

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

PURPOSE

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

STRUCTURE OF THIS PAPER

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

STATUTORY CRITERIA FOR THIS DESIGNATION RENEWAL UNDER THE TSA

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

CREDIBILITY OF SOURCES

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

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

EVIDENCE TO SUPPORT DESIGNATION RENEWAL UNDER THE TSA

Continued involvement in terrorist activity

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

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

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

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

Ideology and Objectives

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

Organisation and structure

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

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

Weapons, tactics and capability

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

Law of armed conflict (LOAC)

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

CONCLUSION

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

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² (02/10/2013) "Statement of case to renew the designation of Izz al-Din al-Qassam Brigades as a terrorist entity. Available at: <http://www.police.govt.nz/sites/default/files/publications/renew-hamas-qassam-brigade-2-oct-2013.pdf>.

³ (10/12/2014) "A classical analysis of the 2014 Israel-Hamas conflict", Combating Terrorism Centre, accessed via <https://www.ctc.usma.edu/posts/a-classical-analysis-of-the-2014-israel-hamas-conflict> on 24/03/2016.

⁴ (08/07/2014) "Hamas claims responsibility for rockets fired at Jerusalem, Te Aviv and Haifa", Middle East Eye, accessed via <http://www.middleeasteye.net/news/israels-army-prepared-ground-assault-gaza-official-275282816> on 24/03/2016.

⁵ (29/07/2014) "PLO announcement of 24 hour Gaza ceasefire disavowed by Hamas", The Guardian, accessed via <http://www.theguardian.com/world/2014/jul/29/plo-announcement-gaza-ceasefire-disavowed-hamas> on 24/03/2016.

⁶ (20/08/2014) "Press Release of Abu Obeida, Al Qassam spokesperson", Al-Qassam, accessed via http://www.qassam.ps/statement-1509-Press_Release_of_Abu_Obeida_Al_Qassam_spokesperson.html on 30/05/2016.

⁷ (21/08/2014) "Hamas official: we were behind the kidnapping of three Israeli teenagers", The Guardian, accessed via <http://www.theguardian.com/world/2014/aug/21/hamas-kidnapping-three-israeli-teenagers-saleh-al-arouri-qassam-brigades> on 30/05/2016, and;

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⁸ (04/09/2014) "Israel charges Palestinian man over murder of three kidnapped teenagers", The Guardian, accessed via <http://www.theguardian.com/world/2014/sep/04/israel-charges-hussam-qawasmeh-kidnapped-teenagers-murder> on 30/05/2016, and;

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⁹ (05/10/2015) "5-man Hamas cell that killed Naama and Eitam Henkin arrested", The Times of Israel, accessed via <http://www.timesofisrael.com/shin-bet-terror-cell-behind-henkin-murders-arrested/> on 30/05/2016, and;

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¹⁰ (12/03/2016) "Hamas Armed Wing: Blood of children killed 12 March 'will not go to waste'; patience 'running out'", Qudsnet, accessed via Open Source Centre on 23/03/2016.

¹¹ (25/04/2016) "Hamas releases video of Jerusalem bus bomber in fatigues", The Times of Israel, accessed via <http://www.timesofisrael.com/hamas-releases-video-of-jerusalem-bus-bomber-in-fatigues/> on 30/05/2016.

¹² (22/04/2016) "Hamas claims responsibility for IED attack targeting a bus in Jerusalem", IHS Jane's Terrorism Watch Report, accessed via <http://www.janes.com/article/59737/hamas-claims-responsibility-for-ied-attack-targeting-a-bus-in-jerusalem> on 04/05/2016, and;

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¹³ The Palestinian uprising against the Israeli occupation was termed the "first intifada", occurring between 1987 and 1993. The "second intifada" began in 2000 and ended in approximately 2005.

¹⁴ (18/04/2016) "Jerusalem rocked by bomb explosion on bus", The Guardian, accessed via <http://www.theguardian.com/world/2016/apr/18/jerusalem-bus-bomb-casualties-derech-hebron> on 04/05/2016.

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