

The Listing of Palestinian Islamic Jihad (PIJ)

- 3.1 On 3 May 2004, the Attorney-General, Hon Philip Ruddock, MP, announced that the Government had gazetted a regulation listing the Palestinian Islamic Jihad (PIJ) as a terrorist organisation under Australia's counter terrorism laws. On the same day a letter was sent to the Chairman of the Parliamentary Joint Committee on ASIO, ASIS and DSD. The announcement was accompanied by a statement of reasons containing open source information about the PIJ.
- 3.2 PIJ is the 17th organisation to be banned by the Commonwealth Government. However, it is the first organisation listed as a terrorist organisation by regulation under the *Criminal Code Amendment (Terrorist Organisations) Act 2004* and the first that has not been designated as a terrorist organisation by the United Nations Security Council or otherwise designated as a terrorist organisation by specific legislative amendment. This regulation is the first to come before the Joint Parliamentary Committee for review.
- 3.3 The statement of reasons provided to the Committee is available to the public on the web sites of both the Minister and the Committee. It is reproduced here in full:

The following information is based on publicly available details about Palestinian Islamic Jihad (PIJ). These details have been corroborated by material from intelligence investigations into the activities of PIJ. PIJ is also known as the Islamic Jihad Palestine (IJP), Islamic Jihad – Palestine

Faction and Islamic Holy War. ASIO assesses that the details set out below are accurate and reliable.

Background

The Palestinian Islamic Jihad (PIJ) was founded in 1979-1980 in Egypt by Palestinian students Fathi Shaqaqi, Abd al-Aziz Odah and Bashir Musa. It emerged from the Muslim Brotherhood Movement and was inspired by the Islamic Revolution in Iran. Rejecting the non-violent stance of the Muslim Brotherhood, and disillusioned with the Palestinian national movement as represented in the Palestine Liberation Organisation, the PIJ grew to be one of the main Palestinian Islamic rejectionist movements.

In August 1988, the two primary leaders of the PIJ, Fathi Shaqaqi, and Abd al-Aziz Odah, were expelled by Israel to Lebanon, where Shaqaqi reorganised the group, developing closer ties with Iranian Revolutionary Guard Corps elements and with Lebanese Hizballah. From this time, the PIJ increasingly adopted the use of terrorist actions to promote its cause, including the use of suicide bombings. The PIJ rejected the Middle East Peace process and the Oslo Accords, and joined the Palestinian Rejectionist Front, opposed to compromise with Israel.

Co-ordinating with the HAMAS military wing (Izz al-Din al-Qassam Brigades), the PIJ conducted a number of suicide bombings in the mid 1990's in an attempt to derail the peace process. Although the Palestinian Authority pressured the PIJ to refrain from terrorist activities during the peace process in the lead up to Camp David in 2000, the PIJ continued its involvement in terrorism, and supported the outbreak of the al-Aqsa Intifada in September 2000. The PIJ has since been responsible for attacks inside Israel, and continues to oppose a negotiated peace settlement, rejecting the Middle East 'road map for peace' launched in Aqaba, Jordan on 5 June 2003 which envisages the establishment of a secular Palestinian state by the end of 2005.

Objectives

The objective of the PIJ is the establishment of an Islamist Palestinian state and the destruction of the state of Israel. The PIJ believes Palestinian liberation and the seizure of

Jerusalem for the Islamic world would serve as a catalyst for a wider Islamic revolution across the Arab and Muslim world. The PIJ sees its role as a revolutionary vanguard, carrying out terrorist attacks to weaken Israel, prior to its destruction by an Islamic army.

Leadership and membership

The PIJ has at times consisted of seven or eight factions, however, following the expulsion of Shaqaqi and Odah to Lebanon in 1988, Shaqaqi took a dominant role in reorganising the group, expanding its political connections with Iran, Syria and Lebanese Hizballah. The PIJ is now led by Damascus-based Dr Ramadan Muhammad Abdullah Shalah, who became leader after the October 1995 assassination of Shaqaqi in Malta.

The PIJ draws support from a small membership base of approximately 50-200 as well as recruiting suicide bombers from mosques, or heavily screened volunteers. The PIJ's main membership base is in the West Bank, Gaza and South Lebanon. Its main strongholds in the West Bank are the cities of Hebron and Jenin. The PIJ also has members and supporters throughout the Middle East, US and Europe, and maintains offices in Beirut, Damascus (where a number of its leadership are located), Tehran and possibly Khartoum. Funding for the group is believed to be primarily from Iran and Syria, but also from sympathisers in the Gulf, Europe and the United States.

The PIJ is assessed as too small to run large guerrilla training camps, relying instead on training in safe-houses in Gaza and Southern Lebanon, or facilities run by other groups including Lebanese Hizballah.

Up until the formation of the PA in 1994, the PIJ maintained only limited links with other terrorist organisations besides Egyptian Islamic Jihad. Since the establishment of the Rejectionist front to the peace process, HAMAS' acceptance of the concept of martyrdom operations, and the 1995 death of Shaqaqi, the PIJ and HAMAS have developed significantly closer ties, coordinating attacks and joint operations, including the 1995 Beit Lid bombing in Israel. The PIJ is also allied to Lebanese Hizballah, which provides through its

External Security Organisation (ESO) training and material support, for the PIJ to conduct terrorist attacks.

Terrorist activities

The PIJ has been involved in terrorist attacks including bombings, suicide bombings (referred to as martyrdom operations), shooting attacks, kidnappings and stabbings. The favoured method of attack by the group is suicide bombings, through either explosive belts or car bombs. The PIJ have at times carried out double suicide bombing attacks at the same location within a short space of time to target bystanders from the first attack.

The PIJ has not acted outside the Middle East and has not targeted Western interests, however, it has threatened to target the US embassy and its personnel if it moves from Tel Aviv to Jerusalem.

Terrorist attacks for which responsibility has been claimed by the PIJ have included:

- the 22 January 1995 double suicide bombing of a military bus stop at Beit Lid near Netanya which killed 19 and injured 69. The PIJ claimed responsibility for the attack. The mission was a joint PIJ/HAMAS operation;
- the 9 April 1995 suicide bombings in Netzarim and Kfar-Darom. In the first attack a bombing of an Israeli bus killed eight people, and injured over 30. In the second attack, a car bombing of a convoy of cars injured 12 people;
- the 4 March 1996 suicide bombing of a Tel Aviv shopping mall which killed 20 persons and injured 75 others;
- the 2 November 2000 car bombing of a Jerusalem outdoor market which killed two people and injured 10;
- the 20 March 2002 suicide bombing of a bus travelling from Tel Aviv to Nazareth which killed seven persons and injured about 30;
- the 5 June 2002 car bombing of a bus near Afula which killed 17 persons and injured 38;
- the 17 July 2002 double suicide bombing in Tel Aviv which killed five persons and injured about 40;
- the 19 May 2003 suicide bombing at a shopping mall in Afula which killed three persons and injured 83;
- the 19 August 2003 suicide bombing of a bus in Jerusalem which killed 21 persons and injured over 100. HAMAS and the PIJ claimed responsibility for this attack, although

a senior HAMAS official later stated HAMAS was not involved;

- the 4 October 2003 suicide bombing of the Maxim restaurant in Haifa which killed 21 persons;
- the 11 January 2004 suicide bombing at an Israeli checkpoint near Janput. Aside from the suicide bomber, there were no other casualties; and
- the 27 February 2004 suicide bombing at Kfar Darom. Aside from the suicide bomber, there were no other casualties.

Conclusion

ASIO assesses the PIJ as continuing to prepare, plan and foster the commission of acts involving threats to human life and serious damage to property. This assessment is strongly corroborated by information provided by reliable and credible intelligence sources.

In the course of pursuing its objective of creating an Islamist Palestinian state and the destruction of the state of Israel, the PIJ is known to have engaged, since the early 1980's and as recently as February 2004, in actions that:

- are aimed at advancing the PIJ's political and religious causes;
- are intended to, or do, cause serious damage to property, the death of persons or endangerment of life; and
- are intended to cause, or have caused, serious risk to the safety of the public in Israel and other persons visiting areas in which it operates.

In view of the above information, the PIJ is assessed to be preparing, planning, and fostering the conduct of terrorist acts. Such acts include actions which are to be done and threats of actions which are to be made with the intention of advancing a political, religious or ideological cause and with the intention of coercing, or influencing by intimidation the Government and people of Israel. The actions or threatened actions which the PIJ are assessed to be involved in would, if successfully completed, cause serious physical harm and death to persons and serious damage to property.

Criteria for the listing of organisations

Definition of a terrorist organisation

- 3.4 The criteria for judging whether an organisation should be banned is specified in the *Criminal Code Amendment (Terrorist Organisations) Act 2003* as ‘an organisation [which] is directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of a terrorist act,¹ (whether or not the terrorist act has occurred or will occur).’ An individual commits an offence under the Act if he or she knows, or is reckless as to whether, the organisation is a terrorist organisation when he or she directs, recruits for, trains or is trained by, gets funds to or from, or provides support or resources to a terrorist organisation.
- 3.5 This is a broad generic definition of a terrorist organisation. Other countries have also outlined reasons for listing or proscription that are broader than simply a narrow definition of national security. These reasons include the encouragement of other nations in the fight against terrorism and terrorist funding, the stigmatising and isolating of terrorist organisations, and heightening public awareness about particular organisations. Given that clearly there are large numbers of organisations in the world that fit the definition in the Australian legislation, the Committee sought to understand whether there were additional criteria for deciding which organisations might be selected for listing by the Australian Government. While there is an obvious validity to many of these more general concerns, the Committee believes that it is important not to lose sight of the seriousness of listing and the potentially severe criminal consequences that attend on it. Therefore, the immediate and threatening aspects of a particular entity, its transnational nature and the perceived threats to

¹ Defined in *Security Legislation Amendment (Terrorism) Act 2002* a **terrorist act** means, *inter alia*, an action or threat of action where: (b) the action is done or the threat is made with the intention of advancing a political, religious or ideological cause; and (c) the action is done or the threat is made with the intention of: (i) coercing, or influencing by intimidation, the government of the Commonwealth or a State, Territory or foreign country, or of part of a State, Territory or foreign country; or (ii) intimidating the public or a section of the public. (2) Action falls within this subsection if it: (a) causes serious harm that is physical harm to a person; or (b) causes serious damage to property; or (ba) causes a person’s death; or (c) endangers a person’s life, other than the life of the person taking the action; or (d) creates a serious risk to the health or safety of the public or a section of the public;

Australia or involvement of Australians should be given particular weight when considering a listing.

Threat to Australian security

- 3.6 There was a reference in the original bill (2002) to ‘threats to the security or integrity of the Commonwealth or another country’. This definition did not survive the passage of the Bill; however, on 29 May 2003, the then Attorney-General, Mr Williams, in his second reading speech for the Criminal Code Amendment (Terrorist Organisations) Bill 2003 argued that the Act passed in 2002 did not sufficiently account for Australia’s interests:

Australia is currently in the unsatisfactory position that we cannot act independently of the United Nations to list a terrorist organisation posing a threat to Australia or Australia’s interests.²

- 3.7 At the time, this was an argument about the necessary connection established in the bill between UN terrorist listings and the ability of the Australian Government to list an organisation. However, the need for a consideration of Australia’s interests in making judgements on the issue also appears to have had some sway with the current Attorney-General. He argued in his summary statement during the second reading of the Bill in the House of Representatives that the Bill was intended to allow the government a capacity to do what must be done ‘ensure the safety and security of Australia’s interests.’³

- 3.8 Mr Ruddock reiterated this view, that an Australian interest was a primary factor in his decision-making on a listing, on *Lateline* on 21 April 2004. The Minister was asked:

TONY JONES: Does this organisation have members in Australia about whom you are worried?

PHILIP RUDDOCK: Look it is one of the factors that we’ve been taking into account. We may move from this, but generally speaking we look to see whether there are linkages in Australia. Those linkages can be in a variety of forms. They can be raising money for organisations, they can be having people who have trained with them, they can be

2 Hon D Williams, MP, Attorney-General, House of Representatives debates, 29 May 2003, p. 15397

3 Hon Philip Ruddock, MP, Attorney-General, House of Representatives debates, 5 November 2003, p. 22068.

people who are overtly supporting them. There are a range of factors, but we look for linkages.

...

PHILIP RUDDOCK: The aspects that have to be looked at first are – is it a terrorist organisation? Then you establish whether or not before you proscribe that as a terrorist organisation that it has linkages with Australia. I think the United Nations have proscribed - or have suggested proscription for – something like 100 or more organisations and we've proscribed to date 16. You can see that the fact that has been influencing us is whether there is a connection with Australia.

- 3.9 The Minister's view would appear to be in line with the Committee's view expressed in paragraph 3.5.

The Palestinian Islamic Jihad

- 3.10 On the basis of the publicly supplied information, the Palestinian Islamic Jihad appears to be a small organisation, 50 to 200 members, which operates with deadly effect in a very limited sphere, Gaza, the West Bank and South Lebanon, although its support and funding extends to Syria, Iran, Europe and the United States.⁴ It does not attack Western interests, but its suicide attacks against Israelis throughout the 1990s have claimed numerous lives.⁵ The Committee was also told that, while the PIJ had not targeted western interests outside of the Middle East, there had been some threats against the United States in Israel, should the United States move its embassy from Tel Aviv to Jerusalem.
- 3.11 It appears that the PIJ has no links to Australia. The Attorney-General is quoted as saying that the 'PIJ has no known presence in Australia' and was proscribed 'because of its activities overseas'.⁶ This was confirmed by ASIO.

4 Eight men were arrested in Florida in 2003 for allegedly overseeing and financing the operations of the PIJ. Herald Sun, February 2003

5 See paragraph 3.3

6 Media report 3 May 2004

Sources and reliability of information

- 3.12 The public information presented by the Attorney-General in support of the listing came from three main sources: Jane's Terrorism and Insurgency Centre database⁷, the International Policy Institute for Counter Terrorism⁸ and a UK Home Office Press Release.
- 3.13 ASIO informed the Committee that it collaborates and liaises with overseas organisations which provide intelligence on the Middle East. On the PIJ, the information was assessed to be accurate and reliable.

The selection and rationale

- 3.14 ASIO's selection of the PIJ was based on a set of priorities established after the passing of the Criminal Code in 2002. Priority was given to Al Qaeda related organisations. They have all been listed. Listing of further organisations was based on those organisations which met the criteria established in the Act. Some consideration was given to 'completing the circle', that is, the isolation of organisations by common listings across a number of countries.
- 3.15 The initiative for this listing (the PIJ) came from ASIO. ASIO acknowledged that there were no links to Australia and no Australian financing of the PIJ, but said that some individuals in Australia shared their (PIJ's) ideology. ASIO argued that it took as its benchmark the listings of other liberal democracies, all of which had already listed the PIJ. The PIJ was listed in the United States, the United Kingdom, Canada and the European Union. In addition, the moves by PIJ to target United States assets in Israel suggested a broadening of focus and that Australia might be seen as a displacement target. An alternative view, somewhat at odds with this, was also put to the Committee; that, since 11 September 2001, those groups involved in the Israeli-Palestinian issue have been keen to restrict activities to Israel and the Occupied Territories.⁹

7 Jane's is a world wide organisation founded in the United Kingdom in 1898. It publishes information on defence, aerospace and transportation.

8 The International Policy Institute for Counter Terrorism is an Israeli research institute focussing on counter terrorism and chaired by Shabtai Shavit, former director of the Israeli Intelligence Agency.

9 Transcript, Private hearing 3 June 2004, p. 5.

The processing of the listing of the PIJ

3.16 The processes followed by ASIO in the listing appeared to be consistent with the requirements of the Act. The following steps were taken:

- Having considered the organisation against the criteria in the Act, ASIO informed the Attorney-General of the possible listing.
- The Attorney-General's Department advised the Chief General Counsel of the Australian Government Solicitor of the listing and sought his view on whether the listing met the requirements of the Act. 5 March 2004. He agreed that it did.
- A brief was provided by the Director-General, ASIO, to the Attorney-General containing the statement of reasons (see paragraph 3.3). 8 April 2004.
- Once the Attorney-General was satisfied, he wrote to the Prime Minister and the Leader of the Opposition informing them of the proposed listing and offering a briefing on the matter. 21 April 2004.
- The State premiers and Territory chief ministers were informed by letter. 23 April 2004.
- The regulation was made and signed by the Governor-General. 3 May 2004.
- The Attorney-General put out a press release containing the statement of reasons announcing the listing. 3 May 2004.
- Information was placed on the Attorney-General's web site. 3 May 2004.
- A letter was sent to the Parliamentary Joint Committee on ASIO, ASIS and DSD informing the Committee of the listing, 3 May 2004, received on 7 May 2004.
- The Committee met on 13 May to consider the regulation, advertised the listing on 15 May 2004 and called for submissions from any interested parties by 1 June 2004.
- No submissions were received.
- A private hearing was held with the Director-General of ASIO and officials from the Attorney-General's Department. 3 June 2004.

- 3.17 The Attorney-General's Department informed the Committee that future listings will include consultation with the Department of Foreign Affairs. Given the possible ramifications of a listing for Australia's relations with other countries, the Committee believes that this consultation is most important.
- 3.18 As the time for review is very limited, in future, the Committee would also appreciate prior notice of any listings. The letter from the Attorney-General to the Committee on this listing, although dated 3 May 2004, did not reach the Committee until 7 May, well after the announcement was made in the press. This was not a very satisfactory situation.
- 3.19 The Committee also believes that the brief of information sent to it on any listing should be more comprehensive, containing an outline of the results of consultations held with States and Territories and the Department of Foreign Affairs and details of the stages in the process used to make the regulation.

Conclusion

- 3.20 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.
- 3.21 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 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.¹⁰

- 3.22 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 Australians¹¹ should be given particular weight when considering a listing. This does not appear to have occurred in this listing.
- 3.23 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.

DAVID JULL, MP

Chairman

3 June 2004

10 Private briefing, 3 June 2004, p. 6.

11 Ideological sympathy on the part of Australians (see para 3.15), without any follow-up action, is insufficient to justify a listing as this would take us into the realms of the thought police.