

Our Ref: [REDACTED]
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17 September 2018

Committee Secretary
Joint Committee on Intelligence and Security
Parliament House
CANBERRA ACT 2600
AUSTRALIA

By Email: pjcis@aph.gov.au

Dear Secretariat,

Supplementary submission, answer to questions on notice.

Discussion took place with The Hon Dr Kelly MP about the relevance of International Humanitarian Law (IHL). We wish to clarify the nature and scope of our remarks in the written submissions and oral argument.

1. In the 2018 Explanatory Statement the Minister states that the PKK considers civilian casualties 'acceptable collateral'. We object to this depiction of PKK violence.
2. In this context, we invited the committee to consider the character of the conflict in Turkey. We then asked the committee to approach alleged acts of violence through the lens of military distinction and proportionality, which are principles common to all armed conflicts under IHL. These principles are expressly stated in AP1 and are also considered matters of customary international law.
3. Assessing PKK activity in this way puts a different colour on the alleged violence. However, our proposed analysis has no practical consequence under Australian law.
4. While NIAC's and IAC's create different privileges and immunities for non-state combatants under international law, domestic terrorism law makes no such distinction. This is the case even if a non-state armed group establishes the conditions for an IAC. The classification of conflict under IHL does not exempt the Crown from laying a charge of terrorism in a domestic court.

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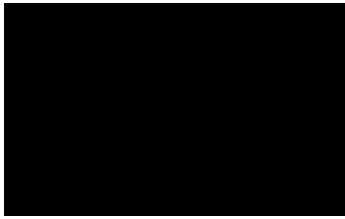
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5. Our submissions in relation to IHL was a discrete argument relating to the nature of PKK violence. This is a non-legislative factor for the committee to consider. Compliance with the military targeting regime under IHL distinguishes the PKK from all other listed terrorist organisations, who intentionally target civilians and other protected objects.

We hope this is of assistance to the Committee.

Yours sincerely,



Jessie Smith
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