraphs 24-26.

Chapter 4: Evidence and Procedures for Including the Islamic Revolutionary Guard Corps on the EU's List of Terrorist Organizations

In this chapter we will first present a decision from a competent authority that meets all the legal requirements of CP931, and which may form the basis for adding the IRGC to the CP931 Annex. We will then describe the procedure for adding IRGC to the Annex in Section 4.2.

4.1 The Decision – Zarei v. Iran

Although there is no requirement for a judicial decision, there is a clear judicial decision from a competent authority in Canada that fulfills all the criteria for adding IRGC to the Annex to CP931.

The decision in question is a court ruling by the Ontario Superior Court of Justice stating that IRGC has undertaken an *intentional act of terrorism* when shooting down the Ukrainian International Airlines Flight PS752. The case is referred to as *Zarei v. Iran* (Appendix 3).

The background is the following. On 8 January 2020, IRGC was involved in shooting down Ukrainian International Airlines Flight PS752 using sophisticated surface-to-air missiles, shortly after PS752 departed Tehran for Kiev.

The first missile hit at 6:15, the second about 30 seconds later. As a direct result of the two missile hits, Flight PS752 crashed, with all 167 passengers and 9 crew members onboard getting killed. Seven of the civilian victims were EU citizens.

Although initially denying that a missile was used in shooting down Flight PS752, the IRGC, after several days, admitted that the flight was in fact hit by missiles operated by members of the IRGC. The commander for the IRGC Aerospace Force blamed human error, stating that a junior defense system operator mistook the passenger jet for a cruise missile.

Despite the IRGC's claims, it has since been held by the Ontario Superior Court of Justice that the shooting of PS752 by the IRGC was an intentional act of terrorism. Based on the evidence and expert reports submitted by the plaintiffs, Justice Edward Belobaba made a positive finding that the missile attacks were intentional and not part of an "armed conflict".

Consequently, the judgment concluded that the shooting down of Flight PS752 by the defendants, including the IRGC, was an act of terrorism and constituted "terrorist activity" under the Canadian State Immunity Act, the Canadian Justice for Victims of Terrorism Act, and the Canadian Criminal Code.

It should be noted that, although *Zarei v Iran* is a default judgment, the defendants (including the IRGC) were considered to have been duly served and given ample opportunity to deliver Statement of Defense. IRGC choose not to submit any such Statement of Defense and was therefore noted in default. However, it is beyond dispute that IRGC was granted the rights of defense and the right to effective judicial protection, although IRGC chose not to utilize those rights.

The Superior Court of Justice in Ontario is a judicial authority in Canada. The Court is the largest superior trial court in Canada and has inherent jurisdiction over criminal, civil, and family cases, arising from Ontario's common law traditions.

The Court has the power to try any indictable offence under the Criminal Code of Canada. However, the Superior Court generally only tries the most serious criminal offences. These include, inter alia, murder, manslaughter, act of terrorism and other offences against the security of the state. The Superior Court also hears appeals from summary conviction cases heard in the Ontario Court of Justice. Consequently, the Superior Court of Justice in Ontario is a competent authority within the meaning of article 1 (4) of the Common Position 2001/931/CFSP.

As noted above, the Superior Court of Justice held in *Zarei v Iran* that the defendants, incl. IRGC, had committed an act that constituted “terrorist activity” under, inter alia, the Canadian Criminal Code. “Terrorist activity” is defined in Section 83.01(1) of the Criminal Code:

83.01(1) terrorist activity means

[...]

(b) an act or omission, in or outside Canada,

(i) that is committed

(A) in whole or in part for a political, religious or ideological purpose, objective or cause, and

(B) in whole or in part with the intention of intimidating the public, or a segment of the public, with regard to its security, including its economic security, or compelling a person, a government or a domestic or an international organization to do or to refrain from doing any act, whether the public or the person, government or organization is inside or outside Canada, and

(ii) that intentionally

(A) causes death or serious bodily harm to a person by the use of violence,

(B) endangers a person's life,

(C) causes a serious risk to the health or safety of the public or any segment of the public,

(D) causes substantial property damage, whether to public or private property, if causing such damage is likely to result in the conduct or harm referred to in any of clauses (A) to (C), or

(E) causes serious interference with or serious disruption of an essential service, facility or system, whether public or private, other than as a result of advocacy, protest, dissent or stoppage of work that is not intended to result in the conduct or harm referred to in any of clauses (A) to (C),

and includes a conspiracy, attempt or threat to commit any such act or omission, or being an accessory after the fact or counselling in relation to any such act or omission, but, for greater certainty, does not include an act or omission that is committed during an armed conflict and that, at the time and in the place of its commission, is in accordance with customary international law or conventional international law applicable to the conflict, or the activities undertaken by military forces of a state in the exercise of their official

duties, to the extent that those activities are governed by other rules of international law. (activité terroriste)

As regards the relevant legal framework of Canadian law in relation to CP931 requirement, it can be noted that the definition of “terrorist activity” under section 83.01(1) of the Canadian Criminal Code contains the same or sufficiently similar as the definition of “terrorist act” under Article 1(3) of the CP931. The similarities are listed in Table 1.

Table 1. Similarities Between Canadian Criminal Code and CP931 Definitions of Terrorist Acts.

| “ Terrorist act ” under Article 1(3) of the Common Position 2001/931/CFSP | “ Terrorist activity ” under section 83.01(1) of the Canadian Criminal Code |
|---|--|
| For the purposes of this Common Position, ‘terrorist act’ shall mean one of the following intentional acts , | <i>terrorist activity</i> means [...] (b) an act or omission, in or outside Canada, (i) that is committed [...] (ii) that intentionally [...] |
| which, given its nature or its context, may seriously damage a country or an international organization, as defined as an offence under national law, | in whole or in part with the intention of intimidating the public , or a segment of the public, with regard to its security, including its economic |

| | |
|---|---|
| <p>where committed with the aim of:</p> <p>(i)seriously intimidating a population, or</p> <p>(ii)unduly compelling a Government or an international organization to perform or abstain from performing any act, [...]</p> <p>(iii)seriously destabilizing or destroying the fundamental political, constitutional, economic or social structures of a country or an international organization:</p> | <p>security, or compelling a person, a government or a domestic or an international organization to do or to refrain from doing any act causes serious interference with or serious disruption of an essential service, facility or system, whether public or private,</p> |
| <p>(a)attacks upon a person's life which may cause death;</p> <p>(b)attacks upon the physical integrity of a person;</p> <p>(g)release of dangerous substances, or causing fires, explosions or floods the effect of which is to endanger human life;</p> | <p>(A) causes death or serious bodily harm to a person by the use of violence,</p> <p>(B) endangers a person's life,</p> <p>(C) causes a serious risk to the health or safety of the public or any segment of the public,</p> |

It is obvious from the comparison above that an act that is defined as 'terrorist activity' under the national Canadian Criminal Code satisfies all the requirements of being defined as a 'terrorist act' under the CP931.

Given the fact that the Superior Court of Justice in Ontario has positively found that the shooting of Flight PS752 was a terrorist activity under Canadian Criminal Code committed by the IRGC, it can be concluded that the same action also amounts to a terrorist act under the CP931.

In summary, the IRGC has been found to have committed an act of terrorism or a terroristic act:

- a. by a competent authority (a judicial authority, namely the Ontario Superior Court of Justice);
- b. being a decision made in a third State (Canada) which has all the relevant legal safeguards, and the decision was made in accordance with the rights of the defense and the right to effective judicial protection;
- c. the terroristic act was an intentional act of terrorism resulting in 176 victims, including seven EU citizens (although this is not a relevant test when deciding whether to list or not); and
- d. The terroristic act took place on 8 January 2020 and can thus be termed a recent act of terrorism.

In conclusion, all the necessary legal requirements are met for the adding IRGC (and its relevant subsidiaries) as a terrorist group in the Annex to CP931.

4.2 Procedure to add the Islamic Revolutionary Guard Corps to the Annex

On 27 June 2007 the Permanent Representatives Committee endorsed the mandate, practical arrangements, and revised working methods of the Working Party on implementation of Common Position 2001/931/CFSP on the application of specific measures to combat terrorism; the CP931 Working Party (Council of the European Union, 2007).

In September 2016, the Foreign Relations Counsellors Working Party (RELEX) decided that the CP931 Working Party should review possible improvements. RELEX agreed on the name, mandate, practical arrangements, and working methods for the CP931 Working Party. On November 23, 2016, the finalized mandate of the CP931 Working Party, known as COMET WP, was published along with the revised working methods, referred to as Revised Working Methods.

The draft mandate and Revised Working Methods were ultimately endorsed by the Permanent Representatives Committee (COREPER) and the relevant scope and the revised working methods are set out in Annex I and II of the Council of the European Union's (2016) document on the establishment of COMET WP.

The terms of reference of the COMET WP include, *inter alia*, the following:

- (i) to examine and evaluate information with a view to listing and de-listing of persons, groups, undertakings, and entities, as well as assess whether the information available meets the criteria set out in CP931 on the application of specific measures to combat terrorism, and
- (ii) make recommendations for listings (and de-listings) under CP931.

In case of CP931, initial proposals for listings may be made by Member States; or by Member States or the High Representative for Foreign Affairs and Security Policy (HR) regarding listings on the basis of decision(s) by third States' competent authorities.

Such initial proposal for listings should include initial draft statements of reasons and specify the decision(s) of the national competent authority and national procedures used as a basis for the listing proposed, as well as the relevant legal framework of domestic law in relation to CP931.¹⁶

The proposal, including material from Member States or material originating from third States in support of pending or new proposals, will be circulated to delegations for discussion in the COMET WP. Delegations will have 15 calendar days to check the material and to allow them to forward the information received to their competent national authorities.

The meetings of COMET WP will be convened by the Presidency on its own initiative or at the request of a Member State. Delegations will be notified of the meeting at least 15 calendar days in advance. The notice of the meeting will include information on which individual, group, undertaking or entity will be discussed and on what legal basis.

The Presidency, on its own initiative or at the request of a Member State or the European External Action Service (EEAS), may decide to invite a representative from competent bodies, institutions, or agencies to attend the meeting of the COMET WP to make a presentation of background information in order to facilitate discussion on a particular subject. Such bodies, institutions or agencies include notably the following: Europol, Eurojust and the EU Intelligence Analysis Centre. Delegates from other relevant Council working parties (for example the Working Party on Visas, the Working Party on Terrorism (International Aspects), Working Party on Terrorism, the Schengen Working Party) may be

¹⁶ See Appendix 4 for a draft Initial Proposal.

invited to attend meetings of COMET WP. The COMET WP will make recommendations for listing to be reflected in the necessary proposals for legal acts from the HR or by Member States, which will be examined by the RELEX and endorsed by the COREPER with a view to their adoption by the Council.

For each person, group, undertaking and entity listed under CP931 the Council will provide a statement of reasons, which will be sufficiently detailed to allow those listed to understand the reasons for their listing and to allow the EU Courts to exercise their power of review where a legal challenge is brought against the listing. The statement of reasons will make clear how the criteria provided for in the underlying legal act have been met. The draft statement of reasons will be prepared by the proposing Member State or the EEAS. Each statement of reasons will then be discussed by the COMET WP on a case-by-case basis. The statement of reasons will then be examined by the RELEX and endorsed by COREPER with a view to its adoption by the Council. After adoption by the Council, the statement of reasons will be kept on the Council's file with the possibility for the listed person, group, undertaking, or entity concerned or his/her/its legal representatives to have access to it.

To sum up, the procedure for adding IRGC to the Annex to CP931 is as follows:

1. A Member State makes an Initial Proposal for listing (incl. draft statements of reasons, specifying the underlying decision from a competent authority etc.)
2. The Initial Proposal is circulated to the delegation to delegations for discussion in the COMET WP (minimum 15 calendar days).

3. COMET WP meeting is convened with a minimum 15 calendar days' notice by the President or a Member State with the aim to decide on a recommendation for listing.
4. The recommendation will be added to the proposal which will be examined RELEX and endorsed by the COREPER with a view to their adoption by the Council.

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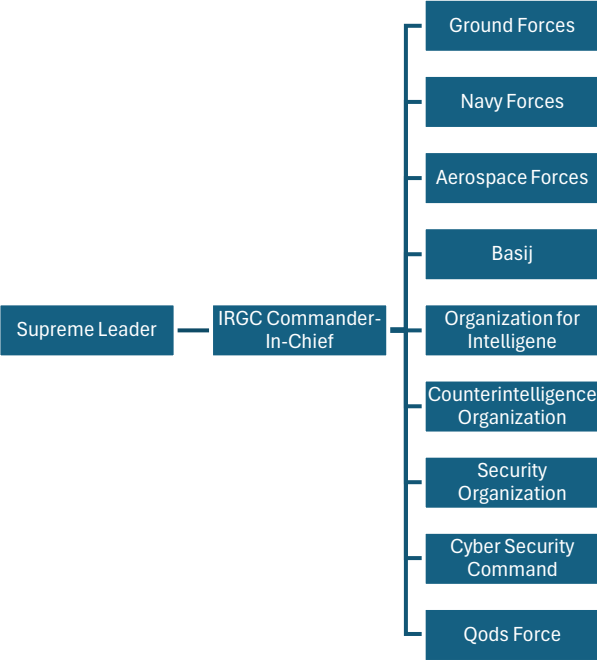
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Appendix 1. The Emblem of the Islamic Revolutionary Guard Corps



Appendix 2. Organizational Chart of the IRGC



Appendix 3. Zarei v. Iran

CITATION: *Zarei v Iran*, 2021 ONSC 3377
COURT FILE NO.: CV-20-635078
DATE: 20210520

ONTARIO

SUPERIOR COURT OF JUSTICE

B E T W E E N:

MEHRZAD ZAREI personally and on behalf of the Estate of ARAD ZAREI deceased or as Personal Representative of ARAD ZAREI deceased and

SHAHIN MOGHADDAM personally and on behalf of the Estate of SHAKIBA FEGHAHATI deceased or as Personal Representative of SHAKIBA FEGHAHATI deceased and on behalf of the Estate of ROSS TIN MOGHADDAM deceased or as Personal Representative of ROSS TIN MOGHADDAM deceased and

ALI GORJI, personally and on behalf of the Estate of POUNEH GORJI deceased or as Personal Representative of POUNEH GORJI deceased and on behalf of the Estate of ARASH POURZARRADI deceased or as Personal Representative of ARASH POURZARRADI deceased and

JOHN DOE, JANE DOE, BILL DOE and SAM DOE

Plaintiffs

-and-

ISLAMIC REPUBLIC OF IRAN, ISLAMIC REVOLUTIONARY GUARD CORPS, aka ARMY OF THE GUARDIANS OF THE ISLAMIC REVOLUTION also known as IRANIAN REVOLUTIONARY GUARD CORPS, IRANIAN ARMED FORCES aka ARMED FORCES OF THE ISLAMIC REPUBLIC OF IRAN, ALI KHAMENEI also known as SUPREME LEADER OF IRAN, MOHAMMAD BAGHERI also known as MOHAMMAD-HOSSEIN AFSHORDI, HOSSEIN SALAMI, SEYYED ABDOLRAHIM MOUSAVI and AMIR ALI HAJIZADEH

Defendants

The court verdict can be downloaded from:

<https://bit.ly/irgcterrorist>

Appendix 4. Initial Proposal, Draft

INITIAL PROPOSAL

Listing of the Islamic Revolutionary Guard Corps
(**IRGC**) pursuant to Common Position 2001/931/CFSP

Memorandum:

COMET WP

Proposal

1. [THE MEMBER STATE] hereby formally proposes that the Islamic Revolution Guards Corps (**IRGC**) be included on the list of persons and entities subject to restrictive measures (**EU Terror List**) under Council Common Position 2001/931/CFSP on the application of specific measures to combat terrorism (**CP931**), with the listing supported by the decision of Ontario Superior Court of Justice, it's rulings and finding, in its decision in *Zarei v. Iran* 2021 ONSC 3377.

Background

2. On 27 June 2007 the Permanent Representatives Committee endorsed the mandate, practical arrangements, and revised working methods of the Working Party on implementation of Common Position

2001/931/CFSP on the application of specific measures to combat terrorism (the **CP 931 Working Party**) (doc. 10826/1/07 REV 1).

3. In September 2016, the Foreign Relations Counsellors Working Party (**RELEX**) agreed that the examination of appropriate possible improvements should be entrusted to the CP 931 Working Party, agreed on the name, mandate, practical arrangements and the working methods of the CP 931 Working Party and on 23 November 2016 the mandate of the **COMET WP** (as it became known) was finalized and published revised working methods (**Revised Working Methods**).
4. The draft mandate and Revised Working Methods were ultimately endorsed by the Permanent Representatives Committee (**Coreper**) and the relevant scope and the revised working methods are set out in Annex I and II of the (doc. 14612/1/16 REV 1).
5. The terms of reference of the COMET WP include, *inter alia*, the following:
 - (i) to examine and evaluate information with a view to listing and de-listing of persons, groups, undertakings, and entities, as well as assess whether the information available meets the criteria set out in CP931 on the application of specific measures to combat terrorism, and
 - (ii) make recommendations for listings (and de-listings) under CP931.

6. In case of CP931, the initial proposal for listings may be made by, *inter alia*, Member States on the basis of decision(s) by third State's competent authorities. Such proposal for listings should include initial draft statements of reasons and specify the decision(s) of the national competent authority and national procedures used as a basis for the listing proposed, as well as the relevant legal framework of domestic law in relation to CP931'.

Methodology and Legal Framework

7. Generally speaking, CP931 provides, *inter alia*, asset freezing measures against individuals, groups, or entities "involved in terrorist acts" as defined under Articles 1 (2) and (3) and Article 1(4) sets out the prerequisite conditions/steps for the initially listing of a person, group or entity.
8. For ease of reference, Article 1(4) relevantly states:

"the list in the Annex [to CP 931] shall be drawn up on the basis of precise information or material in the relevant file which indicates that a decision has been taken by a competent authority in respect of the persons, groups and entities concerned, irrespective of whether it concerns the instigation of investigations or prosecution for a terrorist act, an attempt to perpetrate, participate in or facilitate such an act based on serious and credible evidence or clues, or condemnation for such deeds. Persons, groups, and entities identified by the Security Council of the United Nations as being

related to terrorism and against whom it has ordered sanctions may be included in the list.

For the purposes of this paragraph ‘competent authority’ shall mean a judicial authority, or, where judicial authorities have no competence in the area covered by this paragraph, an equivalent competent authority in that area.’

9. What is then clear from proper construction of Art 1(4) is that there is a two-step process which must be followed in order to initially list a person, group, or entity, namely and relevantly:
 - a. The existence of a decision by a ‘competent national authority’ which meets the definition of Art 1(4) (basically, a decision by a judicial authority – or another competent authority – where it contains a level of inquiry directed at the person, group, or entity’s involvement in ‘terrorists acts’); and
 - b. The European Council deciding to include the person, group, or entity on the list on the basis of precise information or material in the relevant file which indicates that such a decision taken by a competent authority has been taken.¹

¹ See e.g., judgment of 30 November 2022, *PKK v. Council*, T-316/14 RENV and T-148/19, EU:T:2022:727, paragraph 32; judgment of 14 December 2022, *PKK v. Council*, T-182/21,

10. At this juncture, it is critical to note that on the proper construction of CP931, what is *not* required is a positive decision that the person, group, or entity is in fact a ‘terrorist’ or involved in terrorist acts (although of available, then that add weight to the argument).
11. The threshold is simply that there need to be sufficient material to establish that serious and credible evidence or clues exist of the involvement of the person or entity concerned in terrorist activities, regarded as reliable by a national authority, which has led them, at the very least, to adopt measures of inquiry.
12. As supported by relevant caselaw, the two-step process carries specific features, two of which have particular importance:
 - a. The initial listing requires, as a prerequisite, the existence of a national decision by a competent authority²; and

EU:T:2022:807, paragraph 16; judgment of 12 December 2006, *Organisation des Modjahedines du peuple d’Iran v Council*, T-228/02, EU:T:2006:384, paragraph 117 ; judgment of 23 October 2008, *People’s Mojahedin Organization of Iran v Council*, T-256/07, EU:T:2008:461, paragraph 131.

² 30 November 2022 Judgment, *PKK v. Council*, T-316/14 RENV and T-148/19, EU:T:2022:727, paragraph 35; judgment of 14 December 2022, *PKK v. Council*, T-182/21, EU:T:2022:807, paragraph 19; judgment of 26 July 2017, *Council v LTTE*, C-599/14 P, EU:C:2017:583, paragraphs 59 to 61 ; judgment of 26 July 2017, *Council v Hamas*, C-79/15 P, EU:C:2017:584, paragraphs 37 to 39.

- b. the European Council’s burden of proving that the initial listing of a person, group or entity is legally justified, is a relatively easy to meet, as the Council is under an obligation (by reason of Art 1(4)) to defer to the assessment conducted by the competent national authority upon which it relies to list the person, group or entity³ and especially as it concerns the national condemnation decisions taken into account at the time of the initial listing⁴.
13. The above is of critical importance, as the judgments and the precedents they set, are clear in that not it is *not* for the Council to verify whether the events found to have occurred in the national condemnation decisions on which the initial listing was based, actually took place and who is responsible for them.⁵

³ 30 November 2022 Judgment, *PKK v. Council*, T-316/14 RENV and T-148/19, EU:T:2022:727, paragraph 36; judgment of 14 December 2022, *PKK v. Council*, T-182/21, EU:T:2022:807, paragraph 20; judgment of 23 October 2008, *People’s Mojahedin Organization of Iran v Council*, T-256/07, EU:T:2008:461, paragraphs 133 and 134; judgment of 4 December 2008, *People’s Mojahedin Organization of Iran v Council*, T-284/08, EU:T:2008:550, paragraph 53; judgment of 14 December 2018, *Hamas v Council*, T-400/10 RENV, EU:T:2018:966, paragraph 282.

⁴ 30 November 2022 Judgment, *PKK v. Council*, T-316/14 RENV and T-148/19, EU:T:2022:727, paragraph 37; judgment of 14 December 2022, *PKK v. Council*, T-182/21, EU:T:2022:807, paragraph 21; judgment of 24 November 2021, *LTTE v Council*, T-160/19, EU:T:2021:817, paragraphs 240 to 242.

⁵ *Ibid*

14. The only tasks that the Council is obliged to undertake, seem to be:
- a. to assess the facts contained in the national condemnation decision relied upon, to make sure that the acts complained of in those cases (and findings made by the ‘competent authority’) are acts that fall within some or all of the defined terms as contained in Article 1(3) of CP931 – i.e.: the acts that the competent authority took into account are in fact ‘terrorist acts’ as defined in Article 1(3); and
 - b. to make sure that the acts or incidents (being terrorist acts – as defined) that the competent authority took into account are sufficiently recent – based on relevant case law, it seems that a period of five years between the most recent of the ‘terrorist acts’ and the consideration by the Council is considered to be sufficiently recent.⁶
15. In considering the term ‘competent authority’ it is clear that it can a judicial authority or ‘*where judicial authorities have no competence in the area covered by this paragraph, an equivalent competent authority in that area*’.

⁶ Judgment of 30 November 2022, T-316/14 RENV and T-148/19, *PKK v. Council*, EU:T:2022:727, in particular paragraphs 167, 186, 196 and 200 ; judgment of 14 December 2022, T-182/21, *PKK v. Council*, EU:T:2022:807, in particular paragraph 157.

16. As the relevant precedent stands based on the case-law, Article 1(4) of CP931 does not exclude taking into account decisions originating from *administrative authorities* where (i) those authorities are actually vested, with the power to adopt restrictive decisions against groups involved in terrorism and (ii) those authorities, although only administrative, may be regarded as ‘equivalent’ to judicial authorities.⁷
17. Administrative authorities may be regarded as equivalent to judicial authorities if their decisions are open to a judicial review that covers matters both of fact and of law⁸ and their decisions for example where the

⁷ Judgment of 30 November 2022, *PKK v. Council*, T-316/14 RENV and T-148/19, EU:T:2022:727, paragraph 51; judgment of 14 December 2022, *PKK v. Council*, T-182/21, EU:T:2022:807, paragraph 49; judgment of 16 October 2014, *LTTE v Council*, T-208/11 and T-508/11, EU:T:2014:885, paragraph 107; judgment of 14 December 2018, *Hamas v Council*, T-400/10 RENV, EU:T:2018:966, paragraph 259; judgment of 6 March 2019, *Hamas v Council*, EU:T:2019:138, T-289/15, paragraph 72; judgment of 10 April 2019, *Gamaa Islamiya Égypte v Council*, T-643/16, EU:T:2019:238, paragraph 111; judgment of 24 November 2021, *LTTE v Council*, T-160/19, EU:T:2021:817, paragraph 114.

⁸ 30 November 2022, *PKK v. Council*, T-316/14 RENV and T-148/19, EU:T:2022:727, paragraph 52; judgment of 14 December 2022, *PKK v. Council*, T-182/21, EU:T:2022:807, paragraph 50; judgment of 23 October 2008, *People’s Mojahedin Organization of Iran v Council*, T-256/07, EU:T:2008:461, paragraph 145; judgment of 14 December 2018, *Hamas v Council*, T-400/10 RENV, EU:T:2018:966, para 260; judgment of 6 March 2019, *Hamas v Council*, T-289/15, EU:T:2019:138, paragraph 73; judgment of 10 April 2019, *Gamaa Islamiya Égypte v Council*, T-643/16, EU:T:2019:238, paragraph 112; judgment of 24 November 2021, *LTTE v Council*, T-160/19, EU:T:2021:817, paragraph 115.

UK Home Secretary has been regarded as a ‘competent authority’ within the meaning of Article 1(4).⁹

18. The Court of Justice has similarly held in *Stichting Al-Aqsa* that the *Sanctieregeling* adopted by the Dutch Minister for Foreign Affairs qualified as a valid decision by a national competent authority.¹⁰
19. Critically, the term ‘competent authority’ as defined, is not limited to the authorities of EU Member States and can include the authorities of third States¹¹, whether

⁹ Judgment of 10 September 2020, *Hamas v. Council*, C-122/19 P, EU:C:2020:690, paragraphs 43-45 ; judgment of 30 November 2022, *PKK v. Council*, T-316/14 RENV and T-148/19, EU:T:2022:727, paragraphs 50 to 67; judgment of 14 December 2022, *PKK v. Council*, T-182/21, EU:T:2022:807, paragraphs 48 to 67; judgment of 23 October 2008, *People’s Mojahedin Organization of Iran v Council*, T-256/07, EU:T:2008:461, paragraphs 144 and 145; judgment of 16 October 2014, *LTTE v Council*, T-208/11 and T-508/11, EU:T:2014:885, paragraph 106; judgment of 14 December 2018, *Hamas v Council*, T-400/10 RENV, EU:T:2018:966, paragraphs 258 to 285; judgment of 6 March 2019, *Hamas v Council*, T-289/15, EU:T:2019:138, paragraphs 71 to 96; judgment of 10 April 2019, *Gamaa Islamiya Égypte v Council*, T-643/16, EU:T:2019:238, paragraphs 108 to 133; judgment of 24 November 2021, *LTTE v Council*, T-160/19, EU:T:2021:817, paragraphs 112 to 138.

¹⁰ Judgment of 15 November 2012, *Stichting Al-Aqsa v. Council*, C-539/10 P and C-550/10 P, EU:C:2012:711, paragraphs 75-76.

¹¹ Judgment of 30 November 2022, *PKK v. Council*, T-316/14 RENV and T-148/19, EU:T:2022:727, paragraph 85; judgment of 14 December 2022, *PKK v. Council*, T-182/21, EU:T:2022:807, paragraph 83; judgment of 26 July 2017, *Council v LTTE*, C-599/14 P, EU:C:2017:583, paragraph 22; judgment of 14 December 2018, *Hamas v Council*, T-400/10 RENV, EU:T:2018:966, paragraph 244;

judicial or administrative, with the added step being that when the Council relies on a decision of a third State it must first verify whether that decision has been taken in accordance with the rights of the defense and the right to effective judicial protection.¹²

20. In short, the following summarizes the requisite steps and considerations that need to be satisfied, prior to an initial listing by the Council:
 - a. existence of a national decision by a competent authority within the meaning of Article 1(4) CP 931;
 - b. the decision must concern the instigation of investigations or prosecution for a terrorist act, an attempt to perpetrate, participate in or facilitate such an act based on serious and credible evidence or clues, or condemnation for such deeds;
 - c. the competent authority can be a judicial or administrative body;

judgment of 6 March 2019, *Hamas v Council*, T-289/15, EU:T:2019:138, paragraph 43.

¹² Judgment of 30 November 2022, *PKK v. Council*, T-316/14 RENV and T-148/19, EU:T:2022:727, paragraph 87; judgment of 14 December 2022, *PKK v. Council*, T-182/21, EU:T:2022:807, paragraph 85; judgment of 26 July 2017, *Council v LTTE*, C-599/14 P, EU:C:2017:583, paragraphs 24 and 31; judgment of 4 September 2019, *Hamas v Council*, T-308/18, EU:T:2019:557, paragraph 58.

- d. the competent authority might be one from a third (non-EU) State (subject to considerations noted above, namely that the decision was reached in accordance with the rights of the defense and the right to effective judicial protection);
- e. the decision relied upon must be based on facts that are sufficiently recent and meet at least one of the defined terms of Article 1(3), i.e.: the definition of terrorist act.

Initial Draft Statement of Reasons

- 21. The proposal to include the IRGC on the EU Terror List pursuant to CP931 relies on the actions of the IRGC on 8 January 2020, in shooting down Ukrainian International Airlines Flight PS752 using sophisticated surface-to-air missiles, shortly after PS752 departed Tehran for Kiev.
- 22. The first missile hit at 6:15, the second about 30 seconds later. As a direct result of the two missile hits, Flight PS752 crashed, with all 167 passengers and 9 crew members onboard getting killed. Seven of the civilian victims were EU citizens.
- 23. Although initially denying that a missile was used in shooting down Flight PS752, the IRGC, after several days, admitted that the flight was in fact hit by missiles operated by members of the IRGC. The commander for the IRGC Aerospace Force blamed human error, stating

that a junior defense system operator mistook the passenger jet for a cruise missile.

24. Despite the IRGC's claims, it has since been held by the Ontario Superior Court of Justice that the shooting of PS752 by the IRGC was an *intentional act of terrorism*.¹³ Based on the evidence and expert reports submitted by the plaintiffs, Justice Edward Belobaba made a positive finding that the missile attacks were intentional¹⁴ and not part of an "armed conflict"¹⁵.
25. Consequently, the judgment concluded that the shooting down of Flight PS752 by the defendants, including the IRGC, was an act of terrorism and constituted "terrorist activity" under the Canadian *State Immunity Act*¹⁶, the Canadian *Justice for Victims of Terrorism Act*¹⁷ and the Canadian *Criminal Code*¹⁸.
26. It should be noted that, although *Zarei v Iran* is a default judgment, the defendants (including the IRGC) were considered to have been duly served and given ample opportunity to deliver Statement of Defense. IRGC choose not to submit any such Statement of Defense and was therefore noted in default.

¹³ *Zarei v Iran*, at [44]

¹⁴ *Zarei v Iran*, at [36-44]

¹⁵ *Zarei v Iran*, at [45-51]

¹⁶ State Immunity Act, R.S.C., 1985, c. S-18.

¹⁷ Justice for Victims of Terrorism Act, S.C. 2010, c.1, s.2.

¹⁸ Criminal Code, R.S.C. 1970, c. C-34, as am.

27. The Superior Court of Justice in Ontario is a judicial authority in Canada. The Court is the largest superior trial court in Canada and has inherent jurisdiction over criminal, civil, and family cases, arising from Ontario's common law traditions.
28. The Court has the power to try any indictable offence under the Criminal Code of Canada. However, the Superior Court generally only tries the most serious criminal offences. These include, *inter alia*, murder, manslaughter, act of terrorism and other offences against the security of the state. The Superior Court also hears appeals from summary conviction cases heard in the Ontario Court of Justice. Consequently, the Superior Court of Justice in Ontario is a competent authority within the meaning of article 1 (4) of the Common Position 2001/931/CFSP.
29. As noted above, the Superior Court of Justice held in *Zarei v Iran* that the defendants, incl. IRGC, had committed an act that constituted "terrorist activity" under, *inter alia*, the Canadian *Criminal Code*. "Terrorist activity" is defined in Section 83.01(1) of the Criminal Code:

"83.01(1) ***terrorist activity*** means

[....]

(b) an act or omission, in or outside Canada,

(i) that is committed

(A) in whole or in part for a political, religious or ideological purpose, objective or cause, and

(B) in whole or in part with the intention of intimidating the public, or a segment of the public, with regard to its security, including its economic security, or compelling a person, a government or a domestic or an international organization to do or to refrain from doing any act, whether the public or the person, government or organization is inside or outside Canada, and

(ii) that intentionally

(A) causes death or serious bodily harm to a person by the use of violence,

(B) endangers a person's life,

(C) causes a serious risk to the health or safety of the public or any segment of the public,

(D) causes substantial property damage, whether to public or private property, if causing such damage is likely to result in the conduct or harm referred to in any of clauses (A) to (C), or

(E) causes serious interference with or serious disruption of an essential service,

facility or system, whether public or private, other than as a result of advocacy, protest, dissent or stoppage of work that is not intended to result in the conduct or harm referred to in any of clauses (A) to (C),

and includes a conspiracy, attempt or threat to commit any such act or omission, or being an accessory after the fact or counselling in relation to any such act or omission, but, for greater certainty, does not include an act or omission that is committed during an armed conflict and that, at the time and in the place of its commission, is in accordance with customary international law or conventional international law applicable to the conflict, or the activities undertaken by military forces of a state in the exercise of their official duties, to the extent that those activities are governed by other rules of international law. (activité terroriste)”

30. As regards the relevant legal framework of Canadian law in relation to CP931 requirement, it can be noted that the definition of “terrorist activity” under section 83.01(1) of the Canadian Criminal Code contains the same or sufficiently similar as the definition of “terrorist act” under Article 1(3) of the CP931. The similarities are listed in the table below:

| <p>“Terrorist act” under Article 1(3) of the Common Position 2001/931/CFSP</p> | <p>“Terrorist activity” under section 83.01(1) of the Canadian Criminal Code</p> |
|--|--|
| <p>For the purposes of this Common Position, ‘terrorist act’ shall mean one of the following intentional acts,</p> | <p><i>terrorist activity</i> means</p> <p>[....]</p> <p>(b) an act or omission, in or outside Canada,</p> <p>(i) that is committed</p> <p>[...]</p> <p>(ii) that intentionally [...]</p> |
| <p>which, given its nature or its context, may seriously damage a country or an international organisation, as defined as an offence under national law, where committed with the aim of:</p> <p>(i) seriously intimidating a population, or</p> <p>(ii) unduly compelling a Government or an international organization to perform or abstain from performing any act, [...]</p> | <p>in whole or in part with the intention of intimidating the public, or a segment of the public, with regard to its security, including its economic security, or compelling a person, a government or a domestic or an international organization to do or to refrain from doing any act</p> |

| | |
|--|--|
| <p>(iii)seriously destabilizing or destroying the fundamental political, constitutional, economic or social structures of a country or an international organisation:</p> | <p>causes serious interference with or serious disruption of an essential service, facility or system, whether public or private,</p> |
| <p>(a)attacks upon a person's life which may cause death; (b)attacks upon the physical integrity of a person; (g)release of dangerous substances, or causing fires, explosions or floods the effect of which is to endanger human life;</p> | <p>(A) causes death or serious bodily harm to a person by the use of violence, (B) endangers a person's life, (C) causes a serious risk to the health or safety of the public or any segment of the public,</p> |

31. It is obvious from the comparison above that an act that is defined as “terrorist activity” under the national Canadian Criminal Code satisfies all the requirements of being defined as a “terrorist act” under the CP931.
32. Given the fact that the Superior Court of Justice in Ontario has positively found that the shooting of Flight PS752 was a terrorist activity under Canadian Criminal Code committed by the IRGC, it can be concluded that the same action also amounts to a terrorist act under the CP931.
33. In summary, the IRGC has been found to have committed an act of terrorism or a terroristic act:

- a. by a competent authority (a judicial authority, namely the Ontario Superior Court of Justice);
 - b. being a decision made in a third State (Canda) which has all the relevant legal safeguards, and the decision was made in accordance with the rights of the defense and the right to effective judicial protection;
 - c. the terroristic act was an intentional act of terrorism resulting in 176 victims, including seven EU citizens (although this is not a relevant test when deciding whether to list of not); and
 - d. The terroristic act took place on 8 January 2020 and can thus be termed a recent act of terrorism.
34. In conclusion, all the necessary legal requirements are met for the COMET WP to propose to have the IRGC (and its relevant subsidiaries) as a terrorist group in the Annex to CP931. In accordance with p. 2 of the Working methods of the Working Party on restrictive measures to combat terrorism, [The Member State] therefore proposes that the IRGC (and its subsidiaries) be listed accordingly.
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