

STATEMENT OF CASE TO RENEW THE DESIGNATION OF ISLAMIC STATE OF IRAQ AND THE LEVANT – SINAI PROVINCE AS A TERRORIST ENTITY

PURPOSE

1. This paper sets out the case demonstrating Islamic State of Iraq and the Levant – Sinai Province (ISIL Sinai) 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). ISIL Sinai was formerly designated under the description Ansar Bayt al-Maqdis (ABM),¹ and is 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, Aknaf Bayt al-Maqdis, Aknaf Beit al-Maqdis, Supporters of the Holy House, Mu'tassim Billah Battalion, Group of Partisans of Jerusalem, Sinai Peninsula, Wilaya of Sinai of the Islamic State, Wilayat Sinai, Wilayah Sinai, Wilayat Sayna, Islamic State-Sinai Province, Sinai Province, Province of Sinai, Islamic State in the Sinai, Daesh Sinai Province, and Islamic State of Iraq and ash-Sham in the Sinai.

STRUCTURE OF THIS PAPER

2. This paper sets out updated information about ISIL Sinai's continued involvement in terrorist activity and any relevant changes or developments to the organisation since its original designation in May 2015,² including ISIL Sinai'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,³ provide the basis for the conclusion that ISIL Sinai 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 renewed by the Prime Minister prior to expiry. 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)).

DESCRIPTION CHANGE UNDER SECTION 29A OF THE TSA

7. Section 29A of the TSA allows for changes of description of designated terrorist entities. The Prime Minister may state, by signing a written notice, a new description for a designated entity if the Prime Minister is satisfied that an entity designated under s 22 of the TSA should have

a description other than that under which the entity was designated (or than the description stated in the most recent notice under s 29A relating to the entity).

8. On 29 April 2018 the Prime Minister signed a written notice authorising the description of designated entity ABM to be changed to ISIL Sinai.
9. This change reflects ISIL Sinai's commitment to the Islamic State of Iraq and the Levant (ISIL) and its leader Abu Bakr al-Baghdadi, to whom ABM formally swore allegiance on 3 November 2014. A few days later, al-Baghdadi publically accepted the allegiance of ABM and announced the expansion of ISIL into Egypt. Following this announcement ABM publicly declared the Sinai province as part of the Islamic state through changing its name to ISIL Sinai (also known as, *inter alia*, Wilayat Sinai).⁴
10. Open source reporting since the designation of ABM in May 2015 suggests that ABM has fully embraced its new identity of ISIL Sinai, although it has not been subsumed by ISIL and still operates as an independent Egypt-based entity, primarily active in the Sinai Peninsula. Since 2015 attacks have been claimed under the new identity of ISIL Sinai. There have also been instances of ISIL Sinai attacks being claimed through social media platforms owned and operated by ISIL, which reinforces the notion that ISIL Sinai has affiliated with ISIL. In addition, there has been recognition from various media outlets, think tanks, and foreign governments of the change in identity to ISIL Sinai. For example, the US Department of State amended its designation of ABM to include "ISIL Sinai Province" as the descriptor.⁵ However, as some organisations may still refer to ISIL Sinai as ABM, that name along with other associated names have been retained as aliases in this designation of ISIL Sinai.

CREDIBILITY OF SOURCES

11. This paper has been prepared using open or unclassified sources which have a reputation for careful and unbiased reporting. These include: Long War Journal, BBC, Time Magazine, Al Jazeera, Al-Araby Al-Jadeed, Al-Monitor, Reuters, Bloomberg News, The New York Times, The Guardian, The Tahir Institute for Middle East Policy, The Washington Post, IHS Jane's World Insurgency & Terrorism and International Business Times. A range of regional news sources were also referred to including: Mada Masr, Al-Ahram, Al Arabiya, The National, Egypt Independent and The Times of Israel. Other sources utilised include: the US Department of State, Islamic State's magazine *Dabiq*, and Oxford Islamic Studies Online.

EVIDENCE TO SUPPORT DESIGNATION RENEWAL UNDER THE TSA

Continued involvement in terrorist activity

12. Since 2015, ISIL Sinai has carried out numerous acts that constitute continued involvement in terrorist activity, some of which are outlined in the following paragraphs. What is covered in this statement of case is not an exhaustive list of all terrorist incidents perpetrated by ISIL Sinai.
13. Groups of armed militants attacked five checkpoints in Sheikh Zuwayed, North Sinai on 1 July 2015. The militants used car bombs and heavy weaponry in the coordinated attacks, and official sources advise that at least 17 military personnel were killed in the attack. Province of Sinai (one of the alternative titles for ISIL Sinai) claimed responsibility for the attack through statements published on various social media platforms, claiming that they had attacked a total

of 15 military checkpoints simultaneously, one of which was located outside of the police club in Arish. However, it is unclear if any casualties resulted from the additional ten attacks they claimed.⁶

14. On 31 October 2015 a Russian Airliner operated by Metrojet crashed over Sinai, killing all 224 passengers and crew on board.⁷ On 18 November 2015 ISIL announced in its online magazine that Wilayah of Sayna (one of the alternative titles for ISIL Sinai) operatives had undertaken the attack, and local media later confirmed that ISIL Sinai⁸ claimed responsibility for the attack.⁹ The assailants had smuggled an improvised explosive device (IED) onto the plane by concealing it in a soft drink can. Shortly after the crash Russian authorities, having found traces of explosives in the wreckage, concluded that the plane was likely blown up and on 24 February 2016 the Egyptian government confirmed that the crash was a result of terrorist activity.¹⁰
15. On 24 November 2015 an attack targeting a hotel in El-Arish, North Sinai killed at least seven people and wounded another 10. The hotel was hosting judges supervising the vote in Sinai for the second round of parliamentary elections, and was heavily guarded by Egyptian Military and Police. The attack started when an explosives-rigged vehicle was blown up near the troops guarding the hotel, while two militants slipped inside the hotel. One militant detonated a suicide vest in the kitchen, while the other militant opened fire in a hotel room.¹¹ Local media reported that two judges, four policemen and one civilian were killed in this attack. ISIL Sinai claimed responsibility, saying that the attack was in retaliation for the Egyptian army imprisoning female Muslims.¹²
16. On 24 July 2016 a militant gunned down and killed a policeman in El-Arish, North Sinai. The victim was a Major in the Egyptian police, and militants stole his vehicle and weapon after the attack. Local media reported that ISIL's affiliate in Egypt had claimed responsibility for the attack, adding that this was the same group responsible for the Russian Metrojet attack in October 2015.¹³
17. On 14 October 2016 12 soldiers were killed while another six were wounded in an attack on an Egyptian military checkpoint in Bir al-Abed, North Sinai. The attack started when militants fired rockets and mortar rounds at the checkpoint before engaging in battle with soldiers.¹⁴ Egyptian security sources reported gunmen from Sinai Province (one of the alternative titles for ISIL Sinai) were behind the attack.¹⁵
18. On 9 April 2017 a double suicide bombing hit two churches during a Palm Sunday service. The first bombing occurred at the St. George Church in Tanta and killed at least 27 people. A few hours later, a second bombing occurred at Saint Mark's Cathedral, Alexandria killing 47 people. The Coptic Pope Tawadros had been leading a service at Saint Mark's Cathedral when the attack occurred.¹⁶ It was reported that "Egypt's Sinai-based ISIL affiliate" claimed responsibility for these attacks.¹⁷
19. On 18 April 2017 militants situated on a hilltop opened fire on a police checkpoint near St Catherine's Monastery, South Sinai. The attack killed one police officer and wounded four others.¹⁸ Responsibility for the attack was claimed by ISIL Sinai¹⁹. This assault was a relatively rare instance of violence in the Southern part of the Sinai Peninsula.²⁰
20. On October 16 2017 militants exchanged gunfire with guards stationed outside a church in El-Arish, then fired rocket-propelled grenades at the guards. Simultaneously another group of the militants robbed a bank, leaving behind explosives while they escaped with a hostage.²¹ It is believed that the exchange of fire with guards was a camouflage for the bank robbery, as the

bank was situated in a part of el-Arish with a large security presence. The bank robbery was successful, with militants escaping with \$1 million USD. ISIL Sinai is believed to be responsible for this attack, which killed eight people including five civilians.²²

21. On 24 November 2017 a suicide bomb exploded towards the end of Friday prayers in a Rawda mosque, in the district of Bir al-Abed, North Sinai. Shortly after the explosion, four off-road vehicles with approximately 25 to 30 militants approached the mosque, firing on individuals trapped inside and those trying to leave the premises. The militants also attacked emergency services who were trying to reach the victims of the explosion. The attack claimed 305 lives and injured another 128 people.²³ Although no group has claimed responsibility, the attack bears “many of the hallmarks of Wilayat Sinai”.²⁴ Witnesses to the attack claim that some of the militants were carrying the black Islamic State flag.²⁵ In an interview with *Al-Naba* in December 2016 the Emir of ISIL Sinai’s Islamic Police stated that a specific order of Sufism, Jariri (or Al-Jaririya), was a valid target of the militant group and named three specific towns where mosques and religious establishments would be targeted, of which Rawda was one.²⁶ According to the grandson of the Jariri Order, Sheikh Khaled, 90% of the victims in this attack were al-Jaririya Sufis.²⁷ Sufis are accused by some extremists groups of *takfir*, which is when a Muslim declares another Muslim to be a non-believer and no longer a Muslim. It is possible this attack was not claimed publicly by ISIL as the killing of other Muslims accused of *takfir* is a controversial concept in Islam²⁸, and the Rawda Mosque attack killed a large number of Muslims. In January 2018, a video was released of an anonymous individual claiming to be a former member of ISIL Sinai, who had recently defected to rival Al-Qaida inspired group Jund al-Islam. In the video the individual accused members of ISIL Sinai’s al-Arish branch of undertaking the Rawda mosque attack, adding that after the attack ISIL Sinai’s internal media had broadcast that 10 of its militants were responsible for the attack.²⁹
22. Although ISIL Sinai has not openly claimed responsibility for the Rawda mosque attack (possibly due to the large number of Muslim victims), there is strong evidence that it was behind the attack. This is based on the nature of the attack, the weapons used and particularly given that the group had publicly declared an intention to target members of Egypt’s Sufi community in Rawda, and in the weeks before the attack ISIL Sinai distributed leaflets to Rawda residents warning them to halt “heretical” Sufi rituals near the mosque³⁰. On that basis, the mosque attack is considered attributable to ISIL Sinai.

Ideology and objectives

23. ISIL Sinai has a strict transnational Salafist-jihadist ideology, with an ultimate aim of creating a province for ISIL by seizing territorial control over the Sinai Peninsula and enforcing extremist Sharia law on the inhabitants.³¹
24. As well as military and government targets, ISIL Sinai has also been known to target civilian populations. The October 2015 attack on the Russian Metrojet flight targeted tourists, while the 2017 Palm Sunday and Rawda mosque attacks targeted both Christians and Sufi Muslims. In a 2016 interview with the Islamic State Magazine *Al-Naba*, the unnamed Emir of Police for ISIL Sinai advised that the organisation’s “first priority was to combat the manifestations of polytheism including Sufism”.³²

Organisation and structure

25. There is limited open source information on the leadership structure of ISIL Sinai. On 4 August 2016 the Egyptian Military confirmed the death of ISIL Sinai’s leader, Abu Duaa al-

Ansari, who was allegedly responsible for the explosion on the Russian Metrojet flight in October 2015.³³ The military reported that the leader and 45 other fighters were killed in a series of airstrikes just outside the town of El-Arish.³⁴ On 18 August 2016, two weeks after the military report, ISIL Sinai released a statement confirming their leader Al-Ansari's death. The statement released online warned of more attacks to come and announced the name of the new leader, Sheikh Abdullah.³⁵

26. Other reports indicate that Abu Osama al-Masri, who was the main spokesman for ISIL Sinai, emerged as the new leader for the group. Al-Masri was designated by the United States Department of States as a Specially Designated Global Terrorist on 19 May 2017.³⁶

Weapons, tactics and capability

27. A May 2016 estimate assesses that there are between 1,000 and 1,500 active members of ISIL Sinai.³⁷ ISIL Sinai have a large variety of weapons capability, including explosives, infantry weapons, rockets and guided missiles. An example of the latter is the use of an anti-tank guided missiles during a 1 July 2015 attack on Egyptian military in Sheikh Zuweid, North Sinai.³⁸ Due to counter-terrorism operations conducted by the Egyptian Government, ISIL Sinai's capability may have been reduced. In late May 2016 the Egyptian Military directed a series of airstrikes in the Jabal Hilal region of Sinai. Jabal Hilal had been an ISIL Sinai stronghold since 2014, and Egyptian Military operations there damaged the militants' ammunition caches and weapons storage facilities. Official sources claimed that this action had diminished ISIL Sinai's logistics front.³⁹ On 4 August 2016 the Egyptian military conducted airstrikes against ISIL strongholds near El-Arish. The airstrikes killed approximately 46 ISIL operatives, and destroyed a large number of significant weapon, ammunition and explosives stores.⁴⁰
28. ISIL Sinai currently does not have the capability to effect a regime change at the Egyptian national level, nor would it be able to sustain complete control over parts of Northern Sinai. However, the persistent and deadly attacks on both government and civilian targets over the years have resulted in a severe counter terrorism response by the Egyptian Government.⁴¹ An example of this is President el-Sisi's decision to extend the State of Emergency for Egypt until April 2018. This was in response to recent attacks by ISIL Sinai and is the fourth time the State of Emergency for Egypt has been extended since it was first implemented in April 2017.⁴²

LAW OF ARMED CONFLICT

The LOAC exception

29. Section 5(4) of the TSA provides that an act does not constitute a terrorist act for the purposes of the TSA if the act occurs in a situation of armed conflict, and the act, at a time and place that it occurs, is in accordance with the rules of international law applicable to the conflict. Both of these conditions must be met for the exception to apply.
30. In a situation of armed conflict (whether international or non-international), the laws of armed conflict (LOAC) regulate the conduct of hostilities. LOAC is intended to protect the victims of armed conflicts and strike a balance between considerations of military necessity and humanity. The exception at section 5(4) of the TSA recognises that an act carried out by a combatant in an armed conflict in accordance with LOAC is not a terrorist act

Is there an armed conflict in the Sinai Peninsula?

31. An armed conflict can be of two types – international armed conflict (between two or more states); or non-international armed conflict (NIAC). A NIAC is where armed groups or dissident forces within a state are intentionally engaged in protracted, sustained and organised military operations against government forces or each other (the *Tadic* standard).⁴³ Additional Protocol II (1977) to the 1949 Geneva Conventions adopts a higher threshold for the existence of a NIAC, requiring insurgent forces to be under responsible command and to control territory in the state to such an extent that the insurgent forces would be able to implement Additional Protocol II of the Geneva Conventions. LOAC also distinguishes between armed conflict and other internal disturbances or tensions such as riots and isolated and sporadic acts of violence.⁴⁴
32. The activities of ISIL Sinai outlined in paras 12-22 above do not support the conclusion that a NIAC exists. The violence is sporadic and does not appear to have a sufficient degree of organisation to meet the *Tadic* standard. Furthermore, the situation in Sinai would not meet the threshold for a NIAC as outlined in Additional Protocol II because there is no evidence of responsible command or of control over the state's territory.

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

33. Having failed to meet the threshold of a NIAC, it is not necessary to determine whether ISIL Sinai carries out actions in accordance with LOAC. That said, it is clear that ISIL Sinai's activities would frequently breach the LOAC principle of distinction. That principle requires that parties to an armed conflict must always distinguish between the civilian population and combatants, and civilian objects and military objectives. Attacks should only be directed against military objectives.
34. In particular, the bombing of the airliner in October 2015 and the attack on the hotel in November 2015 are serious breaches because these attacks targeted civilians, and a number of subsequent attacks target Egypt's civilian police force.
35. Accordingly, the exemption in s 5(4) cannot apply, and ISIL Sinai attacks are properly characterised as terrorist acts.

CONCLUSION

36. The evidence listed above outlines the extensive nature and scale of ISIL Sinai's continued involvement in terrorist activity, and therefore this paper concludes that there are still reasonable grounds as set out in s 22 of the TSA for ISIL Sinai to be designated under that section.
37. Since its designation in May 2015, ISIL Sinai has continued to carry out terrorist acts as defined in ss 5 and 25 of the TSA (paragraphs 12-22). Accordingly, given there are still reasonable grounds to believe ISIL Sinai has knowingly carried out terrorist acts as set out in s 22 of the TSA, ISIL Sinai meets the legal criteria for renewal of its designation as a terrorist entity under s 35.
38. The designation must be renewed by 4 May 2018 to remain in effect.

- ¹ The New Zealand Gazette Notice No. 2018-go2105 dated 09/05/2018 detailing the description change can be accessed at: <https://gazette.govt.nz/notice/id/2018-go2105>
- ² The statement of case, dated 4 May 2015 can be accessed at: <http://www.police.govt.nz/sites/default/files/publications/ansar-bayt-al-madis-statement-of-case-for-designation-2015.pdf>.
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- ⁴ (13/11/2014) "Islamic State leader claims 'caliphate' has expanded in new audio message", Long War Journal, accessed via <https://www.longwarjournal.org/archives/2014/11/islamic-state-leader-1.php> on 8/01/2018, and; (12/05/2016) "Sinai Province: Egypt's most dangerous group", BBC, accessed via <http://www.bbc.com/news/world-middle-east-25882504> on 8/01/2018.
- ⁵ (29/11/2015) "Designations of Foreign Terrorist Fighters", US Department of State, accessed via <https://www.state.gov/j/ct/rls/other/des/266516.htm> on 8/01/2018.
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- ⁷ (17/11/2015) "Russian Plane Crash: What we know", BBC, accessed via <http://www.bbc.com/news/world-middle-east-34687990> on 14/12/2017.
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⁴⁰ (5/08/2016) “*Egyptian Army kills Sinai ISIS leader Abu Duaa al-Ansari in revenge Airstrikes*”, International Business times, accessed via <http://www.ibtimes.co.in/egyptian-army-kills-sinai-isis-leader-abu-duaa-al-ansari-revenge-airstrikes-689004> on 15/12/2017.

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⁴² (03/01/2018) “*Egypt to extend state of emergency for 3 months: MENA*”, Reuters, accessed via <https://www.reuters.com/article/us-egypt-security/egypt-to-extend-state-of-emergency-for-3-months-mena-idUSKBN1ER1B0> on 11/01/2018.

⁴³ The Prosecutor v Dusko Tadic, Judgment, IT-94-1-T.

⁴⁴ Article 2 of Additional Protocol II 1977 of the 1949 Geneva Conventions which applies to non-international armed conflicts states, “this protocol shall not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence and other acts of a similar nature, as not being armed conflicts.”