

STATEMENT OF CASE TO DESIGNATE THE IZZ AL-DIN AL-QASSAM BRIGADES AS A TERRORIST ENTITY

PURPOSE

1. The purpose of this paper is to set out the case demonstrating the Izz al-Din al-Qassam Brigades (the military wing of Hamas and also known as Ezzedeen Al-Qassam Brigades and Izz al-Din Al-Qassem Brigades) meets the statutory criteria for designation as a terrorist entity within New Zealand pursuant to the Terrorism Suppression Act 2002 (“TSA”).
2. The paper concludes that the Izz al-Din al-Qassam Brigades (“the Brigades”) meets the criteria for designation as a terrorist entity under the TSA.

STRUCTURE OF THIS PAPER

3. This paper sets out background information about the Brigades covering various aspects of the organisation including its objectives, tactics, weapons and structure, before detailing three case studies of attacks which meet the definition of a terrorist act under the TSA.
4. The discussion preceding the case studies provides background about the Brigades which helps inform the analysis of the specific attacks in the case studies below. The attacks detailed in the three case studies represent attacks attributed to and/or claimed by the Brigades. It is these three attacks that have been analysed as meeting the definition of a “terrorist act” under s 5 of the TSA, and which provide the basis for the paper’s conclusion that the Brigades meet the legal criteria for designation as a terrorist entity under the TSA.

STATUTORY CRITERIA FOR THIS DESIGNATION UNDER THE TSA

5. The Prime Minister has the power under the TSA to designate individuals or groups as terrorist entities. Section 22 provides that the Prime Minister may designate an entity as a terrorist entity if the Prime Minister believes on reasonable grounds that the entity has knowingly carried out, or has knowingly participated in the carrying out of, one or more terrorist acts.
6. A terrorist act is defined in s 5 of the TSA. A number of different acts fall within this definition. The s 5 criteria relevant to this paper are those which deem an act to be a terrorist act if that act:
 - 6.1 Is intended to cause the death of, or serious bodily injury to, one or more persons; and
 - 6.2 Is carried out for the purpose of advancing an ideological, political, or religious cause; and
 - 6.3 Is intended to either:
 - 6.3.1 Induce terror in a civilian population; or
 - 6.3.2 Unduly compel or force a government or an international organisation to do or abstain from doing any act; and

- 6.4 Is not an act that occurs in a situation of armed conflict and is, at the time and in the place that it occurs, in accordance with rules of international law applicable to the conflict.

CREDIBILITY OF SOURCES

7. This paper has been prepared using open or unclassified sources which have a reputation for careful and unbiased reporting. These are: Jane's World Insurgency and Terrorism; Council on Foreign Relations; International Crisis Group; Jamestown Foundation's Terrorism Monitor; Amnesty International; New York Times; ISN Security Watch; United Nations High Commissioner for Human Rights; the Washington Institute of Near East Policy and Human Rights Watch. The Report of the United Nations Fact-Finding Mission on the Gaza Conflict ('the Goldstone Report') and website of the Izz al-Din Al-Qassam Brigades has also been used.

BACKGROUND

Establishment of Hamas and the Izz al-Din al-Qassam Brigades

8. Hamas is an acronym for Harakat al-Muqawama al-Islamiya, or Islamic Resistance Movement.¹ Hamas was founded in December 1987 at the time of the first Palestinian Intifada (uprising) against Israeli control of the occupied territories (Gaza and the West Bank).²
9. Hamas' Charter was published in 1988 and records the commitment of the organisation to liberating Palestine from Israeli occupation and achieving an Islamic Palestinian State.³ The Charter views violence as the only appropriate means to achieve these related political and religious objectives.⁴
10. In May 2009, Hamas' political (and overarching) leader Khaled Meshal (based in Damascus) said in an interview that the organisation maintains the right to resist and respond to the Israeli occupation and that "the central goal is the liberation of the occupied land and regaining our rights, ending the Israeli occupation, leading our people toward liberation and freedom, achieving the rights of self-determination and living in a sovereign state on liberated land."⁵ In July 2009, Ayman Taha, another Hamas leader, stated that there is a new emphasis on 'cultural resistance' but that "armed resistance is still important and legitimate."⁶
11. Hamas is divided into three main wings: political, social services (education, health and welfare) and military.⁷ There is also a number of police/security units that fall under the political leadership, including the Executive Force which is a security force established after Hamas won the Palestinian Authority legislative elections in 2006.⁸ The social services provided by Hamas in both the West Bank and Gaza are wide ranging and of long standing – Hamas funds schools, orphanages, mosques, healthcare clinics, soup kitchens and sports leagues.⁹
12. The Brigades were established in 1992 as the military wing of Hamas.¹⁰ The Brigades have about 2,000 core combat operatives and a wider membership of about 15,000.¹¹ There is a clear separation in the leadership between Hamas' political wing and the Brigades; Jane's reports that this is increasing.¹²
13. Hamas has an antagonistic relationship with Al Qaida. This manifests itself in verbal disputes between Hamas leaders and the leaders of Al Qaida's core and by Hamas' killing of self identified Al Qaida militants in Gaza.

14. The Brigades have been proscribed as a terrorist organisation by the United Kingdom. Hamas, including the Brigades, has been proscribed by the United States and Canada, and listed by Australia.¹³

Recent events

15. From 27 December 2008 to 18 January 2009 Israel conducted a three week air and ground campaign into Gaza seeking to destroy various Palestinian groups' capability to fire rockets into Israel. The Brigades fought in this conflict and for the most part relied on small scale or tactical attacks with civilian cover in populated areas. It was reported that "their only real success was the continuation of rocketfire into Israel - which declined after three weeks of combat".¹⁴ The conflict ended with an Israeli withdrawal from Gaza. There have been a number of investigations and reports criticising the tactics used by both sides during the Gaza conflict.¹⁵
16. Khaled Meshal recently reiterated Hamas' proposal of a ten year ceasefire if Israel withdrew from the land it captured in the 1967 war.¹⁶

Organisation and structure of the Izz al-Din al-Qassam Brigades

17. The Brigades have been a separate and distinct part of Hamas since their formation in 1992, and, as noted above, there is a growing separation between Hamas' military command in Gaza (i.e. the Brigades) and its political leadership in Damascus.¹⁷ It is unclear where precisely the balance lies between these two centres of power.¹⁸ In Gaza, the Brigades are part of a cabinet-like organisation running that territory; they are "full participants in this process, not simply a subordinate element."¹⁹
18. Mohammed Deif has commanded the Brigades since the assassination of the group's former leader in 2002. The Brigades operate with a hierarchical structure of units and personnel, with a headquarters and various subordinate brigades grouped by locality in Gaza.²⁰ The Brigades also maintain their own website, separate from Hamas, on which, among other things, they claim responsibility for attacks.²¹

Objectives of the Izz al-Din al-Qassam Brigades

19. The Brigades share Hamas' overall objectives noted at paragraphs 9 and 10 above: ending the Israeli occupation of Palestine and creation of an Islamic Palestinian State, using violence to achieve that.²²

Weapons and tactics of the Izz al-Din al-Qassam Brigades

20. The Izz al-Din al-Qassam Brigades has used a range of guerrilla tactics and weapons in its actions against Israel including suicide bombers, car bombs, rockets, mortars, small arms fire and kidnappings.²³ The Council on Foreign Relations has estimated that Hamas killed more than 500 people in at least 350 separate terrorist attacks between 1993 and 2009.²⁴ During the Al Aqsa Intifada, which Global Security dates between 2000 and 2005,²⁵ the Brigades' military activities were characterised by the use of suicide bombings against targets such as busses, restaurants, coffee shops, hotels and other civilian locations in Israel, demonstrating the Brigades' view that Israeli civilians are a valid target in its armed 'resistance' against Israel.
21. In recent years, the Brigades' main weapon and tactic has been rocket fire into southern Israel. These have been 'Qassam' rockets (constructed locally), and more recently, longer range 'Grad' rockets (the components of which are smuggled into Gaza where they are assembled).²⁶ The range of upgraded versions of the Grad rockets, available to Hamas, is such that now about 15 percent of the Israeli

population (about 40 km into southern Israel) is within range.²⁷ The BBC reported in November 2009 a claim by the Israel Defence Force (IDF) that the Brigades had test-fired a rocket capable of reaching Tel Aviv.²⁸

22. Very large numbers of the Qassam and Grad rockets have been fired by various resistance groups in Gaza.²⁹ Official Israeli sources say that between 2001 and December 2008 Palestinian groups launched 4,048 rockets into southern Israel (plus another 4000 mortar shells).³⁰ In July 2009 Hamas stated that the firing of rockets from Gaza had been suspended, but also that it was seeking to extend its firing range into Israel and acquire Grad missiles/rockets in order to do so.³¹
23. Since the ceasefire in January 2009 following the Israeli incursion into Gaza, the Brigades have continued to use violence, engaging in sporadic small arms clashes with the Israeli Defence Force and security forces³² and firing at least one rocket into Israel in March 2009.³³

CASE STUDIES

Case study 1: Rocket campaign into southern Israel continuing into 2008/2009

The facts

24. Rocket fire into southern Israel has been used by the Brigades operating out of Gaza since February 2002.³⁴ Over that time, the Brigades have claimed responsibility for hundreds of rockets fired at towns in southern Israel.
25. As noted above, official Israeli sources say that between 2002 until December 2008 (prior to the Gaza conflict) 4048 rockets were fired into Israel.³⁵ In 2007 and 2008 there was a significant increase in the number of rockets fired: official Israeli sources say some 1730 rockets were fired in 2008.³⁶ Not all of these rockets have been fired by the Brigades. Other groups, such as the Palestinian Islamic Jihad, also use rockets against Israel.³⁷ The Brigades are the largest and most active of the Palestinian groups operating in Gaza, however, and are widely accepted as being responsible for a large proportion of the rockets fired into Israel.³⁸
26. The Brigades have also claimed responsibility for many rocket attacks. For example, in November 2008 the Brigades announced on its website that it had fired 51 Qassam rockets plus many mortar shells at several Israeli civilian and military targets³⁹ and also 5 Grad rockets at the Israeli city of Ashkelon.⁴⁰ It is also consistent with Hamas' announcement in June 2009 suspending rocket fire from Gaza that rocket fire into Israeli towns and cities had, until that time, been a key part of the fight against Israel.⁴¹
27. The Brigades also used rocket fire during the Gaza conflict in December 2008 and January 2009, claiming on its website that it fired 558 rockets into southern Israel.⁴²
28. The rockets fired at towns in southern Israel, such as Sderot, Netivot, Ashkelon and Beersheva, both before and during the conflict, were fired without precision.⁴³ Other than firing in the direction of those broad targets, there is no ability to accurately aim either the Qassam or Grad rockets used by the Brigades, both of which are unguided. Most of these rockets have landed on unoccupied land but some have hit civilians and civilian property. Some have even landed inside the Gaza Strip, killing and injuring Palestinian civilians.⁴⁴ Human Rights Watch reported in August 2009 that Israeli Defence Forces have not been based in the areas struck by the rockets.⁴⁵

Spokespeople for Hamas and the Brigades have said that their rockets were aimed at civilians as retribution for the killing by Israeli forces of civilians in Gaza.⁴⁶

29. Rockets fired between 2001 and May 2009 have killed 18 civilians (including two young Palestinian children on 26 December 2008),⁴⁷ injured hundreds,⁴⁸ and also destroyed and damaged property including houses, schools, kindergartens, a synagogue and cars.⁴⁹ The mental harm (predominantly shock and anxiety disorders) the rocket fire has caused across all sectors of the population in the towns and cities attacked, is also well documented.⁵⁰ Those towns and cities continue to use the Tseva Adom early warning system that alerts residents to an incoming rocket, giving them between 10 and 40 seconds to get to a bomb shelter. The system does not, however, recognise all incoming rockets and is soon to be complemented with the Israeli rocket and missile defence shield, 'Iron Dome'.⁵¹

The act meets the TSA criteria for designation

30. The Brigades' campaign of rocket fire into southern Israel, continuing into 2008 and 2009, is consistent with the definition of a terrorist act under s 5 of the TSA.
31. The Brigades' firing of rockets at towns and cities in southern Israel shows an intention to cause the death, or serious bodily injury, of the people living in those places (s 5(3)(a) TSA). Although often no physical damage results from a rocket attack, the Qassam and Grad rockets used by the Brigades carry sufficient explosive material to cause significant damage to property and to kill or injure people caught in the explosion, as has happened on a number of occasions (described in paragraph 29 above). The Brigades continued to fire rockets into southern Israel over many years despite the civilian casualties this caused. The likelihood of a rocket causing civilian death or injury is increased by the inability to accurately aim the rockets and the large numbers of rockets that were being fired through 2008 and 2009. Further, statements by Hamas and the Brigades' spokespeople reinforce that the rockets are fired with the intention to kill or injure Israeli civilians (paragraph 28 above).
32. The targeting of the rocket fire generally at Israeli towns and cities, and its consistency through most of 2008 and into 2009, demonstrates that it was done with the intent to induce terror in a civilian population (s 5(2)(a) TSA). It is also clear that the Brigades' rocket campaign has had this effect on those people living in the towns and cities in Israel that are in range of the rockets. As noted above at paragraph 26, the Brigades' rocket attacks were stated to be a key part of Hamas' fight against Israel and thus clearly done with the intent to compel the withdrawal of Israel from the occupied Palestinian territories and to allow the creation of an Islamic Palestinian State, by terrorising Israeli civilians (s 5(2)(b) TSA). This also shows the rocket campaign was carried out for the purpose of advancing the Brigades' and Hamas' religious/political cause (s 5(2) TSA).

Case study 2: Suicide bomb at shopping centre in Dimona, Israel, 4 February 2008

The facts

33. On 4 February 2008 two members of the Brigades attacked a shopping centre in Dimona, an Israeli city in the Negev desert. Both men were wearing explosive belts. One man detonated his explosives killing himself, an elderly woman and wounding ten others. The second man was shot and killed by Police before he was able to detonate his explosives.⁵²

34. There was confusion initially as to which militant group the bombers belonged to. Al Aqsa Martyrs Brigade claimed responsibility jointly with the Popular Front for the Liberation of Palestine, and a previously unknown group, the National Resistance Companies, also claimed responsibility.⁵³ Footage taken of the second bomber before he died, however, showed that he was not one of the two men said by Al Aqsa Martyrs Brigade to be the bombers. On 5 February the Brigades claimed responsibility, identifying the two bombers as being from Hebron in the West Bank.⁵⁴

The act meets the TSA criteria for designation

35. This suicide bomb attack is consistent with the definition of a terrorist act under s 5 of the TSA.
36. Detonating an explosive belt in a public shopping centre when other people were present shows a clear intention to cause the death or serious bodily injury of those people (s 5(3)(a) TSA). Carrying out such an attack in a public place, used by civilians and with no military value, inside Israel, shows an intention to terrorise that civilian population (s 5(2)(a) TSA). As noted above at paragraph 20 the Brigades regard attacks on Israeli civilians as a valid form of armed resistance against the Israeli occupation. As just such an attack, it is reasonable to conclude that this suicide bombing was conducted with the intent to compel the withdrawal of Israel from the occupied Palestinian territories and to allow for the creation of an Islamic Palestinian state (s 5(2)(b) TSA) and was carried out for the purpose of advancing Hamas' and the Brigades' religious/political cause (s 5(2) TSA).

Case study 3: Shooting of security guards at Nitzanei Shalom Industrial Park, Israel, 25 April 2008

The facts

37. Two Israeli security guards working for a private firm were shot at close range and killed around 7 am on 25 April 2008 as they were screening Palestinian workers arriving at the Nitzanei Shalom Industrial Park.⁵⁵ The shooting was carried out by one man, who shot at the guards at the entrance to the Park and fled, escaping capture.⁵⁶ The Park is situated on the Palestinian side of the West bank border with Israel and houses Israeli-owned factories. It was constructed in 1995 to provide jobs for Palestinians living in the West Bank.
38. At the time of the attack Mahmoud Abbas, President of the Palestinian Authority and leader of Hamas' rival Fatah, was in Washington discussing peace negotiations with Israel. Riad Al-Malki, the Palestinian Foreign Minister said that the attack was designed to undermine the Palestinian Authority's ability to control security in the West Bank and embarrass the Authority during talks in America.⁵⁷
39. The attack has been attributed by a range of sources to both the Izz al-Din al-Qassam Brigades and the Al-Quds Brigades (the military wing of the Palestinian Islamic Jihad) working together, and the two groups are reported to have claimed responsibility.⁵⁸

The act meets the TSA criteria for designation

40. The shooting of the security guards at Nitzanei Shalom Industrial park is consistent with the definition of a terrorist act under s 5 of the TSA.

41. The targeted nature of the shooting clearly shows an intention to cause the death or serious bodily injury of the security guards (s 5(3)(a) TSA). Carrying out the attack in a place of work, with no military connection or value, and targeting two civilian security guards, shows an intention to terrorise the civilian population (s 5(2)(a) TSA). As noted above at paragraph 20 the Brigades view attacks on Israeli civilians as a valid form of their armed resistance against Israeli occupation. This attack is thus another example of the Brigade's pursuit of its longstanding objective to compel, through the use of violence and terror against the civilian population, Israeli withdrawal from the Occupied Palestinian Territories (s 5(2)(b) TSA) and was carried out for the purpose of advancing the Brigades religious/political cause (s 5(2)). Further, the timing of the attack, during the Fatah-led Palestinian Authority negotiations in America, and its location very close to the Fatah-controlled West Bank, shows an intention to undermine Hamas' rival's credibility and in that way advance the Brigades' and Hamas' religious/political cause (s 5(2) TSA).

LAW OF ARMED CONFLICT

42. Section 5(4) of the TSA provides that an act is not a terrorist act if "it occurs in a situation of armed conflict and is, at the time and in the place that it occurs, in accordance with the rules of international law applicable to the conflict."

Does LOAC apply?

43. The first condition to fulfil is that there is a situation of armed conflict to which the law of armed conflict ("LOAC") applies.
44. The legal status of Gaza and the conflict between Palestinian resistance groups and Israel is difficult to determine given competing international views and the disputed nature of the land. Gaza is part of the occupied Palestinian territories and Israel exercises some control over that territory, although the Palestinian Authority (de facto Hamas) controls internal matters.⁵⁹ During the 2008/2009 Israeli incursion into Gaza there was also an armed conflict. The law of armed conflict makes a key distinction between armed conflict and other internal disturbances or tensions such as riots and isolated and sporadic acts of violence.⁶⁰ The level, kind and consistency of violence during the incursion clearly met the threshold of an armed conflict.⁶¹ It is not clear though whether that conflict is an international or non-international one given the difficulties noted above. It is probably most accurately characterised as a mixed conflict, with characteristics of both international and non-international conflicts. In comparison, the rocket fire and other violent clashes between the Brigades and the Israeli Defence Forces and security forces outside of the combat period likely do not meet the threshold to be considered an armed conflict. Taking all of these arguments at their highest, this analysis continues on the basis that, in Gaza during the time when the rocket attacks discussed in the first case study above took place, there have been periods during which an armed conflict can reasonably be held to have occurred such that LOAC applies.
45. In contrast, there was no armed conflict inside of Israel at the time of the suicide bombing in Dimona (February 2008) or the shooting at Nitzanei Shalom Industrial Park (April 2008), detailed in the case studies above. Those attacks were isolated instances of violence that do not pass the armed conflict threshold and so LOAC does not apply in those circumstances. For that reason the exemption in s 5(4) of the TSA cannot apply.

Were the acts carried out in accordance with the applicable rules of LOAC?

46. The relevant LOAC principle is that of distinction.⁶² That principle states that attacks on enemy combatants and military targets are lawful, whereas attacks on the civilian population, civilian objects and people rendered *hors de combat* are not.⁶³ The Brigades' rockets were fired towards towns and cities that held no military value and were targeted at Israeli civilians (see paragraphs 28 and 29 above) and so breached the LOAC principle of distinction. The exemption in s 5(4) of the TSA cannot therefore apply to the Brigades' rocket campaign. Even if the rockets were aimed at some military objective, they are impossible to aim (see paragraph 28 above) and therefore an indiscriminate attack prohibited by LOAC.⁶⁴
47. Lastly, even if it could be said that there was an armed conflict inside of Israel at the time of the Dimona and Nitzanei Shalom Industrial Park attacks, both attacks targeted civilians and so also breached the LOAC principle of distinction. The exemption in s 5(4) of the TSA cannot apply.

- 1 'Hamas', Council of Foreign Relations, 27 August 2009, p 1, report available at <http://www.cfr.org/publication/8968/>
- 2 'Hamas', Jane's World Insurgency and Terrorism, 1 April 2010, p 2, report available at http://www4.janes.com/subscribe/jwit/doc_view.jsp?K2DocKey=/content1/janesdata/binder/jwit/jwit0132.htm@current&Prod_Name=JWIT&QueryText=%3CAND%3E%28%3COR%3E%28%28%5B80%5D Hamas+%3CIN%3E+body%29%2C+%28%5B100%5D+%28%5B100%5D Hamas+%3CIN%3E+title%29+%3CAND%3E+%28%5B100%5D Hamas+%3CIN%3E+body%29%29%29 This report is only available on subscription. Officials hold a hard copy.
- 3 The Covenant of the Islamic Resistance Movement, 18 August 1988, translation available at http://avalon.law.yale.edu/20th_century/hamas.asp, articles 11, 12, 14 and 27.
- 4 Hamas Charter, above note 3, articles 8, 13, 15 and 34.
- 5 'Transcript: Interview With Khaled Meshal of Hamas', New York Times, 5 May 2009, available at <http://www.nytimes.com/2009/05/05/world/middleeast/05Meshal-transcript.html>.
- 6 'Hamas shifts from rockets to culture war', New York Times, 23 July 2009, available at <http://www.nytimes.com/2009/07/24/world/middleeast/24gaza.html?scp=1&sq=%22Armed+Resistance+is+still+important+and+legitimate%22&st=nyt>
- 7 Janes, 'Hamas', above note 2, p 9.
- 8 Janes, 'Hamas', above note 2, p 9.
- 9 Council of Foreign Relations, 'Hamas', above note 1, p 3.
- 10 Janes, 'Hamas', above note 2, pp 2 and 12.
- 11 'Hamas in Combat', October 2009, Yoram Cohen and Jeffrey White, The Washington Institute for Near East Policy, available at <http://washingtoninstitute.org/templateC04.php?CID=318>. This reports at pages ix and 8 that Hamas has about 15,000 to 16,000 potential combatants available to it with about 2,000 core combat troops.
- 12 Janes, 'Hamas', above note 2, pp 3 and 9.
- 13 Australian Government, Australian National Security "Hamas's Izz al-Din al-Qassam Brigades" available at: http://www.nationalsecurity.gov.au/agd/WWW/nationalsecurity.nsf/Page/What_Governments_are_doing_Listing_of_Terrorism_Organisations_Hamas&apos
- 14 Washington Institute, above note 11, p ix.
- 15 See:
- (i) the "Goldstone report" (Report of the United Nations Fact-Finding Mission on the Gaza Conflict available at <http://www2.ohchr.org/english/bodies/hrcouncil/docs/12session/A-HRC-12-48.pdf>);
- (ii) 'Rockets from Gaza', Human Rights Watch, August 2009, available at <http://www.hrw.org/en/reports/2009/08/06/rockets-gaza>; and
- (iii) 'Israel/OPT: Fuelling Conflict: Foreign Arms Supplies to Israel/Gaza', Amnesty International, February 2009, available at <http://www.amnesty.org/en/library/info/MDE15/012/2009/en>.
- 16 Janes, Hamas, above note 2, p3.
- 17 Janes, 'Hamas', above note 2, pp 3 and 8.
- 18 Washington Institute, above note 11, p 3.
- 19 Washington Institute, above note 11, p 4.
- 20 Washington Institute, above note 11, p 8.
- 21 Izz al-Din al-Qassam Brigades website: www.qassam.ps
- 22 Janes, 'Hamas', above note 2, pp 2 and 3.
- 23 Janes, 'Hamas', above note 2, p 3.
- 24 Council of Foreign Relations, 'Hamas', above note 1, p 3.
- 25 See:
- (i) Global Security. "Al-Aqsa Intifada", available at: <http://www.globalsecurity.org/military/world/war/intifada2.htm>
- (ii) Janes 'Hamas', above note 2, p 2
- 26 Washington Institute, above note 11, pp 7 and 9.
- 27 'Hamas rockets', Global Security, undated, para 1, available at <http://www.globalsecurity.org/military/world/para/hamas-qassam.htm>
- 28 'Hamas tests long-range rocket', 3 November 2009, available at http://news.bbc.co.uk/2/hi/middle_east/8340096.stm
- 29 Goldstone Report, above note 15 (i), p 347.
- 30 'Summary of rocket fire and mortar shelling in 2008', Israeli Intelligence and Terrorism Information Centre, 2009, p 5, available at http://www.terrorism-info.org.il/malam_multimedia/English/eng_n/pdf/hamas_e017.pdf
- 31 New York Times, 'Culture War', above note 6.
- 32 Janes, 'Hamas', above note 2, p 2.

- 33 'Gaza militants fire Qassam into southern Israel', Haaretz, 18 October 2009, available at
<http://www.haaretz.com/news/gaza-militants-fire-qassam-into-southern-israel-1.5914>
- 34 Janes, 'Hamas', above note 2, p 5.
- 35 Israeli Intelligence and Terrorism Information Centre, 'Summary', above note 30, p 5.
- 36 Israeli Intelligence and Terrorism Information Centre, 'Summary', above note 30, p 2.
- 37 'Palestinian Islamic Jihad', Jane's, 15 April 2010, p 1, available at
http://www4.janes.com/subscribe/jwit/doc_view.jsp?K2DocKey=/content1/janesdata/binder/jwit/jwi%0549.htm@current&Prod_Name=JWIT&QueryText=%3CAND%3E%28%3COR%3E%28%28%5B80%5D%28+Palestine+%3CAND%3E+Islamic+%3CAND%3E+Jihad%29+%3CIN%3E+body%29%2C+%28%5B100%5D+%28%5B100%5D%28+Palestine+%3CAND%3E+Islamic+%3CAND%3E+Jihad%29+%3CIN%3E+title%29+%3CAND%3E+%28%5B100%5D%28+Palestine+%3CAND%3E+Islamic+%3CAND%3E+Jihad%29+%3CIN%3E+body%29%29%29. This report is only available on subscription. Officials hold a hard copy.
- 38 Janes, 'Hamas', above note 2, p 9 and Human Rights Watch, 'Rockets from Gaza', above note 15 (ii), p 2.
- 39 Al-Qassam website <http://www.qassam.ps/statements-page4.html> and <http://qassam.ps/statements-page5.html>
- 40 http://www.qassam.ps/statement-1227-Al_Qassam_Brigades_fired_five_rockets_at_Al_Majdal_Asqalan.html
- 41 Washington Institute, above note 11, pp ix and x.
- 42 http://www.qassam.ps/statement-1250-345_Qassam_rockets_213_Grads.html
- 43 Human Rights Watch, 'Rockets from Gaza', above note 15 (ii), p 1.
- 44 'Turning a Blind Eye: Impunity for Laws of War Violations During the Gaza War', Human Rights Watch, www.reliefweb.int/, 11 April 2010, p 9.
- 45 Human Rights Watch, 'Rockets from Gaza', above note 15 (ii), p 1.
- 46 Human Rights Watch, 'Rockets from Gaza', above note 15 (ii), p 3.
- 47 Human Rights Watch, 'Rockets from Gaza', above note 15 (ii), p 11 and Goldstone Report, above note 15 (i), p 348.
- 48 Human Rights Watch, 'Rockets from Gaza', above note 15 (ii), p 12.
- 49 Human Rights Watch, 'Rockets from Gaza', above note 15 (ii), p 20.
- 50 Goldstone Report, above note 15 (i), pp 357 to 359 and Human Rights Watch, 'Rockets from Gaza', above note 15 (ii), p 12.
- 51 See:
- (i) Goldstone Report, above note 15 (i), p 355.
- (ii) Iron Dome may be ready, but Gaza front is still in danger', Haaretz, <http://www.haaretz.com>, 7 January 2010
- (iii) US to fund installation of Israeli rocket defence system", BBC News, <http://www.bbc.co.uk>, 14 May 2010
- 52 See 'Suicide attack in Israel Kills One', New York Times, 5 February 2008, available at <http://www.nytimes.com/2008/02/05/world/worldspecial/05mideast.html> and 'Hamas restarts suicide bombing campaign', Janes, 16 February 2008, p 2, available at http://search.janes.com/Search/documentView.do?docId=/content1/janesdata/mags/jtsm/history/jtsm2008/jtsm5120.htm@current&pageSelected=allJanes&keyword=%22Hamas%20restarts%20suicide%20bombing%20campaign%22&backPath=http://search.janes.com/Search&Prod_Name=JTSM&. This report is only available on subscription. Officials hold a hard copy.
- 53 'Suicide bombing attack in the Dimona commercial centre kills one city resident and wounds many', Intelligence and Terrorist Information Centre, 2008, available at http://www.terrorism-info.org.il/malam_multimedia/English/eng_n/html/ct_040208e.htm
- 54 Janes, 'Hamas restarts suicide bombing campaign', above note 52.
- 55 '2 Israeli Guards Killed at Plant Near West Bank Line', Washington Post, 26 April 2008, available at <http://www.washingtonpost.com/wp-dyn/content/article/2008/04/25/AR2008042500477.html>
- 56 Two Israelis killed by Palestinian Terrorists near Tulkarm', Israeli Ministry of Foreign Affairs', 25 April 2008, available at: <http://www.mfa.gov.il/MFA/Terrorism-+Obstacle+to+Peace/Palestinian+terror+since+2000/Two+Israelis+killed+by+Palestinian+terrorists+near+Tulkarm+25-Apr-2008.htm>
- 57 'Israel rejects Gaza ceasefire', The Guardian, 25 April 2008 available at <http://www.guardian.co.uk/world/2008/apr/25/israelandthepalestinians>
- 58 See:
- (i) 'Israel rejects Gaza ceasefire', see note 57 above.
- (ii) Washington Post, '2 Israeli Guards Killed', above end note 55;
- (iii) US State Department's Annual Report to Congress on Terrorism, chapter 2, County Reports: Middle East and North Africa Overview, at <http://www.state.gov/s/ct/rls/crt/2008/122433.htm>

(iv) "Two Zionist Soldiers killed in "Nitsanei Oz" area near Tulkarem, in a heroic action", Al Qassam website, <http://www.qassam.ps/statement-1083-Two-Zionist-soldiers-were-killed-in-Nitsanei-Oz-area-near-Tulkarem-in-a-heroic-operation.html>

59 See note 15 (i) above, 'Goldstone report', paragraphs 276 to 279.

60 Article 2 of Additional Protocol to the Geneva Conventions Relating to the Protection of Victims of Non-International Armed Conflicts states that the Protocol does not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence and other acts of a similar nature, as not being armed conflicts.

61 See note 15 (i) above, 'Goldstone report', paragraphs 85 to 92.

62 The principle of distinction is found in Common Article 3 to the Geneva Conventions 1949 and is a recognised principle of customary international humanitarian law (see the International Committee of the Red Cross (ICRC) International Humanitarian Law Study Rule 6 which says civilians are protected against attack, unless and for such time as they take a direct part in hostilities, and Rule 7 which says the parties to the conflict must at all times distinguish between civilian objects and military objectives. Attacks may only be directed against military objectives. Attacks must not be directed against civilian objects.)

63 An person is *hors de combat* if he or she is wounded, sick or shipwrecked or captured by the opposing force.

64 ICRC International Humanitarian Law Study Rule 11 states that indiscriminate attacks are prohibited in both international and non-international armed conflict.

STATEMENT OF CASE TO RENEW THE DESIGNATION OF IZZ AL-DIN AL-QASSAM BRIGADES AS A TERRORIST ENTITY

PURPOSE

1. The purpose of this paper is to assess whether the Izz al-Din al-Qassam Brigades (the military wing of Hamas and also known as Ezzedeen Al-Qassam Brigades and Izz al-Din Al-Qassem Brigades) meets the statutory criteria to renew its designation as a terrorist entity within New Zealand pursuant to the Terrorism Suppression Act 2002 (TSA).
2. The paper concludes that Izz al-Din al-Qassam Brigades (the Brigades) meets the criteria for renewal as a designated terrorist entity under the TSA.

STRUCTURE OF THIS PAPER

3. This paper sets out updated information about the Brigades' continued involvement in terrorist activity and covers any changes and /or developments to the organisation since its original designation, including to its objectives, structure, weapons and tactics and includes any recent attacks which meet the definition of a terrorist act under the TSA.
4. This updated information, together with the information contained in the original designation paper¹ inform the analysis of whether reasonable grounds for designation still exist and provide the basis for the conclusion that the group meets the legal criteria to renew its designation as a terrorist entity under the TSA.

STATUTORY CRITERIA FOR DESIGNATION RENEWAL UNDER THE TSA

5. Section 35(1) of the TSA provides that a designation of a terrorist entity expires three years after the date of designation unless it is earlier revoked or renewed by the Prime Minister. The original designation is made pursuant to s 22 of the TSA, which provides that the Prime Minister may designate an entity as a terrorist entity if the Prime Minister believes on reasonable grounds that the entity has knowingly carried out, or has knowingly participated in the carrying out of, one or more terrorist acts ("terrorist act" is defined in s 5). Carrying out a terrorist act includes the planning, preparation or credible threat to carry out the act, whether it is actually carried out or not (s 25(1)(a) and (b)) and also includes an attempt to carry out the act (s 25(1)(c)).
6. The Prime Minister may renew that designation for a further three years under s 35(2) if satisfied that there are still reasonable grounds as set out in s 22 for the entity to be designated under that section.
7. Before the expiry of an order made under s 35(2), the Prime Minister may make another order under s 35(3) renewing the designation concerned for a further three years. The Prime Minister may make any number of orders under s 35(3) in respect of the same designation (s 35(5)).

CREDIBILITY OF SOURCES

8. This paper has been prepared using open or unclassified sources which have a reputation for careful and unbiased reporting. These are: BBC, Foreign Policy, The Guardian, Haaretz, Al Jazeera, The Washington Post, The New York Times, The

Christian Science Monitor, The Longwar Journal, Human Rights Watch, The Jamestown Foundation, Jane's IHS series, Council on Foreign Relations, Center for Strategic and International Studies, Reuters, Royal United Services Institute and a report of the United Nations Human Rights Council. The official website of the Izz al-Din Al-Qassam Brigades has also been referred to.

Continued involvement in terrorist acts

9. The Brigades were designated as a terrorist entity on 11 October 2010.
10. On 6 April 2011, the Brigades claimed responsibility for a Kornet antitank missile which hit a school bus in southern Israel. The missile, fired from Gaza, killed an Israeli teenager² and also wounded the bus driver.³ The Brigades immediately claimed responsibility for the missile, asserting the group had specifically aimed at the target as "an initial response to the occupation's [Israel's] crimes, the latest of which was the assassination of the three holy fighters".⁴ This was a reference to an Israeli air strike which had killed three senior Hamas operatives a few days earlier.
11. On 14 November 2012, the military commander of the Brigades, Ahmed al-Jabari, was killed in a targeted Israeli air strike.⁵ This prompted a series of retaliatory rocket attacks by Hamas and other Palestinian groups and a reciprocal response from Israel.⁶ During the resulting eight day conflict, more than 1,500 rockets were fired at Israel, killing six Israelis (including four civilians) and wounding over 200.⁷ According to statements released by the Brigades, they were responsible for firing at least 195 of those rockets into Israel.⁸ These included:
 - 11.1. Five Grad type rockers launched at Kiryat Malachi, a town of 20,000 people, on 15 November 2012.⁹ One Grad type rocket struck the top two floors of a residential apartment building at 8 am on that day.¹⁰ Three Israeli civilians were killed.¹¹ Three other civilians, including an 8-month-old baby, were wounded in the attack.
 - 11.2. Two Fajr-5 missiles fired at Tel Aviv on 17 and 18 November 2012 which the Brigades called "a response for the ongoing aggression against Palestinian people".¹² Both missiles missed the city.¹³
12. On 21 November 2012, a bomb was detonated on a passenger bus which was passing a military headquarters in Tel Aviv¹⁴, wounding at least 20 people.¹⁵ The bomb was left on the bus by a passenger and remotely detonated with a mobile phone. Israeli authorities arrested an Israeli citizen of Palestinian descent.¹⁶ The indictment stated the man planted the bomb on the bus on behalf of Hamas.¹⁷ He then informed other members of the cell, who detonated the explosive using a mobile phone. A number of Palestinian operatives affiliated with Hamas and Palestinian Islamic Jihad were also arrested following the attack.¹⁸ Israeli authorities said the operatives admitted recruiting the passenger, preparing the bomb, choosing the target and purchasing the cell phone to detonate the device.¹⁹ Despite the Brigades praising the attack on their Twitter site, stating "you opened the gates of hell on yourselves"²⁰ and members of the cell confessing to their involvement²¹, Hamas' leader Khaled Meshaal has denied Hamas involvement in the bombing.²²

Ideology and objectives

13. The Brigades share Hamas' overall objectives (the destruction of Israel and for recovering and the creation of a Sunni Islamic state in all of mandated Palestine.²³). The Brigades maintain their own website, including an English language version, which hosts military statements and publicises the group's aims and activities. The website is often used to claim responsibility for attacks and to publish biographies of 'martyrs' killed by Israeli forces.²⁴

Organisation and Structure

14. Hamas is divided into three wings; political, social and military. The Brigades were established in 1992 as the military wing of Hamas. However, the Brigades are structured as a distinct and discrete organisation from the other wings of Hamas.²⁵ The group is notoriously secretive, but it is thought the Brigades comprise around 15,000²⁶-20,000 fighters.²⁷

Weapons and Tactics

15. The Brigades operate predominately out of Gaza²⁸, with a minor presence in the West Bank.²⁹ Fighters are equipped with various kinds of small arms, short and medium range rockets and surface-to-air missiles.³⁰ The Brigades continue to pose a significant threat to Israeli security as they have demonstrated they have longer range rockets capable of reaching Tel Aviv³¹ and Jerusalem³², including access to Fajr-5 missiles which have a range of about 45 miles.

Law of Armed Conflict (LOAC)

16. The Brigades attacks since the 2010 designation can be characterised by their indiscriminate nature, and in some cases the Brigades have targeted civilians and civilian objects. It is possible that some Brigades attacks (such as in November 2012) have occurred in a situation of armed conflict. However, in any instances where there threshold for an armed conflict was met, the Brigades attacks breached the principle of distinction and therefore the exemption in s 5(4) of the Act does not apply.

CONCLUSION

17. On the evidence set out above, this paper concludes that there are still reasonable grounds as set out in s 22 of the TSA for the Brigades to be designated under that section.
18. Since its designation in October 2013, the Brigades have continued to carry out attacks which meet the definition of terrorist acts in ss 5 and 25 of the TSA (paragraph 10-12). Accordingly, given there are still reasonable grounds to believe that the Brigades have knowingly carried out terrorist acts as set out in s 22 of the TSA, the Brigades meet the legal criteria for renewal of the group's designation as a terrorist entity under s 35.
19. The designation must be renewed by 11 October 2013 to be effective.

- ¹ The statement of case, dated 10 October 2010 can be accessed at: www.police.govt.nz/service/counterterrorism/designated-terrorists.html
- ² (2012) "World Report 2012: Israel/Occupied Palestinian Territories", Human Rights Watch, <http://www.hrw.org/world-report-2012/world-report-2012-israeloccupied-palestinian-territories>. Accessed 24/01/2013.
- ³ (7/04/2011) "Gaza missile hits Israeli school bus, wounding teen; Israel hits back, killing four", The Washington Post, http://articles.washingtonpost.com/2011-04-07/world/35261900_1_gaza-strip-bus-attack-dome-missile-defense-system. Accessed 24/01/2013.
- ⁴ (7/04/2011) "Missile from Gaza Hits School Bus", The New York Times, <http://www.nytimes.com/2011/04/08/world/middleeast/08gaza.html>. Accessed 11/03/2013.
- ⁵ (14/11/2012) "Feroocious Israeli Assault on Gaza Kills a Leader of Hamas", The New York Times, <http://www.nytimes.com/2012/11/15/world/middleeast/israeli-strike-in-gaza-kills-the-military-leader-of-hamas.html>. Accessed 26/03/2013.
- ⁶ (2012) "World Report 2013: Israel/Occupied Palestinian Territories", Human Rights Watch, <http://www.hrw.org/world-report/2013/country-chapters/israel-palestine>. Accessed 11/03/2013.
- ⁷ United Nations Human Rights Council (March 2013) *Report of the United Nations High Commissioner for Human Rights on the implementation of Human Rights Council Resolutions S-9/1 and S-12/1: Concerns related to adherence to international human rights and international humanitarian law in the context of the escalation between the state of Israel, the de facto authorities in Gaza and Palestinian armed groups in Gaza that occurred from 14 to 21 November 2012*. United Nations Human Rights Council. Accessed 07/06/2013
- ⁸ (11/01/2013) "Hamas", Jane's World Insurgency and Terrorism at page 10, available on subscription. Accessed 28/01/2013.
- ⁹ (15/11/2012), "In an hour, Al Qassam Brigades fired 121 missiles, three Israelis killed", Al-Qassam: Ezzedeen Al-Qassam Brigades - Information Office, http://www.qassam.ps/statement-1416-Al_Qassam_Brigades_fired_121_missiles_three_Israelis_killed.html. Accessed 12/03/2013.
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- ¹¹ (2012) "World Report 2013: Israel/Occupied Palestinian Territories", Human Rights Watch, <http://www.hrw.org/world-report/2013/country-chapters/israel-palestine>. Accessed 11/03/2013
- ¹² (17/11/2012) "Al Qassam Brigades Fire 'Fajer-5' missile at 'Tel Aviv'", Al-Qassam: Ezzedeen Al-Qassam Brigades - Information Office, http://www.qassam.ps/statement-1472-Al_Qassam_Brigades_Fire_Fajer_5_missile_at_Tel_Aviv.html. Accessed 12/03/2013.
- ¹³ (11/01/2013) "Hamas", Jane's World Insurgency and Terrorism at page 12, available on subscription. Accessed 28/01/2013
- ¹⁴ (21/11/2012) "Israel-Gaza crisis: Tel Aviv bomb blast on bus", BBC, <http://www.bbc.co.uk/news/world-middle-east-20425352>. Accessed 15/03/2013.
- ¹⁵ (22/11/2012) "Israel arrests Hamas, Islamic Jihad cell behind Tel Aviv bus bomb", Haaretz, <http://www.haaretz.com/misc/article-print-page/israel-arrests-hamas-islamic-jihad-cell-behind-tel-aviv-bus-bomb-1.479958?trailingPath=2.169%2C2.216%2C2.217%2C>. Accessed 11/03/2013.
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- ¹⁷ (19/12/2012) "Israel charges Tel Aviv bus bomb suspect", The Daily Star Lebanon, www.dailystar.lb/ArticlePrint.aspx?id=199105&mode=print. Accessed 18/06/2013.
- ¹⁸ (19/12/2012) "4 Threat Matrix: Israeli authorities release details on November bus bombing in Tel Aviv", Long War Journal, http://www.longwarjournal.org/threat-matrix/archives/2012/12/israeli_authorities_release_de.php. Accessed 18/06/2013.
- ¹⁹ (19/12/2013) "ISA announcement regarding the November Tel Aviv terror attack" Israeli Defence Force, <http://www.idf.il/1283-17909-en/Dover.aspx>. Accessed 18/06/2013.
- ²⁰ (22/11/2012) "Police Arrest Suspects in Tel Aviv Bus Blast, Including Israeli Citizen", The New York Times, http://www.nytimes.com/2012/11/23/world/middleeast/police-arrest-suspects-in-tel-aviv-bus-blast-including-israeli-citizen.html?_r=1&. Accessed 12/03/2013.
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- ²⁹ (9/12/2011) "Hamas ends armed resistance, but its military wing continues", Jane's Defence Weekly, access available on subscription. Accessed 26/02/2013.
- ³⁰ (27/11/2012) "Hamas", Council on Foreign Relations, <http://www.cfr.org/israel/hamas/p8968#>. Accessed 13/03/2013.
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STATEMENT OF CASE TO RENEW THE DESIGNATION OF IZZ AL-DIN AL-QASSAM BRIGADES AS A TERRORIST ENTITY

PURPOSE

1. The purpose of this paper is to set out the case demonstrating Izz al-Din al-Qassam Brigades (the military wing of Hamas) meets the statutory criteria to renew its designation as a terrorist entity within New Zealand pursuant to the Terrorism Suppression Act 2002 (TSA). Izz al-Din al-Qassam Brigades (the Brigades) is also known as Ezzedeen Al-Qassam Brigades, Izz al-Din Al-Qassem Brigades, IQB and EQB.
2. The paper concludes that the Brigades meet the criteria for renewal as a designated terrorist entity under the TSA.

STRUCTURE OF THIS PAPER

3. This paper sets out updated information about the Brigades' continued involvement in terrorist activity and covers any relevant changes and/or developments to the organisation since its original designation in October 2010¹ and renewal in October 2013.² Updates include the Brigades' objectives, structure, weapons and tactics, and recent attacks which meet the definition of a terrorist act under the TSA.
4. This updated information, together with the information contained in the original designation paper and previous renewal paper, provide the basis for the paper's conclusion that the group meets the legal criteria for renewal of its designation as a terrorist entity under the TSA.

STATUTORY CRITERIA FOR THIS DESIGNATION RENEWAL UNDER THE TSA

5. Section 35(1) of the TSA provides that a designation of a terrorist entity expires three years after the date of designation unless it is earlier renewed by the Prime Minister. The original designation is made pursuant to s 22 of the TSA, which provides that the Prime Minister may designate an entity as a terrorist entity if the Prime Minister believes on reasonable grounds that the entity has knowingly carried out, or has knowingly participated in the carrying out of, one or more terrorist acts. Carrying out a terrorist act includes the planning, preparation or credible threat to carry out the act, whether it is actually carried out or not (s 25(1)(a) and (b)) and also includes an attempt to carry out the act (s 25(1)(c)).
6. The Prime Minister may renew that designation for a further three years under s 35(2) if satisfied that there are still reasonable grounds as set out in s 22 for the entity to be designated under that section.
7. Before the expiry of an order made under s 35(2), the Prime Minister may make another order under s 35(3) renewing the designation concerned for a further three years. The Prime Minister may make any number of orders under s 35(3) in respect of the same designation (s 35(5)).

CREDIBILITY OF SOURCES

8. This paper has been prepared using open or unclassified sources which have a reputation for careful and unbiased reporting. These are: Open Source Centre, The Wall Street Journal, Reuters, The Guardian, BBC News, IHS Jane's Terrorism Monitoring series and Combating Terrorism Centre. Local news sources referenced include: Times of Israel,

Middle East Eye, The Jerusalem Post, Ma'an News Agency, Al-Monitor and the Brigades' English language website Al-Qassam.

EVIDENCE TO SUPPORT DESIGNATION RENEWAL UNDER THE TSA

Continued involvement in terrorist activity

9. The Brigades were designated as a terrorist entity on 11 October 2010. The designation was renewed on 2 October 2013.
10. On 8 July 2014, after over 80 rockets were fired in one day from Gaza, Israel launched military operation Protective Edge against Hamas and other militant groups in the Gaza Strip. The operation was preceded by a month of escalating violence which began with the abduction and murder of three Israeli teenagers in the West Bank in June 2014, and continued with the widespread arrest of Hamas leaders and the dismantling of Hamas institutions in the West Bank by Israeli Defence Forces (IDF).³
11. Also on 8 July 2014, the Brigades claimed responsibility for firing an R160 rocket at Haifa, four M75 rockets at Jerusalem and four M75 rockets at Tel Aviv in response to "Israeli aggression against Palestinians in the West Bank, Jerusalem and Gaza".⁴ During the 50-day conflict, the Brigades launched multiple rocket and mortar attacks into Israel from Gaza. The Brigades claimed to have killed 19 Israeli soldiers on 27 July and 110 during the campaign up until then.⁵ On 20 August 2014, the Brigades issued a press release warning international airlines against flying to Tel Aviv's Ben-Gurion Airport the following day, "banning" big rallies such as football games in all the areas that fell within the range of the Brigades' rockets and warning:

"The inhabitants of what is called the Gaza rim and the towns close by should not return to their homes. Those of them who stay out of necessity should remain inside shelters and protected places.

All the above remain effective until a further official notice is issued by the commander in chief of the Ezzedein Al-Qassam Brigades. Let all be warned not to heed the statements and promises made by the enemy's leaders, for they have proven to be irresponsible and inconsiderate regarding the personal safety of their public."⁶
12. In August 2014, Brigades official Saleh al-Aroui stated a Hamas cell was responsible for kidnapping and killing the three Israeli teenagers as they hitchhiked home on 12 June 2014.⁷ The teenagers were killed when unspecified elements of the kidnapping went wrong. In January 2015, Hamas operative Hussam Qawasmeh was sentenced to three life terms for their murders. Two other suspects were shot dead by Israeli forces in September 2014.⁸
13. On 1 October 2015, Israeli couple Eitam and Naama Henkin were shot dead while they were in a vehicle with their four children near the Itamar settlement in West Bank. The children were not physically harmed. Five Hamas members from Nablus admitted their involvement in the killings to Israel's security agency Shin Bet. Each member had a specific role, including one responsible for clearing the way for the car that contained a driver and two gunmen.⁹
14. On 12 March 2016, the Brigades released a communiqué in response to an Israeli air strike in the Gaza Strip which killed two children. The Brigades stated the children's deaths would not be in vain and "the occupation must know that patience of al-Qassam Brigades and the resistance factions has its limits".¹⁰

15. In a statement issued on 21 April 2016, Hamas claimed responsibility for an improvised explosive device (IED) attack on a bus in West Jerusalem on 18 April. Shin Bet reported the attack as a suicide bombing by Hamas.¹¹ The IED exploded in the back of the bus during rush hour traffic, causing a large fire which also engulfed a second empty bus and a car. Twenty passengers were injured in the attack, two seriously. The bomber, who was also on the bus, died of his wounds two days later.¹² The attack was the first bomb attack on a bus in Jerusalem since the end of the second intifada¹³ a decade prior.¹⁴ At a “Tune of Intifada” rally on 28 April 2016, Hamas leader Abd-al-Rahman Shadid praised the attack, stating the “operation struck terror into the heart of the occupation”. At the same rally a Brigades spokesperson repeatedly warned of an ‘explosion’ if the blockade in Gaza continued.¹⁵
16. On 4 May 2016 IDF claimed they had come under mortar fire, and returned fire at an observation post manned by the Brigades. The Brigades later released a communiqué stating the recent incursion was a clear violation of the August 2014 ceasefire agreement and the Brigades “will not allow this aggression to go on”.¹⁶

Ideology and Objectives

17. The Brigades share the objectives of Hamas, namely; ending the Israeli occupation of Palestine and the creation of an Islamic Palestinian State, using violence in support of these political objectives.¹⁷ A Palestinian unity government comprising the two main Palestinian factions, Hamas and Fatah, was sworn in on 2 June 2014. The union ended years of division and sometimes lethal rivalry between the groups.¹⁸
18. During Operation Protective Edge, Egypt intervened on 14 July 2014 in an attempt to broker a ceasefire between Hamas and Israel. Israel accepted, but Hamas continued to fire rockets into Israel.¹⁹ After several failed ceasefire attempts, on 20 August 2014 the Israeli Air Force killed senior Brigades commanders Mohammed Abu Shammala, Raed al-Attar and Mohammed Barhoum in an air strike in the Gaza Strip.²⁰ On 26 August 2014, Israel, Hamas, and the Palestinian Islamic Jihad accepted an Egyptian-mediated ceasefire as the first step in long-term truce talks.²¹
19. Despite the flaring-up of the conflict in early 2016 (see above), Hamas reportedly agreed to a further indefinite ceasefire on 5 May 2016, provided all IDF troops withdraw from, and cease all operations along, the Gaza border.²²

Organisation and structure

20. The Brigades operate English, Turkish and Arabic language websites independently of Hamas. The Brigades also maintain a presence on social media. On 31 March 2016, the Brigades released a statement condemning Twitter’s repeated closure of the Brigades’ Twitter accounts, and claimed the closures were biased toward the Israeli occupation.²³
21. The Brigades’ website states the number of Brigades members is known only to Brigades leadership, which adopts a secrecy principle in organisation and recruitment.²⁴ A reliable estimate of Brigades members is considered to be approximately 35,000.²⁵
22. The Brigades is self-described as a network of specialised cells operating throughout the Gaza Strip and West Bank. The cells work independently of each other under the instruction of Brigades leadership. Recruits are required to fit “the moral requirements of piety, integrity, and steadfastness as well as...physical and educational requirements...”²⁶

23. Mohammad Deif (also known as Muhammad Deif or Muhammad Al-Dayf) continues to command the Brigades in Gaza and has done so since the assassination of Saleh Shehada in July 2002.²⁷ Abu Obeida continues to be the Brigades' official spokesperson.²⁸

Weapons, tactics and capability

24. In July 2014, IDF estimated the Brigades' arsenal at approximately 8,000 rockets, comprising largely short range weapons but also hundreds of medium range and dozens of long range systems capable of reaching Haifa in northern Israel.²⁹ Also in July 2014, a senior Brigades official stated the Brigades had benefited from Iranian, Syrian and Hizbollah tactical combat schools and had subsequently created an independent school to remain capable of responding to their enemy's challenge.³⁰
25. The Brigades' attacks during Operation Protective Edge demonstrated an enhanced range and number of rockets, improved protection of military infrastructure from Israeli attack, offensive and defensive tunnel systems, and increased effectiveness and cohesion of ground combat forces. Such improvements allowed the Brigades to conduct sustained strikes against Israel even while under siege. However, weaknesses were evident through the Brigades' rocket offensives failing to cause many casualties or damage.³¹ In preparation for battle with Israel, the Brigades deployed dense systems of IEDs, converted civilian areas into defensive localities and deployed anti-tank forces, mortar units and snipers to support ground operations.³²
26. In July 2015, Brigades member Muhammad Shtiwi was executed by the Brigades for allegedly revealing the location of Brigades Commander Mohammad Deif. Deif was the target of an Israeli IDF strike on a house on 19 August 2014. Deif survived but his wife and children were killed.³³ On 7 February 2016, Deif ordered the execution of another commander, Mahmud Rushdi Ishtawi, following a trial in a military court with a Sharia judiciary. Ishtawi was accused of collaborating with the occupation.³⁴ Following Ishtawi's execution, Deif ordered changes to the Brigades commanders in all areas in an attempt to change the status quo.³⁵
27. Iran's Revolutionary Guards reportedly transferred tens of millions of dollars to the Brigades over several months in early to mid 2015. The funds were primarily used to help rebuild a network of tunnels and replenish depleted stocks of medium-range missiles.³⁶ On 4 February 2016, two Brigades fighters were killed when a tunnel in the Gaza Strip collapsed. Hamas vowed to continue building tunnels to prepare for the next confrontation against the "Zionist occupation".³⁷ On 9 March 2016, the Brigades announced a member death during "preparation and training".³⁸
28. On 1 May 2016, Brigades operative Madhat Bin Fuzi Abu Snina of Gaza was indicted and accused of terrorism offences including providing illegal military training, conspiring to commit and attempted murder, membership in an illegal organisation and numerous weapons offences. Israeli prosecutors claim in 2014 Snina invested in partial ownership of a smuggling tunnel used to transfer weapons and military uniforms from Sinai to Rafah, and received a monthly payment for its use throughout 2015.³⁹
29. On 16 July 2016, the Brigades launched their annual summer training camp for over 30,000 middle and high school students. The Brigades' website, Al-Qassam, stated the Brigades were preparing "the Palestinian generations so they will be fully prepared for defending Palestinian soil and the Palestinian people".⁴⁰ The Brigades also displayed to the public rockets, missiles and drones marked with the 'Qassam Manufacturing' symbol. Debris from tanks and Israeli drones allegedly shot down or captured during Operation Protective Edge were also on display.⁴¹

Law of armed conflict (LOAC)

30. It is possible attacks undertaken by the Brigades during Operation Protective Edge in July 2014 occurred in a situation of armed conflict. However, Brigades activities during this time did not comply with LOAC as they embedded military infrastructure into civilian areas in breach of the principle to take precautions to protect civilians, and undertook indiscriminate attacks in breach of the principle of distinction. Outside of this Operation, the Brigades attacks have been sporadic and would not amount to an armed conflict. Accordingly, the exemption in section 5(4) of the TSA does not apply and the Brigades' attacks are properly characterised as terrorist acts.

CONCLUSION

31. On the evidence set out above, this paper concludes that there are still reasonable grounds as set out in s 22 of the TSA for the Brigades to be designated under that section.
32. Since its designation in October 2010 and renewal in October 2013, the Brigades have continued to carry out activities which meet the definition of terrorist acts in ss 5 and 25 of the TSA (paragraphs 10-16). Accordingly, given there are still reasonable grounds to believe the Brigades have knowingly carried out terrorist acts as set out in s 22 of the TSA, the Brigades meet the legal criteria for renewal of the group's designation as a terrorist entity under s 35.
33. The designation must be renewed by 2 October 2016 to be effective.

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STATEMENT OF CASE TO RENEW THE DESIGNATION OF IZZ AL-DIN AL-QASSAM BRIGADES (IQB) AS A TERRORIST ENTITY

PURPOSE

1. This paper sets out the case demonstrating Izz al-Din al-Qassam Brigades (IQB) (Also known as the Military wing of Hamas, Ezzedeen Al-Qassam Brigades (EQB), or Izz al-Din Al-Qassem Brigades) meets the statutory criteria for the renewal of its designation as a terrorist entity within New Zealand pursuant to the Terrorism Suppression Act 2002 (TSA).

STRUCTURE OF THIS PAPER

2. This paper sets out updated information about IQB's continued involvement in terrorist activity and covers any relevant changes or developments to the organisation since its original designation in October 2010,¹ and renewal in October 2013 and September 2016,² including IQB's objectives, structure, weapons and tactics and includes recent attacks which meet the definition of a terrorist act under the TSA.
3. This updated information, together with the information contained in the original designation paper and previous renewal papers, provide the basis for the conclusion that IQB meets the legal criteria for renewal of its designation as a terrorist entity under the TSA.

STATUTORY CRITERIA FOR DESIGNATION RENEWAL UNDER THE TSA

4. Section 35(1) of the TSA provides that a designation of a terrorist entity expires three years after the date of designation unless it is earlier renewed by the Prime Minister. The original designation is made pursuant to s 22 of the TSA, which provides that the Prime Minister may designate an entity as a terrorist entity if the Prime Minister believes on reasonable grounds that the entity has knowingly carried out, or has knowingly participated in the carrying out of, one or more terrorist acts. Carrying out a terrorist act includes the planning, preparation or credible threat to carry out the act, whether it is actually carried out or not (s 25(1)(a) and (b)) and also includes an attempt to carry out the act (s 25(1)(c)).
5. The Prime Minister may renew that designation for a further three years under s 35(2) if satisfied that there are still reasonable grounds as set out in s 22 for the entity to be designated under that section.
6. Before the expiry of an order made under s 35(2), the Prime Minister may make another order under s 35(3) renewing the designation concerned for a further three years. The Prime Minister may make any number of orders under s 35(3) in respect of the same designation (s 35(5)).

CREDIBILITY OF SOURCES

7. This paper has been prepared using open or unclassified sources which have a reputation for careful and unbiased reporting. These include The New York Times, Reuters, Associated Press, the BBC, CNN, and Middle East Monitor.
8. The think tank European Council on Foreign Relations was referred to
9. Regional news sources included The Times of Israel, The Jerusalem Post, and Haaretz.
10. Other sources utilised include the United States Department of State, and the Hamas website.

EVIDENCE TO SUPPORT DESIGNATION RENEWAL UNDER THE TSA

Continued involvement in terrorist activity

11. Since its designation was last renewed in September 2016, IQB has claimed responsibility for mortar and rocket attacks against both civilian and military targets.
12. In February 2018 IQB claimed responsibility for the fatal shooting of a civilian in a small settlement near Nablus in January 2018.³ The attack was carried out by IQB member Ahmad Nasr Jarrar, who was killed by Israeli security forces a few weeks later.⁴
13. In May 2018, IQB and Palestinian Islamic Jihad (PIJ) claimed responsibility for a barrage of rocket and mortar fire into Israel. They said the attacks were in response for Israel's killing of dozens of Palestinians since March 30 in protests at the Gaza-Israel boundary fence, stating: "Bombardment for bombardment and blood for blood".⁵
14. In November 2018, IQB claimed responsibility for a barrage of rockets that killed one civilian and injured dozens more. As many as 400 rockets were fired into Israel over two days, some of them landing in the cities of Ashkelon and Sderot. IQB claimed the attacks were a response to a botched Israeli Defence Force raid in Gaza that left an IQB commander and an Israeli soldier dead.⁶
15. In December 2018, IQB claimed responsibility for two attacks in the northern West Bank. The first shooting in October 2018 in the Barkan Industrial Zone left two civilians dead. In the second, on 9 December, seven civilians were injured in a drive-by shooting at a bus stop in Ofra. Among the injured in the Ofra attack was a 30-weeks pregnant woman who underwent an emergency delivery, but the baby died a few days later.⁷

Ideology and objectives

16. IQB is the military wing of Hamas and thus shares the ideology of its parent organisation. In May 2017, Hamas released a new charter. The charter does not replace the original 1988 charter but rather serves as an update for it. The new charter watered down much of the anti-Semitic language of the original, stating that Hamas has no problem with Jews or any other religions, just the "Zionist project".⁸
17. Hamas leaders were still reportedly calling for the destruction of Israel in October 2017.⁹
18. The 2017 charter no longer references Hamas's early connections with the Muslim Brotherhood movement, which the original charter had highlighted. Despite this, Hamas and IQB paid tribute to Egyptian Muslim Brotherhood leader Mohamed Morsi after his death in June 2019.¹⁰

Organisation and structure

19. IQB continues to operate as a network of independent cells, and is still led by Mohammad Deif with Marwan Issa serving as deputy leader.¹¹ In February 2017, former IQB member Yahya Sinwar took over as Hamas's overall leader in Gaza.¹²

Weapons, tactics and capability

20. In May 2019, Israeli Newspaper Haaretz reported that IQB had roughly 30,000 fighters, 7,000 reservists and an arsenal of 5,000 to 6,000 mostly short-range rockets. Hamas also reportedly

continues to rely on its extensive network of tunnels under the fence separating Gaza from Israel.¹³

21. In January 2017, Israeli defence sources quoted in the Times of Israel stated that Hamas (including IQB) had built back up to the capability level it had prior to its 2014 war with Israel.¹⁴
22. In August 2017 Yahya Sinwar revealed that Hamas (including IQB) had repaired its relations with former primary backer Iran, following a five-year rift created by Hamas's refusal to back Syrian President Bashar al-Assad in the Syrian Civil War. Sinwar, who maintains close ties with IQB, said that Iran is now "the largest backer financially and militarily" to IQB.

LAW OF ARMED CONFLICT (LOAC)

23. The situation continues to be one of sporadic violent activity by IQB, and has not reached a level of intensity and continuity on the part of IQB which would bring the situation within the meaning of "armed conflict" for the purposes of the exemption in section 5(4) of the TSA. Further, IQB's actual or planned targeting of civilians is in breach of the LOAC principle of distinction. Accordingly, the exemption in s 5(4) cannot apply, and IQB's attacks are properly characterised as terrorist acts.

CONCLUSION

24. On the evidence set out above, this paper concludes that there are still reasonable grounds as set out in s 22 of the TSA for IQB to be designated under that section.
25. Since its designation in October 2010, and renewal in October 2013 and September 2016, IQB has continued to carry out activities which meet the definition of terrorist acts in ss 5 and 25 of the TSA (paragraphs 12-15) including planning, threatening and attempting attacks. Accordingly, given there are still reasonable grounds to believe IQB has knowingly carried out terrorist acts as set out in s 22 of the TSA, IQB meets the legal criteria for renewal of its designation as a terrorist entity under s 35.
26. The designation must be renewed by 26 September 2019 to be effective.

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