

## Washington Conference 3-5 October 2004

### Background

- 3.1 The International Intelligence Review Agencies Conference was established in 1997 by the Australian Inspector-General of Intelligence and Security, Mr Ron McLeod. The Washington conference was the fourth such conference, the previous three being held in Australia, 1997, Canada, 1999 and the United Kingdom, 2002. The third conference was deferred from October 2001 in the United States as a result of the attacks on the World Trade Centre. It is intended to hold the next conference in 2006 in South Africa. The number of delegations attending has grown from six in 1997 to nine in 2004. Apologies were sent from two countries, the Czech Republic and Hungary, which had to withdraw at the last minute because of political developments at home. The Parliamentary members of the Australian delegation also withdrew because of the general election.

### Delegations

- 3.2 The following delegations attended the conference:
- **Australia** – Mr Ian Carnell, Inspector-General of Intelligence and security and Ms Margaret Swieringa, Committee Secretary, Joint Parliamentary Committee on ASIO ASIS and DSD.

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- **Canada** – Inspector- General, Hon Eva Plunkett, and Arnold Wayne Zeman, Assistant Inspector General; Office of the Communications Security Establishment Commissioner - William Galbraith, Dr J Paul de B Taillon, Joanne Weeks; Security Intelligence Review Committee –Hon Paule Gauthier (Chair),Hon Gary Filmon, Hon Roy Romanow, Ms Susan Pollack (Executive Director).
  - **New Zealand** – Hon Daniel Neazor, Inspector-General.
  - **Nigeria** – Hon Nuhu Labbo Aliyu, Chairman, Senate Committee on National Security and Intelligence
  - **Poland** – Hon Jozef Gruszka, Deputy to the Parliament; Hon Jacek Gutowski, Secretary to the Parliament, Hon Konstanty Miodowicz, Deputy to the Parliament.
  - **Slovakia** – National Council of the Slovak Republic – Hon Lajos Ladanyi, Hon Roman Vavrik; Office of the Security Council of the Slovak Republic – Hon Tibor Straka.
  - **South Africa** – Office of the Inspector-General – Hon Zoule Thando Ngcakani (Inspector-General), Imtiaz Fazel, Nomsa Maduna-Nala; Joint Standing Committee on Intelligence – Hon Dr Siyabonga C Cwele (Chair), Hon Loretta Jacobus, Hon Luwellyn T Landers, Hon Vytjie Mabel Petronella Mentor, Hon Mathupa Lameck Mokoena, Nontobeko Nkabinde Swart, Hon Paul Stephanus Swart; Ministry for Intelligence Services – Dennis Thokozani Dlomo, Bronwyn Levy; Office of Justice – Hon Loyiso Mhlobo Thando Jafta.
  - **United Kingdom** – Commissioner for the Interception of Communications – Sir Swinton Thomas, David Payne; Intelligence and Security Committee – Rt Hon Ann Taylor (Chair), Rt Hon Alan Howarth, MP, Rt Hon Michael Mates, MP, Rt Hon Joyce Quin, MP; Alistair Corbett, Clerk.
  - **United States** – CIA Inspector General - Hon John Helgerson, Americi (Rick) Cinquegrana; Department of Defense, Office of Assistant to the Secretary of Defense for Intelligence Oversight – George B Lotz 11, Steven Cantrell; Department of Defense, Office of the Inspector General – Joseph E Schmitz (Inspector General), Thomas F Grimble, Donald Ragley; Department of Defense, Defense Intelligence Agency,Office of Inspector General – Neeley Moody (Inspector General), Bobby Speegle; Department of Defense, National Geospatial Intelligence Agency, Office of

General Counsel – Edward J Obloy (General Counsel), Terry Monroe; Marcus Boyle (Inspector-General); Department of Defense, National Reconnaissance Office, Office of the Inspector-General, Eric Feldman (Inspector-General), Lucy Weltin, Alan Larsen; Department of Defense, National Security Agency, Office of Inspector-General – Joel Brenner (Inspector-General), Gerald Everett.

## Program

- 3.3 The program included on the Sunday a sightseeing tour of Washington or of the National Air and Space Museum in Chantilly and a reception in the evening at the home of Mr George B Lotz 11, the Assistant Secretary of Defense for Intelligence Oversight.

Monday 4 October	Tuesday 5 October
9.00 Opening Hon John Helgerson Inspector-General CIA	9.00 Opening Mr George B Lotz, Assistant to the Secretary of Defense for Intelligence Oversight
9.30 Key Note Address Larry Kindsvater Deputy Director for Community Management, CIA	9.15 <i>Panel 3 National Security and the Press</i> Speaker: Mark Mansfield Director of Public Affairs, CIA
10.45 Address <i>Role of the Executive in Intelligence Oversight</i> Hon Joan Dempsey Executive Director, President's Foreign Intelligence Advisory Board	10.45 <i>Panel 4: Intelligence Sharing</i> Speaker: John T Eilliff, Policy Advisor, FBI
1.00 - Panel 1 <i>Role of the Legislature</i> – Speaker: Donald Stone, Senate Select Committee on Intelligence	1.00 <i>Panel 5: Establishing an Intelligence Oversight System</i> Speaker: Ian Leigh, Professor University of Durham
2.45 – Panel 2 <i>Role of the Judiciary</i> – Speaker: Judge Royce Lambeth, US District Court	2.30 <i>Panel 6 Intelligence Oversight and the War on Terrorism</i> Speaker: Hon Eleanor Hill, Former Inspector-General, Department of Defense
7.00pm Conference Dinner Speaker: Hon Justice Scalia, Judge, United States Supreme Court	

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## Panel Discussions

- 3.4 Each session of the conference was organised around themes relating to different ways of achieving oversight of intelligence agencies – executive, legislative, judicial, as well as through media scrutiny. In addition, the conference looked at how a country might set up and evaluate an oversight system, important because there were new systems being established in the countries of some delegates who were attending the conference for the first time. Finally, there was a session on the impact of the war on terrorism on oversight of agencies.
- 3.5 Each theme was dealt with by a panel of speakers selected from across the delegates. Most panels comprised three or four delegates, each asked to speak for 5 to 10 minutes. In addition, there was an introductory speaker for each session.
- 3.6 Prior to the conference the organisers, as a direction for the panel discussion in each area, supplied delegates with a commentary on each theme as it related to the United States. This commentary is included below.

## The Role of Legislative Bodies in Intelligence Oversight

- 3.7 This panel, made up of members of the parliaments or congresses of countries represented at the conference, discussed the experiences of various countries in applying legislative oversight to intelligence activities. It also considered how legislative and executive bodies may cooperate in meaningful oversight of intelligence agencies without damaging effective intelligence operations, and how to enable constructive and non-partisan investigation of controversial intelligence activities.
- 3.8 The panellists in this session were:
- Hon Nuhu Aliyu, Chair, Senate Committee on National Security and Intelligence, Nigeria;
  - Hon Siyabonga Cwele, Chair, Joint Standing Committee on Intelligence, South Africa;
  - Hon Josef Gruszka, Chair, Oversight Committee for Intelligence and Security Services, Poland; and

- Hon Ann Taylor, Chair, Intelligence and Security Committee, United Kingdom.
- 3.9 By way of background, the conference was informed that the Legislative Branch of the United States Government plays an important role in providing oversight to intelligence activities of the Executive Branch. This oversight, which has varied significantly in degree over the years, is conducted largely through the committee structure of Congress. While intelligence oversight responsibility in the Legislative Branch is shared by many committees, the two key committees under the current US structure are the Senate Select Committee on Intelligence, or SSCI, and the House Permanent Select Committee on Intelligence, or HPSCI. Their oversight, particularly with respect to the House, is reinforced by their budget control through the intelligence authorization process. This process affords the committees the opportunity to examine and exert substantial influence over current and proposed intelligence activities.
- 3.10 The SSCI and the HPSCI also have special responsibilities for reviewing the conduct of US intelligence activities on a continuing basis and operate under special statutory requirements for Executive Branch sharing of information relating to intelligence activities with the committees. They are required to be kept fully and currently informed of intelligence activities, including successes, failures, potential illegalities, and significant anticipated operations. In some cases, sensitive information may be shared only with the Chairman and Vice-Chairman of each committee and the leaders of the Senate and the House.
- 3.11 This process of continuous and current disclosure of intelligence activities is different from the Australian approach, where the oversight of intelligence agencies is split between the operational matters scrutinised by the Inspector-General of Intelligence and Security and the scrutiny of administration and expenditure by the parliamentary committee.
- 3.12 The history of legislative oversight of intelligence activities in the United States indicates swings between intense interest and significant neglect. Today is a period of intense interest, not only in the United States, but across the world.

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## Role of the Judiciary in Intelligence and National Security

- 3.13 This panel discussed the issues raised by judicial involvement in national security and intelligence issues. Specifically, the panel discussed and compared how the courts and legal systems of the various countries represented dealt with the public or non-public handling of information relating to intelligence activities.
- 3.14 The panellists for this session were:
- Mr J William Galbraith, Director, Review and Government Liaison, Office of the Communication Security Establishment Commissioner, Canada;
  - Hon Vytjie Mabel Patronella Mentor, Member of Parliament, Joint Standing Committee on Intelligence, South Africa;
  - Hon Daniel Paul Neazor, Inspector-General of Intelligence and Security, New Zealand; and
  - Sir Swinton Thomas, Commissioner for the Interception of Communications, United Kingdom.
- 3.15 In the case of the United States, the President is granted the specific power to be Commander in Chief of the military and to conduct foreign relations. The courts have recognized that these two express powers impliedly give the President the responsibility for the nation's security and the authority to gather and protect foreign intelligence.
- 3.16 Until the 1970's, the President's powers in these areas went virtually unchecked, and the courts were reluctant to become involved. President Lincoln suspended the writ of habeas corpus during the Civil War; President Franklin Roosevelt, with Supreme Court approval, put tens of thousands of American citizens of Japanese descent into internment camps during World War II. The courts recognized a Presidential power to conduct electronic surveillance for national security purposes without a judicial warrant.
- 3.17 In the wake of the Vietnam War and the intelligence investigations of the 1970s, however, the role of the Judiciary in national security matters began to grow. Congress became engaged in more meaningful oversight of the intelligence community and this enhanced the involvement of the US Judiciary in litigation involving national security and intelligence related issues. The Foreign Intelligence Surveillance Act now requires a court order for national security surveillance, and the Classified Information Procedures Act provides procedures for handling classified information in criminal

cases. These are but two examples of Congressional enhancement of the role of the courts in dealing with classified information that may relate to intelligence and military activities. Most recently, the Judicial Branch has become involved, over Executive Branch objections, in determining how to handle the detention and prosecution of terrorists and enemy combatants at home and abroad.

## National Security and the Press

- 3.18 This panel included members of the international press, as well as delegates to the conference, and involved a discussion of the role of the media relative to national security. The issues raised included whether the media has special responsibilities in connection with national security affairs as compared to other information about government activity.
- 3.19 The panellists in the session were:
- Mr Julian Borger, Washington Bureau Chief, The Guardian;
  - Mr John Diamond, USA Today;
  - Hon Alan Howarth, MP, Intelligence and Security Committee, United Kingdom;
  - Hon Luwellyn T Landers, MP, Joint Standing Committee on Intelligence, South Africa; and
  - Dr J Paul de B Taillon, Director, Review and Military Liaison, Office of Communications Security Establishment Commissioner, Canada.
- 3.20 The print and broadcast media in many countries performs a vital function in conveying information to the public regarding intelligence policies, programs, and activities. In the case of the United States, nearly every day the media broadcasts information about intelligence matters, whether relating to Congressional commissions, possible terrorist attacks, or information on the search for weapons of mass destruction in Iraq. Coverage of nominations and confirmations of senior intelligence officials may produce greater public familiarity and trust. Exposure of abuses of authority or intelligence failures ensures that the public understands the true scope and nature of the issues.
- 3.21 The role of the media regarding national security affairs is also controversial. For example, a persistent issue in the United States

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concerns how to deal with unauthorized disclosures, or "leaks," of classified information to the media. This involves how the US Government should better identify and protect information that truly deserves to be classified in the interests of national security. But it also requires the media to consider whether and to what extent it has a responsibility to handle such information in a way that limits damage to US national security interests.

- 3.22 In some instances, information may be leaked to the press for personal reasons, while other information may be disclosed to force the government to take action. One case that has drawn substantial media and public attention involved the disclosure of the identity of a CIA undercover officer. In an effort to identify the source, subpoenas have been issued to US media figures, and at least one reporter has been sentenced to jail for refusing to disclose sources of information.

### **Sharing of Intelligence and Law Enforcement Information: Different Cultures, Different Rules**

- 3.23 This panel discussed the impact of the pressure and necessity for closer cooperation between intelligence and law enforcement agencies that has resulted from the war on terrorism. It included consideration of recent changes in the laws of various countries and how individual countries had moved to enhance their efforts to combat terrorism by encouraging or requiring greater interaction between their law enforcement and intelligence organizations. Also, there was discussion of the possibility of relatively standard rules and international laws for sharing of intelligence and law enforcement information that crosses borders. Conceivably, such sharing could be regulated globally by the United Nations or other international organizations.
- 3.24 The panellists in this session were:
- Hon Loyiso Mhlobo Thando Jafta, Chief Director, Justice, Crime Prevention and Security, the Presidency Policy Unit, South Africa; and
  - Hon Lajos Ladanyi, MP, Committee on Defence and Security of the National Council of the Slovak Republic, Slovakia.
- 3.25 In the United States, intelligence and law enforcement agencies were required by Congressional and public pressure to share information as a result of US counter-narcotics and counter-espionage programs during the 1980s and 1990s. Efforts to increase sharing of information



between law enforcement and intelligence agencies became focused on counterterrorism activities after the terrorist attacks against the United States on September 11, 2001. Congress passed the USA Patriot Act to define new crimes, new penalties, and new procedures to use against domestic and international terrorism. These authorities were intended to bring new efficiency to the sharing of intelligence and law enforcement information for use against domestic and international terrorism. However, critics argue that these revisions erode the distinctions between intelligence and law enforcement organizations that were created to protect individual liberties.

- 3.26 In the international arena, the United Nations Security Council adopted Resolution 1373 to establish steps and strategies to combat international terrorism. The Security Council also established a committee to monitor the member states reporting on the resolution, and decided that member states should prevent and suppress the financing of terrorism, as well as to make criminal the wilful provision or collection of funds for such acts. The Security Council also adopted Resolution 1390, the aim of which is to ascertain which measures have been taken by UN member states. It also makes provision for a sanctions committee.
- 3.27 The countries participating in this conference have responded to Resolution 1373, and many adopted measures reiterating their support for the international effort to root out terrorism. The issue for discussion was whether standardizing and unifying the effort, especially when it comes to sharing of intelligence and law enforcement information across borders, is possible.

## Establishing an Intelligence Oversight System: Principles to Consider

- 3.28 This panel discussed the project of the Intelligence Oversight Committee of the Norwegian Parliament, the Geneva Centre for the Democratic Control of Armed Forces (DCAF), and the Human Rights Centre of the Department of Law at the University of Durham entitled, "Making Intelligence Accountable: Executive and Legislative Oversight of Intelligence Services in Contemporary Democracies." This project is examining the experience of several countries in intelligence oversight, and it intends to produce source material for legislatures, executive officials, and the public based upon comparisons of intelligence oversight practices and policies in developing and established democracies.

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- 3.29 The panellists in this session were:
- Dr Loch K Johnson, Professor, University of Georgia, United States;
  - Hon Roman Vavrik, Vice Chair, Committee on Defence and Security of the National Council of the Slovak Republic, Slovakia;
  - Mr George B Lotz 11, Assistant to the Secretary of Defense for Intelligence Oversight, United States.
- 3.30 The proceedings of a two-day international seminar on intelligence oversight in Norway in late 2003 are being published by the project as "Watching the Spies: Maintaining Accountability over the World's Secret Intelligence Agencies." This publication will explain the range of issues that must be dealt with when considering intelligence oversight on an international basis and address the criteria that must be taken into account by any nation that hopes to place intelligence agencies under democratic supervision. One early conclusion is that a system of checks and balances is necessary, rather than making the executive the exclusive overseer of a nation's secret agencies.
- 3.31 Very recently, the project made available a summary of a paper entitled "Making Intelligence Accountable: Legal Standards and Best Practices for Oversight of Intelligence Agencies." The summary states that there is a growing international consensus in favour of democratic oversight of intelligence organizations, and that this requires executive, legislative, and judicial involvement, as well as input from civil society groups, think tanks, and research institutes. The paper does not provide a "simple blueprint or model law," but suggests ways to deal with common issues by proposing democratic standards and providing examples of good practices from a variety of countries. There is no "golden rule" or uniform law for democratic oversight of intelligence services, but basic principles that may be adapted to the unique circumstances and governmental systems of each country. Establishing a system that recognizes these considerations in the legal and regulatory framework under which a country's intelligence services operate, will help ensure democratic control and accountability.
- 3.32 The panel, included representatives who have actively participated in the project and the international seminar. It discussed the nature and status of the project and enabled the conference participants to explore the findings thus far.

## Intelligence Oversight and the War on Terrorism

- 3.33 This panel addressed the laws and regulations governing the oversight of intelligence activities, both as they existed before the Global War on Terrorism and after September 11, 2001. It focused on whether intelligence oversight laws and regulations have in any way enhanced or hindered intelligence collection, reporting, and analysis in preventing terrorist activities and prosecuting terrorists, and whether changes in oversight practices after September 11, 2001 have removed needless obstacles while retaining necessary oversight functions.
- 3.34 The panellists in this session were:
- Hon Konstanty Miadowicz, Deputy Chairman, Oversight Committee for Intelligence and Security Services, Poland;
  - Hon Michael Mates, MP, Intelligence and Security Committee, United Kingdom; and
  - Ms Margaret Swieringa, Secretary, Joint Parliamentary Committee on ASIO, ASIS and DSD, Australia.
- 3.35 Oversight laws were enacted in the United States in the 1970s and 1980s to counter and prevent abuses by intelligence personnel and to balance the needs for national security and democratic principles. Now, the national security threat of international terrorism is alive worldwide. The panel discussed whether these intelligence oversight laws and regulations and oversight by legislative, judicial, and executive groups were adequate or too restrictive. After September 11, 2001, some intelligence organizations asked whether intelligence oversight rules and regulations had been suspended in light of the attacks. These rules and regulations, however, are as important to the prevention of terrorism as they are to the protection of civil liberties. The Global War on Terrorism will be aided, not hampered, by respect for core democratic values, including rights to assembly, speech, and the exercise of religion; due process, especially the right to confront the charges and accusers against oneself in court; and privacy.
- 3.36 The panel discussed the approaches adopted by various countries, both before and after September 11, 2001, and whether a new regime was required since international terrorism is a warlike force unchecked by sovereign nations.

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## Intelligence Oversight and the War on Terrorism

- 3.37 The following paper was presented by Ms Swieringa to panel six.
- 3.38 The impact of terrorism on the oversight process in Australia can be seen by comparing the committee's work before and after 2001. It should be noted, however, that some of the changes that have occurred in Australia are coincidental rather than a direct result of what happened in America on 11 September 2001.

### A Short History

- 3.39 From the formation of the intelligence services in Australia until the mid 1980s there was no parliamentary oversight of the services. In this period, the Australian Security Intelligence Organisation (ASIO) was publicly known, but the Australian Secret Intelligence Service (ASIS) was neither widely known nor acknowledged by the government.
- 3.40 As a result of public concern at perceived abuses by the agencies between 1974 and the mid 1990s a number of commissions of inquiry were held: 1974 – the Hope Royal Commission; 1983 – Second Hope Royal Commission; 1995 – Samuels and Codd inquiries. The outcome was an increasing level of legislative control and parliamentary and other oversight. ASIO was placed on a legislative footing in 1979 (the *ASIO Act, 1979*). The government acknowledged the existence of ASIS but declined, at that time, to place the organisation on a legislative basis.
- 3.41 After the 1983 Hope Royal Commission, the office of the Inspector General of Intelligence and Security was established (1986). Its role was to supervise the operations of the services. In addition, under the 1979 ASIO Act, a parliamentary committee, the Parliamentary Joint Committee on ASIO was established. It was first appointed in 1988. Its oversight was limited to one of the collection agencies only; it excluded operationally sensitive matters; and its work was not known widely. In its 13 years of operation, it published 5 reports.
- 3.42 The Samuels and Codd inquiries in 1995 led to a new Act, the *Intelligence Services Act 2001*, and a further extension of the powers of the committee to include ASIS and the Defence Signals Directorate (DSD).
- 3.43 In the last three years, the work of the new committee, the Parliamentary Joint Committee on ASIO, ASIS and DSD, reflects the

expanded role and increased intensity of an oversight committee in an age of terrorism. Six reports have been tabled in the three years of this parliament. Not only has the Committee increased powers and functions, but these are continuing to expand. There has been an exponential rise in public awareness of and interest in the work of the committee and, with that, an increase in the perennial tension between security and disclosure.

3.44 Three reports of the committee are illustrative of this changing role.

*The ASIO Legislation Amendment (Terrorism) Bill 2002.*

3.45 This bill was a counter-terrorism measure and a direct result of the terrorist attacks in 2001. It sought to strengthen ASIO's powers and was similar to legislation in other countries. However, the original bill introduced into the Australian Parliament in March 2002 was severe. Its provisions included:

- open ended detention of terrorist suspects;
- detainees could be held incommunicado;
- no right to legal representation;
- refusal of the right to silence;
- no protection against self incrimination;
- children as young as ten could be detained under these arrangements and could be strip searched; and
- there were no protocols for detention practices.

3.46 The committee's inquiry attracted 150 submissions, almost all critical. The committee made 15 recommendations – including giving a role in the detention process to the Inspector-General, raising the age of detention to 18, providing a panel of cleared lawyers for detainees, limiting the period of detention to 7 days and inserting a sunset clause for review of the legislation after three years. Of these recommendations, the government accepted 9 in part or in whole, although it left out some of the most serious matters in the reintroduced bill. When the amended bill reached the Senate, it conducted a further inquiry (with over 400 submissions) and came to similar conclusions and recommendations as the ASIO ASIS and DSD Committee. The government in the lower House refused the Senate amendments and chose to set the Bill aside. It was finally passed, much in the form recommended by the committee, in March 2003 (the

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age of children able to be questioned or detained was set at 16). This outcome is a good illustration of the constructive work of the committee, the importance of bringing a community perspective into the consideration of anti-terrorist matters and an achievement in balance between security and civil liberties and human rights.

- 3.47 Anti-terrorist legislation has become a major feature of the war on terrorism and its consideration is a significant part of the committee's work. The committee has also considered a piece of legislation affecting ASIS (the Intelligence Services Amendment Bill 2003) and there are six other bills in the pipeline, either new bills or amendments or reconsideration of existing legislation. For example the ASIO Act will need to be reviewed in 2005 prior to the operation of the sunset clause.

### Intelligence on Iraq's Weapons of Mass Destruction

- 3.48 This was a reference to the committee from the Senate, received on 18 June 2003. The Senate asked the committee to examine the nature, accuracy and independence of the pre-war intelligence on Iraq's WMD and the accuracy and completeness of the presentation of the intelligence by the Australian Government. The inquiry occurred following a highly charged atmosphere of public opposition to the war and, therefore, there was intense public interest in the inquiry.
- 3.49 The inquiry raised issues of intelligence sharing arrangements and the capacity of the oversight committee to scrutinise intelligence, largely gained from overseas intelligence partners. How good was the intelligence and how timely was the provision of it to allies making decisions to go to war?
- 3.50 A further interesting factor in the committee's findings was that, despite 97% of the intelligence on Iraq coming from partner agencies, the assessments of the Australian agencies, particularly the Defence Intelligence Organisation (DIO), were more accurate to the real conditions on the ground discovered after the invasion.

### Review of Terrorist Listings

- 3.51 This year the government gave an additional function to the committee - to review the Attorney-General's decision to list organisations as terrorist organisations under the *Criminal Code Act 1995*. The Act, as amended in 2004, allows the Attorney-General to list an organisation as a terrorist organisation by regulation and the

committee may then review the listing in the 15 sitting days following the making of the regulation. The consequences of a listing are serious, attracting a possible 25 years in gaol. The history of this process is in itself an interesting study in the concerns over anti-terrorist legislation. It is outlined in detail in the committee's first report, *Review of the Listing of the Palestinian Islamic Jihad* at [www.aph.gov.au/house/committee/pjcaad/pij/report.htm](http://www.aph.gov.au/house/committee/pjcaad/pij/report.htm).

- 3.52 The committee was confronted with a review process that was to be conducted in a very short time frame – 15 sitting days. The first listing was received on 3 May 2004. In its first review, the committee established principles for such reviews. They reflected normal parliamentary practices
- 3.53 Further consideration was given to the criteria upon which terrorist listings might be decided. The Attorney-General himself had defined the need for the listing process as being whether the organisation fitted the definition of a terrorist organisation and whether there were links to Australia. He believed that the protection of Australia's interests was a primary factor in his decision making. The committee accepted and agreed with this.
- 3.54 In its review of the first terrorist listing under the Act, the committee attempted to set out a rationale for the future consideration of such listings. This view seeks to be consistent with the security needs of the fight against terrorism, but also recognises the importance of addressing the underlying causes of terrorism and the complex foreign policy issues that surround political violence. In its conclusions on the review of the PIJ, the committee argued:

It is clear from the supporting statement that the Palestinian Islamic Jihad has used deadly violence in pursuit of its objectives and it has targeted civilians. It fits within the definitions of a terrorist organisation under the Act. It is the Committee's firm view that political violence is not an acceptable means of achieving a political end in a democracy.

However, the Committee would also note there are circumstances where groups are involved in armed conflict and where their activities are confined to that armed conflict, when designations of terrorism might not be the most applicable or useful way of approaching the problem. Under these circumstances - within an armed conflict - the targeting of civilians should be condemned, and strongly condemned, as violations of the Law of Armed Conflict and the Geneva

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Conventions. The distinction is important. All parties to an armed conflict are subject to this stricture. Moreover, these circumstances usually denote the breakdown of democratic processes and, with that, the impossibility of settling grievances by democratic means. Armed conflicts must be settled by peace processes. To this end, the banning of organisations by and in third countries may not be useful, unless financial and/or personnel support, which will prolong the conflict, is being provided from the third country. ASIO acknowledged this point to the Committee:

[When] there is a peace process, ...you can unintentionally make things worse if you do not think through the implications of the listing.

The Committee would therefore reiterate its view, expressed above, that the immediate and threatening aspects of a particular entity, its transnational nature and the perceived threats to Australia or involvement of Australians should be given particular weight when considering a listing. This does not appear to have occurred in this listing.

Nevertheless, the Committee does not object to this listing. However, it would like to see a more considered process in any future regulations. Given the serious consequences attached to listing, it should not be taken lightly.

- 3.55 Finally, in an age of terrorism, the oversight committee must achieve a delicate balance. It must create a feeling of trust between the agencies and the committee that substantial areas of national security will not be compromised. Its work must be sufficiently public to inspire public confidence in its oversight role. It can't afford to be too close to the agencies – to become part of an exclusive club. Inquiries should be thorough and probing; criticism should be fair, modulated and constructive.
- 3.56 This conference is an extremely important one which allows a variety of oversight agencies from a number of countries to share methods and to discuss problems in an area that is particularly complicated, the oversight of essentially secret organisations. The expansion of the membership of the conference in the last few years is testament to its value and to the difficulties oversight bodies are experiencing in the post September 11 world.