

SUBMISSION TO THE PARLIAMENTARY JOINT COMMITTEE ON INTELLIGENCE AND SECURITY – REVIEW OF THE RELISTING: HIZBALLAH'S EXTERNAL SECURITY ORGANISATION (ESO)

Hizballah and ESO

1. Strictly speaking, the regulation is confined to the re-listing of Hizballah's External Security Organisation (ESO) and does not relate to Hizballah in its entirety. The relationship between the two is unclear. One knowledgeable commentator queries whether the ESO is anything more than an 'umbrella name' used by others to lump together activities they attribute (rightly or wrongly) to the organization. The same commentator raises doubts that Imad Mughnieh, referred to in the SoR as the head of ESO, takes direction from or has any established organizational link with Hizballah.¹
2. However, for the purpose of this submission it is accepted that whether or not the ESO actually exists, and if so in what form, the real target of the regulation is Hizballah. Reflecting this, the statement of reasons (SoR) frequently fails to draw any distinction between the two.
3. Hizballah is a Lebanese Shia political organization with deep roots in Lebanese society. It has a widespread and loyal following amongst the Lebanese Shia, the largest and poorest of the ethno-religious communities that make up Lebanese society. It also attracts support across the ethno-religious divisions institutionalized within the Lebanese polity. It is represented in the Lebanese Parliament and local government. The organization also has broad international support, including in Australia where during the 2006 conflict with Israel many Muslim leaders called upon the Government to de-list the organization. These included members of the Government's own Muslim Advisory Board.²
4. Most of Hizballah's resources are devoted to the maintenance of an extensive network of hospitals, clinics, television and radio stations, housing projects, construction activities and other social services.³ It has a strong reputation for honesty and competence that for many observers, including its critics, distinguish it from many other political organizations and politicians in Lebanon. By all accounts it enjoys strong support from Iran and Syria (just as Israel does from the USA), but it is wrong to suggest or imply that it simply takes direction from these governments. Hizballah is a pragmatic organization that is firmly rooted in and strongly responsive to its national constituency. Its establishment and maintenance of a non-state militia (not the ESO) have been conditioned in part by the weakness of the Lebanese state and the perceived threat from

¹ Nicholas Blanford, 'Hizballah in the firing line', *Middle East Report Online*, April 28, 2003 at <http://www.merip.org/mero/mero042803.html>

² Richard Kerbaj, 'PM can't be swayed on Hezbollah', *The Australian*, August 4, 2006, p8.

³ Lara Deeb, 'Hizballah: A Primer', *Middle East Report Online*, July 31, 2006 at <http://www.merip.org/mero/mero073106.html>; Paul McGeough, 'Between Hezbollah and hell', *Sydney Morning Herald*, July 29-30, 2006, p29.

Israel. Under UN Security Council Resolution 1701, which ended the 2006 armed conflict with Israel, Hizballah cooperated in the deployment of the Lebanese army in Southern Lebanon and the removal of its own fighters. Progress towards a normalization of the state in Lebanon, including the disarmament of Hizballah, is desirable. This goal is unlikely to be served by any attempted marginalization of Hizballah as a terrorist organization. Rather what is needed is to encourage and support its participation in the state and the democratic political process.

Statutory Criteria for Listing

5. Under Division 102 of the *Criminal Code* an organization may be listed as a ‘terrorist organisation’ if the Attorney-General is satisfied on reasonable grounds that the organization:

- is directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of a terrorist act, or

- advocates the doing of a terrorist act by way of
 - directly or indirectly counselling or urging the doing of a terrorist act, or
 - directly or indirectly providing instruction on the doing of a terrorist act, or
 - directly praising the doing of a terrorist act in circumstances where there is a risk that such praise might have the effect of leading a person to engage in a terrorist act.

The definition applies in each case whether or not a terrorist act has occurred or will occur.

Statement of Reasons

6. Apart from the simple assertion that the ESO is a terrorist organization the statement of reasons (SoR), in its section on ‘Hizballah’s ESO engagement in terrorist activities’, offers little concrete information and limited specific grounds to support the listing of the organization. The only terrorist incidents that are particularized are three bomb attacks directed at Israeli targets outside Israel between 1992 and 1994 and the kidnapping of an Israeli businessman in the UAE in 2000. It is acknowledged that Hizballah/ESO responsibility for the former incidents has not been substantiated. In other words, the SoR’s particularization of Hizballah’s involvement in terrorist activity is limited to claims concerning a kidnapping seven years ago and possible responsibility for incidents that occurred some 13 or more years ago.

7. The SoR makes limited and selective reference to Hizballah’s conflict with Israel. They include the claim that the ESO has infiltrated individuals ‘into Israel to conduct acts of terrorism following the commencement of the second intafada in 2000 and has been involved in at least three major attempts to smuggle arms to Palestinian militants since 2001.’ No acts of terrorism by the individuals infiltrated into Israel are particularized. As regards the second of these claims it needs to be questioned whether the provision of arms to a people who claim (with some justification in international law) a right of resistance to

illegal military occupation should be judged differently from the massive western military aid provided to the state of Israel and which is used to sustain the illegal occupation in question? Or, to consider more recent events, should it be seen in a different light from the provision of weapons by western governments to Fatah militants in the Palestinian territories?⁴

8. The larger context of the conflict with Israel is ignored, including:

- Israel's illegal invasion and occupation of Southern Lebanon between 1982 and 2000, resistance to which led to the formation of Hizballah and to its mass political following in Lebanon
- the war in mid 2006 in which almost 1200 Lebanese civilians and 43 Israeli civilians were killed
- Israel's continuing illegal occupation of the Palestinian territories.

In relation to this ongoing conflict it would be difficult to pin the label 'terrorist' on the acts of one side only without inviting an accusation of rank hypocrisy. This is perhaps why the SoR leaves this context to one side.

9. Other claims contained in the SoR are of an extremely vague and general nature and unsupported by probative material. Indeed the SoR is grossly short on references to detail, context, sources, or validation of any kind.

10. The SoR includes the general claim that 'it is estimated that Hizballah has raised millions of dollars through activities such as drug and arms smuggling and product piracy' in South America. The Committee is duty bound to seek further particulars in relation to such a claim directed at Hizballah rather than specifically at the ESO. Who 'estimated' this? On what basis? In what time frame? Aside from its generality, to the outside observer the claim invites skepticism given that the SoR also claims that Hizballah enjoys the patronage of two large neighbouring governments, those of Iran and Syria.

11. There is also a claim that in the 1990s ESO was involved in planning attacks and gathering intelligence in relation to US and Israeli shipping activities in the Malacca Straits. If, as the SoR claims, preparatory activity was being undertaken in the 1990s it might reasonably be expected that there would be some specific evidence provided of a particular attack or attacks that was executed or attempted in the 7 to 17 year period that has elapsed since.

12. There is a further claim of 'renewed reports..[of] contingency planning for future attacks'. Again no attempt is made to source or further particularize the claim.

13. In the final paragraph the SoR concludes that '*Based on the above information*, it is assessed that the ESO continues to have the capability and intent to conduct further

⁴ Ed O'Loughlin, 'Military success creating bigger problems for Hamas', *Sydney Morning Herald*, June 15, 2007, p8.

terrorist attacks... [and] it is likely the ESO will undertake attacks if and when the opportunity arises..' (emphasis added).

14. The problem with this conclusion is that the 'information' referred to as a basis for the conclusion is largely missing, unless 'information' is to be equated with vague, unsubstantiated allegations and it is accepted (as per the logic of the SoR) that mere repetition confers authority on an allegation.

15. Before listing an organization the Attorney General has to be satisfied on *reasonable grounds* that the statutory criteria have been met. This is an objective test. It does not suffice for the Attorney General to rehearse a range of vague and unsubstantiated allegations and say *he* is satisfied. It is submitted that the more valid conclusion is that the manifest inability to particularize contemporary activities, attacks or incidents involving the organization is that there is no reasonable basis provided in the SoR upon which the Attorney General could be satisfied that the organization meets the listing criteria. It is submitted that the PJC should seek further and cogent evidence relating to the organization before it considers recommending against disallowance of the regulation.

16. On more than one occasion the PJC has stressed the need to distinguish terrorism from violence involved in armed political conflicts of a local or regional nature where peace and mediation processes may play a part in their resolution⁵ -

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 organizations 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.

⁵ *Review of the listing of the Palestinian Islamic Jihad (PIJ)* Parliament of the Commonwealth of Australia, June, 2004, para 3.21, also quoted by the Committee in its conclusion to its review of the listing of four organizations, including Hamas and Hizbollah, *Review of the Listing of four terrorist organisations* Parliament of the Commonwealth of Australia, September 2005, para 3.87.

17. It is submitted that the case at hand is a classic instance of where this important distinction applies and where the listing of the organization in question is inappropriate and potentially counter-productive.

Conclusion

18. This listing once again highlights problems with the breadth of the listing criteria, an issue that has been repeatedly raised by the PJC.

19. It is submitted that no legitimate practical end is served by the use of Australia's domestic anti-terror laws to proscribe Hizballah, an organization engaged in a conflict that is centrally concerned with national, political rights in its immediate region. The re-listing may put some law-abiding Australian residents and citizens at risk of prosecution for serious criminal offences or other adverse official action simply because of their political beliefs and associations.

20. More generally it invites the perception that such measures are motivated by a form of anti-Islamism that pays no regard to context, cause, history or justice as it relates to the specific conflicts in which particular Islamic political organizations are involved. This tendency to conflate all forms of political Islam with al Qaeda terrorism is a recipe for fomenting and spreading violence and insecurity rather than preventing it.

21. The targeting of civilians in the conflict involving Hizballah and Israel should be unreservedly condemned, whichever side is responsible. Beyond this there is much room for disagreement in the Australian and international communities about who bears the most responsibility, where justice lies as between the various parties and what measures might be taken by Australia and other governments to foster a settlement of the conflict. These are matters that should properly be open to democratic political debate. They should not be preempted by an executive decision that in effect criminalizes one side in a long running and complex political conflict.

22. On the basis of the information provided by the Attorney General it is submitted that recommend disallowance of the regulation.

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22nd June, 2007.