



RECEIVED 05 DEC 2014

THE HON JULIE BISHOP MP

Minister for Foreign Affairs

Mr Dan Tehan MP
Chair
Parliamentary Joint Committee
on Intelligence and Security
Parliament House
CANBERRA ACT 2600


Dear Chair

I am writing to advise of the recent making of the *Criminal Code (Foreign Incursions and Recruitment – Declared Areas) Declaration 2014 – Al-Raqqa Province, Syria*, which declares Al-Raqqa province in Syria as an area in a foreign country for the purposes of section 119.2 of the *Criminal Code Act 1995* (the Criminal Code).

This is the first time that an area has been declared under the Criminal Code.

I have made the declaration as I am satisfied that the Islamic State of Iraq and the Levant (ISIL), which is a listed terrorist organisation under the Criminal Code, is engaging in a hostile activity in Al-Raqqa province in Syria.

My decision to declare Al-Raqqa province in Syria was made following careful consideration of a Statement of Reasons provided by the Australian Security Intelligence Organisation (ASIO) in consultation with relevant government agencies.

In compliance of the requirement under subsection 119.3(3) the Criminal Code that, before making a declaration, arrangements must be made for the Leader of the Opposition to be briefed in relation to the proposed declaration, I wrote to the Leader of the Opposition on 3 December 2014 advising of my intention to declare Al-Raqqa province in Syria and enclosed a copy of the Statement of Reasons upon which my decision to make the declaration was based. I invited the Leader of the Opposition to contact my office if he required further briefing.

Subsection 119.3(7) of the Criminal Code provides that the Parliamentary Joint Committee on Intelligence and Security may review the declaration before the end of the period during which the declaration may be disallowed under section 42 of the *Legislative Instruments Act 2003*.

To assist the Committee, I enclose a copy of the Declaration and Explanatory Statement (with attached Statement of Reasons upon which my decision to declare Al-Raqqa province in Syria was based). The legislative instrument commences the day after it is registered on the Federal Register of Legislative Instruments.

The action officer for this matter in my department is Emil Stojanovski, who may be contacted by email at _____ or by telephone _____

Yours sincerely

~~Julie Bishop~~

04 DEC 2014

Encl:

Declaration and Explanatory Statement including Statement of Reasons



RECEIVED 10 DEC 2014

Criminal Code (Foreign Incursions and Recruitment – Declared Areas) Declaration 2014 – Al-Raqqa Province, Syria

Criminal Code Act 1995

I, JULIE BISHOP, Minister for Foreign Affairs, make this Declaration under subsection 119.3(1) of the *Criminal Code*.

Dated



December 2014

JULIE BISHOP

Minister for Foreign Affairs

1 Name of Declaration

This declaration is the *Criminal Code (Foreign Incursions and Recruitment – Declared Areas) Declaration 2014 – Al-Raqqa Province, Syria*

2 Commencement

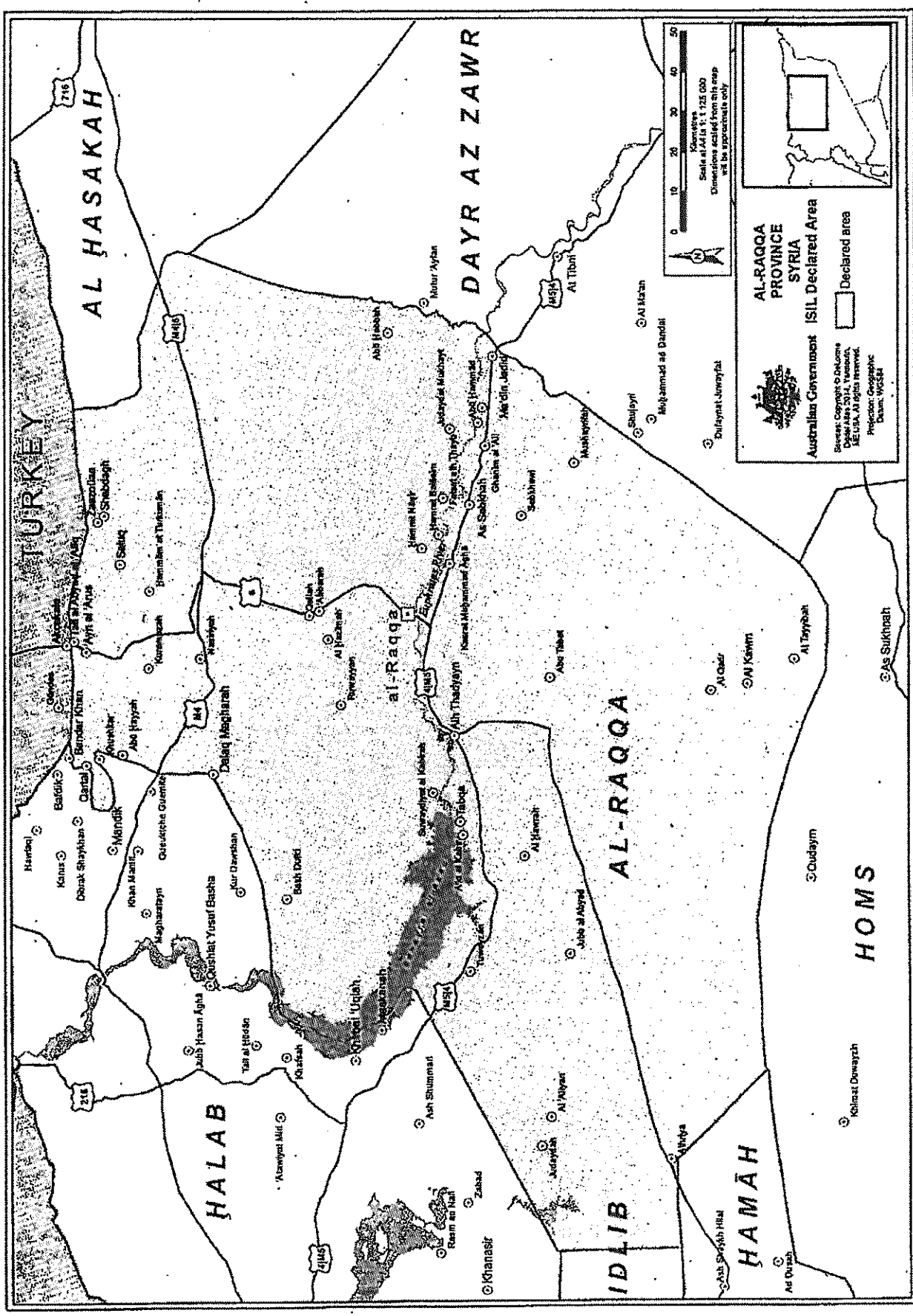
This declaration commences on the day after it is registered.

3 Authority

This declaration is made under subsection 119.3(1) of the *Criminal Code*.

4 Declared area in a foreign country

- (1) Al-Raqqa province in Syria as shown marked 'AL-RAQQA' on the maps attached hereto and marked 'A'. Al-Raqqa province is east of the Syrian province of Aleppo and shares its northern border with Turkey
- (2) Al-Raqqa province in Syria is also known as Ar Raqqah.



EXPLANATORY STATEMENT

Criminal Code (Foreign Incursions and Recruitment – Declared Areas) Declaration 2014 – Al-Raqqa Province, Syria

The *Criminal Code (Foreign Incursions and Recruitment – Declared Areas) Declaration 2014 – Al-Raqqa Province, Syria* (the Declaration) is made under subsection 119.3(1) of the *Criminal Code*.

Background

Division 119 of the *Criminal Code* contains Australia's foreign incursions and recruitment offences. Section 119.2 of the Code makes it an offence for a person to intentionally enter, or remain in, a declared area in a foreign country where the person is reckless as to whether the area is a declared area. The maximum penalty for this offence is 10 years' imprisonment.

Under section 119.3 of the *Criminal Code*, the Minister for Foreign Affairs may declare an area in a foreign country for the purposes of section 119.2 if the Minister is satisfied that a listed terrorist organisation is engaging in a hostile activity in that area. The Islamic State of Iraq and the Levant (also known as the Islamic State), which is a listed terrorist organisation under the *Criminal Code*, is engaging in a hostile activity in al-Raqqa province in Syria.

Purpose

The Declaration makes it an offence under section 119.2 of the *Criminal Code* to enter, or remain in, al-Raqqa province in Syria except where the person has done so solely for a legitimate purpose or purposes.

Explanation and effect of provisions

Section 1 - Name of Declaration

Section 1 sets out the title of the Declaration as the *Criminal Code (Foreign Incursions and Recruitment – Declared Areas) Declaration 2014 – Al-Raqqa Province, Syria*.

Section 2 – Commencement

Section 2 provides that the Declaration commences on the day after it is registered.

Section 3 – Authority

Section 3 notes the Minister for Foreign Affairs has the power to make the Declaration under subsection 119.3(1) of the *Criminal Code*.

Section 4 – Declared area in foreign country

Subsection 4(1) provides that the area covered by the Declaration is al-Raqqa province in Syria. Subsection 4(1) attaches two maps (marked 'A') to show the

geographical area that the Declaration covers. Al-Raqqa province is east of the Syrian province of Aleppo and shares its northern border with Turkey.

Subsection 4(2) recognises that al-Raqqa province is also known as Ar Raqqah.

Statement of Compatibility with Human Rights

This statement has been prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

The Declaration is compatible with the human rights and freedoms recognised or declared in the international instruments listed under the definition of 'human rights' in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

The Declaration is compatible with these human rights because it is a lawful, necessary and proportionate response to protect Australia's national security. The Declaration, which is made under section 119.3 of the *Criminal Code*, will result in the offence under section 119.2 applying to al-Raqqa province in Syria. The Minister for Foreign Affairs can make a declaration if the Minister is satisfied that a listed terrorist organisation is engaging in hostile activity in an area of a foreign country.

Islamic State of Iraq and the Levant (ISIL) is a listed terrorist organisation under the *Criminal Code*. It operates across much of Iraq and Syria, but is based in the Iraqi provinces of Ninewa and al-Anbar and the Syrian province of al-Raqqa, which serves as its de facto capital. ISIL's activities in al-Raqqa province, and calls by ISIL's leadership, have attracted thousands of 'foreign fighters', including Australians, who have travelled to Syria to join ISIL and engage in hostile activity.

It is appropriate for the Minister to declare al-Raqqa province under subsection 119.3(1) of the *Criminal Code* as ISIL is engaging in hostile activity in the area. The Declaration promotes the safety of Australians, both those seeking to travel to al-Raqqa province and those who may be at risk of harm posed by persons returning from al-Raqqa province. Consistent with subsection 119.3(2A) of the *Criminal Code*, the Declaration does not cover an entire country.

As a result of the Declaration, it will be a criminal offence under section 119.2 of the *Criminal Code* for a person to enter, or remain in, al-Raqqa province where the person is reckless as to whether the area has been declared. The Attorney-General's consent to prosecute will be required before a prosecution under section 119.2 can commence and the Commonwealth Director of Public Prosecutions is required to consider the public interest in line with its prosecutorial policy prior to the commencement of a prosecution. The 'declared area' offence under section 119.2 addresses two pressing and substantial concerns. The first concern is that Australians who enter or remain in conflict areas put their own lives at risk; the Australian Security Intelligence Organisation has advised that at least 20 Australians have died in the Syria and Iraq conflicts in the past year. The second concern is that foreign conflicts provide a significant opportunity for Australians to develop the necessary capability and ambition to undertake terrorist acts overseas and within Australia.

A person prosecuted for an offence under section 119.2 of the *Criminal Code* for entering or remaining in al-Raqqa province will maintain the right to a fair trial and presumption of innocence in accordance with article 14 of the International Covenant on Civil and Political Rights (ICCPR). A defendant will bear no burden of proof unless they seek to raise facts constituting a defence. Should a defendant choose to rely on the defence, they bear an evidential burden to adduce or point to evidence that suggests a reasonable possibility that their travel to al-Raqqa province was solely for a legitimate purpose or purposes. The prosecution retains the legal burden and must disprove any legitimate purpose defence raised beyond a reasonable doubt, in addition to proving the elements of the offence.

Subsection 119.3(7) of the *Criminal Code* provides for the review of the Declaration by the Parliamentary Joint Committee on Intelligence and Security before the end of the disallowance period.

To the extent that the Declaration may limit the right to freedom of movement under article 12 of the ICCPR the limitation is lawful and proportionate. The Declaration does not remove the ability to enter or remain in al-Raqqa province for a legitimate purpose or purposes.

A limitation can be justified if it is in the interest of national security. The risk of a successful terrorist attack occurring in Australia is high and the limitation imposed by the Declaration is necessary to assist in the prevention of an attack on Australian soil. This is particularly so given that ISIL is using al-Raqqa province as a base of operations and Australians have travelled to Iraq and Syria to participate in the foreign conflict.

Conclusion

The Declaration is compatible with human rights because it is a lawful, necessary and proportionate response to protect Australia's national security.

Consultation

Consultation on this Declaration was undertaken with key stakeholders. Pursuant to section 17 of the *Legislative Instruments Act 2003* the Minister for Foreign Affairs is satisfied that appropriate consultation has occurred. In particular consultation was undertaken with:

- Attorney-General's Department
- Australian Customs and Border Protection Service
- Australian Crime Commission
- Australian Federal Police
- Australian Geospatial-Intelligence Organisation
- Australian Secret Intelligence Service
- Australian Security Intelligence Organisation
- Department of Defence
- Department of Foreign Affairs and Trade
- Department of Immigration and Border Protection
- Department of Prime Minister and Cabinet

The Minister for Foreign Affairs has also arranged for the Leader of the Opposition in the House of Representatives to be briefed in relation to this Declaration in accordance with subsection 119.3(3) of the *Criminal Code*.

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Declaration of an area where the Islamic State of Iraq and the Levant is engaged in hostile activity under the Criminal Code

Al-Raqqa Province, Syria

This statement is based on publicly available information about the areas where the proscribed terrorists group—the Islamic State of Iraq and the Levant (ISIL)—is engaged in hostile activity. To the Australian Government’s knowledge, this information is accurate, reliable and has been corroborated by classified information.

Basis for declaring an area in a foreign country where a listed terrorist organisation is engaging in hostile activity

Under section 119.3 of the *Criminal Code*, the Foreign Affairs Minister may, by legislative instrument, declare an area in a foreign country for the purposes of section 119.2. Before declaring an area in a foreign country for the purposes of section 119.2, the Foreign Affairs Minister must be satisfied that a listed terrorist organisation is engaging in a hostile activity in that area of the foreign country.

Section 119.2 makes it an offence for a person to enter, or remain in, an area in a foreign country if the area is an area declared by the Foreign Affairs Minister under section 119.3.

Background to this declaration

Proscription of the group engaged in hostile activity

The group currently referred to as the Islamic State of Iraq and the Levant (ISIL) has been operating in Iraq under various names since 2003. It was first listed as a proscribed terrorist organisation under the Arabic name *Tanzim Qa’idat al-Jihad fi Bilad al-Rafidayn* in 2005. It was then re-listed under the names al-Qa’ida in Iraq and ISIL.

ISIL has been active in the Syria conflict since late 2011, when it established operations in Syria through its former subordinate organisation, Jabhat al-Nusra. On 29 June 2014, the group proclaimed an Islamic caliphate in areas it controls in Iraq and Syria and changed its name to *Dawla al-Islamiya*, or the Islamic State. The most recent re-listing of the group was under the name Islamic State on 12 July 2014.

Geographic basis of the group’s activities

Since January 2014, ISIL has focussed on capturing and consolidating control over large areas of Iraq and Syria. It operates across much of Iraq and Syria, but is based in the Iraqi provinces of Ninewa and al-Anbar and the Syrian province of al-Raqqa, which serves as its de facto capital. Al-Raqqa Province is east of the Syrian province of Aleppo and shares its northern border with Turkey.

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ISIL's activities in these areas of Iraq and Syria, and calls by ISIL's leadership, have attracted thousands of foreign fighters, including Australians, who have travelled to Iraq and Syria to join ISIL and engage in hostile activity.

Group's engagement in hostile activities within or from the declared area

The overthrow by force or violence of the government of that or any other foreign country, or of a part of that or any other foreign country

ISIL has sought to replace the Iraqi and Syrian governments through the conquest of territory and the declaration of a caliphate spanning the established Iraq/Syria border. It governs territory by applying its rule over the population by force. It also uses this territory to launch attacks on other areas of Iraq and Syria through bombings, indirect fire and ground assaults, including with military equipment captured from the Iraqi and Syrian militaries.

- 24 August 2014: ISIL captured Tabqa air base in al-Raqqa Province, Syria, after several days of fighting in which over 500 militants and Syrian soldiers were reportedly killed.
- 6 March 2013: ISIL and other Syrian rebel groups, including al-Qa'ida affiliate Jabhat al-Nusra, took control of Raqqa city.

In areas under its control, ISIL seeks to supplant government control over all official functions. This includes setting up courts and applying punishments for infractions against its own rules and controlling access to cities using checkpoints. ISIL has also announced that it will begin minting its own currency.

The engagement, by that or any other group, in action that:

- *Falls within subsection 100.1(2) but does not fall within subsection 100.1(3); and*
- *If engaged in Australia, would constitute a serious offence*

ISIL has proven resilient, having survived its earlier near-extinction at the hands of an international coalition that fought it for eight years. Despite recent military operations against it in both Iraq and Syria, it remains an ongoing threat and conducts daily attacks throughout its areas of operation in Iraq and Syria.

- 17 November 2014: ISIL publicly executed 18 Syrian soldiers in Raqqa, Syria.
- 29 August 2014: a video posted online shows ISIL forces executing hundreds of Syrian soldiers in al-Raqqa province following their capture of Tabqa Air Force Base.

Intimidating the public or a section of the public of that or any other foreign country

ISIL uses terrorist attacks extensively against civilians in Iraq and Syria. This includes frequent mass casualty attacks in public places including marketplaces and cafes. It also conducts mass executions, including beheadings, and publicises these activities, including through the dissemination of videos and magazines depicting these violent acts.

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ISIL has made multiple statements threatening civilians in Iraq and Syria. It focuses its campaign of intimidation against Shia Muslims and religious and ethnic minorities, including Yazidis and Shabaks in Iraq. ISIL has carried out mass executions and enslavement of these and other minorities.

ISIL has also produced numerous videos of beheadings featuring threatening statements. Five have featured American or British citizens, and have included statements intended to threaten or intimidate Western audiences.

- 16 November 2014: ISIL released a video claiming responsibility for the beheading of United States (US) aid worker Peter Kassig. The video also featured threatening statements against Western governments.
- 3 November 2014: Over a ten-day period in late November, ISIL executed over 200 members of the Albu Nimr tribe in al Anbar Province, Iraq, including women and children. ISIL targeted the tribe for fighting against ISIL.
- 3 October 2014: ISIL released a video claiming responsibility for the beheading of British citizen Alan Henning.
- 13 September 2014: ISIL released a video claiming responsibility for the beheading of British aid worker David Haines.
- 9 September 2014: ISIL released a video claiming responsibility for the beheading of US journalist Steven Sotloff.
- 19 August 2014: ISIL released a video claiming responsibility for the beheading of US journalist James Foley.

While the location of these incidents cannot be identified, al-Raqqa is the de facto capital of ISIL and provides a base from which much of its operations are directed.

Causing the death of, or bodily injury to, a person who:

- *Is the head of state of that or any other foreign country; or*
- *Holds, or performs any of the duties of, a public office of that or any other foreign country (or of a part of that or any other foreign country)*

ISIL regularly conducts assassinations, executions and attacks targeting Iraqi and Syrian government officials, politicians, soldiers and police.

- 29 August 2014: ISIL released a video depicting the mass execution of 300 Syrian soldiers, followed hours later by a video of the group beheading a Kurdish soldier in Mosul, Ninewa Province, Iraq.
- 30 June 2014: ISIL published photos of the group beheading a group of Syrian soldiers at a government base near Raqqa, al-Raqqa Province, Syria.

Unlawfully destroying or damaging any real or personal property belonging to the government of that or any other foreign country (or of a part of that or any other foreign country)

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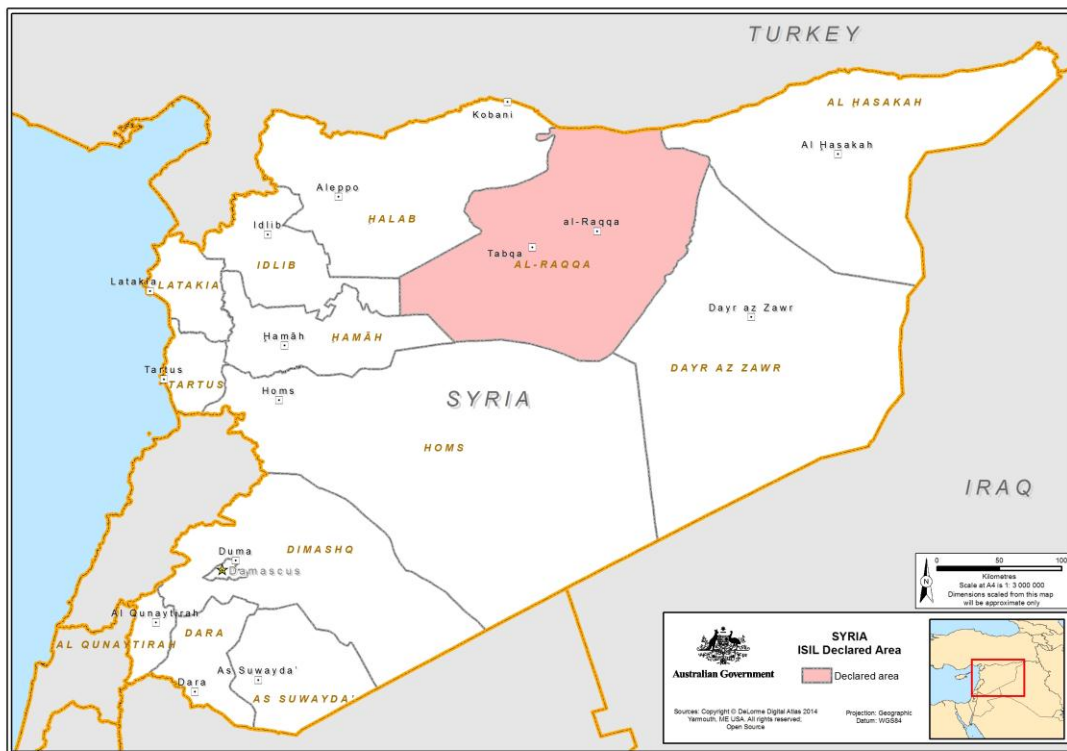
ISIL regularly destroys government property, both through its military campaign and the imposition of its religious and ideological beliefs on the populations that fall under its control.

- 8 August 2014: ISIL captured the Brigade 93 Syrian Army base in al-Raqqa Province, Syria. The attack on the base included a triple suicide bomb attack.

Conclusion

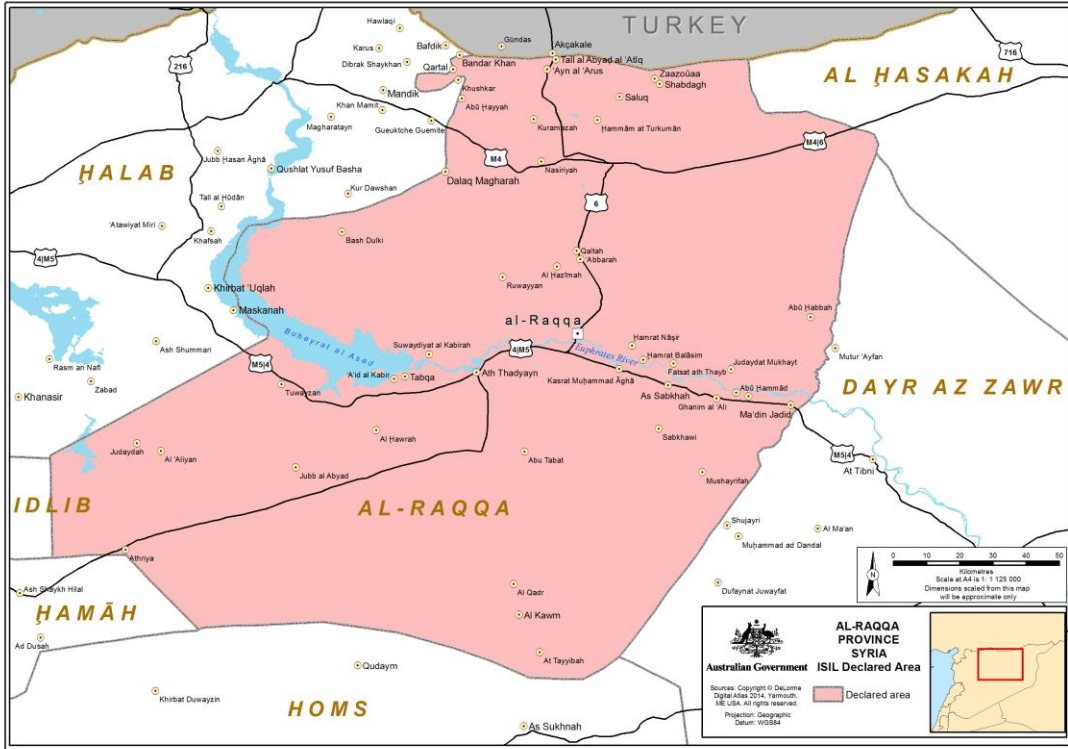
On the basis of the above information, ASIO assesses that ISIL is engaged in hostile activities in al-Raqqa Province, Syria.

This assessment is corroborated by information from reliable and credible intelligence sources.



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