

## **STATEMENT OF CASE TO DESIGNATE ANSAR BAYT AL-MAQDIS AS A TERRORIST ENTITY**

### **PURPOSE**

1. The purpose of this paper is to set out the case demonstrating that Ansar Bayt al-Maqdis (ABM), also known as also known as ABM, Jamaat Ansar Bayt al-Maqdis, Ansar Beit al-Maqdis, Ansar Jerusalem, Jamaat Ansar al-Dalwa al-Islamiyya fi Bayt Al Maqdis, Supporters of the Holy House, Mu'tassim Billah Battalion, Group of Partisans of Jerusalem, Sinai Peninsula and Wilaya of Sinai of the Islamic State 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 ABM meets the criteria for designation as a terrorist entity under the TSA.

### **STRUCTURE OF THIS PAPER**

3. This paper sets out background information about ABM covering various aspects of the organisation including its background and history; ideology and objectives; its organisation and structure; and targets, weapons and capabilities, before detailing case studies of attacks which meet the definition of a terrorist act under the TSA.
4. The discussion preceding the case studies provides background about the situation in Egypt and about ABM which helps inform the analysis of the case studies below. The events detailed in the case studies represent attacks attributed to and claimed by ABM and have been analysed as meeting the definition of “terrorist acts” under s 5 of the TSA. They provide the basis for the paper’s conclusion that ABM 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 which 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 that have a reputation for careful and unbiased reporting. These include IHS Jane's Terrorism and Security Monitor, The Guardian, Wall Street Journal, The Economist, BBC, Reuters, International Business Times and New York Times.
8. A range of think tanks were referred to including The Soufan Group, The Jamestown Foundation, Combating Terrorism Center at West Point, Center for Strategic and International Studies, Control Risks and Christian Science Monitor.
9. A range of regional news sources were referred to including Mada Masr, Egypt Independent, The Cairo Post and Daily News Egypt.
10. Online postings purporting to be from ABM have also been utilised.

### **Background**

11. In the wake of burgeoning anti-government insurgency and the overthrow of Egyptian President Hosni Mubarak in February 2011, Egyptian soldiers were withdrawn from the Sinai Peninsula region to help stabilise Cairo. This left local law enforcement and tribal authorities with responsibility for security in the area. Since then, militant groups operating in the Sinai Peninsula have thrived in the resulting security vacuum, taking advantage of the lack of military presence and political stability.<sup>1</sup> After the ousting of President Mohammed Morsi on 3 July 2013, the sub-state conflict escalated considerably in the Sinai, allowing for these groups, including ABM, to further expand operations.

### **Establishment of ABM**

12. ABM has been active since 2011. It was originally established by Sinai Bedouin as an Al-Qaida-inspired group, attacking the Israel-Egypt border, particularly the Trans-Sinai gas pipeline. On 24 July 2012, ABM announced its existence for the first time in a video released onto jihadist forums, in which it claimed responsibility for 13 attacks on the Trans-Sinai gas pipeline over the preceding 18 months.<sup>2</sup> The group also claimed responsibility for a rocket attack targeting southern Israel in August 2011.<sup>3</sup> The video entitled, "*If you return, we shall return*" featured footage of attacks targeting the Trans-Sinai pipeline and gas pumping stations. The video title is likely a reference to Al-Isra, a chapter of the Qur'an, which describes the destruction of the "children of Israel" by Allah, and underlined the group's original aim of seeking to destroy the Israeli state.<sup>4</sup>
13. ABM's broader threat to Egypt began after the ousting of President Morsi in 2013 when it stepped up the tempo of attacks, which were now directed largely at Egyptian security forces. By early 2014 ABM had become Egypt's most active militant group. Although primarily based in the Sinai Peninsula, the group has also carried out attacks in Cairo, along the Nile Delta<sup>5</sup> and in western Egypt.

## **Ideology**

14. ABM adheres to a Salafist-jihadist ideology. A primary objective of the group is the formation of an Islamic state under sharia (Islamic law) in Egypt.<sup>6</sup> The group seeks to expand the borders of this state into Israel to 'liberate' the city of Jerusalem.<sup>7</sup> Since 2013, ABM has shifted its focus from attacking Israel to destabilising the Egyptian state and paralysing its institutions, particularly Egypt's security forces, labelled by ABM as infidels.
15. On 19 July 2014, ABM posted a statement online detailing the group's intent which "clarifies the approach of the mujahideen (strugglers)", along with a link to a further statement whereby ABM state they seek the establishment of a caliphate ruled under sharia law and will not cease "until we pray in the al-Aqsa Mosque."<sup>8</sup> In pursuit of this objective, ABM directs attacks at targets it deems to represent values or interests contrary to Islamic teachings.
16. The group is represented by a circular logo which includes a map of the Eastern Hemisphere and an open Qur'an. To the left of the map is an AK-47 assault rifle, to which is attached a black flag (inclusive of the shahada<sup>9</sup> "There is no God but Allah" and an interpretation of the seal, "Muhammad, Messenger of Allah").<sup>10</sup> Around the map is the Qur'anic verse, "And fight them [the infidels] until there is no persecution, and worship is for Allah [alone]."
17. In addition to this goal, ABM has also gained support by co-opting localised Sinai Bedouin grievances against the Egyptian government.<sup>11</sup>

## **Organisation and Structure**

18. Little is known about the organisational structure of ABM; however it is likely to consist of a number of small, geographic cells. It is thought to have around 1000 members<sup>12</sup> and is largely comprised of Sinai Bedouin. ABM numbers have also been supplemented by recruits from other parts of Egypt.<sup>13</sup> In its claims of responsibility for attacks, ABM has attributed attacks to various battalions within the group.<sup>14</sup>

## *Leadership*

19. There is limited open source information about ABM's leadership. Since late 2013, Egyptian security forces have launched a campaign against ABM in the Sinai Peninsula, killing a number of top ABM commanders.<sup>15</sup>
20. In December 2013, an Egyptian military spokesman claimed that a senior ABM leader, Ibrahim Mohamed Freg (also known as Abu Suhaib), was killed in an ambush in Sheikh Zuweid. The statement claimed he died in an exchange of fire with army troops near al-Touma village.<sup>16</sup>
21. On 11 March 2014, senior ABM member Tawfik Mohammed Freij (also known as Abu Abdallah) died when, according to an official statement released by the group on 14 March 2014, an explosive device he was transporting detonated. The statement claimed Freij was a founding member of ABM and was responsible for a number of the group's attacks.<sup>17</sup> Egyptian security officials subsequently claimed that Freij was actually killed by Egyptian security forces.<sup>18</sup>

22. On 23 May 2014, Egyptian authorities announced that security forces had killed ABM leader, Shadi al Meneir, along with three senior ABM members;<sup>19</sup> however ABM later released an online statement refuting the claims that Shadi al Meneir had died, or that he was the leader of ABM. ABM stated "they [the Egyptian authorities] announce the death of the brother jihadist Shadi al Meneir and that he is the (head of the group) while he was not killed and was not a leader."<sup>20</sup>

### **Group Affiliations**

23. ABM is known to have communicated with, and to have previously publicly expressed support for, Al-Qaida; however despite ABM's clear ideological identification with Al-Qaida, ABM is not an official Al-Qaida affiliate.<sup>21</sup> ABM videos often feature senior Al-Qaida leaders including Osama Bin Laden, Abu Yahya al Libi and Ayman al-Zawahiri. This includes statements made by al-Zawahiri in January 2014 praising ABM's attacks against pipelines exporting gas to Israel.
24. The extent of ABM's affiliation with Salafist extremist group, the Islamic State, is not clear. In October 2014, ABM released a video which was overlaid with a speech given by Islamic State spokesman Abu Mohamed al-Adnani, in which he urged Sinai-based militants to kill Egyptian security personnel.<sup>22</sup> On 3 November 2014, ABM released a statement online swearing baya'ah (allegiance) to the Islamic State, stating "(a)fter entrusting Allah, we decided to swear allegiance to the emir of the faithful Abu Bakr al-Baghdadi<sup>23</sup>, caliph of the Muslims in Syria and Iraq and in other countries."<sup>24</sup> In a speech released in November 2014, Baghdadi announces the Islamic State have accepted oaths of allegiance from Egypt, stating "We announce to you the expansion of the Islamic State to new countries, to the countries of the Haramayn, Yemen, Egypt, Libya, Algeria"<sup>25</sup> and claims to have established new Islamic State provinces in each of these countries.<sup>26</sup> The declared affiliation to the Islamic State may have caused a split in the factions of ABM<sup>27</sup> with a second online statement released the next day, denying that the group had issued the pledge of allegiance - a possible indication of an internal division.<sup>28</sup> It has been suggested that this second statement came from an ABM faction, based in the Nile Valley, which instead remains loyal to Al-Qaida's ideology.<sup>29</sup>
25. In subsequent online postings, purporting to represent the group, ABM promotes its status as a franchise of the Islamic State, calling itself "Sinai Province"<sup>30</sup> or "Wilaya (Province) of Sinai of the Islamic State".<sup>31</sup>
26. ABM also likely cooperates with other, smaller Sinai-based militant groups. Egyptian security sources have indicated that a number of Cairo-based Ajnad Misr (Soldiers of Egypt) and Kateeb Ansar al-Sharia fi Ard al-Kinanah (Brigades of Ansar al-Sharia in the Land of Egypt) members, especially those active in Nile Delta provinces, have been trained by ABM.<sup>32</sup> Despite the association to other militant groups, ABM maintains a discrete identity, with separate ideological goals and organisational structure.

### **Tactics, Weapons and Capability**

#### *Tactics*

27. ABM's initial focus was on Israeli targets, carrying out attacks at the Sinai/Israeli border and explosive attacks on the Trans-Sinai pipeline carrying natural gas to Israel.

ABM claims it attacks the pipeline to protect the resources and wealth of the Egyptian people from the exploitation of the Egyptian government and Israel.

28. Since 2012, ABM's focus has shifted to targeting Egyptian security forces.<sup>33</sup> In a statement released in December 2013, ABM stated it deems the Egyptian military 'non-Muslim' because it opposes those who attempt to impose Islamic law, and protects a secular form of government. It warned members of the security forces to abandon their posts to avoid attack, stating "we are the most resolute and determined to carry out the command of Allah and his messenger to do jihad against you and fight you until all the religion is for Allah."<sup>34</sup>
29. The group frequently uses both small and large Improvised Explosive Devices (IEDs) in its attacks, often on security force targets. ABM uses explosives to target infrastructure which supports Egyptian security forces; for example, in attacks against gas pipelines to disrupt the flow of gas to military-controlled industrial plants in the Sinai.<sup>35</sup>
30. ABM also conducts small-scale ambush or hit and run attacks against security force targets and has conducted assassination operations, targeting senior government or security force officials.
31. Since 2012, ABM has sustained a campaign of attacks on other government targets. ABM has displayed proficiency in conducting large Vehicle-Borne Improvised Explosive Devices (VBIED) attacks and complex attacks involving IEDs usually against hard targets like police stations, but also in public areas causing extensive damage and casualties.
32. In videos issued by ABM in late 2014, the group demonstrates its members' growing skill in the use of IEDs, as well as better tactical co-ordination in ambushing and attacking security services.<sup>36</sup> This is demonstrated in a 24 October 2014 video of an ABM attack against a security checkpoint in El-Arish. This video shows an ABM militant driving a VBIED pickup truck and detonating it next to two military vehicles parked at the security checkpoint.<sup>37</sup> Following an explosion ABM militants, armed with firearms, grenades and Rocket Propelled Grenades (RPGs), launch a follow up assault on responding security force members.<sup>38</sup> ABM killed 28 Egyptian soldiers in this attack. The footage also appears to show an Egyptian tank fleeing the militants.<sup>39</sup> ABM militants then seized a large cache of material, including mortars, assault rifles, night vision equipment and other heavy weaponry.<sup>40</sup> The video shows ABM militants standing on top of an Egyptian tank, waving the black flag represented in their logo.
33. ABM has access to sophisticated weaponry, smuggled in from surrounding states. It has been claimed that ABM is divided into several groups with different tasks, such as creating explosives and smuggling weapons inside the country and across the borders with Libya, Sudan and Gaza.<sup>41</sup> ABM is also reported to operate quasi-military training camps in the Sinai.<sup>42</sup>
34. Despite ABM's claims that it takes care to avoid civilian casualties,<sup>43</sup> stating "we are greatly suffering to operate without harming Muslims" and that attacks are targeted at government or security forces, ABM is indiscriminate in its targets and has injured and killed civilians.<sup>44</sup>

35. ABM regularly releases statements and videos, usually with the group's logo, through jihadist forums. It typically releases statements claiming responsibility for attacks through these forums. ABM communiqués are frequently replicated on social media platforms such as Twitter and Facebook; however it is difficult to verify the authenticity of statements as there are multiple accounts purporting to be associated to ABM which have been used to release messages. ABM has itself questioned the validity of some accounts associated with it. On 17 February 2014, in a statement released on a jihadist forum ABM stated it had no official presence on social media platforms and would only release official communiqués through established forums.<sup>45</sup>

### **History of ABM operations**

36. After first announcing their existence online on 24 July 2012, ABM claimed responsibility for 13 attacks on the Trans-Sinai gas pipeline over the preceding 18 months.<sup>46</sup> The group also claimed responsibility for a rocket attack targeting southern Israel in August 2011.<sup>47</sup>
37. ABM's broader threat to Egypt began after the ousting of President Morsi in 2013 when it stepped up the tempo of attacks, which they were now directing largely at Egyptian security forces.<sup>48</sup>
38. On 19 August 2013, ABM executed 25 police officers in an attack near the Sinai-Gaza border. Two other officers were injured.<sup>49</sup> In the attack two buses carrying off-duty police officers were ambushed by ABM militants in northern Sinai.<sup>50</sup> ABM ordered the police officers to leave the buses before ABM bound, blindfolded and shot them in the back of the head.<sup>51</sup>
39. On 5 September 2013, ABM attempted to assassinate Egyptian Interior Minister Mohammed Ibrahim by targeting his convoy with a Suicide Vehicle-Borne Improvised Explosive Device (SVBIED). ABM was not successful in assassinating Minister Ibrahim; however the attack killed one person and injured approximately 20 others.<sup>52</sup> (See case study one below.)
40. On 21 September 2013, ABM militants operating in North Sinai opened fire on Israel Defence Forces (IDF) personnel in Israel's Southern District, killing one Israeli soldier. Three ABM militants were killed, including one whose explosive belt detonated, wounding another IDF soldier.<sup>53</sup> The following day ABM claimed responsibility for the attack, stating it was in response to the controversial *Innocence of Muslims* film, which they perceived as denigrating the Prophet Muhammad – and the alleged Jewish involvement in its production.<sup>54</sup>
41. On 7 October 2013, an ABM suicide bomber wearing a police uniform detonated a SVBIED at the South Sinai Security Directorate in Al-Tur<sup>55</sup> killing four police officers and injuring at least 48 other people.<sup>56</sup> Following the attack ABM released a claim of responsibility, describing the South Sinai Security Directorate as a place "of oppression and enslavement."<sup>57</sup> ABM also stressed its intention to avoid civilian casualties, claiming that its militants "did their best in terms of monitoring and planning so as to avoid injuring any innocent Muslim."<sup>58</sup>
42. On 19 October 2013, ABM detonated a VBIED in front of a military intelligence building in Ismailia, wounding six Egyptian soldiers. ABM claimed responsibility for the attack, stating "the explosion occurred through a car bomb to cleanse Egypt of

crime and military foreign agents.”<sup>59</sup> The explosive blast also caused damage to part of the military compound’s wall and set fire to several cars in the area.<sup>60</sup>

43. On 17 November 2013, ABM assassinated a high ranking member of Egypt’s National Security Agency, Lieutenant Colonel Muhammad Mabrouk Abu Khattab, in Nasr City. The Egyptian Ministry of the Interior stated that Lieutenant Colonel Abu Khattab was assassinated by five individuals, travelling in two cars, near his house as he was leaving for work.<sup>61</sup> On 19 November 2013, ABM claimed in a statement released online that ABM’s Mu’tassim Billah Battalion was responsible for the assassination. ABM claimed they had killed Lieutenant Colonel Abu Khattab for his involvement in the trial of 15 women and seven girls who had participated in a violent demonstration in support of former Egyptian President Mohammed Morsi in October 2013. The statement further stated the battalion had been tasked with attempting “to liberate the female prisoners and to pursue who[ever] participated and contributed in capturing them, from officers and individuals of the Interior Ministry.”<sup>62</sup>
44. On 24 December 2013, ABM detonated two near-simultaneous VBIEDs in front of the Daqahliya Security Directorate in the city of Mansoura. This attack killed 16 people, including police and civilians and injured dozens more, including the head of Mansoura’s Security Directorate.<sup>63</sup> Security officials say that a third set of explosives, concealed inside a car, was later defused.<sup>64</sup> The explosion caused the partial collapse of the police building and caused extensive damage to surrounding buildings.<sup>65</sup> A day before the attack, ABM released a statement on jihadist forums calling on members of Egypt’s security forces to repent and leave their positions, stating “we are the most resolute and determined to carry out the command of Allah and His Messenger to do jihad against you and fight you until all the religion is for Allah.”<sup>66</sup> ABM claimed responsibility for the attack on 25 December 2013, referring to the Directorate as a “den of apostasy and tyranny.”<sup>67</sup>
45. On 29 December 2013, ABM detonated a VBIED in front of a military intelligence building in Anshas, Sharkeya Governorate, wounding four security personnel. The explosive blast caused damage to part of the surrounding wall and to the administrative building.<sup>68</sup> Two months after this attack ABM claimed responsibility by releasing video footage of the attack on jihadist forums.<sup>69</sup>
46. On 7 January 2014, ABM kidnapped four officials from the Egypt Trade Union Federation (ETUF) and a Ministry of Labour official in Sinai.<sup>70</sup> ABM claimed responsibility for this later the same day. The officials were travelling to a rally in the town of Sharm El Sheikh in support of the new Egyptian military-backed constitution when they were kidnapped.<sup>71</sup> The group demanded the release of all female Islamist prisoners held by the Egyptian Government in exchange for the release of the officials. This demand was not met by the Government and the officials were released unharmed by the militants in an unspecified location in North Sinai on 16 January 2014.<sup>72</sup>
47. On 17 January 2014, ABM undertook an explosive attack on a domestic gas supply pipeline in El-Arish, North Sinai. On 19 January 2014, ABM claimed responsibility for the attack on jihadist forums, stating “let everyone know that, with Allah’s help, we are determined to cut off gas supplies to the Armed Forces cement factory as we previously halted exports to the Zionist entity.”<sup>73</sup> In the statement ABM alleges the pipeline supplied a military-owned cement factory that funded the Egyptian military’s

"killing of Muslims and arrests and dishonouring of women" and exported cement to Israel. ABM further warned the Egyptian military that it would continue to target the military's economic interests as long as it continued its perceived policies of destroying people's land and houses in Sinai.<sup>74</sup>

48. On 23 January 2014, two ABM militants travelling on a motorcycle opened fire on a police checkpoint in Beni Suef south of Cairo, killing five police officers and wounding two others.<sup>75</sup> In subsequent social media postings purporting to be from ABM, the group claimed responsibility for the attack.<sup>76</sup>
49. On 24 January 2014, ABM released a statement calling on Egypt's security forces to defect, stating "if you can escape with your weapon then do that. Otherwise...we will target you as we target your leaders. And you saw what has been happening in security directorates, buses carrying troops, checkpoints...and what is coming is going to be much worse and bitter."<sup>77</sup> A few hours later, ABM detonated a VBIED outside the Cairo Security Directorate in the Abdeen district, Cairo. At least four people, including three police officers, were killed in the attack. A further 76 people were wounded.<sup>78</sup> This attack also caused significant damage to the building, as well as to the nearby Islamic Art Museum. This attack was later claimed by ABM, who stated, "We declare our responsibility for the targeting of the Cairo police headquarters with a remote-detonated car bomb."<sup>79</sup>
50. On 25 January 2014, ABM shot down an Egyptian transport helicopter using a Man-Portable Air Defence System (MANPAD).<sup>80</sup> Five crew members on board the helicopter were killed. ABM later claimed responsibility in a video of the attack released online.<sup>81</sup> The use of the MANPAD system signalled a significant increase in ABM's capability. This attack also demonstrated ABM's developed security awareness as care is taken in the video to heavily blur the operator's upper torso and much of the MANPAD, preventing the identification of the exact weapon used.<sup>82</sup>
51. On 26 January 2014 ABM militants opened fire with automatic weapons and RPGs on a military bus in the Sinai. According to an Egyptian military spokesman, masked ABM militants in a sports utility vehicle attacked the bus carrying soldiers in Sinai.<sup>83</sup> Four soldiers were killed and another 11 individuals were injured.<sup>84</sup>
52. On 28 January 2014, a senior Ministry of the Interior official, identified as General Mohamed Al-Saeed, was killed by two ABM militants as he sat in his car outside his residence in Giza governorate.<sup>85</sup> The ABM militants reportedly travelled on motorcycles to conduct the attack.<sup>86</sup> ABM claimed responsibility for the attack on a jihadist forum, stating "Allah enabled your brothers at Ansar Bayt al-Maqdis to assassinate Mohamed al-Saeed, Deputy Interior Ministry [sic]...to [Egyptian President] Sisi and [Minister of the Interior] Mohamed Ibrahim, cheer up, retaliation is near."<sup>87</sup>
53. On 2 February 2014, three civilians were wounded in a VBIED attack by suspected ABM militants. An Egyptian security spokesman stated the explosives-laden car was detonated by remote control near government buildings in the town of Rafah, on the border with the Gaza strip.<sup>88</sup> The blast went off around 10 metres from a bus transporting soldiers who were on holiday.<sup>89</sup>
54. On 16 February 2014, three South Korean tourists and an Egyptian bus driver were killed in an explosives attack conducted by ABM militants. ABM claimed



responsibility for the attack, stating the attacks were conducted to damage Egypt's economy, with tourism being one of Egypt's principal sources of income (see case study two below).<sup>90</sup>

55. On 23 April 2014, Egyptian security forces raided what they described as an ABM hideout southwest of Alexandria. One police officer and one ABM militant were killed in the raid. According to the Egyptian Ministry of the Interior, the ABM cell was reportedly planning to target police, military and security forces. Police seized weapons including explosive belts, automatic weapons, hand grenades and ammunition in the raid. The location of the hideout shows ABM's operational expansion into the mainland Egypt.<sup>91</sup>
56. On 2 May 2014, twin suicide bombings in the Sinai Peninsula, killing an Egyptian soldier and a civilian. The attack also injured eight others. According to an Egyptian military spokesman, the first bombing took place at a joint-security checkpoint in Al-Tur City, near Sharm El Sheikh.<sup>92</sup> The explosion killed both the ABM militant and a soldier and injured three police officers and one soldier. The second suicide bomber in Al-Tur City detonated his device as a bus was driving by, killing one and injuring three factory workers who were passengers on the bus. ABM claimed responsibility for this attack in a statement released on jihadist forums, stating "We will not rest until we achieve retribution for the blood and honour of the Muslims."<sup>93</sup>
57. On 1 June 2014, ABM militants killed six military personnel in an assault on a security checkpoint in Al-Farafra in Wadi al-Gadid Governorate, near the border with Libya.<sup>94</sup> ABM subsequently claimed responsibility for the attack. This attack was likely conducted in order to ensure the safe provision of weapons across the Libyan border.<sup>95</sup>
58. On 19 July 2014, ABM militants killed 22 military personnel in an assault on the same security checkpoint in Al-Farafra in Wadi al-Gadid Governorate. In the attack, ABM attacked the checkpoint with small-arms and vehicle-mounted RPGs. According to a security source, approximately 12-16 ABM militants launched the 30 minute assault, during which four ABM militants were also killed.<sup>96</sup> ABM later claimed responsibility and released a video allegedly showing footage of the attack.<sup>97</sup>
59. On 28 August 2014, ABM broadcast a video, recorded on an unknown date, of ABM militants beheading four Egyptian nationals. ABM accused the four of providing Israel with intelligence for an airstrike that killed three ABM militants on 23 July 2014<sup>98</sup> (see case study three below).
60. On 2 September 2014, 11 police officers were killed in an IED attack on a convoy in Wefaq, near the Gaza border in the Sinai Peninsula. Two other police officers were injured.<sup>99</sup> ABM claimed responsibility for this attack in a video released the next day.<sup>100</sup> In the video, the convoy can be seen moving along the Rafah-Sheikh Zuweid Road before exploding, likely having hit a concealed IED. When the explosion takes place, a voice from behind the camera can be heard yelling "Allah Akbar" (God is Great).<sup>101</sup> The video also included footage of ABM seizing military equipment and personal items from the remains of the convoy.<sup>102</sup>
61. On 16 September, six police officers were killed and two others wounded in an IED attack on a police convoy in Rafah. In a similar mode of operation to the 2 September 2014 attack, Egyptian security officials said the IED was concealed under the asphalt

of a highway on which the officers were travelling.<sup>103</sup> ABM released a video of the attack on the same day, showing one of the targeted police vehicles exploding.<sup>104</sup>

62. On 24 October 2014, ABM conducted two separate attacks on a military checkpoint in Sheikh Zuweid and El-Arish. The two attacks killed 31 Egyptian soldiers.<sup>105</sup> The first attack was conducted as a coordinated, two-stage assault on a military checkpoint in Karm al Qawadis, near the town of Sheikh Zuweid.<sup>106</sup> ABM released a 30-minute video of this attack. In the opening stages of the video, an ABM militant gives a statement to the camera in Arabic, stating he is delivering a message from Sinai to Egypt's President, Abdel Fattah el-Sisi.<sup>107</sup> He states ABM will "liberate" Al-Aqsa Mosque by "purifying all land from Jewish agents, like el-Sisi's army"<sup>108</sup> ...We will be the swords that cut off your heads, your hands and your legs; we will be the bombs that demolish your thrones and forts."<sup>109</sup> The video then shows footage of the attack in which a VBIED was driven into the checkpoint, followed by an assault using small arms. Three hours later a second attack occurred in the nearby town of El-Arish. ABM militants opened fire on a military checkpoint and killed a further three soldiers.<sup>110</sup> ABM stated that the attacks are part of its militant campaign against the Egyptian army, which ABM considers "apostates" who carry out "massacres" against Egyptian Muslims.
63. On 25 October 2014, as a result of the ABM attacks the day before, the Egyptian Government declared a three month state of emergency<sup>111</sup> in north and central Sinai.
64. On 30 November 2014, ABM claimed it had killed an oil worker from the United States whose body had been discovered on 6 August in a rural area near Lake Qaroun in Faiyum Governorate. The victim, identified as William Henderson, was found with gunshot injuries, and the murder was initially suspected to be linked to a carjacking. The statement also posted images purportedly showing Henderson's passport and two identification cards.<sup>112</sup>
65. On 11 January 2015, ABM militants kidnapped a police officer in north-east Sinai. The police officer was on his way home when the public bus on which he was travelling was stopped at a security checkpoint. ABM militants, under the pretext of being members of the security checkpoint, then removed the officer from the vehicle.<sup>113</sup> The police officer was found dead the next day, killed by a gunshot wound to the head. Islamic State said on its official news cast that its wing in Sinai had kidnapped the officer.<sup>114</sup> On 25 January 2015, ABM released a video showing the abduction and killing of the officer.<sup>115</sup> In the video, entitled "*we vow to take revenge*", the officer is forced to list "abuses" by the Ministry of Interior.<sup>116</sup>

### **Case Study One: 5 September 2013 assassination attempt on Egyptian Interior Minister**

#### *Facts*

66. On 5 September 2013, ABM detonated a SVBIED<sup>117</sup> targeting the convoy of the Egyptian Minister of the Interior, Mohammed Ibrahim, in the Nasr City area of Cairo. Minister Ibrahim was unhurt in the attack; however one person was killed<sup>118</sup> and at least 21 people (10 police officers and 11 civilians, including a child) were wounded. Four police protection vehicles were also damaged.<sup>119</sup>

67. The explosion took place shortly after Minister Ibrahim left his home to be driven by convoy to work. The explosive blast also damaged the facade of a nearby mixed residential and commercial building.<sup>120</sup> At the time of the event, security officials stated that initial investigations showed the blast came from a parked car loaded with around 40 kilograms of explosives in the back of the vehicle.<sup>121</sup>
68. On 8 September 2013, ABM released a 31-minute video online, claiming responsibility for the attack. The video includes footage of the moment the SVBIED detonated near the Minister's convoy.<sup>122</sup>
69. The video also includes a statement recorded in advance by the suicide bomber who carried out the attack, a former officer in the Egyptian Army.<sup>123</sup> ABM further stated, "Stay away from the installations and headquarters of the Ministries of Defence and Interior." ABM said it would also attack the Egyptian Minister of Defence and media personalities who had "spread lies" about the group.<sup>124</sup> Prior to this attack, ABM had only carried out attacks against Israeli targets from the Sinai so this attack represented a development in both its target profile and its intent and capability to carry out bombings outside Sinai.

*The act meets the TSA criteria for designation*

70. The attempted assassination of the Egyptian Minister of the Interior, Mohammed Ibrahim using a SVBIED, is consistent with the definition of a terrorist attack under s 5 of the TSA.
71. The attack was well planned and coordinated having been timed to assassinate Minister Ibrahim as he drove to work. The quantity of explosives used demonstrates the attack was undertaken in order to cause maximum harm. The location, timing and nature of the attack show that ABM's intention was to cause the death of, or serious bodily injury to people in the Minister's convoy and anyone else in the vicinity (s 5(3)(a) TSA).
72. Suicide bombings are, by their nature, terrorising acts. The nature of this attack belies ABM's claim that it tries to avoid civilian casualties (see paragraph 34 above) and shows that ABM is prepared to use indiscriminate and deadly force to carry out its threats against security forces and political leaders (see also paragraphs 28, 42, 44, 45, 47 and 49 above). It was a mid-morning suicide attack on the Interior Minister occurring without warning and specifically targeting a public thoroughfare, resulting in death and injury.
73. The attempted assassination of a government Minister was also intended to destabilise the Egyptian government which ABM deems 'non-Muslim' because it opposes those who seek to impose Islamic law. This attack was undertaken as a step in ABM's campaign towards its ultimate goal of overturning the government and establishing an Islamic state in Egypt (see paragraphs 14–15 above) (s 5(2) TSA). The attack was therefore carried out with the purpose of advancing ABM's own ideological/political/religious cause through acts of violence and terror and with the intention of both inducing terror in the civilian population (s 5(2)(a) TSA) and unduly forcing the Egyptian government out of office and creating a purely Islamic state under strict sharia law (s 5(2)(b) TSA).

## Case Study Two: 16 February 2014 suicide attack on tourist bus in Sinai Peninsula

### *Facts*

74. On 16 February 2014, ABM conducted an explosive suicide attack on a tourist bus carrying more than 30 people in Taba in the Sinai Peninsula, Egypt. A member of ABM boarded the bus before detonating an explosive device while the bus was stopped at the Taba border crossing between Egypt and Israel.<sup>125</sup> The bus was heavily damaged and engulfed by fire after the explosion. The attack killed three South Korean citizens and the Egyptian bus driver. A number of South Korean nationals were also wounded in the attack.<sup>126</sup> The bus had been travelling from Israel to a popular tourist destination in the south Sinai, the Saint Catherine's Monastery, when it was targeted.<sup>127</sup>
75. Prior to the attack, on 19 January 2014, ABM had warned that it would retaliate against Egyptian military operations in the Sinai by hitting economic targets.<sup>128</sup> On 17 February 2014, ABM claimed responsibility for the attack in a statement released on a jihadist forum online. The group stated the attack was conducted to damage Egypt's economy, with tourism being one of Egypt's principal sources of income. ABM threatened more strikes against economic targets, saying "Ansar Bayt al-Maqdis has successfully sacrificed one of its heroes to detonate the bus headed toward the Zionists, and this comes as part of our economic war against this regime of traitors...With Allah's will we will be watching this treacherous gang of infiltrators and we will target their economic interests in all places in order to paralyse their hands from (hurting) Muslims."<sup>129</sup>
76. Online postings purporting to be from ABM further warned foreign tourists against staying in Egypt, stating "we recommend tourists to get out safely before the expiry of the deadline" (20 February 2014) and threatened to attack any tourists who remain after this date.<sup>130</sup> To date, there have been no further reports of tourists being specifically targeted by ABM.

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

77. The suicide bombing attack by ABM on a bus carrying civilians is consistent with the definition of a terrorist act under s 5 of the TSA.
78. The ABM suicide bomber deliberately detonated a powerful explosive device in an enclosed bus full of people. This clearly shows that ABM's intention was to cause the death of, or serious bodily injury to people within, and in the vicinity of, the tourist bus (s 5(3)(a) TSA).
79. Suicide bombings are, by their nature, terrorising acts. ABM claimed it was a deliberate attack and threatened more similar attacks in future.
80. ABM expressly claims to be fighting an "economic war" against the current regime in Egypt. The group stated that the purpose of this attack was to damage Egypt's economic interests and in turn destabilise the government. It was accordingly undertaken to advance ABM's ultimate goal of overturning the government and establishing an Islamic state in Egypt (s 5(2) TSA). The attack was therefore carried out with the purpose of advancing ABM's own ideological/political/religious cause through acts of violence and terror and with the intention of both inducing terror in the civilian

population (s 5(2)(a) TSA) and unduly forcing the Egyptian government out of office and creating a purely Islamic state under strict sharia law (s 5(2)(b) TSA).

### Case Study Three: 2014 Execution of Egyptian nationals in Sinai

#### *Facts*

81. On 28 August 2014, ABM broadcast a video, recorded on an unknown date, of ABM militants beheading four Egyptian civilians. ABM accused the four of providing Israel with intelligence for an airstrike that killed three ABM militants in an Unmanned Aerial Vehicle (UAV) missile strike in Sinai on 23 July 2014.<sup>131</sup>
82. In a 29-minute video entitled "*They are the enemies; so beware of them*", released on jihadist forums online, ABM claimed the four men had been spying for Israel's intelligence agency, Mossad, and stated "God helped your mujahideen brothers in Ansar Bayt al-Maqdis to discover a spy cell working for the Israeli Mossad against the mujahideen."<sup>132</sup> In the video, ABM presented alleged confessions by the men with each responding to questions regarding the accusations and talking about the information they allegedly provided to Israel.<sup>133</sup> Before they are beheaded the four victims are seen kneeling and are blind-folded in a desert area. Behind the victims, black-clad masked gunmen stand in front of three SUVs adorned with the black flag represented in ABM's logo.<sup>134</sup>
83. ABM further threatens Israel in the video, "We didn't and we won't forget what you have done with to [sic] the Muslim women and children in Gaza. Everyone is not the same: our dead are in heaven and yours are in hell."<sup>135</sup>
84. On 20 August 2014, Egyptian officials confirmed that security forces had recovered the headless corpses of four men from the town of Sheikh Zuweid.<sup>136</sup> Egyptian security officials further commented ABM's video appeared authentic.<sup>137</sup>
85. On 5 October 2014, ABM released another video (entitled "*They are the enemy, be wary of them (2)*") showing the execution of four other men accused of spying for the Mossad and the Egyptian army. The video begins with ABM storming a house, and then the remote detonation of an explosive, reducing the house to rubble. ABM accuses a number of clan members from the house of collaborating with security forces against the ABM.<sup>138</sup> The four accused men recorded their 'confessions' and urged other 'spies' to publicly repent. The victims state that ABM knows who the spies are, and they will not be spared. One of the individuals is shot multiple times. The remaining three victims are beheaded, with their heads placed atop their backs. An ABM spokesman states "these are your sons, continuing to harvest the spies of the Jews"<sup>139</sup> and cautions that the militants would storm peoples' homes to kill and capture those they suspected as being army agents.<sup>140</sup>
86. The video footage also shows ABM members manning checkpoints to search for 'spies', and overlays statements from a September 2014 speech given by Islamic State spokesman Abu Mohamed al-Adnani, in which he urges Sinai-based militants to kill Egyptian security personnel.<sup>141</sup>

*The act meets the TSA criteria for designation*

87. The filmed and published beheading and shooting of Egyptian nationals is consistent with the definition of a terrorist act under s 5 of the TSA.
88. ABM carried out the killings as retribution for the men's alleged collaboration with Israeli intelligence services and as a warning to anyone who supports Israel or the Egyptian military. Plainly, ABM's intention was to cause the death of, or serious bodily injury to one or more persons (s 5(3)(a) TSA).
89. ABM has threatened to do the same to anyone they suspect of being "army agents" or who they suspect of cooperating with Israel. Kidnapping and killing civilians in this way, filming their deaths and publicly threatening other people with a similar fate, are all acts calculated to induce terror in the civilian population.
90. The group's statements about these killings show they were undertaken to undermine security in both Egypt and Israel. ABM has stated it ultimately seeks the destruction of the Israeli state and the imposition of strict sharia law there as well as in Egypt (see paragraphs 12 and 14 above). These acts were clearly intended to advance those goals (s 5(2) TSA). The acts were therefore carried out for the purpose of advancing ABM's own ideological/political/religious cause through acts of violence and terror and with the intention of both inducing terror in the civilian population (s 5(2)(a) TSA) and ultimately unduly forcing the Israeli and Egyptian governments out of office and creating a purely Islamic state under strict sharia law (s 5(2)(b) TSA).

## **LAW OF ARMED CONFLICT**

### **The law of armed conflict exception**

91. Section 5(4) of the TSA provides that an act does not constitute a terrorist act for the purposes of the TSA if two conditions are met. The first condition is that there must be a situation of armed conflict in those areas in which ABM conducts its operations, at the time the act occurs. Secondly, the act must accord with the law of armed conflict (LOAC). If one of these conditions is not met, the exemption does not apply.
92. LOAC makes a key distinction between armed conflict and other internal disturbances or tensions such as riots and isolated and sporadic acts of violence.<sup>142</sup>

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

93. The first question that arises is whether there exists within Egypt a state of "armed conflict" for the purposes of international law. An internal armed conflict exists where the conflict is fought between government forces and opposing non-state forces, or amongst armed groups, none of whom qualify as a legitimate government. Additional Protocol II (1977) to the 1949 Geneva Conventions adopted a higher threshold, requiring the insurgent forces fighting the government to be under responsible command and to control territory such that the insurgent forces would be able to implement Additional Protocol II. Such violence may even be classified as an international armed conflict when people are fighting against colonial domination, alien occupation or racist regimes in the exercise of their right to self determination. LOAC distinguishes, however, between armed conflict, and other internal disturbances or tensions such as riots and isolated and sporadic acts of violence.

94. Egypt continues to experience longstanding ethnic and religious tensions that may manifest in localised outbreaks of civil unrest. Although Egypt is far from stable there is no evidence of violence that has reached a degree of intensity and continuity on the part of either ABM or the Egypt authorities that would bring the situation within the meaning of “armed conflict.”
95. As a matter of international law relevant to an internal armed conflict, members of ABM are unable to meet the definition of combatant thus they are unable to claim combatant immunity in accordance with LOAC.

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

96. Having failed to meet the threshold of an armed conflict, it is not necessary to go further to examine whether the action of ABM would have been in accordance with LOAC. However, it is noted that even if it were considered that there was a current armed conflict, the second threshold for applying LOAC is also not met. A significant proportion of the attacks described in the case studies above were directed against police and civilians. Police in terms of LOAC are not combatants and therefore are classed as civilians unless incorporated into the armed forces.<sup>143</sup> These attacks would have breached the principle of distinction – that attacks on enemy combatants and military objectives are lawful, whereas attacks on entities such as the Police and the civilian population or civilian objects are not.

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<sup>8</sup> Located in Jerusalem’s Old City, al-Aqsa Mosque is a sacred site and home to the Dome of the Rock, a revered site believed to be where the Prophet Muhammad ascended to heaven.

<sup>9</sup> Shahada is an Islamic creed declaring belief in the oneness of Allah and the acceptance of Muhammad as Allah’s prophet.

<sup>10</sup> This flag is also commonly associated to other jihadist groups, including the Islamic State and al-Shabaab

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