

# **STATEMENT OF CASE TO DESIGNATE AL-AQSA MARTYRS' BRIGADES, AS A TERRORIST ENTITY**

## **PURPOSE**

1. The purpose of this paper is to set out the case demonstrating that Al-Aqsa Martyrs' Brigades ("AAMB"), 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 AAMB meets the criteria for designation as a terrorist entity under the TSA.

## **STRUCTURE OF THIS PAPER**

3. This paper sets out background information about AAMB covering various aspects of the group's history, objectives, structure, tactics, weapons and involvement in terrorism, 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 AAMB, which helps inform the analysis of the case studies. The events detailed in the three case studies represent actual attacks attributed to, and claimed by, AAMB. It is these three events 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 AAMB 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;
  - 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 include: the Jane's series (World Insurgency & Terrorism, Terrorism & Security Monitor and Intelligence Review); Council on Foreign Relations; the Jamestown Foundation; The Centre for Strategic and International Studies; The New York Times; the BBC; The Washington Post; The Guardian; Reuters. This paper also utilises public information from the US Department of State and the Israeli Foreign Ministry, as well as a range of international organisations and think tanks, and international and regional media sources including the Jerusalem Post and Haaretz.

## BACKGROUND

### Establishment and History of the AAMB

8. The AAMB was established as a network of Palestinian militias during the second Palestinian uprising (*intifada*) in late 2000.<sup>1</sup> The group's name refers to the Al-Aqsa Mosque in Jerusalem (after which the Second or "Al-Aqsa" Intifada also takes its name), located atop the contested holy site known to Muslims as the Noble Sanctuary (Haram Al-Sahrif) and to Jews as the Temple Mount.<sup>2</sup>
9. The AAMB was established as a loose network of associated cells drawing recruits primarily from the Fatah party (the largest faction of the Palestinian Liberation Organisation which was led by Yasser Arafat until his death in 2004). As such, initial links between Fatah and the AAMB appeared strong, leading some to conclude that it was Fatah's armed wing. A BBC investigation in 2003 found that US\$50,000 a month was being sent to the AAMB by an associate of Arafat in the Palestinian Authority.<sup>3</sup>
10. But in recent years, especially since the death of Arafat, the links between Fatah and AAMB have waned, although the majority of its members adhere to Fatah political objectives.<sup>4</sup> The current nature of the relationship between the AAMB and Fatah (to which the current Palestinian President Mahmoud Abbas belongs) remains unclear, in part due to the decentralised nature of the AAMB. In recent years the AAMB appears to have moved away from its traditional relationship with Fatah towards other sponsors, including the Lebanese group Hizbollah. Recent media reports indicate that Hizbollah has filled the void in terms of providing material support to AAMB.<sup>5</sup>
11. AAMB was initially focussed on small arms attacks against Israeli military personnel and settlers in the West Bank. In 2002, however, the group began to take part in suicide bombing against Israeli civilians, either by itself, or in collaboration with other groups, for example the Palestinian Islamic Jihad. Between 2002 and 2008 the AAMB claimed responsibility for some of the most significant attacks against Israel including: a pair of January 2003 suicide bombings in Tel Aviv which killed 23 people and injured over 100, a January 2004 attack on a bus in Jerusalem that killed 11 people, and a March 2002 suicide attack at a Jerusalem café that killed 11 and wounded more than 50.<sup>6</sup>
12. Since 2008 AAMB has primarily carried out shootings in the West Bank and rocket and mortar attacks into southern Israel from Gaza.<sup>7</sup>

*Designation of AAMB by partners*

13. The AAMB was designated as a terrorist entity by the United States in March 2002, by the European Union in June 2002, and by Canada in April 2003 (renewed in November 2008).

### **Ideology and objectives**

14. The AAMB is a secular nationalist Palestinian group. While linked to the Fatah party, AAMB represents the violent fringe which rejects negotiations with Israel and seeks the establishment of a Palestinian state through violent means. The AAMB rejects making concessions to Israel, and seeks an unconditional Israeli withdrawal from the West Bank (and Gaza) to pre-1967 borders, and the right of return for Palestinian refugees to their former homes in Israel.<sup>8</sup> The AAMB believes that the use of violence is a legitimate tactic for achieving this objective and in numerous public statements has declared that it believes that “liberation cannot be realised except through armed resistance.”<sup>9</sup> The AAMB has also issued statements declaring that “resistance and martyrdom operations... [are their] only option.”<sup>10</sup>
15. While the AAMB is a secular group with a Palestinian nationalist agenda, and does not seek the creation of an Islamic state in the same manner as Hamas, some members do, however, share the ideological view of more extreme Islamists, and oppose the existence of Israel.<sup>11</sup> The AAMB also views those who are involved in suicide attacks as being “martyrs”, and works in collaboration with other violent Islamist groups, namely Hizbollah, Hamas’ Izz al-Din al-Qassam Brigades and Palestinian Islamic Jihad.<sup>12</sup>
16. AAMB has a clearly articulated intent to force Israel to withdraw from the West Bank and Gaza through violent attacks against Israelis and Israeli interests. This is reflected in the following comment from an AAMB spokesperson: “We exist to fight the occupation. When the occupation ends we will dissolve.”<sup>13</sup>

### **Organisation and structure**

17. The AAMB consists of a number of small loosely-affiliated cells in the West Bank and Gaza Strip split amongst the various cities and towns, which, to a large extent, act autonomously.<sup>14</sup> These cells often adopt the names of Palestinian fighters (often those killed in action against Israel) when forming cells to undertake attacks. For example, a group calling itself the “Al-Aqsa Martyrs Brigade – Imad Mugniyeh Group” (taking its name from the high-profile senior member of Hizbollah who was killed in early 2008), has claimed responsibility for numerous attacks in the West Bank in the past two years.<sup>15</sup>
18. Although AAMB members adhere to Fatah’s political agenda and are usually members of its party, the degree of control that Fatah exerts over the organisation is not clear.<sup>16</sup> There is no clearly defined hierarchy within AAMB. In part, this decentralised structure represents a deliberate decision to make it harder for Israel to disrupt the groups’ activities.<sup>17</sup>
19. Due to the autonomous nature of the AAMB cells, AAMB members often take part in joint attacks with other Palestinian rejectionist groups, including the Izz al-Din al-Qassam Brigades of Hamas and the Palestinian Islamic Jihad, leading to multiple groups claiming responsibility for the same attack.

### **Weapons and Tactics**

20. AAMB has access to, and has used, a wide range of weaponry in its attacks, including small arms and assault rifles, explosives (used both in suicide attacks and in the construction of crude roadside bombs) and home-made rockets.<sup>18</sup>
21. AAMB initially engaged primarily in shootings against Israeli soldiers and settlers in the West Bank, but in 2002 (following the targeted killing of one of its leaders by Israel) changed its focus to carrying out suicide attacks against Israeli civilians, including within Israel.<sup>19</sup> Since late 2007, the AAMB has primarily reverted to shooting attacks against Israeli targets in the West Bank, and launching rockets from the Gaza Strip into Israel.<sup>20</sup>
22. Attacks claimed by AAMB have often been in retaliation for Israeli actions. The Imad Mughniyeh Group of the AAMB, for example, claimed responsibility for an attack against Israeli settlers in June 2010, stating that it was a response to an attack on a Palestinian teenager near Ramallah, allegedly by Israeli settlers.<sup>21</sup> The settlers received only minor injuries in the attack.<sup>22</sup> The same group also claimed responsibility for shooting dead two Police officers, David Rabinowitz and Yehezkel Ramzarkar, in the West Bank in March 2009.<sup>23</sup>

## CASE STUDIES

### 1. The shooting of an Israeli civilian, West Bank, November 19 2007

#### *The facts*

23. On the evening of 19 November an Israeli civilian, Ido Zoldan, was shot in a small arms/assault rifle attack near the settlement of Kedumim in the northern West Bank. Zoldan was injured in the neck and chest, and later died of his wounds, after the car he was driving was shot at nine times.<sup>24</sup>
24. The attack was claimed by the AAMB as “an act of protest against the Annapolis Conference”, which was about to be held in the United States, and “a response to Israel’s crimes against the Palestinians”.<sup>25</sup> The attack was widely attributed to the AAMB, and not claimed by any other groups.<sup>26</sup>

#### *The act meets the TSA criteria for designation*

25. The shooting attack on the Israeli civilian in his car on 9 November 2007 is consistent with the definition of a terrorist act under s 5 of the TSA.
26. The nature of this targeted shooting attack and the kinds of weapons used by the attackers clearly shows an intention to cause the death of, or serious bodily injury to, the Israeli civilian in his car (s 5(3)(a) TSA).
27. The shooting is part of a strategy by AAMB, which was recently revived, of attacks on civilian Israeli targets in the West Bank (see paragraph 21 above). Such attacks, and the use of extreme violence in carrying them out, demonstrate an intention to induce terror in the civilian population (s 5(2)(a) TSA). Further, the AAMB expressed its political motivations for carrying out this attack, which included its opposition to a forthcoming Middle East Peace Conference. This attack is thus also an example of AAMB’s pursuit, through its preferred strategy of violence, of its objective to force Israel to withdraw from the West Bank and to bring about the establishment of a Palestinian state (s 5(2)(b) TSA). This shooting attack was therefore also carried out

with the purpose of advancing the AAMB's own ideological/political cause (s 5(2) TSA).

## **2. The shooting of an Israeli civilian, West Bank, 24 December 2009**

### *The facts*

28. On the evening of 24 December 2009, Meir Avshalom Chai, an Israeli civilian, was killed when AAMB militants opened fire on his car using small arms as he drove near his home in the West Bank settlement of Shavei Shomron.<sup>27</sup> One of the affiliated cells of AAMB, calling itself the Imad Mughniyeh Group of the AAMB, claimed responsibility for the attack.<sup>28</sup> In an email statement, the group warned of "a series of attacks to come."<sup>29</sup> The attack was widely attributed in the media to AAMB, and no other groups claimed responsibility.<sup>30</sup>
29. Three days after the shooting the Israeli military launched a raid on a Palestinian home in Nablus, killing three men. According to Palestinian sources two of the men were AAMB militants and, according to the Israeli military, a ballistic analysis of weapons found in the house showed that they had been used in the attack that killed Meir Chai.<sup>31</sup>

### *The act meets the TSA criteria for designation*

30. The shooting attack on the Israeli civilian in his car on 24 December 2009 is consistent with the definition of a terrorist act under s 5 of the TSA.
31. The nature of this targeted shooting attack and the kinds of weapons used by the attackers clearly shows an intention to cause the death of, or serious bodily injury to, the Israeli civilian in his car (s 5(3)(a) TSA).
32. The shooting is part of a strategy by AAMB, which was recently revived, of attacks on civilian Israeli targets in the West Bank (see paragraph 21 above). AAMB also warned of further attacks to come. Such attacks, coupled with the use of extreme violence in carrying them out and the threat of future attacks, demonstrate an intention to induce terror in the civilian population (s 5(2)(a) TSA). This attack is also an example of AAMB's pursuit, through violent means, of its objective to force Israel to withdraw from the West Bank and to bring about the establishment of a Palestinian state (s 5(2)(b) TSA). This shooting attack was therefore also carried out with the purpose of advancing the AAMB's own ideological/political cause (s 5(2) TSA).

## **3. The shooting of an Israeli Police Officer, Hebron, West Bank, 14 June 2010**

### *The facts*

33. At around 7.20am on 14 June 2010, one Israeli Police officer, Yehushua Sofer, was killed and two others were seriously wounded when the police vehicle they were travelling in came under attack from small arms fire. The attack happened on route 60 north of the city of Hebron, and around nine kilometres from the Dahariya checkpoint, which had been dismantled by Israeli authorities three weeks earlier. The officers were being transported from Beersheba to Jerusalem.<sup>32</sup> Investigators suggested the shooting was a planned ambush attack.<sup>33</sup>
34. The affiliated cell calling itself the "Al-Aqsa Martyrs' Brigades - Imad Mughniyeh Group" claimed responsibility for the attack stating it was in response to Israel's

deadly raid on the 'aid flotilla' bound for Gaza on 31 May. The attack was widely attributed in the media to AAMB, and no other groups claimed responsibility.<sup>34</sup>

*The act meets the TSA criteria for designation*

35. The shooting attack on the Israeli police officers is consistent with the definition of a terrorist act under s 5 of the TSA.
36. The nature of this targeted shooting attack and the kinds of weapons used by the attackers clearly shows an intention to cause the death of, or serious bodily injury to, the Israeli civilian police officers in their car (s 5(3)(a) TSA).
37. The shooting is part of a strategy by AAMB, which was recently revived, of attacks on civilian Israeli targets in the West Bank (see paragraph 21 above). Such attacks, and the use of extreme violence in carrying them out, demonstrate an intention to induce terror in the civilian population (s 5(2)(a) TSA). The attack is consistent with AAMB's custom of carrying out attacks in retaliation for Israeli actions (see paragraph 22 above). This attack is also an example of AAMB's pursuit, through violent means, of its objective to force Israel to withdraw from the West Bank and to bring about the establishment of a Palestinian state (s 5(2)(b) TSA). This shooting attack was therefore also carried out with the purpose of advancing the AAMB's own ideological/political cause (s 5(2) TSA).

## **LAW OF ARMED CONFLICT**

*Is there an armed conflict and are AAMB members combatants?*

38. For the s 5(4) exemption to apply, two conditions must be satisfied. First that at the time the attacks detailed in the case studies were carried out, a state of armed conflict existed in the areas in which the AAMB conducts its operations; and second, that the attacks carried out complied with the law of armed conflict ("LOAC"). If one of these conditions is not met, the exemption does not apply.
39. The first question that arises under this definition is whether there exists within Palestine/Israel a state of "armed conflict" for the purposes of international law.
40. Although the level of violence arising from the three most recent periods of Intifada (uprising) has generally been relatively sustained and often intense, many experts consider that it has not consistently held the characteristics needed to be an armed conflict for the purposes of international law. The activities of AAMB, however, have generally been at the lower level of organisational violence.
41. Israel has conceded that customary international law applicable to armed conflict, and certain parts of the Geneva Conventions of 1949, apply to the conflict. For the purposes of this analysis, it is accepted that some form of armed conflict has occurred in Israel / Palestine, although its characteristics do not fit in well with many of the basic criteria of the established treaty law.
42. In addition to open hostilities, however, LOAC also applies during a state of armed occupation, even if that occupation meets no armed resistance. The International Court of Justice decided in its advisory opinion on the legal consequences of the construction of a wall in the Occupied Palestinian Territory that the land seized by Israeli forces during the 6-Day War is occupied territory, and that Israel is therefore an occupying power for the purposes of the Hague Convention of 1907, the Fourth

Geneva Convention, and for the purposes of Customary International Law. Whether or not the situation in the occupied territories is, therefore, an armed conflict per se, LOAC applies to the actions of the occupying power and the activities of those who resist the occupation.

43. It should be noted that, although Additional Protocol I extends the definition of international armed conflict to include situations where peoples are fighting for self-determination against alien occupation and racist regimes, Israel is not a party to this Protocol. Israel is also not a party to Additional Protocol II which applies to non-international armed conflict. The Palestine Liberation Organisation, on behalf of the Palestinian people, has stated its intention to be bound by the Geneva Conventions of 1949 and the two Additional Protocols of 1977 but cannot be a party to any of these treaties due to its lack of State personality.
44. From the information available on open sources documentation it does not appear that AAMB complies with the definition of combatant. Although aspects of AAMB are organised along military lines, are disciplined, and its members are commonly depicted in the media wearing camouflaged fatigues and brandishing weapons they do not so distinguish themselves when launching their attacks. The question of compliance with LOAC in respect of AAMB means and methods of combat is dealt with further below. Occasional breaches of LOAC could not be used to disqualify an otherwise qualifying force, but there must at least be evidence of a chain of command that enforces respect for LOAC. There is no evidence that any such programme exists within AAMB.

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

45. Having failed to meet the threshold of a combatant in an armed conflict, it is not necessary to go further to examine whether the action of AAMB would have been in accordance with that law. However, for completeness, clearly all three attacks described in the case studies were directed against civilians and would have breached the principle of distinction – that attacks on enemy combatants and military objectives are lawful, whereas attacks on the civilian population or civilian objects are not.

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<sup>1</sup> Holly Fletcher, 2008. *Al-Aqsa Martyrs Brigade*, Backgrounder, Council on Foreign Relations, 2 April 2008

<sup>2</sup> Holly Fletcher, 2008. *Al-Aqsa Martyrs Brigade*, Backgrounder, Council on Foreign Relations, 2 April 2008

<sup>3</sup> 'Palestinian Authority funds go to militants' BBC News, 7 November 2003 <http://news.bbc.co.uk> last accessed 30 September 2010

<sup>4</sup> i. 'Al-Aqsa Martyrs Brigades', Transnational and Non-State Armed Groups – Legal and Policy Responses, <http://www.armed-groups.org> last accessed 28 September 2010.

ii. Holly Fletcher, 2008. *Al-Aqsa Martyrs Brigade*, Backgrounder, Council on Foreign Relations, 2 April 2008

<sup>5</sup> i. 'Hizballah supports wide network of cells of Al-Aqsa Brigades' in Al-Hayah, 22 July 2006.

ii. 'Hezbollah cell recruited members in the name of Al-Aqsa Martyrs Brigade', Asharq Al-Awsat (English Edition), 20 April 2009, <http://www.aawsat.com/english> last accessed 28 September 2010

<sup>6</sup> Holly Fletcher, 2008. *Al-Aqsa Martyrs Brigade*, Backgrounder, Council on Foreign Relations, 2 April 2008

<sup>7</sup> 'Fatah', Jane's World Insurgency and Terrorism, 30 June 2010.

<sup>8</sup> i. Anthony Cordesman, 2006. *Palestinian Forces: Palestinian Authority and Militant Forces*, Centre for Strategic and International Studies, Washington, 2006.

ii. 'Al-Aqsa Martyrs Brigades', Transnational and Non-State Armed Groups – Legal and Policy Responses, <http://www.armed-groups.org> last accessed 28 September 2010.

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- iii. Audrey Cronin, 2004. 'Foreign Terrorist Organisations' Congressional Research Service report for Congress, February 2004.
- <sup>9</sup> i. Anthony Cordesman, 2006. *Palestinian Forces: Palestinian Authority and Militant Forces*, Centre for Strategic and International Studies, Washington, 2006.
- ii. interview with Abu-Uday, spokesperson for Al-Aqsa Martyrs Brigades in the West Bank, published by the Ma'an News Agency, Bethlehem 2004.
- <sup>10</sup> statement issued by the Al-Aqsa Martyrs Brigades via the official website of the Al-Aqsa Martyrs Brigades <http://katebaqsa.org> October 2006
- <sup>11</sup> 'Al-Aqsa Martyrs Brigades', Transnational and Non-State Armed Groups – Legal and Policy Responses, <http://www.armed-groups.org> last accessed 28 September 2010.
- <sup>12</sup> i. Holly Fletcher, 2008. *Al-Aqsa Martyrs Brigade*, Backgrounder, Council on Foreign Relations, 2 April 2008
- ii. 'Fatah', Jane's World Insurgency and Terrorism, 30 June 2010.
- <sup>13</sup> i. Interview with Rabi Hamad, spokesperson for Al-Aqsa Martyrs Brigades, published in the *Palestine Times* 11 December 2006.
- ii. 'Al-Aqsa Martyrs Brigades', Transnational and Non-State Armed Groups – Legal and Policy Responses, <http://www.armed-groups.org> last accessed 28 September 2010.
- <sup>14</sup> i. 'Al-Aqsa Martyrs Brigades', Transnational and Non-State Armed Groups – Legal and Policy Responses, <http://www.armed-groups.org> last accessed 28 September 2010.
- ii. 'Fatah', Jane's World Insurgency and Terrorism, 30 June 2010.
- <sup>15</sup> "Shin Bet: We've caught Hamas cell behind the murder of Israeli policeman' Haaretz, 19 July 2010, <http://www.haaretz.com>, last accessed 28 September 2010.
- <sup>16</sup> i. 'Palestinian Authority funds go to militants', BBC News, 7 November 2003. <http://news.bbc.co.uk> last accessed 30 September 2010
- ii. Kim Cragin, Peter Chalk, Sara Daly, Brian Jackson, 2007. *Sharing the Dragon's Teeth: Terrorist Groups and the Exchange of New Technologies* (Santa Monica: Rand Corporation, 2007)
- <sup>17</sup> Interview with Rabi Hamad, spokesperson for Al-Aqsa Martyrs Brigades, published in the *Palestine Times* 11 December 2006.
- <sup>18</sup> i. 'Fatah', Jane's World Insurgency and Terrorism, 30 June 2010.
- ii. Holly Fletcher, 2008. *Al-Aqsa Martyrs Brigade*, Backgrounder, Council on Foreign Relations, 2 April 2008
- <sup>19</sup> i. Holly Fletcher, 2008. *Al-Aqsa Martyrs Brigade*, Backgrounder, Council on Foreign Relations, 2 April 2008
- <sup>20</sup> i. 'Fatah', Jane's World Insurgency and Terrorism, 30 June 2010.
- <sup>21</sup> 'Report: Al-Aqsa Martyrs Brigades claim responsibility for West Bank shooting attack', Haaretz, 14 May 2010, <http://www.haaretz.com>, last accessed 22 September 2010
- <sup>22</sup> 'Police officer killed and two wounded in West Bank shooting', Haaretz, 14 June 2010, <http://www.haaretz.com>, last accessed 22 September 2010.
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- <sup>23</sup> 'Israel Police killed in West Bank', Al Jazeera, 15 March 2009, <http://english.aljazeera.net>, last accessed 24 September 2010.
- <sup>24</sup> 'IDF: PA police killed settler Ido Zoldan in West Bank last week', Haaretz 2 December 2007, <http://www.haaretz.com>, last accessed 4 October 2010.
- <sup>25</sup> i. 'IDF: PA police killed settler Ido Zoldan in West Bank last week', Haaretz 2 December 2007, <http://www.haaretz.com>, last accessed 4 October 2010.
- ii. 'Israeli killed by terrorists in the W. Bank' Jerusalem Post, 19 November 2007, <http://www.jpost.com>, last accessed 4 October 2010
- iii. 'Settler's murderer gets life sentence' YNet News 1 February 2010 <http://www.ynetnews.com>, last accessed 4 October 2010
- <sup>26</sup> i. 'Iran, Syria said to be stepping up support of terrorist groups', Jerusalem Post, 21 November 2007
- ii. 'IDF: PA police killed settler Ido Zoldan in West Bank last week', Haaretz, 2 December 2007
- iii. 'Israeli killed in West Bank terror attack' YNet News, 20 November 2007
- <sup>27</sup> 'Israeli forces kill 6 Palestinians in West Bank and Gaza', LA Times, 27 December 2009, <http://www.latimes.com>, last accessed 22 September 2010.
- <sup>28</sup> i. 'Six Palestinians killed in West Bank, Gaza attacks', BBC News, 26 December 2009, <http://www.bbc.co.uk>, last accessed 22 September 2010.
- ii. 'Settler violence after shooting death', Ma'an News Agency, 24 December 2009, <http://www.maannews.net> last accessed 4 October 2010.
- <sup>29</sup> 'Settler violence after shooting death', Ma'an News Agency, 24 December 2009, <http://www.maannews.net> last accessed 4 October 2010.
- <sup>30</sup> i. 'Fatah', Jane's World Insurgency and Terrorism, 30 June 2010.
- ii. 'Rifle found in Nablus hideout belonged to terrorists who murdered Chai', Jerusalem Post, 28 December 2009



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- iii. 'Settler violence after shooting death', Ma'an News Agency, 24 December 2009, <http://www.maannews.net> last accessed 4 October 2010
- <sup>31</sup> i. 'Palestinians vow raid retaliation', Al Jazeera, 27 December 2009, <http://english.aljazeera.net>, last accessed 22 September 2010.
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- <sup>32</sup> i. 'Israeli Policement killed in ambush', Al Jazeera, 14 June 2010, <http://english.aljazeera.net>, last accessed 22 September 2010.
- ii. 'Police officer killed and two wounded in West Bank shooting', Haaretz, 14 June 2010, <http://www.haaretz.com>, last accessed 22 September 2010.
- iii. 'Al-Aqsa Brigade claims attack', Jerusalem Post, 14 June 2010, <http://www.jpost.com> last accessed 28 September 2010.
- <sup>33</sup> 'Police officer killed and two wounded in West Bank shooting', Haaretz, 14 June 2010, <http://www.haaretz.com>, last accessed 22 September 2010.
- <sup>34</sup> i. 'Israeli Policeman Killed in Ambush', Al-Jazeera, 14 June 2010, <http://english.aljazeera.net> last accessed 28 September 2010.
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- iii. 'Shin Bet: We've caught Hamas cell behind the murder of Israeli policeman' Haaretz, 19 July 2010, <http://www.haaretz.com>, last accessed 28 September 2010.

## **STATEMENT OF CASE TO RENEW THE DESIGNATION OF AL-AQSA MARTYRS' BRIGADES AS A TERRORIST ENTITY**

### **PURPOSE**

1. The purpose of this paper is to assess whether Al-Aqsa Martyrs' Brigades (AAMB) 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 AAMB's 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 paper<sup>1</sup> 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 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 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, Jane's World Insurgency and Terrorism Monitor, Council on Foreign Relations, Open Source Center, Reuters, START Terrorism Database, Human Rights Watch, ProQuest and IRIN.

9. Regional sources were also utilised, including Bethlehem Ma'an News Agency, The Jerusalem Post, Ramallah Al-Ayyam and Gaza Qudsnet.

## **CONTINUED INVOLVEMENT IN TERRORIST ACTIVITY**

10. AAMB was designated as a terrorist entity on 15 December 2010.<sup>2</sup>
11. On 21 December 2010, an Israeli citizen was wounded when a Qassam rocket was launched by militants in the Gaza Strip. The rocket landed next to a kindergarten near the city of Ashkelon, Israel. No damage was reported. AAMB claimed responsibility for the attack.<sup>34</sup>
12. On 26 October 2011, AAMB detonated an Improvised Explosive Device (IED) targeting an Israeli Defence Force (IDF) vehicle near the Efrat settlement, south of Bethlehem. AAMB claimed soldiers were injured, although no casualties were reported. The vehicle was damaged in the attack.<sup>5</sup> AAMB claimed responsibility for the bombing in a statement released the next day.<sup>6</sup>
13. On 27 February 2012, an IED was detonated at an IDF vehicle located near the West Bank barrier and the village of Qibya in south-west Ramallah. The Martyr Imad Mughniyah Group of the AAMB claimed responsibility for the attack.<sup>7</sup>
14. In early 2012, AAMB units used rockets to target Israeli towns and cities. On 28 February 2012, AAMB claimed responsibility for a rocket attack on Ashkelon, Israel.<sup>8</sup> On 12 March 2012, the AAMB's Ayman Jawdah unit claimed to have fired three "Al-Aqsa 2" rockets into Kfar Aza, a *kibbutz* in southern Israel.<sup>9</sup>
15. On 24 November 2012, an unidentified spokesman for AAMB claimed the group had fired 516 rockets at Israel during the eight day conflict between Israel and Gaza-based militants (from 14-21 November 2012).<sup>10</sup> The Ayman Jouda Brigades, one of the most active groups of AAMB, claimed to have fired 81 rockets towards Israel.<sup>11</sup>
16. On 26 January 2013, Israeli police claimed to have foiled a terror attack on the Jewish town of Elon Moreh, Israel. Police arrested two men initially for throwing Molotov cocktails at vehicles, but subsequent searches revealed grenades and other firebombs.<sup>12</sup> Police believe the two men were on the way to carry out an attack as they were also carrying a letter in Arabic claiming responsibility for an attack on Elon Moreh in the name of the AAMB, written on the official AAMB letterhead.<sup>13</sup>
17. On 26 February 2013 AAMB-affiliated group Faris al-Lil claimed responsibility for the first rocket fired from Gaza to land in Israel since the implementation of a ceasefire in late November 2012,<sup>14</sup> saying, "Liberty will be achieved through sacrifice. We must fight the enemy with all means necessary. The resistance will continue."<sup>15</sup> The launch was in retaliation for a Palestinian prisoner's death in an Israeli prison.<sup>16</sup> The rocket hit a road and caused some minor damage in the immediate vicinity, but there were no injuries. The rocket was an M-75 unguided rocket.<sup>17</sup>

## **Ideology and objectives**

18. AAMB evolved from a Fatah linked coalition of militias, with the common goal of ending Israel's presence in Gaza and the West Bank. Its ideology is based on secular

Palestinian nationalism.<sup>18</sup> The armed factions individually associate themselves to Fatah, but the group is not known to have retained any significant formal structure associated to Fatah.<sup>19</sup>

19. On 30 December 2010, in a statement marking the second anniversary of the Israeli war on Gaza, AAMB reaffirmed its rejection of the occupation of the Gaza Strip and its preparedness to repel any new offensive in the area. AAMB also reinforced their adherence to all methods of resistance to Israeli occupation.<sup>20</sup>
20. AAMB members continue to collaborate with other groups, including Hamas' Izz al-Din al-Qassam Brigades and Palestinian Islamic Jihad's Al-Quds Brigades.<sup>21</sup>

### **Organisation and Structure**

21. The AAMB consists of a number of small loosely-affiliated cells in the West Bank and Gaza Strip split amongst the various cities and towns, which, to a large extent, act autonomously.<sup>22</sup>
22. AAMB has shown a desire to unite its many factions, stating in July 2012 that unity "is the strength for our movement and a way to increase our capability to confront the enemy and its schemes"<sup>23</sup>. Despite this, some groups were reluctant to unify, preferring to maintain independence.<sup>24</sup> During the eight day conflict between Israel and Gaza-based militants, the majority of the groups that comprise AAMB agreed to participate in a "Joint Military Council" to promote coordination and unified action.<sup>25</sup>

### **Weapons and Tactics**

23. The Qassam and Grad rockets used by the AAMB are unguided.<sup>26</sup> Accordingly, rockets continue to be fired without precision and without the ability to discriminate between civilian and military targets.<sup>27</sup> The group also targets IDF posts and equipment with IEDs.<sup>28</sup>
24. In December 2010, an AAMB commander in the Gaza Strip revealed to *Qudsnet* that AAMB had successfully developed a locally-manufactured and long-range Palestinian rocket, which would "surprise the Israeli occupation".<sup>29</sup>

### **Law of Armed Conflict (LOAC)**

25. AAMB attacks since the 2010 designation have been violent but sporadic, and have not generally reached the level of intensity and continuity to be considered in a situation of armed conflict. It is possible that some attacks (such as in November 2012) have occurred in a situation of armed conflict. However, in any instances where the threshold for an armed conflict may have been met, AAMB failed to discriminate between military targets and civilian objects, particularly when it has conducted rocket attacks against Israel. The attacks therefore breach the principle of distinction and therefore the exemption in s 5(4) of the Act does not apply.

### **CONCLUSION**

26. 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 AAMB to be designated under that section.

27. Since its designation in December 2010, AAMB has continued to carry out activities which meet the definition of terrorist acts in ss 5 and 25 of the TSA, including preparation for (paragraph 16) and actually carrying out such acts (paragraphs 11-15 and 17). Accordingly, given there are still reasonable grounds to believe that AAMB has knowingly carried out terrorist acts as set out in s 22 of the TSA, AAMB meets the legal criteria for renewal of its designation as a terrorist entity under s 35.
28. The designation must be renewed by 16 December 2013 to be effective.

<sup>1</sup> The statement of case, dated 15 December 2010 can be accessed at:

[www.police.govt.nz/service/counterterrorism/designated-terrorists.html](http://www.police.govt.nz/service/counterterrorism/designated-terrorists.html)

<sup>2</sup> *Ibid*

<sup>3</sup> (Undated) "Incident Summary", START Global Terrorism Database,

<http://www.start.umd.edu/gtd/search/IncidentSummary.aspx?gtid=201012210005>. Accessed 17/04/2013.

<sup>4</sup> (21/12/2010) "Two Palestinians Suffer "Critical Injuries" in Israeli air raid", Ma'an News Agency - BBC Monitoring Middle East, accessed via <http://www.accessmylibrary.com/article-1G1-245028176/two-palestinians-suffer-critical.html>. Accessed on 17/04/2013.

<sup>5</sup> (19/05/2013) "Fatah" Jane's World Insurgency and Terrorism, at page 42. Available on subscription. Accessed 22/03/2013

<sup>6</sup> (28/10/2011) "Fatah armed wing claims responsibility for IED attack in West Bank", Jane's Terrorism Watch Report, accessed via ProQuest <http://search.proquest.com> on 12/04/2013.

<sup>7</sup> (27/02/2012) "West Bank: Fatah militants Claim Targeting IDF in Response to Al-Aqsa 'Desecration'", Gaza Qudsnet, accessed via Open Source Centre, <http://opensource.gov> on 12/04/2013.

<sup>8</sup> Schanzer, J. (April 2012). *The New Palestinian Strategy* Commentary 133.4. Accessed via ProQuest, <http://search.proquest.com> on 12/04/2013.

<sup>9</sup> (12/03/12) "Gaza Militant Factions Claim Responsibility for Rocket Attacks on Southern Israel", Ma'an News Agency, via Open Source Centre, [www.opensource.gov](http://opensource.gov). Accessed 15/04/2013

<sup>10</sup> (19/05/2013) "Fatah" Jane's World Insurgency and Terrorism, at page 7. Available on subscription. Accessed 22/03/2013

<sup>11</sup> (15/04/2013) "A who's who of fighters in Gaza", IRIN, <http://www.irinnews.org/Report/97847/A-who-s-who-of-fighters-in-Gaza>. Accessed 16/04/2013.

<sup>12</sup> (21/01/2013) "Fatah terror group notes found on suspects", The Jerusalem Post, <http://www.jpost.com/MiddleEast/Article.aspx?id=301104>. Accessed 17/04/2013.

<sup>13</sup> (27/01/2013) "Police Foil Terror Attack on Elon Moreh in Samaria", Arutz Sheva, <http://www.israelnationalnews.com/News/News.aspx/164612>. Accessed on 21/02/2013,

<sup>14</sup> (15/04/2013) "A who's who of fighters in Gaza", IRIN, <http://www.irinnews.org/Report/97847/A-who-s-who-of-fighters-in-Gaza>. Accessed 16/04/2013.

<sup>15</sup> (26/02/2013) "Rocket hits outskirts of Ashkelon; none injured", Ynet News, <http://www.ynetnews.com/articles/0,7340,L-4349447,00.html>. Accessed 2/08/2013

<sup>16</sup> (26/02/2013) "First rocket fired from Gaza into Israel since November ceasefire", CNN, [http://edition.cnn.com/2013/02/26/world/meast/israel-gaza-rocket/?hpt=wo\\_c2](http://edition.cnn.com/2013/02/26/world/meast/israel-gaza-rocket/?hpt=wo_c2). Accessed 25/03/2013.

<sup>17</sup> (4/03/2012) "Single rocket fired into Israel", HIS Jane's Missiles & Rockets, Available on subscription. Accessed 02/08/2013.

<sup>18</sup> (2/10/2008) "Al-Aqsa Martyrs Brigade", Council on Foreign Relations, <http://www.cfr.org/israel/al-aqsa-martyrs-brigade/p9127>. Accessed 5/04/2013.

<sup>19</sup> (19/05/2013) "Fatah" Jane's World Insurgency and Terrorism, at page 14. Available on subscription. Accessed 22/03/2013.

<sup>20</sup> (30/12/2010) "Fatah armed wing rejects "all forms of calm" with Israel", Ma'an News Agency via BBC Monitoring Newsfile and ProQuest <http://search.proquest.com> on 12/04/2013.

<sup>21</sup> On 3 December 2012, Hanan al-Qassam, claiming to be the head of AAMB, stated to local media that militants from the group had fought with Hamas' Izz al-Din al-Qassam Brigades during the eight day conflict between Israel and Gaza-based militants (from 14-21 November 2012), claiming the fighting helped to build good will between the groups (Izz al-Din al-Qassam Brigades is a designated terrorist group in New Zealand pursuant to United Nations Security Council Resolution 1267).

The group also claimed to have fired rockets in a joint operation with the Al-Quds Brigades, the military wing of the Palestinian Islamic Jihad (Palestinian Islamic Jihad is a designated terrorist group in New Zealand pursuant to United Nations Security Council Resolution 1267)

(see (19/05/2013) "Fatah" Jane's World Insurgency and Terrorism, at page 7. Available on subscription. Accessed 22/03/2013 and (2/12/12) "Al-Aqsa Brigades Berates Palestinian Media for Ignoring Role in Gaza", Ramallah Al-Ayyam via Open Source Centre, [www.opensource.gov](http://www.opensource.gov). Accessed 15/04/2013)

<sup>22</sup> (19/05/2013) "Fatah" Jane's World Insurgency and Terrorism, at page 14. Available on subscription. Accessed 22/03/2013

<sup>23</sup> (11/06/2012) "Officials Say Efforts to Unify Fatah's Armed Groups in Gaza Facing Obstacles", Ma'an News Agency via Open Source Centre, [www.opensource.gov](http://www.opensource.gov). Accessed 15/04/2013

<sup>24</sup> (11/06/2012) "Officials Say Efforts to Unify Fatah's Armed Groups in Gaza Facing Obstacles", Ma'an News Agency via Open Source Centre, [www.opensource.gov](http://www.opensource.gov). Accessed 15/04/2013

<sup>25</sup> (2/12/12) "Al-Aqsa Brigades Berates Palestinian Media for Ignoring Role in Gaza", Ramallah Al-Ayyam via Open Source Centre, [www.opensource.gov](http://www.opensource.gov). Accessed 15/04/2013

<sup>26</sup> (11/01/2013) "Hamas", Jane's World Insurgency and Terrorism at page 11, available on subscription. Accessed 28/01/2013

<sup>27</sup> (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.

<sup>28</sup> (19/05/2013) "Fatah" Jane's World Insurgency and Terrorism, at page 42. Available on subscription. Accessed 22/03/2013

## **STATEMENT OF CASE TO RENEW THE DESIGNATION OF AL-AQSA MARTYRS' BRIGADES (AAMB) AS A TERRORIST ENTITY**

### **PURPOSE**

1. The purpose of this paper is to set out the case demonstrating Al-Aqsa Martyrs' Brigades (AAMB), also known as Al-Aqsa Martyrs' Brigade, Al-Aqsa Intifada Martyrs' Group, Al-Aqsa Brigades, Martyrs of Al-Aqsa Group, Al-Aqsa Martyrs Battalion and Armed Militias of the Al-Aqsa Martyr Battalions, 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 AAMB's continued involvement in terrorist activity and covers any relevant changes and/or developments to the organisation since its original designation in December 2010<sup>1</sup> and renewal in October 2013.<sup>2</sup> Updates include AAMB'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 AAMB 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, Jane's World Insurgency and Terrorism series, Council on Foreign Relations and BBC News. This

paper also utilises public information from the US Department of State and International Committee of the Red Cross. Local news sources referenced include Times of Israel, Israel National News, Breaking Israel News, Jerusalem Post, Palestine Media Watch, Haartzet and Jerusalem Center for Public Affairs.

## **EVIDENCE TO SUPPORT DESIGNATION RENEWAL UNDER THE TSA**

### **Continued involvement in terrorist activity**

9. AAMB was designated as a terrorist entity on 15 December 2010. The designation was renewed on 2 October 2013.
10. In July 2014, AAMB joined Hamas and other militant groups in fighting Israel during Operation Protective Edge.<sup>3</sup> Operation Protective Edge was launched by Israel on 8 July 2014 in response to increased rocket and mortar attacks from the Gaza Strip. AAMB posted a message in Hebrew on social media on 9 July 2014 saying: “A message to the Israeli government and the Israeli people: Death will reach you from the south to the north. Flee our country and you won’t die. The KN-103 rocket is on its way toward you”.<sup>4</sup> The fighting, which lasted for seven weeks, was the deadliest in years.<sup>5</sup> Israel claimed hundreds of unguided rockets were fired at its territory, directly threatening its civilians. A total of 73 people were killed on the Israeli side, including six civilians.<sup>6</sup> Several attempts to arrange a ceasefire failed. Israel claimed it had accepted successive truce proposals but resumed fire following renewed rocket attacks from militants.<sup>7</sup>
11. On 12 July 2014, Ayman Judah Brigades, an offshoot of AAMB, claimed responsibility for firing a missile at Kibbutz Miflasim and two improvised projectiles at Kibbutz Beerli, both in Israel’s Southern district. No casualties were reported.<sup>8</sup>
12. On 22 July 2014, AAMB announced via social media an “open war” with Israel that “will include many surprises, and that will create a balance of terror and lead to a campaign in the Zionist interior.” On 16 August 2014, AAMB posted a summary of the more than 30 attacks it had carried out between 22 July and 14 August, including:<sup>9</sup>
  - 22 July: Firing toward Rehalim Junction south of Nablus, one soldier wounded;
  - 23 July: Firing toward Gush Etzion Junction and firing toward an IDF force in the al-Aruv refugee camp;
  - 25 July: Firing toward an IDF force near the village of Yatta in the Hebron district, firing toward the Kalandia checkpoint, firing toward the settlement of Beit El and shooting near the settlement of Itamar;
  - 30 July: Firing toward an IDF force in the village of Qabalan in the Nablus district, wounding an IDF soldier;
  - 31 July: Shooting near the Shavei Shomron checkpoint;
  - 4 August: Shooting near the Hebrew University of Jerusalem and wounding of a soldier, firing toward an IDF force near the village of al-Khader in the Bethlehem district and firing toward the DCO liaison office in Beit Jalla;
  - 8 August: Firing toward the settlement of Psagot in the Ramallah area;
  - 9 August: Firing toward the IDF observation tower beside the al-Aruv refugee camp, firing toward an IDF force near the village of Jit in the Kalkilya district and wounding of a “Zionist”, firing toward an IDF force in the area of the Nur Shams refugee camp in the Tulkarem district and shooting in the al-Tur area south of Nablus;
  - 10 August: Firing toward the Gush Etzion Junction, and;



14 August: Firing toward a force in Tulkarem.

### **Ideology and Objectives of AAMB**

13. AAMB evolved from a Fatah linked coalition of militias with the common goal of ending Israel's presence in Gaza and the West Bank. AAMB's ideology is based on secular Palestinian nationalism.<sup>10</sup> This goal and ideology remains today.
14. On 18 June 2013, AAMB released a statement reiterating their strong, strategic relationship with Hizbollah and Hizbollah's Secretary General Hasan Nasrallah. Nasrallah had reportedly promised AAMB the "compass was and still is directed toward the holy Al-Aqsa and that the Palestinian question will remain the mother cause until the end of occupation". AAMB warned all free men of the world that the last link in the "Zio-US scheme" was the Judaisation of Al-Aqsa Mosque in front of Muslims who are "drowned in sedition". AAMB called on resistance factions and free men to mobilise and pool their efforts, and declare general mobilisation to confront the "Zio-US conspiracy". AAMB reaffirmed the only "basic battle" should be with the Israeli occupation.<sup>11</sup>

### **Organisation and structure of AAMB**

15. AAMB is currently believed to comprise a few hundred members, spread across an unknown number of small cells.<sup>12</sup> The individual cells are often named after recently killed Palestinian militants. AAMB continue to align with other Palestinian militant groups, including Hizbollah, Hamas, and the Palestine Liberation Organisation.<sup>13</sup>

### **Weapons, tactics and capability of AAMB**

16. Low-level sporadic attacks by AAMB have continued in response to Israeli offensives in the Gaza Strip. While AAMB is considered only a minor threat to the Israeli state, it remains a significant source of instability, particularly when conducting simultaneous or joint operations with other Palestinian militant groups.<sup>14</sup>
17. AAMB continues to use or acquire unguided rockets which are unable to be fired with precision or discriminate between civilian and military targets. In August 2014, AAMB posted a video showing Israeli Defence Force military equipment reportedly seized in Gaza during Operation Protective Edge. AAMB claimed it took the equipment, including magazines, ammunition, and shoulder-fired rockets during clashes with Israeli forces east of Beit Hanun.<sup>15</sup>
18. In September 2014, a Palestinian journalist visited a subdivision of AAMB known as the Al-Asifa Army. In a video interview, a militant advised rockets were being prepared in preparation for coming battles. The militant also advised the Al-Asifa Army had successfully developed a "K-132 rocket".<sup>16</sup>
19. In November 2014, AAMB released a recruitment video showing fighters training.<sup>17</sup> The video includes militants practising kidnapping techniques and guerrilla tactics to combat Israeli targets. Lyrics in the accompanying music state, "A sniper unit in the battalions does not fear death...using RPGs and booby-traps, they did not leave even one settlement".<sup>18</sup>
20. In early October 2015, AAMB stated they had developed a rocket capable of reaching up to 40 miles "deep inside the Zionist enemy". Marking the AAMB's 15<sup>th</sup> anniversary, AAMB expressed their eagerness to "confront the occupation at any time".<sup>19</sup>

21. During Operation Protective Edge in 2014, Israel unearthed 32 offensive tunnels dug by Palestinians into Israeli territory.<sup>20</sup> In footage which aired on Iran's state-owned Al-Alam channel in June 2015, a masked AAMB fighter showcased what he claimed was a newly built 3.5km tunnel "ready for the next round of hostilities with Israel". The militant went on to ask Iran, described as a "long-time supporter of the resistance and the Palestinian cause", for money.<sup>21</sup>
22. During his weekly sermon on 29 January 2016 Hamas leader in Gaza, Sheikh Ismail Haniyeh, stated Hamas was developing their military capabilities and were rebuilding tunnels to prepare for a future conflict with Israel. Haniyeh stated, "There are those who think that the calm is a time of rest...but this is a continuation of the struggle". Haniyeh claimed AAMB were digging tunnels to defend Gaza and turn it into a launch pad for all of Palestine.

### Law of armed conflict (LOAC)

23. It is possible attacks undertaken by AAMB during Operation Protective Edge occurred in a situation of armed conflict. While a number of attacks AAMB were involved in during this time were aimed at military targets, unguided weapons were used and some attacks targeted settlements and junctions. These attacks therefore breach the LOAC principle of distinction. Outside of this Operation, AAMB attacks have been sporadic and do not amount to a situation of armed conflict. The exemption in section 5(4) of the TSA therefore cannot apply and AAMB 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 AAMB to be designated under that section.
25. Since its designation in December 2010 and renewal in October 2013, AAMB has continued to carry out activities which meet the definition of terrorist acts in ss 5 and 25 of the TSA (paragraphs 10-12). Accordingly, given there are still reasonable grounds to believe AAMB has knowingly carried out terrorist acts as set out in s 22 of the TSA, AAMB 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.

<sup>1</sup> (15/12/2010) "*Statement of case to designate Al-Aqsa Martyrs' Brigades as a terrorist entity*", available at <http://www.police.govt.nz/sites/default/files/publications/statement-of-case-al-aqsa-martyrs-brigades-terrorist-entity-15-dec-2010.pdf>

<sup>2</sup> (02/10/2013) "*Statement of case to renew the designation of Al-Aqsa Martyrs' Brigades as a terrorist entity*", available at <http://www.police.govt.nz/sites/default/files/publications/renew-aamb-2-oct-2013.pdf>

<sup>3</sup> (30/06/2015) "*Country Reports on Terrorism 2014*", US Department of State, accessed via <http://www.state.gov/documents/organization/239631.pdf> on 23/02/2016, and;

(08/05/2014) "*Al Aqsa Martyrs Brigades posts video showing IDF equipment seized in Gaza*", Jerusalem Post, accessed via <http://www.jpost.com/Operation-Protective-Edge/Al-Aqsa-Martyrs-Brigades-posts-video-showing-IDF-equipment-370151> on 23/02/2016.

<sup>4</sup> (09/07/2014) "*Fatah to Israelis: 'The KN-103 rocket is on its way toward you'*", Palestinian Media Watch, accessed via <https://www.youtube.com/watch?v=xGeR9-z5tw#t=11> on 25/05/2016.

<sup>5</sup> (26/08/2014) "*Gaza-Israel conflict: Is the fighting over?*", BBC News, accessed via <http://www.bbc.com/news/world-middle-east-28252155> on 23/02/2016.

<sup>6</sup> (29/08/2014) "*Islamic Jihad: 121 of our fighters killed in Gaza*", Times of Israel, accessed via <http://www.timesofisrael.com/islamic-jihad-121-of-our-fighters-killed-in-gaza/> on 25/05/2016, and;

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<sup>7</sup> (26/08/2014) "*Gaza-Israel conflict: Is the fighting over?*", BBC News, accessed via <http://www.bbc.com/news/world-middle-east-28252155> on 23/02/2016.

<sup>8</sup> (12/08/2014) "*Fatah*", Jane's Terrorism and Monitoring series, accessed on 23/02/2016. Available on subscription.

<sup>9</sup> (20/08/2014) "*The Al-Aqsa Martyrs Brigades, the Military Wing of Fatah, is officially returning to armed struggle and terror*", Jerusalem Center for Public Affairs, accessed via <http://jcpa.org/al-aqsa-martyrs-brigades-military-wing-fatah/> on 25/05/2016, and;

(22/07/2014) "*بيان باسم "كتائب شهداء الأقصى - القيادة العامة"*", Youtube, accessed via <https://www.youtube.com/watch?v=a3skz-ZICM0> on 25/05/2016.

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- <sup>10</sup> (02/04/2008) “*Al-Aqsa Martyrs Brigade*”, Council on Foreign Relations, accessed via <http://www.cfr.org/israel/al-aqsa-martyrs-brigade/p9127> on 23/02/2016.
- <sup>11</sup> (18/06/2013) “*Al-Aqsa Brigades call for stopping bloodshed in Syria, say relationship with Hizballah ‘Strategic’*”, Ma’an News Agency, accessed via Open Source Centre on 23/02/2016.
- <sup>12</sup> (30/06/2015) “*Country Reports on Terrorism 2014*”, US Department of State, accessed via <http://www.state.gov/documents/organization/239631.pdf> on 23/02/2016.
- <sup>13</sup> (08/05/2014) “*Al-Aqsa Martyrs Brigades posts video showing IDF equipment seized in Gaza*”, Jerusalem Post, accessed via <http://www.jpost.com/Operation-Protective-Edge/Al-Aqsa-Martyrs-Brigades-posts-video-showing-IDF-equipment-370151> on 23/02/2016, and;
- (26/08/2014) “*Gaza-Israel conflict: Is the fighting over?*”, BBC News, accessed via <http://www.bbc.com/news/world-middle-east-28252155> on 23/02/2016, and;
- (10/10/2015) “*Senior Fatah official confirms: We murdered the Israeli couple*”, Israel National News, accessed via <http://www.israelnationalnews.com/News/News.aspx/201349#.VsUkT2Hr9A2> on 18/02/2016, and;
- (30/06/2015) “*Country Reports on Terrorism 2014*”, US Department of State, accessed via <http://www.state.gov/documents/organization/239631.pdf> on 23/02/2016.
- <sup>14</sup> (12/08/2014) “*Fatah*”, Jane’s Terrorism and Monitoring series, accessed on 23/02/2016. Available on subscription.
- <sup>15</sup> (08/05/2014) “*Al-Aqsa Martyrs Brigades posts video showing IDF equipment seized in Gaza*”, Jerusalem Post, accessed via <http://www.jpost.com/Operation-Protective-Edge/Al-Aqsa-Martyrs-Brigades-posts-video-showing-IDF-equipment-370151> on 23/02/2016
- <sup>16</sup> (22/09/2014) “*Fatah producing new rockets to replenish supplies to attach “the Zionist enemy” in “coming battles”*”, Palestine Media Watch, accessed via <https://www.youtube.com/watch?v=PjSpNnh-9bs> on 23/02/2016.
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- <sup>18</sup> (26/11/2015) “*Militant snacks on snake in new Fatah promotional video*”, The Jerusalem Post, accessed via <http://www.jpost.com/Arab-Israeli-Conflict/Militant-snacks-on-serpent-in-new-Fatah-promotional-video-435491> on 23/02/2016.
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## **STATEMENT OF CASE TO RENEW THE DESIGNATION OF AL-AQSA MARTYRS' BRIGADE (AAMB) AS A TERRORIST ENTITY**

### **PURPOSE**

1. This paper sets out the case demonstrating Al-Aqsa Martyrs' Brigade (AAMB, also known as Al-Aqsa Martyrs' Brigade, Al-Aqsa Intifada Martyrs' Group, Al-Aqsa Brigades, Martyrs of Al-Aqsa Group, Al-Aqsa Martyrs' Battalion and Armed Militias of the Al-Aqsa Martyr Battalions, 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 AAMB's continued involvement in terrorist activity and covers any relevant changes or developments to the organisation since its original designation in December 2010,<sup>1</sup> and subsequent renewals in October 2013<sup>2</sup> and September 2016<sup>3</sup>. Updates include AAMB's objectives, structure, weapons and tactics, and 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 AAMB 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 Al Jazeera English, BBC, Council on Foreign Relations, the Guardian and Reuters.
8. A range of regional news sources were used, including Haaretz, JPost, The Times of Israel, Palestine Today, Al-Watan News, Al-Manaar News and Sawa News. Information from TRAC (Terrorism Research and Analysis Centre), MEMRI (The Middle East Media Research Institute) and CAMERA (the Committee for Accuracy in Middle East Reporting and Analysis) were also referred to.

## EVIDENCE TO SUPPORT DESIGNATION RENEWAL UNDER THE TSA

### Continued involvement in terrorist activity

9. AAMB was designated as a terrorist entity on 15 December 2010. The designation was renewed on 2 October 2013, and again on 26 September 2016.
10. Since the last renewal, AAMB has continued its “armed resistance” to the Israeli occupation of Palestinian lands. AAMB escalated its activities in May 2018 after Israeli Defence Force (IDF) personnel reportedly killed dozens of Palestinian protesters taking part in the weekly “Great March of Return” demonstrations.<sup>4</sup>
11. Over the following year, until a ceasefire was announced on 6 May 2019, Gaza-based militant groups including AAMB fired thousands of crude rockets towards Israeli citizens and targeted Israeli soldiers near the Gaza strip with sniper fire.<sup>5</sup> AAMB has publicly claimed responsibility for the following recent attacks:
  - 11.1. 15 May 2018: In a statement on 17 May 2018, AAMB claimed full responsibility for “targeting a Zionist military jeep and a number of soldiers” in a shooting east of Beit Hanoun. AAMB claimed the operation resulted in a number of Israeli casualties. According to the statement, this attack was “a preliminary response to the massacre committed by the occupation against peaceful demonstrators east of the Gaza Strip and the fall of more than 63 martyrs.”<sup>6</sup>
  - 11.2. 26 July 2018: AAMB claimed responsibility for launching a number of mortars and 107 rockets towards the areas surrounding Gaza. This included the indiscriminate firing of 10 rockets towards the Israeli towns of Eshkol and Hanegov.<sup>7</sup>
  - 11.3. 3–6 May 2019: On 7 May 2019 AAMB announced the successful launch of 20 rockets and a number of mortar shells towards the city of Ashkelon between 3 and 6 May 2019.<sup>8</sup>
12. In January 2017, Israeli authorities arrested two members of AAMB outside of Jerusalem and charged them with carrying out and planning to carry out terrorist acts. According to media reporting, the men had been responsible for throwing a small pipe bomb at Israeli soldiers resulting in the wounding of one soldier. The men were also reportedly planning to carry out shooting attacks against Israeli forces.<sup>9</sup>

### Ideology and objectives

13. AAMB’s goals and ideology have remained unchanged since the last renewal: it remains a secular nationalist group which uses violence to pursue its primary purpose of driving Israel from Gaza and the West Bank and establishing a Palestinian state.
14. Following the US decision to move the US Embassy from Tel Aviv to Jerusalem in late 2017, the Nidal Al-Amoudi faction of AAMB released a statement referring to President Trump as “Satan” and called on the Arab and Muslim *ummah* to support the armed struggle to liberate all Palestinian lands. The group promised, “we will die and live for Jerusalem... It is the heart of our faith and honour, and we will advance towards it with millions of martyrs.”<sup>10</sup>
15. On 16 May 2019 AAMB released a statement reaffirming its commitment to the destruction of Israel and to “resist the occupation by all means available.”<sup>11</sup>

## Organisation and structure

16. It is unknown exactly how many operatives AAMB currently has due to the group's decentralized structure and the imprisonment and death of many of its original members.<sup>12</sup> However, AAMB is still believed to comprise only a few hundred members spread across an unknown number of small cells.<sup>13</sup> AAMB has cooperated with other terrorist groups throughout its existence, however because of its links to Fatah, the group has had at times difficult relations with Hamas and Palestinian Islamic Jihad (PIJ), alternatively cooperating with and acting against these groups.<sup>14</sup>
17. On 2 December 2017, a faction within AAMB announced on the group's Facebook page that it had established "The Martyr Yasser Arafat Base, the first Fatah movement military base in the Gaza Strip". The announcement said the base is intended for the training of fighters in all types of military skills for the continuation of the armed struggle in order to complete the project of expelling the occupation from all the lands of occupied Palestine.<sup>15</sup>

## Weapons, tactics and capability

18. Since 2016 AAMB has continued to use low-level, sporadic attacks against Israeli targets. Its units typically use small arms, home-made bombs and crude, short-range missiles. While AAMB's activities by themselves pose only a minor threat to the Israeli state, combined with the activities of other Gaza-based militant groups they remain a significant source of instability.
19. AAMB claims to have fired more than 100 rockets and mortar rounds into Israel from Gaza since mid-2018. In May 2019 this included 'storm 2' and 'storm 3' variant short range rockets, as well as the first successful firing of a 'storm 4' variant.<sup>16</sup> Like the more common Qassem and Quds rockets, the storm rockets are likely to be home-made, "fire and forget" rockets that are manually targeted but with no control over where the projectile will land.<sup>17</sup>

## LAW OF ARMED CONFLICT (LOAC)

20. Despite escalation of violent activity in May 2018, the situation continues to be one of sporadic violent activity by AAMB, and has not reached a level of intensity and continuity on the part of AAMB which would bring the situation within the meaning of "armed conflict" for the purposes of the exemption in section 5(4) of the TSA. The AAMB's rocket attacks on towns show a disregard for the LOAC principle of distinction. Accordingly, the exemption in section 5(4) cannot apply, and AAMB attacks are properly characterised as terrorist acts.

## CONCLUSION

21. 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 AAMB to be designated under that section.
22. Since its designation in December 2010, and renewal in October 2013 and September 2016, AAMB has continued to carry out activities which meet the definition of terrorist acts in ss 5 and 25 of the TSA (paragraphs 11-12) including planning, threatening and attempting attacks. Accordingly, given there are still reasonable grounds to believe AAMB has knowingly carried out terrorist acts as set out in s 22 of the TSA, AAMB meets the legal criteria for renewal of its designation as a terrorist entity under s 35.
23. The designation must be renewed by 26 September 2019 to be effective.

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  - iii. Gaza protests: 59 Palestinians killed by Israeli gunfire at border”, Haaretz News, accessed via <https://www.haaretz.com/middle-east-news/u-s-embassy-gaza-protests-and-nakba-day-live-updates-1.6078190> on 29/05/2019
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