

STATEMENT OF CASE TO DESIGNATE PALESTINIAN ISLAMIC JIHAD (PIJ) AS A TERRORIST ENTITY

PURPOSE

1. The purpose of this paper is to set out the case demonstrating Palestinian Islamic Jihad (“PIJ”) (also known as Palestinian Islamic Jihad – Shaqaqi Faction; Palestinian Islamic Jihad – Shallah Faction; Islamic Jihad; Islamic Jihad (in/of) Palestine ; Islamic Jihad – Palestine Faction and Islamic Holy War; Harakat al-Jihad al Islami fi Filistin; Jihad al-Islami; Abu Ghunaym Squad of the Hizballah Bayt al-Maqdis), including its military wing, the al-Quds Brigades (also known as the Saraya al-Quds (Jerusalem Battalions); Saraya al-Mujihadeen; and Al-Awdah 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 PIJ meets the criteria for designation as a terrorist entity under the TSA.

STRUCTURE OF THIS PAPER

3. This paper sets out background information about PIJ covering various aspects of the organisation including its objectives, tactics, weapons and structure, before detailing two 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 PIJ which helps inform the analysis of the specific attacks in the case studies below. The attacks detailed in the two case studies represent attacks attributed to and/or claimed by PIJ. It is these two 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 PIJ meets 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: the Jane's series (World Insurgency & Terrorism, Terrorism & Security Monitor, Intelligence Review, and Missiles and Rockets); Council on Foreign Relations; International Crisis Group; Amnesty International; The New York Times; the BBC; The Washington Post; The Guardian; Reuters; United Nations High Commissioner for Human Rights; the Washington Institute of Near East Policy; and Human Rights Watch. This paper also utilises public information from the US Department of State and the Israeli Foreign Ministry, as well as the Report of the United Nations Fact-Finding Mission on the Gaza Conflict ('the Goldstone Report'), a range of regional media sources including Al Jazeera, Haaretz and the Jerusalem Post, and the multiple websites of PIJ and the al-Quds Brigades.

BACKGROUND

Establishment and history of PIJ

8. PIJ was formally established in Gaza in 1981 by two Palestinian activists: Dr Fathi abd al-Aziz Shaqaqi, a Rafah-based physician, and Shaykh Abd al-Aziz Awda, an Islamic preacher from the Jabaliyya refugee camp.¹ Based in Egypt, Shaqaqi and Awda were originally members of the Muslim Brotherhood.² Their views on the destruction of Israel, however, led them in 1979 to establish Islamic Jihad- Shaqaqi Faction, a branch of the Egyptian Islamic Jihad. The Shaqaqi Faction was expelled from Egypt in 1981 following the assassination of Egypt's President Anwar Sadat by the Egyptian Islamic Jihad. Shaqaqi and Awda returned to Gaza where they formally established PIJ.³
9. PIJ was not concerned with mass-mobilisation and did not provide basic welfare services to the Palestinian people, like many other groups operating in the occupied territories, including the Palestinian Liberation Organisation (PLO) and later Hamas.⁴ Their whole focus was on "exemplary armed attacks" against the Israeli "occupiers."⁵ PIJ began its armed operations against Israel in 1984.⁶
10. In October 1988 Shaqaqi was expelled to Lebanon by Yasser Arafat's PLO, where he established close links with Hizbollah and the Iran's Revolutionary Guards Corps.⁷ Iran became PIJ's major financial backer⁸ while Hizbollah provided PIJ fighters with training facilities, logistical aid, and facilitated the expansion of PIJ's networks into the Palestinian refugee camps in Lebanon.⁹ In 1989 Shaqaqi moved PIJ's headquarters to its current location in Damascus.¹⁰
11. In 1992, during the first Intifada, PIJ's armed wing, the al-Quds Brigades (Saraya al-Quds or Jerusalem Battalions) was formally established to bring coherence and unity

to the various armed factions that had until that point been operating separately under the banner of Islamic Jihad.¹¹

12. In 1993 the PLO renounced violence against Israel and signed up to the Oslo Accords, ending the first Intifada. PIJ proclaimed this as “a betrayal of Palestinian and Islamic rights” and began launching more frequent attacks against Israel, “in a race to end the peace process.”¹² PIJ and Hamas’ joint campaign of suicide bombings during the mid-1990s nearly succeeded in derailing the negotiations.¹³
13. Over the next five years PIJ’s activities, under the new leadership of Damascus-based Dr Ramadan Abdullah Shallah¹⁴, were constrained by the Palestinian National Authority. However, the beginning of the second Intifada in late 2000 provided an environment conducive to the PIJ agenda, facilitating fresh funding, recruitment and terrorist activities.¹⁵ Some of these activities are detailed in subsequent sections.
14. PIJ refused to participate in the 2006 legislative elections, claiming that “at least one movement would continue to devote its entire energies to the liberation of Palestine.”¹⁶ After Hamas won the elections, PIJ sought to capitalise on public perception that Hamas and Fatah were embroiled in a bitter factional dispute and that PIJ alone was the ‘vanguard of the resistance.’¹⁷
15. While PIJ offered its conditional support to ceasefires in 2003, 2005, 2006, 2008 and 2009, it has always been amongst the first to revert to reprisals, asserting that Israel had first violated ceasefire conditions.¹⁸ In 2010 PIJ has continued a campaign of rocket fire at Israeli towns and armed attacks against Israeli security forces.¹⁹
16. PIJ has been proscribed as a terrorist organisation by Australia, Canada, Israel, Japan, the United Kingdom and the United States. It has also been designated by the European Union for the purpose of asset freezing.

Ideology and objectives of PIJ

17. PIJ’s strategic objective remains unchanged since its founding: the complete ‘liberation of Palestine’ as defined by the borders of the pre-1948 British mandate (i.e. all of contemporary Israel, West Bank and Gaza).²⁰ PIJ refuses to participate in the political process and considers the destruction of the state of Israel through armed ‘resistance’ the only viable strategy for achieving their objective.²¹ In late 2009, PIJ Secretary General Shallah said in an interview with Al Jazeera that, “I consider that the entire land of Palestine is ours and that [the ‘Zionists’] have no right to build so-called Israel as a Jewish state on that land.”²²
18. PIJ considers itself a “revolutionary vanguard” whose armed attacks will inspire the Palestinian people to follow its example and will unite the Arab and Muslim worlds against Israel.²³ PIJ is also an Islamist movement, seeking the establishment of an Islamic state of Palestine.²⁴

Organisation and structure of PIJ

19. PIJ is highly secretive about its organisational structure, and as such an accurate estimate of its size and strength is difficult to make. Most estimates put PIJ’s total numbers at between 1000-2000 personnel, with a core leadership of 50-200, spread between the full-time political leadership in Damascus, and political representatives, al-Quds Brigades commanders and part-time local fighters in Lebanon, West Bank

and Gaza.²⁵ The majority of PIJ's members are recruited from within Gaza and the West Bank, but also from the Palestinian refugee communities in Lebanon and Syria²⁶

20. PIJ's political leadership in Damascus comprises Secretary General Dr Ramadan Abdullah Shallah, Deputy Secretary General Ziyad al-Nakhalah (responsible for PIJ activities in Lebanon), and the group's supreme organisational body, the General Bureau or Shura (Al-Maktab al-Am). This body comprises eight people, including PIJ's religious leader and co-founder Shaykh Abd al-Aziz Awda.²⁷ The General Shura approves all appointments to the Political Bureau, the organisation's 'daily executive political leadership' in Damascus,²⁸ based on nominations from local Shuras in Gaza, West Bank and Lebanon.²⁹
21. While the organisation's leadership resides in Damascus, PIJ's membership is concentrated in the Palestinian Territories, predominantly in Gaza.³⁰ Out of necessity the organisation has in recent years operated informally and frequently clandestinely. While it is known that two of PIJ's senior Gaza-based leaders, Dr Muhammad al-Hindi and Shaykh Nafidh Azzam, are members of the Damascus-based Political Bureau,³¹ it is less clear to what extent the Damascus-based leadership exercises command and control over PIJ activities in Gaza and the West Bank, particularly the activities of the al-Quds Brigades. They do, however, condone and encourage the use of violence against Israel as the core tactic of the 'resistance', and attacks are often claimed by the PIJ leadership and the al-Quds Brigades on the group's multiple websites.³²
22. The al-Quds Brigades fighters are organised into small, decentralised cells, with a greater level of autonomy than was the case during the height of the organisation's suicide bombing campaign during the first and second Intifadas.³³ Abu Ahmed is the Brigades' Gaza spokesman³⁴ and it is believed that Khalid al-Batsh and Khalid Habib are leading PIJ political figures with strong links to the al-Quds Brigades.³⁵ Over recent years Israel security forces have successfully captured and killed dozens of al-Quds commanders and fighters, including around 34 killed during the Israeli incursion into Gaza³⁶ and two suspected commanders killed near Jenin in the West Bank in March 2010.³⁷

Relations with other militant groups

23. Within the occupied Palestinian territories PIJ's alliances are relatively fluid. While it has at different times cooperated with Hamas³⁸, PIJ tends to align more closely with the Fatah-affiliated Al Aqsa Martyrs Brigades.³⁹ Militarily cooperation between the al-Quds Brigades and Izz al-Din al-Qassam Brigades (the 'military' wing of Hamas) is close during times of conflict and many of the traditional Palestinian resistance movements have in recent years conducted joint attacks or at least coordinated their attacks against Israel.⁴⁰ These include the Al Aqsa Martyrs Brigades, the Popular Front for the Liberation of Palestine (General Command) and the Popular Resistance Committees.⁴¹ While PIJ is not directly supportive of Salafist, Al-Qaida-inspired groups, it also believes "the arena of resistance in Palestine is big enough for everyone."⁴²
24. In recent years, Hamas, which Israel holds as solely responsible for the security situation in Gaza, has sought to reign in militant groups operating in the Gaza Strip. Throughout 2009 several PIJ militants were arrested by Hamas for firing rockets into

Israel. In April 2010 four PIJ fighters, who were “planning a qualitative operation” against Israel, were detained by Hamas and only released after they were forced to sign documents saying they would not fire any more rockets. PIJ leaders have responded by saying “launching homemade projectiles is [part of] their right and duty to resist Israel.”⁴³

Weapons and tactics

25. Despite its relatively small size, PIJ is considered to be one of the more effective of the Palestinian militant groups.⁴⁴ Over the years PIJ’s ‘military wing’, the al-Quds Brigades, has used a range of guerrilla tactics and weapons in its actions against Israel, including suicide bombers, car bombs, rockets, mortars and small arms fire.⁴⁵
26. The tunnels connecting the Gaza Strip to Egypt through the Sinai give PIJ in Gaza greater opportunity to acquire and stockpile weapons (such as AK-47 assault rifles, sniper rifles, RPGs, mortars etc.) and explosives⁴⁶ than in the West Bank, where Israeli and Palestinian National Authority security forces have successfully limited operations.
27. Between 2001 and 2007 PIJ was responsible for approximately 25 suicide attacks inside Israel, resulting in the deaths of more than 140 people, most of whom were either civilians or off-duty soldiers.⁴⁷ The majority of these attacks occurred between 2001 and 2003 as Israeli security since then has limited the ability of potential suicide bombers to move freely throughout the region. PIJ’s last suicide attack happened on 29 January 2007 at a bakery in the Red Sea resort of Eilat, killing three Israelis.⁴⁸ On their website, the al-Quds Brigades continue to celebrate the anniversaries of many of these attacks, holding up as heroes of the resistance those who have carried out suicide bombings (“Martyrdom operations”) inside Israel.⁴⁹
28. In recent years, PIJ’s main weapon and tactic has been rocket fire into southern Israel. This has predominantly been with ‘Quds’ rockets (the same as the ‘Qassam’ rocket used by the Izz al-Din al-Qassam Brigades). Ninety percent of the rockets are locally made using raw materials from basic civilian industries or materials imported or stolen from inside Israel.⁵⁰ The equipment used to manufacture them does not require advanced technology and can be found in simple metal workshops and garages.⁵¹ One PIJ member claimed that the organisation could produce up to 100 rockets in a night, with each rocket costing around NZ\$900 for raw materials.⁵²
29. More recently PIJ is known to have conducted joint operations with the Izz al-Din al-Qassam Brigades using the longer-range Katyusha-type ‘Grad’ rockets (the components of which are smuggled into Gaza where they are assembled).⁵³ The range of upgraded versions of the Grad rockets is such that now about 15 percent of the Israeli population (about 40 km into southern Israel) is within range.⁵⁴
30. Through developments over the past eight years PIJ rocket makers have developed a new rocket fuel that allows the rockets to be stockpiled for longer, and for them to fly further.⁵⁵ Although PIJ has been under strong pressure from Hamas to not fire rockets at Israel, and to an extent has acquiesced to that pressure, PIJ’s leadership continues to promote their use of rockets as ‘an effective tool of the resistance.’⁵⁶ For example, in March 2010, PIJ Secretary General, Ramadan Abdullah Shallah said in an interview that, “there are no settlements in Gaza. The Israelis have departed

Gaza, and targeting the enemy is no longer possible except by firing missiles and other projectiles at the 1948 areas.”⁵⁷

31. Since the ceasefire in January 2009 following the Israeli incursion into Gaza, PIJ has continued to use violence, engaging in sporadic small arms clashes with the Israeli security forces⁵⁸ and has claimed responsibility for firing a small number of rockets and mortars into the western Negev region of Southern Israel.⁵⁹

Recent events

32. In 2010 there have been a number of incidents that demonstrate PIJ continues to espouse the use of indiscriminate violence against Israel to further its political and religious agendas. In January three PIJ members were killed by Israeli security forces as they prepared to fire rockets into Israel from a field often used for such attacks.⁶⁰ Twenty mortars and rockets had reportedly been fired into Israel the previous week.⁶¹ On 1 June 2010, three PIJ fighters were killed in an Israeli airstrike after they had fired two rockets into open ground.⁶²

CASE STUDIES

Rocket campaign into southern Israel continuing into 2008 and 2009

The facts

33. Rocket fire into southern Israel has been used by PIJ and its al-Quds Brigades, alongside other militant groups operating out of Gaza, since February 2002. Over that time, PIJ and the al-Quds Brigades have claimed responsibility for hundreds of rockets fired at towns in southern Israel.
34. Official Israeli sources say that between 2002 and December 2008 (prior to the Gaza conflict) 4048 rockets were fired into Israel.⁶³ In 2007 and 2008 there was a significant increase in the number of rockets fired – in 2007 there were reportedly 896 rockets and 749 mortars fired into Israel and in 2008, according to the official Israeli summary, at least 1750 rockets and 1,500 mortars were fired (329 of which were fired during the ceasefire of 19 June to 19 December 2008).⁶⁴
35. PIJ claims that in March 2008 it fired: 216 rockets and mortar shells at “Zionist towns and posts” including the town of Sderot; 6 RPGs; and detonated multiple roadside bombs.⁶⁵ In June 2008 it was the first group to break the ceasefire, claiming responsibility for firing three rockets into the western Negev, following the death of one of its members, Tarek Aby Ghally.⁶⁶
36. PIJ and the al-Quds Brigades also used rocket fire during the Gaza conflict in December 2008 and January 2009, claiming responsibility for firing 262 rockets into Israel.⁶⁷ Official Israeli sources claim that, in all, 571 rockets and 205 mortars were fired from 27 December 2008 to 18 January 2009. These rockets killed 3 Israeli civilians, with 11 people suffering moderate injuries and 167 light injuries.⁶⁸
37. All of the rockets fired from Gaza, both before and during the conflict, lack precision and were very loosely aimed at cities and towns in southern Israel, such as Sderot, Netivot, Ashqelon and Beersheva.⁶⁹ There is no ability to accurately aim or predict the trajectory of the Quds rockets. Most of these rockets landed on unoccupied land but some hit civilians and civilian property. Many have even landed

inside the Gaza Strip, killing and injuring Palestinian civilians.⁷⁰ Human Rights Watch reported in August 2009 that Israeli security forces were rarely in the areas struck by the rockets.⁷¹

38. Rockets fired between 2001 and May 2009 have killed 18 civilians (including two young Palestinian children on 26 December, 2008),⁷² injured hundreds, and also destroyed and damaged property including houses, schools, kindergartens, a synagogue and cars.⁷³ The mental harm (predominantly shock and anxiety disorders) the constant rocket fire has caused across all sectors of the population in the targeted towns and cities is also well documented.⁷⁴ Those towns and cities most affected by the rocket fire now 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'.⁷⁵

The act meets the TSA criteria for designation

39. PIJ's 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.
40. PIJ's 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 rockets used by PIJ carry sufficient explosive material to cause significant damage to property and to kill or injure people caught in the explosion or hit by flying shrapnel, as has happened on a number of occasions. PIJ has continued to fire rockets into southern Israel over many years despite the civilian casualties caused. The likelihood of a rocket causing civilian death, injury or property damage 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 PIJ spokespeople claiming responsibility for firing rockets at "Zionist towns and posts" reinforce that the rockets are fired with the intention to kill or injure Israeli civilians and that PIJ will continue to use rockets as their primary weapon.
41. The nature and consistency of the rocket fire through 2007 and most of 2008, and the well documented impact it has had on those living within range of the rockets, demonstrates that it was done with the intent to induce terror in a civilian population (s 5(2)(a) TSA). Further, PIJ's endorsement of rocket attacks as a valid tool in their campaign of 'resistance' against Israel (see paragraphs 24 and 30 above) illustrates that the attacks were committed with the intent to compel the Israeli government to withdraw from the occupied Palestinian territories (s 5(2)(b) TSA) and were carried out for the purpose of advancing the group's religious/political cause (s 5(2) TSA).

Shooting of security guards at Nitzanei Shalom Industrial Park, Israel, 25 April 2008

The facts

42. Two Israeli security guards working for a private firm were shot at close range and killed at around 7am on 25 April 2008 as they were screening Palestinian workers arriving for work at the Nitzanei Shalom Industrial Park.⁷⁶ A third guard escaped uninjured. PIJ claimed responsibility for the attack, claiming in an interview with an Israeli news agency that the fighters had escaped from prison only days earlier. The gunman, who shot the guards at the entrance to the Park, escaped with only slight

injuries.⁷⁷ 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.

43. The attack has been attributed by a range of sources to both the al-Quds Brigades and the Izz al-Din al-Qassam Brigades working together. PIJ was first to claim responsibility for the attack, stating it was “a natural response to the Israeli assaults and ongoing crimes against the Palestinian people.” Hamas’ al-Qassam Brigades followed shortly afterwards.⁷⁸
44. At the time of the attack Mahmoud Abbas, President of the Palestinian National Authority, 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 the US.⁷⁹

The act meets the TSA criteria for designation

45. 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.
46. The targeted nature of the shooting clearly shows an intention to cause the death or serious bodily injury of the civilian security guards (s 5(3)(a) TSA). As noted above at paragraph 27, PIJ lauds attacks (such as suicide bombings) on Israeli civilians as heroic acts of ‘resistance’ against Israel. This attack is thus another example of PIJ’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). Further, the timing of the attack during the Fatah-led Palestinian Authority’s peace negotiations with Israel in the US, and its location close to the Fatah-led West Bank, shows an intention to undermine the Palestinian National Authority’s credibility and its peace negotiations, consistent with the PIJ’s view that armed resistance is the only viable strategy for Palestinians. Both as an attempt to undermine peace negotiations and as a form of ‘resistance’ against Israel, this attack was also clearly carried out to advance PIJ’s own political/religious cause (s 5(2) TSA).

LAW OF ARMED CONFLICT

47. 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?

48. The first condition to fulfil is that there is a situation of armed conflict to which the law of armed conflict (“LOAC”) applies.
49. 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.⁸⁰ 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.⁸¹ The level, kind and consistency of violence during the incursion clearly met the threshold of an armed conflict.⁸² 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 PIJ 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.

50. In contrast, there was no armed conflict inside of Israel at the time of the shooting at Nitzanei Shalom Industrial Park (April 2008), detailed in the second case study above. That attack was an isolated instance of violence that does not pass the armed conflict threshold and so LOAC does not apply. 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?

51. The relevant LOAC principle is that of distinction.⁸³ 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.⁸⁴ The PIJ's rockets were fired towards towns and cities that held no military value and were targeted at Israeli civilians (see paragraphs 37 and 38 above) and so breached the LOAC principle of distinction. The exemption in s 5(4) of the TSA cannot therefore apply to the PIJ's rocket campaign. Even if the rockets were aimed at some military objective, they are impossible to aim (see paragraph 37 above) and therefore an indiscriminate attack prohibited by LOAC.⁸⁵
52. Lastly, even if it could be said that there was an armed conflict inside of Israel at the time of the Nitzanei Shalom Industrial Park shooting, the attack targeted civilians and so also breached the LOAC principle of distinction. The exemption in s 5(4) of the TSA cannot apply.

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- i. 'Political Parties and Organisations', Encyclopedia of the Middle East, Mideast web, <http://www.mideastweb.org/Middle-East-Encyclopedia/.htm>, last accessed 10 June 2010;
- ii. 'Palestinian Islamic Jihad or Islamic Jihad Movement in Palestine (PIJ)', Transnational and Non-State Armed Groups: Legal and Policy Responses, www.armed-groups.org, last accessed 11 June 2010;
- iii. 'Palestinian Islamic Jihad', Jane's World Insurgency and Terrorism, posted 15 April 2010, <http://www.client.janes.com>, last accessed 3 June 2010.

² As students at Zaqaziq University in Egypt during the 1970s, Shaqaqi and Awda were heavily influenced by the teachings of Sayyid Qutb, one of the most prominent Islamic intellectuals of the Muslim Brotherhood during the 1950s and 60s. He was critical of both the divisions within Islam, which he believed had degraded Muslim society, and western society, which he believed was obsessed with materialism and violence. His ideas laid the foundation for modern Islamism, and some of his earlier followers included Osama Bin Laden, Dr Ayman al-Zawahiri and Abdullah Azzam, founding members of Al-Qaida. But whereas the Brotherhood believed the establishment of the Islamic caliphate should precede the destruction of Israel, Shaqaqi saw the existence of Israel as being, "a source of moral and spiritual corruption that prevented Muslims from remedying the malaise of their society." Inspired by the 1979 Iranian Revolution and the teachings of Ayatollah Khomeini, he sought to combine Islamism with Palestinian nationalism in order to create a new revolutionary movement to overthrow Israel and, in the process, establish an Islamic state of Palestine. This, he believed, would better meet the Brotherhood's objective of uniting the Islamic world than engaging in politics.

See above note 1,

- i. (i); 'Political Parties and Organisations', Encyclopedia of the Middle East;
- ii. (ii); 'Palestinian Islamic Jihad or Islamic Jihad Movement in Palestine (PIJ)', Transnational and Non-State Armed Groups; and
- iii. (iii); 'Palestinian Islamic Jihad', Jane's World Insurgency and Terrorism.

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- i. 'The Palestinian Islamic Jihad: Background Information', Meir Litvak, Moshe Dayan Centre for Middle Eastern and African Studies, 28 November 2002, available at: <http://www.tau.ac.il/dayancenter/taunotes56.pdf>, last accessed 14 May 2010;
- ii. above note 1 (i); 'Political Parties and Organisations', Encyclopedia of the Middle East.
- iii. There were also six other factions of Islamic Jihad operating in the occupied territories at that time. The most prominent was the Tamimi Jerusalem Brigade, the Islamic Jihad Battalions, and the Amar faction of the Islamic Jihad.

⁴ David Wright-Neville (2010) *Dictionary of Terrorism*, Cambridge: Polity Press.

⁵ See above note 1 (iii); 'Palestinian Islamic Jihad', Jane's World Insurgency and Terrorism.

⁶ See above note 1 (i); 'Political Parties and Organisations', Encyclopedia of the Middle East.

⁷ See above note 1 (iii); 'Palestinian Islamic Jihad', Jane's World Insurgency and Terrorism.

⁸ 'Islamic Jihad Secretary General on Saudi, Qatari efforts to achieve Palestinian reconciliation', Interview by Hasan al-Mustafa, 'Al-Watan', 8 April 2010, BBC Monitoring Middle East, Mideast Web, <http://www.mideastweb.org/Middle-East-Encyclopedia/.htm>, last accessed 8 June 2010.

⁹ See above note 1 (i); 'Political Parties and Organisations', Encyclopedia of the Middle East.

¹⁰ See for example:

- i. 'Official says Palestinians Proud of ties with Iran', IRNA, 28 February 2010, BBC Monitoring Middle East, 1 March 2010; and
- ii. 'Iran President confers with Palestinian Islamic Jihad on Resistance of Nations', excerpt from state-run Iranian TV news channel, BBC Monitoring Caucasus, 9 February 2010.

¹¹ See above note 1 (ii); 'Palestinian Islamic Jihad or Islamic Jihad Movement in Palestine (PIJ)', Transnational and Non-State Armed Groups.

¹² See above note 1 (i); 'Political Parties and Organisations', Encyclopedia of the Middle East.

¹³ See above note 1 (iii); 'Palestinian Islamic Jihad', Jane's World Insurgency and Terrorism.

¹⁴ PIJ's founder, Fathi Shaqaqi, was assassinated in Malta in 1995 by Israeli secret intelligence agents. Some analysts have claimed that PIJ has never fully recovered from his death, however under the new leadership of Shallah PIJ's attacks against Israel dramatically increased.

See above note 1,

- i. (i); 'Political Parties and Organisations', Encyclopedia of the Middle East;
- ii. (ii); 'Palestinian Islamic Jihad or Islamic Jihad Movement in Palestine (PIJ)', Transnational and Non-State Armed Groups; and
- iii. (iii); 'Palestinian Islamic Jihad', Jane's World Insurgency and Terrorism.

¹⁵ See above note 1 (iii); 'Palestinian Islamic Jihad', Jane's World Insurgency and Terrorism.

¹⁶ See above note 1 (iii); 'Palestinian Islamic Jihad', Jane's World Insurgency and Terrorism.

¹⁷ See above note 1,

- i. (iii); 'Palestinian Islamic Jihad', Jane's World Insurgency and Terrorism;
- ii. (i); 'Political Parties and Organisations', Encyclopedia of the Middle East; and
- iii. Israeli Intelligence and Terrorism Information Centre, http://www.terrorism-info.org.il/malam_multimedia/English/eng_n/pdf/hamas_e017.pdf, last accessed 8 June 2010.

¹⁸ See above note 1 (iii); 'Palestinian Islamic Jihad', Jane's World Insurgency and Terrorism.

¹⁹ See above note 17 (iii); Israeli Intelligence and Terrorism Information Centre.

²⁰ See above note 1 (iii); 'Palestinian Islamic Jihad', Jane's World Insurgency and Terrorism.

²¹ 'Palestinian Islamic Jihad and the New Political Landscape', Jane's Intelligence Review, <http://www.client.janes.com>, posted 15 March 2006, last accessed 3 June 2010.

²² "Two State Solution is a Disaster", Al Jazeera, <http://english.aljazeera.net>, 14 Oct 2009, last accessed 2 June 2010.

²³ See above note 1 (iii); 'Palestinian Islamic Jihad', Jane's World Insurgency and Terrorism.

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- i. While PIJ is an Islamist movement, it is not Salafist in its interpretation of Islam, and therefore does not call for the complete rejection of modern society as do groups such as Al-Qaida.
- ii. The PIJ emblem encapsulates both the political and religious agendas of the group. It shows a map of the land they claim as Palestine (roughly, present-day Israel, the West Bank and the Gaza Strip) superimposed on the images of the 'Dome of the Rock' (the most holy Islamic site in Jerusalem), two fists and two rifles. Dark green Arabic text immediately above the images reads "Allah-u-Akbar" (God is great) while the main text quotes verse 29:69 (related to jihad) from the Qur'an: "As for those who strive [*jihadoo* – jihad] in our cause, we will surely guide them in our paths. Most assuredly, God is with the pious." United States Anti-Defamation League, http://www.adl.org/terrorism/symbols/palestinian_islamic_jihad.asp, last accessed 28 May 2010.
- iii. Note: the use of the word jihad is open to varying interpretations. Jihad literally means "to struggle" or "to strive." It is a religious duty of all Muslims "to strive" for a greater personal understanding of God and towards greater service of God. In this context it is an 'internal struggle'. While jihad has also historically been used as the basis for violent conflict, usually in defence of the religion, extremist groups such as Al-Qaida promulgate the idea that it is the religious duty of all Muslims to wage 'violent jihad' against 'non-believers', Israel and the United States.

²⁵ See above note 1,

- i. (iii); 'Palestinian Islamic Jihad', Jane's World Insurgency and Terrorism;
- ii. (ii); 'Palestinian Islamic Jihad or Islamic Jihad Movement in Palestine (PIJ)', Transnational and Non-State Armed Groups; and
- iii. 'Terrorist Organisations', Country Reports on Terrorism 2008, Office of the Coordinator for Counter-Terrorism, US State Department, <http://www.state.gov/s/ct/rls/crt/2008/index.htm>, 30 April 2009, last accessed 28 May 2010.

²⁶ See:

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- i. 'Palestinian Islamic Jihad', Holly Fletcher, Council on Foreign Relations, http://www.cfr.org/publication/15984/palestinian_islamic_jihad.html, last accessed 10 June 2010;
 - ii. above note 1 (iii); 'Palestinian Islamic Jihad', Jane's World Insurgency and Terrorism;
 - iii. above note 1 (i); 'Political Parties and Organisations', Encyclopedia of the Middle East;
 - iv. above note 1 (ii); 'Palestinian Islamic Jihad or Islamic Jihad Movement in Palestine (PIJ)', Transnational and Non-State Armed Groups; and
 - v. Israeli Ministry of Foreign Affairs, <http://www.mfa.gov.il>, last accessed 9 June 2010.
- ²⁷ Dr Ramadan Abdullah Shallah and Sheik Abd al Aziz Azda are both on the FBI's most wanted terrorists list.
- ²⁸ 'Unprecedented Meeting by Jihad Reviews Movement's Course, Structures', Al-Hayat, 'Palestinian Islamic Jihad Reportedly Revamps Structure, Views Ties with Hamas', 22 September 2009, BBC Monitoring Middle East, 23 Sept 2009.
- ²⁹ See:
- i. above note 1 (iii); 'Palestinian Islamic Jihad', Jane's World Insurgency and Terrorism;
 - ii. above note 1 (ii); 'Palestinian Islamic Jihad or Islamic Jihad Movement in Palestine (PIJ)', Transnational and Non-State Armed Groups; and
 - iii. above note 28; 'Unprecedented Meeting by Jihad Reviews Movement's Course, Structures'.
- ³⁰ See above note 1 (iii); 'Palestinian Islamic Jihad', Jane's World Insurgency and Terrorism.
- ³¹ See above note 28; 'Unprecedented Meeting by Jihad Reviews Movement's Course, Structures'.
- ³² Refer:
- i. (PIJ main website) www.qudsway.ir / www.qudsway.net / www.qudsway.com;
 - ii. (al-Quds Brigades) www.saraya.ps / www.sarayaalquds.ps / www.sarayaalquds.org;
 - iii. (PIJ news) www.qudsnews.net / www.paltoday.com;
 - iv. (other websites) www.shikaki.net / www.falestiny.net.
 - v. Refer also the Intelligence and Terrorism Information Center at the Israel Intelligence Heritage & Commemoration Center (IICC), www.terrorism-info.org.il.
 - vi. The al-Quds Brigades have also reportedly developed a cyber-war unit both to protect PIJ's network from Israeli attack, but also to launch cyber attacks against Israeli networks. See "Islamic Jihad's Cyber-war Brigades", www.menassat.com, 17 June 2007, last accessed 17 June 2010.
- ³³ See above note 1 (ii); 'Palestinian Islamic Jihad or Islamic Jihad Movement in Palestine (PIJ)', Transnational and Non-State Armed Groups.
- ³⁴ 'Al-Quds Brigade: Iran is Our Biggest Benefactor', Kifah Zaboun, Asharq Awalsat, <http://www.aawsat.com/english/news.asp?section=1&id=19495>, 12 January 2010, last accessed 14 June 2010.
- ³⁵
- i. 'Palestinian Islamic Jihad, Hamas refuse to disband military wings - report Al-Quds', al-Arabi website, 16 October, referenced in "Report from Ramallah, West Bank, by Walid Awad: 'Al-Qassam Vows to Keep Its Military Ammunition Until the Last 'Zionist' Soldier Leaves, and Al-Quds Brigades Holds to Resistance Until Jerusalem Is Liberated. Hamas and the Islamic Jihad Refuse to Disband Their Military Wings in Contradiction With the Egyptian Document'", BBC Monitoring Middle East, 17 October 2009; and
 - ii. above note 1 (iii); 'Palestinian Islamic Jihad', Jane's World Insurgency and Terrorism.
- ³⁶ 'Palestinian Factions United by War', Al Jazeera, <http://english.aljazeera.net>, 20 January 2009.
- ³⁷ See above note 1 (iii); 'Palestinian Islamic Jihad', Jane's World Insurgency and Terrorism.
- ³⁸ During the early 1990s PIJ's founder, Fathi Shaqaqi, unsuccessfully sought an alliance with Hamas so as to consolidate the resistance movement. Hamas was reluctant to go down that route, having developed an active political branch and a network of religious and welfare institutions to create a counter-weight to the PLO. Since Hamas' 2006 election victory and their declaration of several ceasefires, PIJ has viewed themselves as the only true resistance movement; "PIJ will continue on [its] own path, even if Hamas rejects its militant principles." See above note 20; 'PIJ and the New Political Landscape', Jane's Intelligence Review.

The Middle East Encyclopedia describes the relationship between PIJ and Hamas as “cooperative-antagonistic-competitive.” See: ‘Palestinian Islamic Jihad’, Encyclopedia of the Middle East, Mideast web, www.mideastweb.org/Middle-East-Encyclopedia/palestinian_islamic_jihad.htm, last accessed 10 June 2010.

³⁹ See above note 1 (iii); ‘Palestinian Islamic Jihad’, Jane’s World Insurgency and Terrorism.

⁴⁰ See above note 36; ‘Palestinian Factions United by War’, Al Jazeera.

⁴¹ The Popular Resistance Committees (PRC) is a coalition of Palestinian resistance movements. Its military wing, the An-Nasser Salah ad-Din Brigades, is made up of predominantly ex-Al Aqsa Martyrs Brigades fighters, with some ex-Popular Front for the Liberation of Palestine-General Command, Izz al-Din al Qassam Brigades and al-Quds Brigades fighters. See: ‘Popular Resistance Committees’, Encyclopedia of the Middle East, Mideast web, www.mideastweb.org/Middle-East-Encyclopedia/popular_resistance_committees.htm

⁴² ‘Shallah to Al-Hayat: Withdrawing the Arab initiative is the minimum reply by the summit to the Israeli aggression’, Interview with Ibrahim Hamaydi, Al-Hayat, date not given, BBC Monitoring Middle East, 25 March 2010.

⁴³ See:

- i. ‘Gaza Militant: Stopping Rocket fire into Israel’, Avi Issacharoff, Haaretz, 12 April 2010;
- ii. ‘Islamic Jihad: Hamas has secret ceasefire agreement with Israel’, Ma’an news, 12 April 2010, in ‘Palestinian Islamic Jihad says Members Arrested in ‘Secret’ Hamas-Israel Deal’, BBC Monitoring Middle East, 13 April 2010;
- iii. above note 21; ‘PIJ and the New Political Landscape’, Jane’s Intelligence Review; and
- iv. ‘Turning a Blind Eye: Impunity for Laws of War Violations During the Gaza War’, Human Rights Watch, www.reliefweb.int/, 11 April 2010, p.16, referencing ‘Hamas threatens rocket militants’, BBC News, www.bbc.co.uk, 12 March 2009.

⁴⁴ See above note 1 (iii); ‘Palestinian Islamic Jihad’, Jane’s World Insurgency and Terrorism.

⁴⁵ See above note 1 (iii); ‘Palestinian Islamic Jihad’, Jane’s World Insurgency and Terrorism.

⁴⁶ See above note 1 (iii); ‘Palestinian Islamic Jihad’, Jane’s World Insurgency and Terrorism.

⁴⁷ See:

- i. above note 26 (i); ‘Palestinian Islamic Jihad’, Council on Foreign Relations;
- ii. ‘Victims of Palestinian Violence and Terrorism since 2000’, Israeli Ministry of Foreign Affairs, <http://www.mfa.gov.il>, June 2008, last accessed 9 June 2010; and
- iii. above note 1 (iii); ‘Palestinian Islamic Jihad’, Jane’s World Insurgency and Terrorism.

⁴⁸ See:

above note 26 (i); ‘Palestinian Islamic Jihad’, Council on Foreign Relations;
above note 47 (ii); ‘Victims of Palestinian Violence and Terrorism since 2000’, Israeli Ministry of Foreign Affairs; and

above note 1 (iii); ‘Palestinian Islamic Jihad’, Jane’s World Insurgency and Terrorism.

⁴⁹ See website of the al-Quds Brigades: www.saraya.ps.

⁵⁰ See:

- i. ‘Islamic Jihad Leader Discusses Gaza, Rejects Linking Aid to Palestinian Unity’, interview with Muhammad al-Hindi by Hazim al-Amin and Fathi Sabbah, Al Hayat online, 27 January 2009, BBC Monitoring Middle East, 28 January 2009;
- ii. ‘Weapon of Terror: Development and Impact of the Qassam Rocket’, Margaret Weiss, Policy Watch #1352, The Washington Institute for Near East Policy, <http://www.washingtoninstitute.org/templateC05.php?CID=2728>, 11 March 2008, last accessed 29 May 2010; and
- iv. ‘Graveyard Shift for Islamic Jihad: A Visit to a Gaza Rocket Factory’, Ulrike Putz, Spiegel Online, <http://www.spiegel.de/international/world/0,1518,531578,00.html>, 29 January 2008, last accessed 29 May 2010.

⁵¹ See above note 50,

- i. (ii); ‘Weapon of Terror: Development and Impact of the Qassam Rocket’, The Washington Institute for Near East Policy; and
- ii. (iv); ‘Graveyard Shift for Islamic Jihad: A Visit to a Gaza Rocket Factory’, Spiegel Online.

⁵² See above note 50 (iv); 'Graveyard Shift for Islamic Jihad: A Visit to a Gaza Rocket Factory', Spiegel Online.

⁵³ Katyusha is a family of rockets developed by the Soviet Union during the second world war, while the Grad was first developed for the Soviet BM-21 rocket launcher during the 1960s. At least some of these rockets are believed to be manufactured in Iran.

See above note 50 (ii); 'Weapon of Terror: Development and Impact of the Qassam Rocket', The Washington Institute for Near East Policy.

⁵⁴ See:

- i. ' Hamas rockets', Global Security, undated, para 1, available at: <http://www.globalsecurity.org/military/world/para/hamas-qassam.htm>;
- ii. 'Israel/OPT: Fuelling Conflict: Foreign Arms Supplies to Israel/Gaza', Amnesty International, <http://www.amnesty.org>, 2009; and
- iii. above note 50 (ii); 'Weapon of Terror: Development and Impact of the Qassam Rocket', The Washington Institute for Near East Policy.

⁵⁵ See above note 1 (iii); 'Palestinian Islamic Jihad', Jane's World Insurgency and Terrorism.

⁵⁶ See above note 43,

- i. (i); 'Gaza Militant: Stopping Rocket fire into Israel', Avi Issacharoff, Haaretz, 12 April 2010; and
- ii. (ii); 'Islamic Jihad: Hamas has secret ceasefire agreement with Israel', Ma'an news.

⁵⁷ See above note 42; 'Shallah to Al-Hayat: Withdrawing the Arab Initiative in the minimum reply by the Summit to the Israeli aggression', Al-Hayat.

⁵⁸ See:

- i. above note 1 (iii); 'Palestinian Islamic Jihad', Jane's World Insurgency and Terrorism; and
- ii. 'Islamic Jihad: Fighters Clash with Israeli Force in Southern Strip', Ma'an News Agency, 'Palestinian Islamic Jihad Militants Clash with Israeli Force in Gaza Strip', BBC Monitoring Middle East, 14 May 2009.

⁵⁹ See website of the al-Quds Brigades: www.saraya.ps.

PIJ has limited the use of rockets, however, both as a response to pressure from Hamas, but also because of "the need of the resistance to rebuild its strength and to learn from the experience of the past Gaza war."

See above note 42; 'Shallah to Al-Hayat: Withdrawing the Arab initiative is the minimum reply by the summit to the Israeli aggression', Al-Hayat.

⁶⁰ See:

- i. 'Israel Vows 'Powerful Response' to Gaza Attacks', Reuters, <http://www.reuters.co/article/idUSTRE6091H620100110>, 10 January 2010, last accessed 17 June 2010; and
- ii. 'Israel Air Strike Kills Gaza Militants', BBC News, www.bbc.co.uk, 10 January 2010, last accessed 17 June 2010.

⁶¹ See above note 60 (ii); 'Israel Air Strike Kills Gaza Militants', BBC News.

⁶² 'Three Terrorists Killed in Gaza Airstrike', Associated Press and Jerusalem Post, <http://www.jpost.com/MiddleEast/Article.aspx?id=177148>, 1 June 2010, last accessed 17 June 2010.

⁶³ See:

- i. '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, last accessed 28 May 2010; and
- ii. 'Goldstone Report', A/HRC/12/48, available at: http://www2.ohchr.org/english/bodies/hrcouncil/specialsession/9/docs/UNFFMGC_Report.pdf, last accessed 28 May 2010.

⁶⁴ See:

- i. above note 63 (ii); 'Goldstone Report', p.457, referencing The Jerusalem Post, 24 June 2008;
- ii. 'Ending the War in Gaza', Middle East Policy Briefing No26, 5 January 2009, International Crisis Group; and

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- iii. 'Human Rights Situation in Palestine and Other Occupied Arab Territories', UNGA report A/HRC/8/17, 6 June 2008.
- ⁶⁵ See:
- i. 'PIJ claims firing 216 rockets, mortars throughout March, looses 18 activists,' Palestine Information Centre, www.palestine-info.info, 3 April 2008, last accessed 28 May 2010;
 - ii. 'Militants fire five more rockets at Sderot, PIJ claims firing 27 rockets 13 March', Ma'an News, 13 March 2008, BBC Monitoring Middle East; and
 - iii. above note 25 (iii); 'Terrorist Organisations', Country Reports on Terrorism 2008, US State Department.
- ⁶⁶ See:
- i. above note 63 (ii); 'Goldstone Report', p.350 and p.457;
 - ii. above note 64 (ii); 'Ending the War in Gaza', International Crisis Group;
 - iii. above note 64 (iii); 'Human Rights Situation in Palestine and Other Occupied Arab Territories', UNGA report.
- ⁶⁷
- i. See above note 36; 'Palestinian Factions United by War', Al Jazeera;
 - ii. According to statistics on its website, the al-Quds Brigades claimed responsibility for firing 235 mortars and rockets during military operations, 'Goldstone Report', p.454.
- ⁶⁸ See:
- i. 'Israel/Gaza: Operation 'Cast Lead' – 22 days of death and destruction', report by Amnesty International, www.amnesty.org, 2 July 2009, last accessed 28 May 2010 (Quotes Israeli figures of 571 rockets and 205 mortars fired during the war);
 - ii. In their report 'Rockets from Gaza', Human Rights Watch claimed that PIJ, along with Hamas and other Palestinian groups, were responsible for firing as many as 820 rockets from 27 December 2008 to 18 January 2009. See 'Rockets from Gaza: Harm to Civilians from Palestinian Armed Groups' Rocket Attacks', Human Rights Watch, www.hrw.org/en/report/2009/08/06/rockets-gaza-0, 6 August 2009, p.10, last accessed 28 May 2010;
 - iii. See also 'Rocket Fire from Gaza was a War Crime, says HRW', Doug Richardson, Jane's Missiles and Rockets, <http://client.janes.com>, 3 September 2009, last accessed 3 June 2010; and
 - iv. www.johnstonsarchive.net/terrorism, last accessed 28 May 2010 - 572 rockets and 204 mortar attacks were carried out against Israel during the period 27 December 2008 – 18 January 2009, causing 4 deaths (including 1 police officer), over 160 injuries and nearly 600 cases of 'shock and anxiety'.
- ⁶⁹ See:
- i. '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, last accessed 28 May 2010;
 - ii. above note 54 (ii); 'Israel/OPT: Fuelling Conflict: Foreign Arms Supplies to Israel/Gaza', Amnesty International; and
 - iii. above note 63 (ii); 'Goldstone Report', A/HRC/12/48, p.347.
- ⁷⁰ See above note 69 (i); 'Turning a Blind Eye: Impunity for Laws of War Violations during the Gaza War', Human Rights Watch, p.9.
- ⁷¹ See above note 68,
- i. (ii); 'Rockets from Gaza: Harm to Civilians from Palestinian Armed Groups' Rocket Attacks', Human Rights Watch; and
 - ii. (iii); 'Rocket fire from Gaza was war crime, says HRW', Jane's Missiles and Rockets.
- ⁷² See:
- i. above note 69 (i); 'Turning a Blind Eye: Impunity for Laws of War Violations During the Gaza War', Human Rights Watch, p.9; and
 - ii. above note 68 (ii); 'Rockets from Gaza: Harm to Civilians from Palestinian Armed Groups' Rocket Attacks', Human Rights Watch, p.2.
- ⁷³ See above note 63 (ii); 'Goldstone Report', pp.461-462.
- ⁷⁴ See above note 63 (ii); 'Goldstone Report', pp.357-359.

⁷⁵ See:

- i. 'Iron Dome may be ready, but Gaza front is still in danger', Haaretz, <http://www.haaretz.com>, 7 January 2010, last accessed 9 June 2010; and
- ii. "US to fund installation of Israeli rocket defence system", BBC News, <http://www.bbc.co.uk>, 14 May 2010.

⁷⁶ See:

- i. 'Two Israeli Guards Killed at Plant Near West Bank Line', Washington Post, <http://www.washingtonpost.com/wp-dyn/content/article/2008/04/25/AR2008042500477.html>, 26 April 2008, last accessed 31 May 2010.
- ii. 'Country Reports: Middle East and North Africa Overview', Country Reports on Terrorism 2008, Office of the Coordinator for Counter-Terrorism, US State Department, <http://www.state.gov/s/ct/rls/crt/2008/index.htm>, 30 April 2009, last accessed 28 May 2010;
- iii. above note 47 (ii); 'Victims of Palestinian Violence and Terrorism since 2000', Israeli Ministry of Foreign Affairs; and
- iv. above note 64 (iii); 'Human Rights Situation in Palestine and Other Occupied Arab Territories', UNGA report.

⁷⁷ See:

- i. above note 64(iii); 'Human Rights Situation in Palestine and Other Occupied Arab Territories', UNGA report;
- ii. ' Hamas offers Truce in Gaza Strip', BBC News, <http://www.bbc.co.uk>, 25 April 2008, last accessed 31 May 2010;
- iii. above note 76 (ii); 'Country Reports: Middle East and North Africa Overview', Country Reports on Terrorism 2008, US State Department;
- iv. above note 47 (ii); 'Victims of Palestinian Violence and Terrorism since 2000', Israeli Ministry of Foreign Affairs; and
- v. above note 76 (i); 'Two Israeli Guards killed at plant near West Bank line', The Washington Post.

⁷⁸ See:

above note 76 (i); 'Two Israeli guards killed at plant near west bank line', The Washington Post; ' Hamas offers truce in Gaza Strip', The Guardian, <http://www.guardian.co.uk/world/2008/apr/25/israelandthepalestinians>, 25 April 2008, last accessed 31 May 2010;

- i. above note 77 (ii); ' Hamas offers Truce in Gaza Strip', BBC News;
- ii. above note 76 (ii); 'Country Reports: Middle East and North Africa Overview', Country Reports on Terrorism 2008, US State Department; and
- iii. "Two Israelis killed by Palestinian Terrorists near Tulkarm", Israeli Ministry of Foreign Affairs, <http://www.mfa.gov.il>, 25 April 2008, last accessed 31 May 2010.

⁷⁹ "Israel rejects Gaza ceasefire", The Guardian,

<http://www.guardian.co.uk/world/2008/apr/25/israelandthepalestinians>, 25 April 2008.

⁸⁰ See above note 63 (ii); 'Goldstone Report', paras 276 to 279.

⁸¹ 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.

⁸² See above note 63 (ii); 'Goldstone Report', paras 85 to 92.

⁸³ 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.)

⁸⁴ A person is *bors de combat* if he or she is wounded, sick or shipwrecked or captured by the opposing force.

⁸⁵ 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 (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.

¹ The statement of case, dated [11 October 2010] can be accessed at: <https://www.police.govt.nz/advice/personal-community/counterterrorism/designated-entities/lists-associated-with-resolution-1373>

² The statement of case, dated [2 October 2013 and 26 September 2016] can be accessed at: <https://www.police.govt.nz/advice/personal-community/counterterrorism/designated-entities/lists-associated-with-resolution-1373>

³ ¹⁰ (06/02/2018) “مصادر صحفية: كتاب القسام تتبنى عملية ‘حفات جلعاد’ التي نفذت قبل شهر بنابلس”, Palestine News Network, accessed via <http://pnn.ps/news/301242> on 22/07/2019

i. (10/01/2018), *Terror victim Raziel Shevach remembered as unique, kindhearted man*, The Times of Israel, accessed via <https://www.timesofisrael.com/terror-victim-raziel-shevach-remembered-as-unique-kindhearted-man/> on 22/07/2019

⁴ (6/02/2018) *Hamas praises suspected mastermind behind killing of Havat Gilad Rabbi*, The Jerusalem Post, accessed via <https://www.jpost.com/Arab-Israeli-Conflict/Hamas-praises-suspected-killer-of-Havat-Gilad-Rabbi-540823> on 25/07/2017

⁵ (29/05/2018) *Gaza militants launch barrages across border, Israel hits back with air strikes*, Reuters, accessed via <https://www.reuters.com/article/us-israel-palestinians-sirens/gaza-militants-launch-barrages-across-border-israel-hits-back-with-air-strikes-idUSKCN1IU0BX> on 22/05/2019

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STATEMENT OF CASE TO RENEW THE DESIGNATION OF PALESTINIAN ISLAMIC JIHAD (PIJ) AS A TERRORIST ENTITY

PURPOSE

1. The purpose of this paper is to set out the case demonstrating Palestinian Islamic Jihad (PIJ),¹ 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 the group 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 PIJ's continued involvement in terrorist activity and covers any relevant changes and/or developments to the organisation since its original designation in October 2010² and renewal in October 2013.³ Updates include PIJ's 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 PIJ 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: Jane's World Insurgency and Terrorism series, Reuters, Rand Corporation, The Washington Institute, Open Source Centre, BBC News and Al-Monitor. Local news sources referenced include The Jerusalem Post, Times of Israel and Israel Ministry of Foreign Affairs.

EVIDENCE TO SUPPORT DESIGNATION RENEWAL UNDER THE TSA

Continued involvement in terrorist activity

9. PIJ was designated as a terrorist entity on 11 October 2010. The designation was renewed on 2 October 2013.
10. On 22 December 2013, a bomb was discovered in an unattended bag on a public bus in Bat Yam, Israel. All passengers were able to disembark shortly before the bomb detonated. The bus suffered broken windows and severe interior damage from the blast. The bomb consisted of two kilograms of explosives and nails and screws stuffed into a pressure cooker. The bomb was activated by mobile phone.⁴ During an interview with Al Aqsa TV, PIJ operative Ahmed Almadalel praised the attempted attack but stopped short of claiming responsibility.⁵ Four PIJ operatives were later arrested in relation to the attempted attack. Documents filed in court reported that one operative had admitted another large scale attack had been planned in the Tel-Aviv-Jaffa area for the days after the first attempt.⁶
11. On 12 March 2014, PIJ fired over 50 rockets towards towns in Israel's Southern District. Most fell in open areas, although one landed in the centre of the town of Sderot.⁷ The rockets caused minimal damage and no casualties. PIJ claimed responsibility, stating the attack was in response to earlier "Zionist aggression".⁸
12. On 12 July 2014, PIJ's armed wing, the Al-Quds Brigades, launched two rockets targeting an Israeli military base in the Negev desert in Israel's Southern District. The attack caused no casualties. The attack was part of a wider rocket assault involving Palestinian militant groups responding to the 8 July launch of Israeli military offensive Operation Protective Edge. Operation Protective Edge targeted Hamas, PIJ and other militant groups responsible for an increasing volume of rocket attacks from the Gaza Strip. PIJ fired numerous rockets over the following weeks and launched attacks targeting Israeli soldiers during a ground offensive.⁹ PIJ claimed to have fired more than 3,250 rockets and mortar shells throughout the 50-day operation, targeting the Israeli cities of Netanya, Tel Aviv, Dimona and Jerusalem.¹⁰ A total of 73 people were killed on the Israeli side during the operation, including six civilians.¹¹
13. On 10 November 2014, an individual stepped out of a car and stabbed three people at the entrance to the Alon Shvut settlement in the Gush Etzion area of the West Bank. One victim was stabbed to death before a guard stationed at the settlement entrance shot and wounded the attacker. PIJ later claimed responsibility for the attack.¹² In March 2015 the attacker, a PIJ member from Hebron who had previously been imprisoned for throwing fire bombs at an Israeli Defence Force patrol, was sentenced by a military court to two life imprisonment sentences.¹³

Ideology and Objectives of PIJ

14. PIJ continues to violently oppose the existence of Israel and aims to replace it with a sovereign Islamic state. PIJ has always operated alongside other Palestinian militant groups. In a public announcement in 2014, PIJ described Hamas as a "brother" in the decades-old conflict against Israel¹⁴ and thanked Hizbollah for their financial, military and moral support.¹⁵

15. PIJ has launched a small number of political initiatives, including pushing toward a reconciliation process between Fatah and Hamas in December 2014. PIJ spokesperson Khaled al-Batsh, stated this initiative was in collaboration with national and Islamic forces because the ongoing crisis between Fatah and Hamas was having social and economic repercussions on the Gaza Strip. Al-Batsh noted it was not PIJ's job to find a solution to the internal crisis, but PIJ was required as a mediator given PIJ's balanced relations with all parties.¹⁶

Organisation and structure of PIJ

16. PIJ is reported to be the second strongest armed movement in Gaza after Hamas, with approximately 2000-3000 fighters.¹⁷ The majority of PIJ's members are recruited from Palestinian communities in Gaza and the West Bank.¹⁸
17. Ramadan Abdallah Shallah has been PIJ's Secretary-General since 1995. Organisational leadership, known as the General Bureau, consists of eight individuals.¹⁹

Weapons, tactics and capability of PIJ

18. In July 2014, Israeli Prime Minister Benjamin Netanyahu stated Iran was financing, arming and training PIJ and Hamas.²⁰ During a meeting with Shallah in Iran in October 2014, Iranian Foreign Minister Mohammad Javad Zarif expressed Iran's full support for Palestinian resistance and congratulated Shallah for the "victory" in the Gaza War (referring to attacks on Israeli elements during Operation Protective Edge).²¹
19. In May 2015, PIJ was reportedly on the verge of bankruptcy after losing favour with Iran when PIJ refused to comment in support of Iran on the war in Yemen. Iran reportedly began diverting funds to a group that split from PIJ named Al-Sarabin (also known as As-Sabirin), headed by former PIJ operative Hisham Salem.²² PIJ funding from Iran was suspended for several months. Al-Sarabin has successfully attracted disgruntled cadres from PIJ, largely due to arrears over member salaries.²³ In May 2016, however, Shallah led a PIJ delegation that met with Iranian Supreme Leader Ayatollah Ali Khamenei in Tehran where Shallah thanked him for Iran's "firm support" for Palestine.²⁴
20. PIJ increased the intensity of its rocket and mortar fire from Gaza for the duration of Operation Protective Edge in July/August 2014. Although PIJ suffered losses during this conflict, it still retains the capability to attack Israel, primarily through indiscriminate rocket fire. PIJ also seeks to renew its asymmetric warfare capabilities, and has been linked to rudimentary attacks using basic weapons against Israeli targets.²⁵
21. Following a six month ceasefire, by February 2015 PIJ had reportedly rearmed and replenished their ranks in anticipation of a future confrontation with Israel. The al-Quds Brigades possess mortars, stored underground in mortar pits near the Israeli border and linked to escape tunnels used in previous conflicts.²⁶ Militants from al-Quds Brigades were identified undertaking military training in the south of the Gaza Strip on 3 March 2015.²⁷ Al-Quds Brigades also maintain a website (www.saraya.ps) and create videos for propaganda purposes.²⁸
22. On 11 March 2016, Israeli security forces closed Falastin Al-Yom (also known as Filastin al-Yawm), a PIJ-affiliated television broadcast station in Ramallah. According to Israeli security agency Shin Bet, the channel and its social media outlets had called for the carrying out of terror attacks against Israel and its citizens. The channel's manager, PIJ operative Faruq Aliat, was arrested.²⁹

Law of armed conflict (LOAC)

23. It is possible attacks under taken by PIJ during Operation Protective Edge in July and August 2014 occurred in a situation of armed conflict. However, PIJ activities during this time did not comply with the LOAC principle of distinction as they attacked Israeli towns and cities using indiscriminate rocket fire. Outside of this Operation, PIJ attacks have been sporadic and do not amount to an armed conflict. Accordingly, the exemption in section 5(4) of the TSA does not apply and PIJ 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 PIJ to be designated under that section.
25. Since its designation in October 2010 and renewal in October 2013, PIJ has continued to carry out activities which meet the definition of terrorist acts in ss 5 and 25 of the TSA (paragraphs 10-13). Accordingly, given there are still reasonable grounds to believe PIJ has knowingly carried out terrorist acts as set out in s 22 of the TSA, PIJ meets the legal criteria for renewal of its designation as a terrorist entity under s 35.
26. The designation must be renewed by 2 October 2016 to be effective.

¹ also known as Palestinian Islamic Jihad - Shafaqi Faction; Palestinian Islamic Jihad - Shallah Faction; Islamic Jihad; Islamic Jihad (in/of) Palestine; Islamic Jihad - Palestine Faction and Islamic Holy War; Harakat al-Jihad al Islami fi Filistin; Jihad al-Islami; Abu Ghunaym Squad of the Hizballah Bayt al-Maqdis; al-Quds Brigades; al-Quds Squads; Saraya al-Quds (Jerusalem Battalions/The Jerusalem Brigades); Saraya al-Mujhadeen; Al-Awdah Brigades, and; Islamic Jihad Palestine (IJP).

² (11/10/2010) "Statement of case to designate Palestinian Islamic Jihad (PIJ) as a terrorist entity", available at: <http://www.police.govt.nz/sites/default/files/publications/statement-of-case-palestinian-islamic-jihad-terrorist-entity-11-oct-2010.pdf>.

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¹² (10/11/2014) "Woman stabbed to death in West Bank, Islamic Jihad claims responsibility", The Jerusalem Post, accessed via <http://www.jpost.com/Arab-Israeli-Conflict/At-least-one-seriously-hurt-in-stabbing-attack-in-West-Bank-terrorist-killed-381351> on 01/03/2016.

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¹⁴ (12/11/2013) "Single-minded Islamic Jihad grows in Gaza's shadows", Reuters, accessed via <http://www.reuters.com/article/us-palestinians-islamicjihad-idUSBRE9AB08720131112> on 03/03/2016.

¹⁵ (13/07/2014) "Sunni Palestinian Islamic Jihad thanks Iran and Hezbollah (English Subtitles)", Monitor Mideast, accessed via <https://www.youtube.com/watch?v=xKHp1TvfAIQ> on 03/03/2016.

¹⁶ (28/02/2016) "How to become a politician in Gaza", Al-Monitor, accessed via <http://www.al-monitor.com/pulse/originals/2016/02/palestine-political-action-gaza-failure.html#> on 01/03/2016.

¹⁷ (26/05/2015) "Iran said to pull Islamic Jihad's funding over group's neutrality on Yemen", Times of Israel, accessed via <http://www.timesofisrael.com/iran-said-to-pull-islamic-jihads-funding-over-groups-neutrality-on-yemen/> on 01/03/2016, and;

(12/11/2013) "Single-minded Islamic Jihad grows in Gaza's shadows", Reuters, accessed via <http://www.reuters.com/article/us-palestinians-islamicjihad-idUSBRE9AB08720131112> on 03/03/2016.

¹⁸ (11/08/2015) "Palestinian Islamic Jihad", Australian Government, accessed via <https://www.nationalsecurity.gov.au/Listedterroristorganisations/Pages/PalestinianIslamicJihad.aspx> on 08/03/2016.

¹⁹ (12/08/2014) "Palestinian Islamic Jihad (PIJ)", Jane's World Insurgency and Terrorism - available on subscription. Accessed 24/02/2016.

²⁰ (28/07/2014) "Gaza and the Nuclear Negotiations", Rand Corporation, accessed via <http://www.rand.org/blog/2014/07/gaza-and-the-nuclear-negotiations.html> on 03/03/2016.

²¹ (20/10/2014) "Iran FM meets Palestinian Jihad leader, voices support for Palestinian 'resistance'", The Jerusalem Post, accessed via <http://www.jpost.com/Arab-Israeli-Conflict/Iran-FM-meets-Palestinian-Jihad-leader-voices-support-for-Palestinian-resistance-379325> on 22/03/2016.

²² (26/05/2015) "Iran said to pull Islamic Jihad's funding over group's neutrality on Yemen", Times of Israel, accessed via <http://www.timesofisrael.com/iran-said-to-pull-islamic-jihads-funding-over-groups-neutrality-on-yemen/> on 01/03/2016.

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- ²⁸ (03/03/2016) “*Al-Quds Brigades*”, Al-Quds Brigades, the military wing of Islamic Jihad in Palestine, accessed via <http://saraya.ps/> on 03/03/2016.
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STATEMENT OF CASE TO RENEW THE DESIGNATION OF PALESTINIAN ISLAMIC JIHAD (PIJ) AS A TERRORIST ENTITY

PURPOSE

1. This paper sets out the case demonstrating Palestinian Islamic Jihad (PIJ) (Also known as Islamic Jihad, Islamic Jihad (in/of) Palestine, Islamic Jihad – Palestine Faction and Islamic Holy War, Palestinian Islamic Jihad – Shaqaqi Faction, Palestinian Islamic Jihad – Shallah Faction, Harakat al-Jihad al Islami fi Filistin, Jihad al-Islami, Abu Ghunaym Squad of the Hizballah Bayt al-Maqdis, al-Quds Brigades, Saraya al-Quds (Jerusalem Battalions/The Jerusalem Brigades), Saraya al-Mujihadeen or Al-Awdah Brigades, al-Quds Squads, Islamic Jihad Palestine (IJP)) 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 PIJ'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 renewals in October 2013 and September 2016², including PIJ'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 PIJ 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 Reuters, The New York Times, and Associated Press.
8. Regional news sources include The Times of Israel.

9. Other sources utilised include the United States Department of State.

EVIDENCE TO SUPPORT DESIGNATION RENEWAL UNDER THE TSA

Continued involvement in terrorist activity

10. Since its designation was last renewed in September 2016, PIJ has claimed responsibility for mortar and rocket attacks against both civilian and military targets.
11. In September 2016 Israeli authorities arrested a PIJ operative entering Israel from Gaza.³ The operative was linked to a plot to murder an Israeli Defence Force soldier, and a second to ‘target’ an events hall in Southern Israel.
12. On 29 May 2018, PIJ (alongside Hamas) claimed responsibility for a barrage of rocket and mortar fire directed throughout the day at military installations and settlements in 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”.⁴
13. In October 2018, PIJ claimed responsibility for an overnight barrage of rocket fire directed towards southern Israel, with eight targeting the city of Sderot. At least 20 short-range rockets were fired over a ten hour period.⁵ No casualties were reported. PIJ claimed that the attack was retaliation for Israeli forces’ killing of four Palestinians near the Gaza-Israel boundary fence.⁶
14. In early May 2019, PIJ (alongside Hamas) launched a heavy barrage of rocket and mortar fire into Israel. The day before the attack a Gaza sniper had wounded two Israeli soldiers, following which two Palestinians were shot by Israeli forces and another two were killed in an Israeli airstrike. These events set off a two day assault, during which “about 600 projectiles” were fired at southern Israel. The cross-border fighting left 22 Palestinians (including militants, civilians and children) and four Israeli civilians dead.⁷

Ideology and objectives

15. PIJ continues to violently oppose the existence of the Israeli state. On 16 May 2019, a senior PIJ official called for the removal of the “strangers”, referring to Israel.⁸
16. PIJ continues to reject the Palestinian Liberation Organisation’s (PLO) authority to negotiate with Israel on behalf of all Palestinians. In April 2018, the PIJ (alongside Hamas) boycotted a PLO organised Palestinian national forum.⁹

Organisation and structure

17. PIJ’s leadership has continued to operate from Syria since 1989, when they relocated from Lebanon after Israel expelled them a year earlier. PIJ continues to operate primarily in the Gaza Strip but its members also live in Syria, Lebanon and elsewhere in the Middle East. It has a minimal presence in the West Bank and Israel.¹⁰
18. In September 2018, PIJ named its new leader, 65-year-old Ziad al-Nakhalah. Nakhalah was a founding member of PIJ and has been based in Syria and Lebanon since 1988.¹¹

Weapons, tactics and capability

19. PIJ has continued to primarily use rockets, mortars, bombings and snipers as its preferred attack vectors.
20. In 2018, the US Department of State assessed that PIJ had close to 1,000 members, and reported that Iran continued to provide weapons, training and funding to PIJ.¹²
21. Iran continues to be the primary source of funding for PIJ. In February 2019, PIJ spokesman Abu Hamza told Iran's Al-Alam TV that "since the day of its establishment, the [Iran] has been supporting the Palestinian fighters financially, militarily, in [training], and in all aspects."¹³
22. In 2018, the US Department of State assessed that as of early 2015, 200 PIJ recruits were undergoing training programmes that lasted between 36 days and 6 months.¹⁴

LAW OF ARMED CONFLICT (LOAC)

23. The situation continues to be one of sporadic violent activity by PIJ and has not reached a level of intensity and continuity on the part of PIJ 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, PIJ's actual or planned targeting of civilians and civilian infrastructure is in breach of the LOAC principle of distinction. Accordingly, the exemption in s 5(4) cannot apply, and PIJ 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 PIJ to be designated under that section.
25. Since its designation in October 2010, and renewals in October 2013 and September 2016, PIJ has continued to carry out activities which meet the definition of terrorist acts in ss 5 and 25 of the TSA (paragraphs 11-14) including planning, threatening and attempting attacks. Accordingly, given there are still reasonable grounds to believe PIJ has knowingly carried out terrorist acts as set out in s 22 of the TSA, PIJ 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.

¹ The statement of case, dated [11 October 2010] can be accessed at: <https://www.police.govt.nz/advice/personal-community/counterterrorism/designated-entities/lists-associated-with-resolution-1373>

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