

STATEMENT OF CASE TO DESIGNATE LEBANESE HIZBOLLAH'S MILITARY WING, AL-MUQAWAMA AL-ISLAMIYYA ('THE ISLAMIC RESISTANCE'), AS A TERRORIST ENTITY

PURPOSE

1. The purpose of this paper is to set out the case demonstrating that the military wing of Lebanese Hizbollah (hereafter referred to as Hizbollah)¹, Al-Muqawama al-Islamiyya (also known as 'The Islamic Resistance' or 'IR'), 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 Al-Muqawama al-Islamiyya, hereafter referred to as IR, meets the criteria for designation as a terrorist entity under the TSA.

STRUCTURE OF THIS PAPER

3. This paper sets out background information about Hizbollah and IR covering various aspects of their history, objectives, structure, tactics, weapons and involvement in terrorism, before detailing two case studies of planned and actual attacks which meet the definition of a "terrorist act" under the TSA.
4. The discussion preceding the case studies provides background about Hizbollah, and IR in particular, which helps inform the analysis of the case studies. The events detailed in the two case studies represent planned or actual attacks attributed to and/or claimed by IR. It is these two 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 IR 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;
 - 6.1.1 the death of, or serious bodily injury to, one or more persons; or
 - 6.1.2 the destruction of, or serious damage to, property of great value or importance, if likely to result in the death of, or serious bodily injury to, one or more persons; and
 - 6.2 Is carried out for the purpose of advancing an ideological, political, or religious cause; and
 - 6.3 Is intended to either:

- 6.3.1 Induce terror in a civilian population; or
- 6.3.2 Unduly compel or force a government or an international organisation to do or abstain from doing any act; and
- 6.4 Is not an act that occurs in a situation of armed conflict and is, at the time and in the place that it occurs, in accordance with rules of international law applicable to the conflict.

CREDIBILITY OF SOURCES

- 7. This paper has been prepared using open or unclassified sources which have a reputation for careful and unbiased reporting. These include: the Jane's series (World Insurgency & Terrorism, Terrorism & Security Monitor and Intelligence Review); Council on Foreign Relations; the Jamestown Foundation; The New York Times; the LA Times; the BBC; The Washington Post; The Guardian; Reuters; and Time Magazine. This paper also utilises public information from the US Department of State, the Australian Attorney General's Office and the Israeli Foreign Ministry, as well as a range of international organisations and think tanks, international and regional media sources, and information published and posted online by Hizbollah.

BACKGROUND

Establishment

- 8. 'The Islamic Resistance' first emerged as a radical Shia militia in 1982. It was formed by Islamist members of the mainstream Shia Amal Movement, former members of the Lebanese Dawa Party, and numerous other radical Shia groups in response to Israel's invasion of Lebanon.² The group's early leaders were inspired by the radical teachings of Iran's Ayatollah Khomeini and radical Iraqi cleric Mohammad Baqr as-Sadr³, and they received military training from Iran's Islamic Revolutionary Guards Corps (IRGC) in camps in Bekaa.⁴
- 9. The establishment of Lebanese Hizbollah as a political entity came later, formally declared on 16 February 1985. Official party spokesman al-Sayyed Ibrahim Amine al-Sayyed presented Hizbollah's "ideological, jihad, political and social visions" as outlined in the 'Open Letter'.⁵ According to Naim Qassem, Hizbollah's current Deputy Secretary-General, the period between 1982 and 1985 were foundational years, "for the crystallization of a political vision, the facets of which were harmonious with faith in Islam as a solution", and the establishment of "an effective jihad operation as represented by Islamic Resistance forcing Israel's partial flight from Lebanon in 1985."⁶

Ideology and objectives

- 10. Hizbollah has three essential ideological pillars: i) belief in Islam as a 'code of law' covering "all of humankind's needs, both individual and social"⁷; ii) 'jihad', particularly 'military jihad' against the 'enemies' of Islam; and iii) 'al-Wali al-Faqih' or 'Jurisdiction of the Jurist-Theologian' (see *Organisation and Structure*).⁸
- 11. Hizbollah's core objectives are informed by these ideological 'pillars', and were set out in its 1985 founding document, the 'Open Letter'. They include the establishment of a Shia-based Islamic Republic in Lebanon and the destruction of the

state of Israel through 'jihad'. In November 2009, Secretary General Nasrallah released the 'New Political Document of Hizbollah' to reflect what he called the organisation's 'political evolution' since the 1990s.⁹ The document toned down the Islamist rhetoric and in it, Hizbollah claims to recognise the pluralistic nature of Lebanese society.¹⁰ Many have seen this new conciliatory approach not as a fundamental ideological shift, however, but as a calculated effort "to rehabilitate its image at home and abroad."¹¹

12. Hizbollah's "core ideological pillars"¹² remain central to the organisation's aims. Hizbollah continues to be ruled by a Shia 'theocrat' taking guidance from clerical leaders in Iran, and the organisation's "goals with respect to Israel have remained unaltered, [as] has its complete opposition to any negotiated solution to the Arab-Israeli conflict."¹³

Organisation and structure

13. Hizbollah's power structure is determined by the concept of al-Wali al-Faqih ('Jurisdiction of the Jurist-Theologian'). This dictates that ultimate authority flows from Allah and the Prophet Mohammad, through "the infallible Imams" to the 'Jurist Theologian'; the "custodian of the entire nation of [Shia] Islam." Iran's Grand Ayatollah Khamenei is the current 'Jurist Theologian',¹⁴ from whom the organisation's leaders seek ultimate spiritual counsel.
14. In 1985, with the declaration of Hizbollah's 'Open Letter', the position of Secretary General was established beneath the Jurist Theologian as the organisation's official spokesperson. The current Secretary General, Sheikh Hassan Nasrallah, has held the position continuously since his election in 1992. Hizbollah's top decision-making body is a seven-man Shura Council (Majlis al-Shura), which comprises Secretary General Nasrallah, Deputy Secretary General Qassem and the heads of the five boards or council assemblies that make up Hizbollah's Political and Administrative Apparatus: the Jihad Assembly, the Political Assembly, the Executive Assembly, the Parliamentary Assembly and the Judicial Assembly.¹⁵ Within the Executive Assembly are units in charge of Hizbollah's social, education, health, information, finance, external relations and other programmes.¹⁶

The military wing – Islamic Resistance

15. Hizbollah's 'Military and Security Apparatus', IR, exists as a distinct entity from the main body of the organisation¹⁷, and elements of the military wing are known to operate in isolation and in complete secrecy (see paras 19-20 below) for reasons of operational security.¹⁸ "This makes it much more difficult for Israeli intelligence to get accurate intelligence about their capabilities, methods, training, armaments and intentions."¹⁹ According to Qassem, "a limited circle of individuals was aware of resistance operations. Only those directly involved with planning and execution within the tactics set by the military command formed part of this circle."²⁰ In its more conventional role, however, IR reports directly to, and receives high-level strategic guidance from, Nasrallah and the Shura Council.²¹
16. IR consists of three main operational elements which each comprise "self-contained, semi-autonomous, mobile contingents"²², interspersed across three regional commands: the Bekaa valley, Beirut and southern Lebanon.²³ The elements cover recruitment and training; guerrilla warfare; and security and enforcement. According

to one organisation, IR has a group of operatives “capable of undertaking terrorist missions that is larger and better-trained than any group Al Qaida has ever had.”²⁴

17. The guerrilla warfare element comprises four operational sub-units: i) a ‘martyrs’ unit responsible for suicide operations²⁵; ii) a special forces unit, responsible for sniping, anti-tank activities, surveillance, communications and bomb-making; iii) a heavy weapons unit, responsible for rocketry and mortars; and iv) a regulars and support unit.²⁶
18. The security and enforcement element consists of both internal and external security components. The ‘External Security Organisation’ (ESO) functions as a foreign intelligence unit specialising in espionage, counter-intelligence and despatching operatives overseas to infiltrate diaspora communities, business and criminal networks, and carry out terrorist attacks.²⁷
19. Little is known about IR’s internal command hierarchy due to its highly secretive nature and use of sophisticated protective measures. However it is thought that prior to his death in 2008, Imad Mughniyeh was one of the key leaders and held primary responsibility for conducting “special operations” against Israel, for forging close links with and providing support to Palestinian militant groups, and supporting the Shia Mahdi army in Iraq.²⁸ Mughniyeh was assassinated in a car bomb attack in Damascus in February 2008.
20. While culpability has never been ascribed, Nasrallah has blamed Israel for the assassination, and at the militant’s funeral he stated: “They consider that killing Hajj Imad was their accomplishment, while we see that Hajj Imad's remaining alive fighting them for 25-years... especially in the past ten years in different arenas, working night and day in constant movement, constant presence on battlefield front lines... for him to endure and stay alive for 25 years is itself the achievement attributed to Hizbullah security school, so to speak!”²⁹
21. Due to a massive rate of recruitment into IR since the 2006 war with Israel, it is difficult to accurately estimate the current force size. Prior to 2006 it was believed the guerrilla warfare element had 400-800 full time fighters. There were also around 5,000 to 10,000 part time fighters who acted as reservists or village guards. These part timers comprised the bulk of IR’s fighting force during the 2006 war with Israel.³⁰ Fighters are trained in places like Nabi Sheet in eastern Lebanon, by Hizbollah instructors, members of the Syrian army and trainers from Iran’s Islamic Revolutionary Guard Corps Quds Force (IRGC-QF) as well as Iran’s Ministry of Intelligence and Security (MOIS). Some are also sent to Syria and Iran for training on advanced weapons and advanced terrorist tactics.³¹

Weapons

22. IR is one of the most well armed non-state actors in the world. Its fighters are armed with a variety of small arms and light weapons, including the M-16 and AK series assault rifles, Russian and Italian snipers rifles, grenades and other explosives. While most of these can be sourced on the Lebanese black market³², IR’s “links to Iranian diplomatic facilities guarantee them access to modern weaponry and military-grade explosives that can be brought in via the diplomatic pouch, which is inviolable under international treaty.”³³

23. IR's anti-tank units are equipped with an assortment of advanced missile systems that were used with deadly effect during the 2006 war with Israel. IR also has advanced anti-aircraft and anti-ship weapons, and since 2006 has developed a highly credible Unmanned Aerial Vehicle (UAV) capability.³⁴
24. IR's fire support teams, which launched more than 4,000 rockets into Israel during the 2006 war, are believed to have as many as 40,000 rockets currently stockpiled, including in bunkers within 12km of the Israeli border.³⁵ This includes the Katyusha rocket (with a range of 20km), but also longer range Iranian and Syrian rockets able to strike almost anywhere inside Israel.³⁶
25. Recently it has also been alleged that IR has acquired Scud-class missiles from Iran via Syria.³⁷ According to Jane's, the IDF is now "working on the presumption that Hizbollah could have any weapons system in Iran's inventory."³⁸ US Secretary of Defence, Robert Gates, said in April 2010 "Syria and Iran are providing Hizbollah with rockets and missiles of ever increasing capability. And we are at a point now... [where] Hizbollah has far more rockets and missiles than most governments in the world."³⁹ In recent months United Nations Force in Lebanon (UNIFIL) peacekeepers have been attacked by local Shia villages in southern Lebanon and banned from entering several villages. UNIFIL officials have said the clashes appear to have been organised by Hizbollah, and UN Secretary Ban Ki-moon attributed this to Hizbollah's reported acquisition of Scud-class missiles.⁴⁰
26. Hizbollah's continued possession and acquisition of weapons is in violation of the 1989 Ta'if Accord, which ended Lebanon's civil war and called for the disarming of all militia⁴¹, and UN Security Council Resolution 1701 (2006), which ended the 33-day Israel-Hizbollah war in 2006. Resolution 1701 called for the demilitarisation of Hizbollah, and expressed "the importance of the extension of the control of the government of Lebanon over all Lebanese Territory in accordance with the provisions of Resolutions 1559 (2004) and 1680 (2006) and of the relevant provisions of the Ta'if Accords for it to exercise its full sovereignty so that there will be no weapons without the consent of the government of Lebanon and no authority other than that of the government of Lebanon."⁴²

Tactics

1982-2006

27. Throughout the 1980s and 1990s Hizbollah was implicated in dozens of attacks against Israel, the United States and other Western targets in the Middle East, Europe and South America. These attacks included a series of kidnappings of Westerners in Lebanon (1980s); suicide truck bombings against the US Embassy, French paratroopers and the US Marine barracks in Beirut that killed more than three hundred people (1983); bombings in Copenhagen and Paris (1985); the hijacking of TWA flight 847 with the death of a US citizen (1985); the bombing of the Israeli Embassy in Argentina that killed twenty-nine people (1992); and the bombing of a Jewish community centre in Argentina that killed ninety-five (1994).⁴³ Hizbollah has also been linked to the 1996 truck bombing of the Khobar Towers in Saudi Arabia that killed 19 US servicemen and one Saudi national.⁴⁴
28. Hizbollah has denied any involvement in the Argentina and Saudi bombings⁴⁵, although in 1999 the Argentina Supreme Court issued an arrest warrant for Imad

Mughniyeh, citing “conclusive evidence” that his group was behind the attack on the Israeli Embassy in 1992.⁴⁶ From 2000 to 2008 IR’s primary focus had shifted from suicide bombings and car bombings to sporadic armed attacks against Israeli forces in the Shebaa Farms region along Lebanon’s southeast border with the Golan Heights.⁴⁷ Activities have included sniper and rocket fire on military outposts; ambushing convoys; planting improvised explosive devices; ‘booby-trapping’ vehicles and houses; and launching mortars and rockets against Israeli towns and villages.⁴⁸

Prelude to the 2006 war with Israel

29. IR has reportedly applied lessons from Israeli and US military training manuals and is equipped with very modern communications and weapons systems. Despite heavy Lebanese losses, Hizbollah has claimed IR was victorious during the 2006 war with Israel, “having stood its ground against the IDF and thwarting Israel’s pre-war conditions for a ceasefire.”⁴⁹
30. The war was sparked on 12 July 2006, when an IR squad using rocket propelled grenades and small arms fire ambushed an Israeli patrol, killing three soldiers and kidnapping two others. The attack happened on the Israeli side of the ‘blue line’. At the same time as the ambush, “IR fire support teams staged a diversionary bombardment” of IDF outposts in the Shebaa Farms area and against several Israel villages, including Zar’it and Shetula, with mortars and Katyusha rockets.⁵⁰ Approximately six civilians were reportedly wounded in Shetula when a rocket hit a house.⁵¹
31. Hizbollah Secretary General Nasrallah said the attack had been planned for several months and was aimed at forcing negotiations that would win the release of four Lebanese men held in Israeli jails, including former Palestinian Liberation Front (PLF) member and convicted murderer, Samir Kuntar. “Let this be clear, the prisoners will only return home through indirect negotiations and a trade. If the Israelis are considering any military action to bring the hostages home, they are delusional, delusional, delusional.”⁵²

Terrorist plots since 2008

32. Since 2008, however, there is clear evidence that IR has re-engaged with planning terrorist attacks against Israeli interests abroad. Alleged plots have been disrupted in several countries, including Azerbaijan (see case study 1), Turkey and Israel.⁵³ In April this year an Egyptian court convicted 26 men of belonging to a Hizbollah cell that was planning to attack Israeli tourists in the Sinai Peninsula, fire on ships passing through the Suez Canal and smuggle weapons, supplies and people through the Gaza tunnels. According to Egyptian prosecutors, the operatives were instructed to collect intelligence from villages along the Egypt-Gaza border, at tourist sites, and at the Suez Canal. Nasrallah himself confirmed that one of the men arrested was Sami Shihab, a Hizbollah member who was on “a logistical job to help Palestinians get [military] equipment.”⁵⁴ UN special envoy Terje Roed-Larsen commented that there has recently been “a growing concern that Hezbollah has engaged in clandestine and illegal militant activities beyond Lebanese territory.”⁵⁵

Intent

33. Since the end of the 2006 war with Israel, Hizbollah has continued to issue public threats against Israel. In 2009 and 2010, Nasrallah threatened that in the next conflict if Israel bombed Hizbollah's stronghold in southern Beirut, the group would "bomb Tel Aviv"⁵⁶; "if you hit Raik al Hariri international airport in Beirut, we will hit Ben-Gurion airport in Tel Aviv."⁵⁷
34. At the funeral of Imad Mughniyeh in southern Beirut in February 2008, however, Nasrallah suggested Hizbollah would not wait for another war to attack Israel. "You have crossed the borders... With this murder, its timing, location and method – Zionists, if you want this type of open war, let the world listen: Let this war be open."⁵⁸ Less than a week later during a speech honouring the martyrdom of Mughniyeh and other "Hizbollah heroes", Nasrallah said, "Our options are open and we have all the time in the world... [W]e are the ones to choose the time and place and target." He also suggested Hizbollah was looking for a target that "rises to the level of Mughniyeh."⁵⁹
35. In July 2008 Jane's reported that US and Canadian intelligence agencies had issued warnings that Hizbollah was "ready to mount an attack against 'Jewish targets' somewhere outside the Middle East."⁶⁰
36. On the second anniversary of Mughniyeh's death in 2010, Deputy Secretary General Naim Qassem said that Hizbollah was still seeking revenge for the assassination of the organisation's top military commander, and that avenging his death was "the minimum Hizbollah could do." "[The] [c]ommitment exists. The (attack) period and specifications, however, will come in due time."⁶¹

Other considerations

Links with Iran & Syria

37. Iranian and Syrian support to Hizbollah is wide ranging, historical and filters throughout the organisation. The 'Jurist Theologian', Iran's Ayatollah Khomeini, provides the highest level of clerical guidance to the organisation's leaders (see *Ideology and objectives*). IRGC envoys are also reportedly present at the command level within IR.⁶² The two countries provide massive assistance in the form of money, political support, military training (see *Organisation and structure*) and military hardware (see *Weapons*)⁶³, and according to Jane's, Hizbollah was "rearmed by Iran" following the 2000 Israeli withdrawal from southern Lebanon and again following the 2006 war.⁶⁴
38. While this level of support highlights Hizbollah's central role in Iranian and Syrian strategic planning⁶⁵, it does not necessarily indicate control over the organisation. "[Hizbollah] uses Iran and Syria as much as it is used", and sees them both as sources of weapons and money for its fight against the 'Zionist enemy'.⁶⁶
39. It is difficult to accurately assess how much Iran gives Hizbollah financially, but it is estimated to be in the region of \$60-100 million per year.⁶⁷ Nasrallah reportedly contacted Ayatollah Khomeini in 2010 requesting \$300 million in funding, which was then transferred to Hizbollah during the February 2010 meeting in Damascus

between Iranian President Mahmoud Ahmedinajad, Syrian President Bashar Assad and Nasrallah.⁶⁸

40. In December 2008, Nasrallah was awarded an honorary doctorate in political science from a university in the Iranian region of Isfahan, “in recognition by the Iranian university of the achievements made by the Islamic Resistance in Lebanon.” In a statement read at the ceremony, Nasrallah thanked Iran for its longstanding support of Hizbollah’s “fight against the Zionist entity” and expressed the hope “that one day the Resistance group would change the face of the Middle East.”⁶⁹

Support to terrorist groups

41. Specialist units within IR, possibly under the former leadership of Mughniyeh and the ESO, were established over the past several years to provide support, training and resources to Palestinian militant and terrorist groups in the Occupied Palestinian Territories, and Shia insurgents in Iraq.⁷⁰ ‘Unit 1800’ is reported to have worked closely with Palestinian Islamic Jihad and Hamas’ Izz al-Din al-Qassam Brigades⁷¹, both recently designated as terrorist entities under the TSA. ‘Unit 3800’, meanwhile, provided support and training between 2006-2008 to the Shia ‘Madhi Army’ of radical cleric Muqtada al-Sadr⁷², responsible for killing coalition forces as well as Iraqi civilians.⁷³ In both instances cases could be made that IR knowingly ‘facilitated the carrying out of a terrorist act’ (s 25(2) TSA).

Designation of elements of Hizbollah by partners

42. The US and Canada have both proscribed the entire Hizbollah organisation due to the strong Hizbollah linkages to organised crime in their respective countries and the expressed threat the organisation historically and currently poses to the US. Prior to 11 September 2001, Hizbollah was responsible for the deaths of more American citizens than any other terrorist group. The UK has proscribed the IR as a distinct terrorist entity within Hizbollah citing the need to retain a political dialogue with Hizbollah. Australia, meanwhile, has proscribed the External Security Organisation (ESO) as a distinct ‘terrorist entity’ within the IR.

Designation of Hizbollah’s military wing only

43. Hizbollah plays a social and political role Lebanon. It represents a large portion of the Shia community, the largest of Lebanon’s religious groupings, and provides social services to communities across the country. Given its current level of influence in Lebanese society, Hizbollah can play an important role, alongside the Lebanese government, in ensuring Lebanon does not regress back into a sectarian civil war.
44. Hizbollah’s leadership, however, has not renounced violence as a means to achieve the organisation’s objectives, particularly with regard to Israel, and continue to maintain a degree of strategic command over the military wing. Furthermore IR has, over the past four years, grown stronger than it has ever been and arguably currently poses the greatest security threat to the region. For these reasons, it is appropriate to designate Hizbollah’s military wing, IR, as a terrorist entity.

CASE STUDIES

1. The siege of West Beirut, May 2008

The facts

45. For 17 months following the 2006 war with Israel, Hizbollah led a campaign of street protests against the Lebanese Government to force it to negotiate a new ruling coalition in which Hizbollah would have a power of veto. Hizbollah's actions paralysed central Beirut, preventing parliament from sitting, blocking the November 2007 presidential elections, and "effectively freezing the political process".⁷⁴
46. In May 2008, in an attempt to bring Hizbollah more under the government's control, Lebanese Prime Minister Fouad Siniora announced he would move to shut down Hizbollah's private 'military telecommunications network', which the government considered a violation of state sovereignty, and remove Beirut Airport's security chief, Brigadier General Wafiq Shuqeir, over his alleged ties to Hizbollah.⁷⁵ In response, on 7 May, IR commanders and fighters from groups allied to Hizbollah used a planned labour strike in central Beirut as an opportunity to infiltrate the city, block major routes with burning tyres and launch attacks against key government buildings, including political offices and media outlets.⁷⁶ On 8 May Hizbollah Secretary General Nasrallah announced on Al-Manar television that the government's move against the group's networks was a "declaration of war" on the organization, and demanded that the order be revoked. Accusing the government of being "Israelis dressed in suits and speaking Arabic"⁷⁷, he pledged to "cut the hands that will target the weapons of the resistance"⁷⁸, and of those who would tamper with the group's telecoms network.⁷⁹
47. Within minutes of Nasrallah's comments, heavy street battles broke out in central Beirut between the pre-positioned IR-led opposition fighters and pro-government Sunni militiamen of the Future Movement.⁸⁰ Over the next two days opposition gunmen, using machine guns and rocket propelled grenades, "[routed] government supporters with ease in what was clearly a pre-planned and well-coordinated operation."⁸¹ Over these two days 14 people, including 8 civilians, were killed in Beirut alone.⁸²
48. In response to the violence, Prime Minister Siniora said, "Hizbollah today has a problem with all of Lebanon, not just the government... Hizbollah must realise that force of arms cannot intimidate us". He accused Hizbollah of besieging the capital and "poisoning" the dream of democracy in Lebanon.⁸³ A senior member of the Lebanese government added, "by turning its guns on the country, Hizbollah has lost its status as a national resistance among the majority of Lebanese."⁸⁴ IR's armed attacks in Beirut ended on 10 May when the Lebanese Army conceded to Hizbollah's demands, reinstating Beirut airport's security chief and overturning the government's earlier decision to shut down the telecoms network. The 18-month political crisis finally ended on 21 May when rival Lebanese leaders reached an agreement in Doha, giving the opposition 11 Ministerial positions within any new coalition, and thereby assuring Hizbollah a veto power within the government.
49. Despite the agreement, sporadic violence continued to spread throughout Lebanon for several weeks. It is estimated that between 7 May and 25 July, 105 people were killed in episodic violence involving IR-led fighters against pro-government and

Sunni groups. This included 34 civilians, two Police and one foreign national (Australian).⁸⁵ Human Rights Watch believes the figure is more likely to be 65 civilians killed, while the Lebanese Police estimated the figure could be as high as 80.⁸⁶

The act meets the TSA criteria for designation

50. IR's attacks in West Beirut in May 2008 are consistent with the definition of a terrorist act under s 5 of the TSA.
51. IR's use of machine guns and rocket propelled grenades during the street battles in the centre of Lebanon's capital city shows an intention to cause the death of, or other serious bodily injury to, one or more persons (s 5(3)(a) TSA). This is supported by the fact that in three days of fighting between IR fighters and pro-government forces, 14 people, including 8 civilians, were killed.
52. As noted in paragraph 46 above, the violent attack on West Beirut by IR fighters was carried out in response to the government's move to shut down Hizbollah's military telecommunications network. The fact that IR ended the attacks when its demands were met illustrates that its intention was to unduly compel the government to act to reinstate the airport security chief and to reverse its earlier decision to dismantle Hizbollah's telecommunications network (s 5(2)(b) TSA). IR's prompt action to restore Hizbollah's military capability (and thus preserve the "weapons of the resistance") was also clearly carried out with the purpose of advancing the IR's own ideological/political or religious cause (s 5(2) TSA).

2. The planned attack against the Israeli Embassy in Baku, Azerbaijan, May 2008

The facts

53. In October 2009 two Lebanese members of Hizbollah's IR and four Azeri nationals were convicted by a court in Azerbaijan of plotting in 2008 to bomb the Israeli and US Embassies in Baku as well as the Russian-operated Qabala radar station.⁸⁷ They had been charged in June 2009 with treason, revealing secret information abroad, espionage, preparation of acts of terrorism, drug trafficking and arms smuggling.⁸⁸ The investigation concluded that the suspects intended to position up to four car bombs near the Embassies and explode them simultaneously. The alleged plot has been described as "in the advanced stages".⁸⁹ Police caught the suspects fleeing from the Israeli Embassy in May 2008 with explosives, binoculars, cameras, firearms with silencers and reconnaissance photos in their vehicle.⁹⁰
54. The leader of the plot, Ali Karaki, is described as, "a veteran of Hizbollah's external operations unit [ESO]", while the second Lebanese man, Ali Najem Aladine, was a "lower-ranking explosives expert".⁹¹ According to investigation records, the men were receiving orders from Hizbollah's ESO, and support - including explosives and facilitated entry into Azerbaijan - from Iran's Revolutionary Guards Corps. A court spokesman said the group also had ties to Al Qaida.⁹²
55. Local and foreign newspapers reported that the planned bombing was an attempt to avenge the assassination of Imad Mughniyeh.⁹³ As recorded above at paragraph 34 Hizbollah Secretary General Nasrallah has publicly stated that Mughniyeh's death would be avenged through attacks against Israeli at 'a time and place' of Hizbollah's choosing. It appears that the planning for an attack may have even begun before

February 2008. The investigation found that the two Lebanese IR members had travelled to Azerbaijan several times in 2007 and early 2008, using Iranian passports, to collect information on the Israeli Embassy and take photos of the radar station.⁹⁴ During the trial, Ali Karaki admitted that he had represented Hizbollah in Iran since 2003 and that his duties included collecting information on the Jewish Cultural Center in Baku as well investigating a number of Iranians who “help Israel”.⁹⁵

The act meets the TSA criteria for designation

56. IR’s planned attack against the Israeli Embassy in Baku, Azerbaijan is consistent with the definition of a terrorist act under s 5 of the TSA.
57. For the purposes of the TSA, a terrorist act is carried out if planning or other preparations to carry out the act occur, whether it is actually carried out or not (s 25(1)(a) TSA). The IR members were convicted of preparing to commit acts of terrorism involving the planting of car bombs near foreign embassies and a radar station. Their activities reveal an intention to cause the death of, or other serious bodily injury to, one or more persons (s 5(3)(a) TSA). The plan to bomb the radar station also shows an intention to cause serious damage to property of great value or importance and would be likely to cause death or serious bodily injury (s 5(3)(c) TSA). The plan to detonate multiple bombs simultaneously in public places shows an intention to induce terror the civilian population (s 5(2)(a) TSA).
58. The bombings were clearly intended to target Israel and supporters of Israel. As stated in paragraph 11, the destruction of the state of Israel is one of Hizbollah’s core objectives. The IR’s actions in planning the bomb attacks were therefore carried out with the purpose of advancing the IR’s own ideological/political or religious cause (s 5(2) TSA).

LAW OF ARMED CONFLICT

Is there an armed conflict and are IR members combatants?

59. For the s 5(4) exemption to apply, two conditions must be satisfied. First that there is a state of armed conflict currently in the areas in which IR is conducting its operations, and second that the attack accords with the law of armed conflict (“LOAC”). If one of these conditions is not met, the exemption does not apply.
60. The history of the conflict between IR elements and the IDF, and between the IR and other Lebanese factions is a long and complex one. Some parts of this violent history would qualify as armed conflict. For example the Second Lebanese War from 12 July – 14 August 2006 involved a major Israeli military incursion into Lebanon along with a land, air and sea blockade of the country. IR and the IDF were involved in pitched battles of some intensity. Although IR does not constitute the armed forces of Lebanon, widespread destruction of Lebanese infrastructure purportedly intended to turn the Lebanese against Hizbollah would seem to convert what might otherwise have been non-international armed conflict between a State and a non-state actor, into an international armed conflict.
61. IR has also been involved in violence which might qualify as internal armed conflict. 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 it would be able to implement the Additional Protocol. Such violence may even be classified as an international armed conflict when peoples are fighting against colonial domination, alien occupation or racist regimes in the exercise of their right to self determination.⁹⁶

62. However although some aspects of IR's operations may amount to armed conflict many other aspects would not. LOAC does not apply to sporadic or isolated acts of violence, such as IR's campaign of suicide bombings throughout the 1980s and 1990s, and particularly does not apply to such acts of violence conducted outside of the territory controlled by the parties to the conflict.
63. In case study 1, for example, the operations of IR in West Beirut in May 2008 involved members in violent street-fighting with the Sunni militia of the Future Movement. Although this militia backed the Government of Prime Minister Fouad Siniora, it was not a formalised part of the armed forces of Lebanon and therefore this conflict would best be described as being between two armed groups. Neither the Lebanese Army, nor the Police became involved in any significant way in the fighting. The fighting lasted approximately 14 days and resulted in about 100 or more deaths. However not all of those deaths can be attributed to IR and some occurred in subsequent isolated acts of violence.
64. Fighting of this type does not reach the threshold of armed conflict. Although neither duration nor casualties alone is determinative, most authorities would not regard a limited political demonstration of force of this nature to be an armed conflict. The aims of the violence were limited and the normal structures of the State, although unable to operate effectively, remained in place. Given there is no situation of armed conflict, the exemption in s 5(4) cannot apply to IR's actions detailed in case study 1.
65. In case study 2 the planned attack was intended to occur in Azerbaijan which, even if armed conflict was occurring in Lebanon at the time, is outside of that territory. The action was intended to be conducted as an isolated act of violence by persons who did not identify themselves as combatants and who would not qualify as combatants. This does not amount to an armed conflict, so once again the exemption in s 5(4) cannot apply to IR's actions detailed in case study 1.

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

66. Having failed to meet the threshold of armed conflict it is not necessary to go further to examine whether the action of IR would have been in accordance with that law. In respect of case study 1 it is not possible to say whether the fighting in question would, or would not, have met this test. Not enough is known of the way in which this fighting was conducted to be able to make such an assessment.
67. In respect of case study 2, however, even if it is accepted that there is a current armed conflict, the second threshold for applying LOAC is also not met. Only combatants⁹⁷ have the right to conduct attacks in accordance with LOAC. This generally means members of armed forces, however irregular forces can still qualify

provided that they distinguish themselves from the civilian population while engaged in an attack or operations preparatory to an attack.⁹⁸ The members of IR, by not distinguishing themselves from the civilian population during this operation or conducting its operations according to LOAC, do not qualify for combatant status.⁹⁹

68. Furthermore the attack was intended to target an embassy, which is a protected civilian object containing civilian persons. This breaches the LOAC principle of distinction – that attacks on enemy combatants and military objectives are lawful, whereas attacks on the civilian population or civilian objects are not.

¹ Hizbollah literally means “The Party of God” (Hizb-i Allah). Other transliterations of the name include: Hizbullah, Hizballah, Hezbollah, Hezballah and Hizb Allah.

² ‘Hizbullah’, Janes World Insurgency and Terrorism, 29 April 2010, <http://defence.janes.com>, last accessed 22 July 2010.

³ Mohammad Baqr as-Sadr is the late father-in-law of radical Shia leader Muqtada al-Sadr, who established the anti-coalition ‘Mahdi Army’ (see paragraph 41).

⁴ Naim Qassem (2005) *Hizbullah. The story from within*, London: Saqi, pp.66-68.

‘Hizbullah’, Janes World Insurgency and Terrorism, 29 April 2010, <http://defence.janes.com>, last accessed 22 July 2010.

⁵ Naim Qassem (2005) *Hizbullah. The story from within*, London: Saqi, p.98.

⁶ *ibid*, p.98.

⁷ *ibid*, p.22.

⁸ *ibid*, pp.21-58.

⁹ Hizbollah stood candidates for Lebanon’s first post-civil war elections in 1992, winning eight seats. Since then the organisation has maintained a continuous parliamentary presence, averaging around 10 of the 128 seats in parliament. In May 2008, following IR’s siege of Beirut (see Case Study 1) Hizbollah and its allies were granted one third of the seats in parliament, given it the power to veto government policy. In the most recent election in 2009, the Hizbollah-led opposition block secured 57 of the 128 seats in parliament, and was awarded 10 of the 30 positions in Cabinet.

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‘Hezbollah back in the Lebanon fray’, Asia Times Online, 11 November 2009, www.atimes.com, last accessed 16 August 2010.

¹⁰ ‘The rebirth of Hizbollah’, Benedetta Berti, Strategic Assessment, Volume 12 No.4, February 2010, pp.95-96.

‘Hezbollah cuts Islamist rhetoric in new manifesto’, Reuters, 30 November 2009, www.reuters.com, last accessed 9 August 2010.

¹¹ This followed a series of public relations disasters including the May 2008 siege of West Beirut, Hizbollah’s implication in the Hariri assassination, losses in the June 2009 elections, challenges to Iran’s clerical leadership and internal financial issues. See ‘Hezbollah’s penance: The Shi’ite militia works to rebuild its tarnished image’, The Washington Institute, 5 March 2010.

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For more on Hizbollah’s ‘flexibility in a dynamic geopolitical environment’, see also:

‘Lebanon’s Scud row’, Council on Foreign Relations, 13 May 2010, www.foreignaffairs.com, last accessed 12 July 2010.

¹⁴ Naim Qassem (2005) *Hizbullah. The story from within*, London: Saqi, pp.55-57.

¹⁵ ‘Hizbullah’, Janes World Insurgency and Terrorism, 29 April 2010, <http://defence.janes.com>, last accessed 22 July 2010.

¹⁶ Naim Qassem (2005) *Hizbullah. The story from within*, London: Saqi, p.63.

¹⁷ ‘Hizbullah’, Janes World Insurgency and Terrorism, 29 April 2010, <http://defence.janes.com>, last accessed 22 July 2010.

¹⁸ Naim Qassem (2005) *Hizbullah. The story from within*, London: Saqi, pp.69-70.

¹⁹ ‘Hizbullah’s intelligence apparatus’, Jane’s Terrorism and Security Monitor, 13 September 2006, <http://defence.janes.com>, last accessed 22 July 2010.

²⁰ Naim Qassem (2005) *Hizbullah. The story from within*, London: Saqi, pp.69-70.

²¹ ‘Hizbullah: An organisational and operational profile’, Martin Rudner, International Journal of Intelligence and Counterintelligence, Routledge, 2010, p.234.

²² *ibid*, p.234.

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- ²³ 'Hizbullah', Janes World Insurgency and Terrorism, 29 April 2010, <http://defence.janes.com>, last accessed 22 July 2010.
- ²⁴ 'Hezbollah: Radical but rational', STRATFOR Global Intelligence, 12 August 2010.
- ²⁵ It should be noted that Hizbollah has not been held responsible or claimed responsibility for a suicide attack against Israel since before 2000.
- ²⁶ 'Hizbullah: An organisational and operational profile', Martin Rudner, International Journal of Intelligence and Counterintelligence, Routledge, 2010, p.234.
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- ²⁸ 'Inside Hizbullah's decision-making', Magnus Ranstop, excerpted from Chpt 15 of 'The Making of a Terrorist, Volume Two: Training', Praeger, 2005.
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