



The Listings

The criteria for listing an organisation

The legal criteria

- 2.1 To be specified as a terrorist organisation for the purposes of paragraph (b) of the definition of terrorist organisation in section 102.1 of the Criminal Code, the Minister:

Must be satisfied on reasonable grounds that the organisation is directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of a terrorist act (whether or not the terrorist act has occurred or will occur); or

Advocates the doing of a terrorist act (whether or not a terrorist act has occurred or will occur).¹

- 2.2 To provide further clarification of this definition, Section 102.1 (1A) of the Criminal Code states that an organisation advocates the doing of a terrorist act if:

The organisation directly or indirectly counsels or urges the doing of a terrorist act; or

The organisation directly or indirectly provides instruction on the doing of a terrorist act; or

The organisation directly praises the doing of a terrorist act in circumstances where there is risk that such praise might have the effect of leading a person (regardless of his or her age or mental

¹ Paragraphs 102.1(2) (a) and (b) of the *Criminal Code Act 1995*.

impairment (within the meaning of section 7.3) that the person might suffer) to engage in a terrorist act.²

- 2.3 In previous reports, the Committee has commented on the breadth of this statutory definition.³
- 2.4 The Committee's accepts that there are many organisations that may satisfy the statutory definition of terrorist organisation and remain unlisted.
- 2.5 The Committee rejects the view that groups who fall within the statutory criteria should not be listed because not all groups who *could* be listed as terrorist organisations are listed.

ASIO's guidelines

- 2.6 At its hearing on 1 February 2005 for the *Review of the listing of six terrorist organisations*, the Director-General of ASIO advised the Committee of ASIO's evaluation process in selecting entities for proscription under the Criminal Code. Some of the factors included:
- Engagement in terrorism;
 - Ideology and links to other terrorist groups or networks;
 - Links to Australia;
 - Threat to Australian interests;
 - Proscription by the UN or like-minded countries; and
 - Engagement in peace and mediation processes.⁴
- 2.7 The Committee notes that these guidelines are indicators only and are not formally set out in the Act. However, the Committee has found these to be a useful tool in reviewing the listing of terrorist organisations.
- 2.8 The Committee has decided to continue to use these guidelines to assist its current review. The Committee has previously accepted, and again reiterates that, the absence of information in relation to these guidelines is not necessarily determinative of the listing of an organisation.
- 2.9 The Committee would also like to note the following guidelines suggested by Dr Patrick Emerton:

2 Paragraphs 102.1 (1A) (a) (b) and (c) of the *Criminal Code Act 1995*.

3 See: Joint Parliamentary Committee on ASIO, ASIS and DSD, *Review of the listing of the Palestinian Islamic Jihad*, June 2004, p. 18 and Joint Parliamentary Committee on ASIO, ASIS and DSD, *Review of the listing of six terrorist organisations*, March 2005, Chapter 2.

4 *Confidential exhibit*, ASIO, tabled 1 February 2005.

- the nature of the political violence engaged in, planned by, assisted or fostered by the organisation;
- the nature of the political violence likely to be engaged in, planned by, assisted or fostered by the organisation in the future;
- the reasons why such political violence, and those who are connected to it via the organisation, ought to be singled out for criminalisation by Australia in ways that go beyond the ordinary criminal law;
- the likely impact, in Australia and on Australians, of the proscription of the organisation, including, but not limited to:
 - an indication of the sorts of training Australians may have been providing to, or receiving from, the organisation;
 - an indication of the amount and purpose of funds that Australians may have been providing to, or receiving from, the organisation;
 - the way in which the concept of ‘membership’, and particularly ‘informal membership’, will be applied in the context of the organisation;
 - the extent to which ASIO intends to take advantage of the proscription of an organisation to use its detention and questioning power to gather intelligence.⁵

2.10 The Committee thanks Dr Emerton for his suggestion. The Committee has, however, continued to apply the factors set out in paragraph 2.6.

2.11 Two submissions in particular⁶ referred to the ASIO guidelines and argue that the Committee should disallow these re-listing on the basis that the guidelines have not been addressed. As the Federation of Community Legal Centres (Vic) Inc state in their submission:

ASIO’s Statements of Reasons relating to the re-listing of these four organisations, as provided by the Attorney-General, do not address the ASIO guidelines in any discernible manner. We view this as a grave concern.⁷

2.12 In its report *Review of the re-listing of Ansar al –Islam, AAA, IAA, IMU, JeM and LeJ* the Committee requested that the statements of reasons be written

5 Dr Patrick Emerton, *Submission 3*, p. 1.

6 Dr Patrick Emerton, *Submission 3* and Federation of Community Legal Centres (Vic) Inc, *Submission 5*.

7 Federation of Community Legal Centres (Vic) Inc, *Submission 5*, p. 7.

in a way that directly links the evidence with ASIO's guidelines.⁸ The Committee will once again raise this with ASIO.

- 2.13 The Committee reiterates that it is a misunderstanding of the statutory scheme to suggest that, because an organisation does not satisfy certain of the ASIO indicators, it could not be listed as a terrorist organisation under the Criminal Code.

8 Parliamentary Joint Committee on Intelligence and Security, *Review of the re-listing of Ansar al – Islam, AAA, IAA, IMU, JeM and LeJ*, June 2009, p. 32

Hamas' Izz al-Din al-Qassam Brigades (the Brigades)

- 2.14 This organisation was initially listed on 9 November 2003, re-listed 5 June 2005, 7 October 2005 and 10 September 2007.
- 2.15 The statement of reasons is attached at Appendix D. They confirm that, the information provided, whilst publicly available, has been 'corroborated by classified information.'⁹
- 2.16 The Committee reiterates that Hamas itself is not being listed.
- 2.17 Dr Patrick Emerton's submission quotes the 'Goldstone Report' – *Report of the United Nations Fact Finding Mission on the Gaza Conflict* – suggesting that the disbandment of Hamas' Executive Force would mean that the Brigades have been absorbed into the Gaza police.¹⁰ The Committee put this to ASIO, who confirmed that the Brigades still exist and stated:
- Hamas Brigades have been responsible for attacks this year. Disbanding the Executive Force had no impact on the Brigades.¹¹
- 2.18 The Committee sought information on why the Brigades were listed and Hamas was not, ASIO stated:
- Where ASIO has information that only part of an organisation 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, only that part of the organisation will be put forward for proscription. This is the case with Hamas' Izz al-Din al-Qassam Brigades.¹²
- 2.19 The Committee also sought information on how the distinction was drawn between Hamas and the Brigades, ASIO stated:
- Hamas as an organisation has distinct political and military wings. While the Brigades are an integral part of Hamas, they also operate independent of, and times at odds with, Hamas' stated aims.¹³

9 See *Statements of Reasons*, Appendices D.

10 Dr Patrick Emerton, *Submission 3*, p. 6.

11 ASIO, *Classified Secret Submission 11*.

12 ASIO, *Classified Secret Submission 11*

13 ASIO, *Classified Secret Submission 11*.

Engagement in Terrorism

- 2.20 The Brigades are the armed element of the military wing of Hamas and the statement of reasons lists numerous attacks against Israeli civilians. The three most recent were:
- November 2008: the Brigades announced on its website it had fired a total of 43 Qassam rockets and a number of mortar shells at several Israeli civilian and military targets;
 - November 2008: five Grad rockets were fired from the Gaza Strip at the Israeli city of Ashqelon; and
 - January 2009: numerous rockets fired into Israel.
- 2.21 In January 2009 Hamas Security sources in Gaza told Jane's that:
- Iran was sending anti-aircraft and anti-armour missiles to help Hamas replenish its arsenal aboard a convoy heading north from Sudan into Egypt when it was destroyed in an airstrike.¹⁴
- 2.22 The Brigades also carry out brutal suppression against the Palestinian people. As is well known, in August 2009 Hamas:
- ... launched a devastating bombardment of rocket-propelled grenades and machine-gun fire against a mosque in Rafah. The attack killed at least 22 Palestinians, including an 11-year-old girl. Over 100 more were injured and the mosque, which belonged to a rival Islamist faction, the Jund Ansar Allah, was left riddled with bullets. The adjacent building was destroyed.¹⁵
- 2.23 And, since the end of December 2008:
- ... Hamas forces and militias in the Gaza Strip have engaged in a campaign of abductions, deliberate and unlawful killings, torture and death threats against those they accuse of "collaborating" with Israel, as well as opponents and critics.¹⁶
- 2.24 The suggestion by Mr Assem Judeh in submissions four, eight and nine that the listing of the Brigades – and the statement of reasons supporting this listing – is somehow done at the bidding of or in support of Israel or Israeli interests is rejected by the Committee.
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14 Mohammed Najib, *Iran was source of Hamas SAMs destroyed in Sudan airstrike*, Jane's Defence Weekly, 3 April 2009

15 Ron Prosor, *Menace to Its Own*, Telegraph, 26 August 2009.

16 *Palestinian Authority: Hamas' deadly campaign in the shadow of the war in Gaza*, Amnesty International Media Briefing, February 2009
<<http://www.amnesty.org/ar/library/asset/MDE21/001/2009/ar/9f210586-f762-11dd-8fd7-f57af21896e1/mde210012009en.html>>

Ideology and links to other terrorist groups/networks

Ideology

2.25 The statement of reasons states that:

Hamas is a radical Sunni Islamic organisation which emerged from the Palestinian branch of the Muslim Brotherhood in late 1987 - shortly after the commencement of the Intifada. Hamas soon became the dominant Islamic fundamentalist group in the Occupied Territories. Its main presence is in the Gaza Strip and some areas of the West Bank.¹⁷

2.26 Whilst Hamas carries out legitimate political and social activities its terrorist operations are conducted by the Brigades.

Links to other terrorist groups/networks

2.27 There is no information on any links to other terrorist groups/networks in the statement of reasons. In relation to Hamas (including the Brigades), Jane's states that:

In principle, Hamas has always favoured co-operation with other Palestinian and Islamic factions, based on the common goal of jihad for the liberation of Palestine. However in reality, relations with other Palestinian factions have been determined by a number of calculations, primarily the struggle for power within Palestinian society.¹⁸

Links to Australia

2.28 No links between Australia and the Brigades are mentioned in the statement of reasons. The Committee has no information to indicate this organisation has any links to Australia.

Threat to Australian interests

2.29 The Brigades attacks show a reckless disregard for civilians of any nationality. The Brigades therefore pose a threat to Australian interests and Australians such as businesspeople, tourists or government officials who may be caught in a Brigades attack.

17 Statement of reasons, *Submission 1*, Appendix D.

18 Jane's Terrorism and Insurgency Centre, *Hamas*, 11 September 2009, <http://jtict.janes.com>

Proscription by the UN or like-minded countries

- 2.30 The Brigades have been proscribed as a terrorist organisation by the government of the United Kingdom. Hamas (including the Brigades) has been proscribed as a terrorist organisation by the governments of the United States and Canada. Hamas is also listed by the European Union for the purposes of its anti-terrorism financing measures.

Engagement in Peace and Mediation processes

- 2.31 There is no mention in the statement of reasons of this organisation's engagement in peace or mediation processes.

- 2.32 The Committee is aware that Hamas have regularly participated in ceasefires with the IDF about which Dr Emerton states:

. . . the Statement of Reasons does not pay sufficient regard to intermittent truces and ceasefires to which Hamas has been a party, nor to the widely-held belief that any resolution of the status of the Occupied Palestinian Territories will have to involve negotiation with Hamas and hence a political resolution of the status of the Brigades. Listing the Brigades appears to be an obstacle to, rather than a contribution, to this goal.¹⁹

- 2.33 The Committee notes the following:

Hamas (through the Brigades) seeks to destroy the state of Israel and establish an Islamist Palestinian state in the existing Gaza Strip, West Bank and Israel. *It will not enter into peace talks with Israel and its leaders have stated Hamas cannot live with an Israeli state.*²⁰

Conclusion

- 2.34 The Committee found that Hamas' Izz al-Din al-Qassam Brigades continue to engage in activities that satisfy section 102.1 of the Criminal Code. The Committee does not recommend disallowance of the regulation.

19 Dr Patrick Emerton, *Submission 3*, p. 7.

20 Statement of reasons, *Submission 1*, Appendix D. (emphasis added)

Recommendation 1

The Committee does not recommend the disallowance of the regulations, made under the Criminal Code section 102.1, to list the organisation:

- **Hamas' Izz al-Din al-Qassam Brigades**
as a terrorist organisation.

Kurdistan Workers Party (PKK)

- 2.35 The PKK, also known as Kongra Gel, was initially listed on 17 December 2005 and re-listed 27 September 2007.
- 2.36 The statement of reasons is attached at Appendix E. They confirm that, the information provided, whilst publicly available, has been ‘corroborated by classified information.’²¹

Kurdish Self Determination and the PKK

- 2.37 In a previous report²² the Committee discussed at length the historical background to the Kurdish issues relating to terrorism, self determination and minority rights.
- 2.38 Submission 6 by the Australian Kurdish Association, Kurdish Association of Victoria and the Kurdish Association of Western Australia in quoting the 1987 Geneva Convention on Terrorism states:

Australian Kurdish community and its associations believe and support a peaceful political solution to the Kurdish or any other human crisis, yet in regards to the relisting of PKK there are some important factors in the conflict which needs to be taken in to account. Although we criticize some tactics which PKK has implemented in the past but we point out to the committee the significant contexts of 1987 Geneva Declaration on terrorism. The convention affirms to the fact that United Nations supports “people who are fighting against colonial domination and alien occupation and against racist regimes in the *exercise of their rights of self-determination, have the right to use force to accomplish their objectives within the framework of international humanitarian law*”.²³

- 2.39 The Committee notes that, immediately after the sentence quoted by Submission 6 above, the 1987 Geneva Declaration on Terrorism states:

21 See *Statements of Reasons*, Appendices E.

22 Joint Parliamentary Committee on Intelligence and Security, *Review of the listing of the Kurdistan Workers’ Party (PKK)*, April 2006, p. 19 – 21.

23 Australian Kurdish Association, Kurdish Association of Victoria and Kurdish Association of Western Australia, *Submission 6* p. 9 (emphasis in submission)

Such lawful uses of force must not be confused with acts of international terrorism.²⁴

2.40 Additionally, the Declaration also states:

We condemn all those tactics and methods of struggle that inflict violence directly upon innocent civilians as such.²⁵

2.41 Whilst being sensitive to the history of the Kurdish people the Committee reiterates that acts of terrorism, particularly where innocent civilians are targeted, are unacceptable to Australia and the international community.

The impact of listing the PKK on the Australian Kurdish Community

2.42 In its hearing the Committee heard from a spokesman for the Australian Kurdish association that:

... as Kurdish people here we feel marginalised, we feel isolated and we feel frustrated by the listing of PKK.²⁶

2.43 Submission 6 by the Australian Kurdish Association, Kurdish Association of Victoria and the Kurdish Association of Western Australia states that in Australia Kurds '... are refused the very socialisation process that most Australians undertake.'²⁷

2.44 At the hearing the Committee sought further information on this. A spokesperson for the Kurdish Association of Australia stated:

...in terms of access to government institutions and departments we feel we have been marginalised. Every function which we hold we welcome most of our authorities and representatives but we rarely have anybody, to be honest. We have been isolated and left alone in our little pocket. That is what we meant by the process. We feel in terms of funding support and programs, just allowing our youth and our people to integrate into the system in employment, and in communication with the government, basically we have none. These allegations have led to our people being scared of the fact that there is this massive banner of

24 The Geneva Declaration On Terrorism, UN General Assembly Doc. A/42/307, 29 May 1987, Annex.

25 The Geneva Declaration On Terrorism, UN General Assembly Doc. A/42/307, 29 May 1987, Annex.

26 *Private Hearing Transcript*.

27 Australian Kurdish Association, Kurdish Association of Victoria and Kurdish Association of Western Australia, *Submission 6* p. 17.

terrorism hanging over our associations, which is preposterous, to be honest.²⁸

2.45 The Committee makes the strong point that the re-listing of the PKK is in no way meant as a comment on Australians of Kurdish descent. It is of concern to the Committee to have Australians of Kurdish background believing that they are in a position of being lesser citizens or persecuted. The Committee fully accepts that, whilst members of the Kurdish community may 'wholeheartedly support the PKK's political and ideological objectives,'²⁹ they oppose terrorism:

... as Kurdish people we are against any terrorist act against civilians. We have all been civilians. For any of our families, if you check our history, you will see that we have lost a member of our family, a relative or a family friend. We know the pain of suppression, we know the pain of death. We oppose any sort of terrorism. The Australian Kurdish community opposes that.³⁰

Informing the Kurdish community of the listing

2.46 The Committee asked witnesses from the Australian Kurdish Community how they became aware of the listing and what listing meant. The witnesses replied:

Some of our Kurdish people may be new refugees but they are very interactive in their communications systems, with the Internet and through the media. They follow Australian TV more than anything else because of a lack of access to communications mediums at home. They find out through the normal channels of communication.³¹

2.47 And;

In the Kurdish Association about two years ago we ran an information session about all this terrorism and what it means. We asked lawyers to attend and inform our community. Also a representative of the police came – I forget which section – to inform our society about what it means being a terrorist

28 *Private Hearing Transcript.*

29 *Private Hearing Transcript.*

30 *Private Hearing Transcript.*

31 *Private Hearing Transcript.*

organisation or assisting, the consequences of that. They already have some knowledge.³²

2.48 The Committee notes the following from its *Annual Report of Committee Activities 2008-2009*:

Since 30 June 2008 the Attorney-General's Department have reported to the Committee on recent developments in improving community education and awareness. The Committee has been provided with a copy of a pamphlet, produced by the Attorney-General's Department, on Australia's counter-terrorism laws. The Committee has also received a list of the community organisations that this pamphlet has been distributed to.³³

2.49 The problem referred to in paragraphs 2.46 and 2.47 highlights the need to improve education about listing and wider community understanding of the false and counter-productive stereotyping of minority groups.

Engagement in Terrorism

2.50 The statement of reasons lists a number of the violent acts in the period 2006 to 2009 ascribed to or claimed by the PKK, the three most recent being:

- 11 October 2008: Turkish police arrested a female member of the PKK who was planning a suicide attack on an unspecified target in Istanbul. She was feigning pregnancy in order to conceal 8.8 kilograms of explosives on her body;
- 23 December 2008: Turkish security forces discovered a car in Diyarbakir loaded with 57 kilograms of explosives, an RPG7 rocket launcher, 50 rocket grenades, 70 hand grenades and ammunition; and
- 20 March 2009: Police arrested three PKK militants in Istanbul. Explosives, a firearm, two hand grenades and three pistols were seized in the raid, but the target of the alleged attack was unknown.

2.51 In addition, Jane's Terrorism and Insurgency Centre notes the following attacks:

- On 27 May, six soldiers were killed and six others wounded when suspected PKK rebels detonated a remote-controlled improvised

32 *Private Hearing Transcript*.

33 Parliamentary Joint Committee on Intelligence and Security, *Annual Report of Committee Activities 2008-2009*, October 2009, p. 12.

explosive device (RCIED) near their vehicle in an unspecified area of Hakkari province.³⁴

Allegation of Turkish State involvement in attacks attributed to the PKK

2.52 The Committee did take evidence that some of the attacks attributed to the PKK had in fact been perpetrated by Turkish Military Forces. In his submission Dr Patrick Emerton states:

. . . at least some of the violence against civilians that is attributed to the PKK – including the massacre of September 29, 2007, mentioned in the Statement of Reasons – may have in fact been perpetrated by Turkish security forces.³⁵

2.53 ASIO, gave the Committee classified evidence that this was not the case and further stated:

The actual ‘Alliance for Kurdish Rights’ document Dr Emerton refers to in his submission does not actually provide any evidence of Turkish State involvement in the September 2007 attack. The report alludes to suspicion of Turkish authorities possibly being involved in the earlier 1996 incident (on very spurious grounds) and posits the view that if there was a cover up in 1996, that it could be happening again after the 2007 massacre. No proofs are offered.³⁶

2.54 In addition, Sarah Nicholson from the Federation of Community Legal Centres (Vic) Inc stated:

In our view, the key to this is the Ergenekon case, which is referred to in our submission and it is referred to in the EU progress report. That is a case where charges have been brought against the Turkish military and others in the Turkish state that the military have undertaken terrorist acts in the name of the PKK or the Kurdish community and now these charges have been brought against those state actors for those offences. That has taken some time to come to bear – that was a 2007 incident.³⁷

34 Jane’s Terrorism and Insurgency Centre, *Partiya Karkaren Kurdistan (PKK)*, 3 September 2009, <http://jtic.janes.com>

35 Dr Patrick Emerton, *Submission 10*, p. 4.

36 ASIO, *Classified Secret Submission 11*.

37 *Private Hearing Transcript*.

- 2.55 The case of the criminal network Ergenekon is a trial involving ex-members of the Turkish Military accused of 'attempting to overthrow the government and to instigate armed riots'³⁸ and 'involvement of military personnel in anti-government activities.'³⁹
- 2.56 The EU Turkish Progress Report⁴⁰ does not link the Ergenekon Trial to any PKK attacks and ASIO did not support any suggestion that Ergenekon was responsible for attacks attributed to the PKK.⁴¹
- 2.57 The Committee is not satisfied that there has been Turkish State involvement in any attacks attributed to the PKK by the statement of reasons.

The PKK and Article 96 paragraph 3 of the First Additional Protocol to the Geneva Convention

- 2.58 Article 96 paragraph 3 of the First Additional Protocol to the Geneva Convention allows armed movements such as the PKK to issue a statement of intended compliance to the International Red Cross in Geneva. Such a statement then makes the Geneva Convention and the additional Protocols applicable to the organisation.⁴²
- 2.59 In relation to this protocol the submission by the Australian Kurdish Association, Kurdish Association of Victoria and the Kurdish Association of Western Australia stated that:
- Let us also remind the committee that PKK has accepted the conditions and has signed the Geneva Convention.⁴³
- 2.60 The Committee confirmed that the PKK undertook to respect this statement in 1995 but notes the following statement from the Attorney-General's Department:
- The making of a declaration under Article 96 paragraph 3 of the First Additional Protocol to the Geneva Conventions by an

38 *Turkey 2009 Progress Report*, p. 6.
<http://ec.europa.eu/enlargement/pdf/key_documents/2009/tr_rapport_2009_en.pdf>

39 *Turkey 2009 Progress Report*, p. 11.
<http://ec.europa.eu/enlargement/pdf/key_documents/2009/tr_rapport_2009_en.pdf>

40 *Turkey 2009 Progress Report*,
<http://ec.europa.eu/enlargement/pdf/key_documents/2009/tr_rapport_2009_en.pdf>

41 ASIO, *Classified Secret Submission 11*.

42 See Sean Watts, 'Reciprocity and the Law of War (2009) 50(2) *Harvard International Law Journal* 365, 426 - 427.

43 Australian Kurdish Association, Kurdish Association of Victoria and Kurdish Association of Western Australia, *Submission 6* p. 6.

organisation does not affect whether or not that organisation meets the legislative test for listing as a terrorist organisation under the Criminal Code.⁴⁴

2.61 And;

Since 1995, the PKK has been involved in many terrorist attacks, including suicide bombing attacks, which have resulted in large numbers of civilian casualties. These terrorist attacks have been directed against not only Turkish security force, but also against civilian and foreign targets. Such attacks clearly do not comply with the Geneva Conventions which the PKK undertook to respect in its statement in 1995.⁴⁵

2.62 Importantly, none of the submitters denied that the PKK had been involved in terrorist acts that would be enough to satisfy the statutory criteria for re-listing. Additionally Jane's notes that:

... starting in early 2008, the PKK has begun to demonstrate a greater willingness to kill civilians. To date, the attacks have been concentrated in Istanbul and the tourist resorts along Turkey's Mediterranean and Aegean coasts. However, news of many of the attacks, particularly those which have not caused any casualties, has been suppressed by the Turkish authorities for fear of harming the local tourism industry. For example, a number of bombings causing only material damage in Antalya in August 2004 were officially attributed to gas leakages.⁴⁶

Ideology and links to other terrorist groups/networks

Ideology

2.63 Established in 1974,⁴⁷ the PKK's immediate objectives:

... are greater cultural and political rights for Turkey's Kurdish minority, including the amendment of the Turkish constitution to include an explicit recognition of a Kurdish identity, a comprehensive amnesty for PKK militants, including allowing the organisation's leadership to participate in political activities in

44 ASIO, *Classified Secret Submission 11*.

45 ASIO, *Classified Secret Submission 11*.

46 Jane's Terrorism and Insurgency Centre, *Partiya Karkaren Kurdistan (PKK)*, 21 October 2009, <http://jtic.janes.com>

47 The organisation was founded in 1974 but was named the PKK in 1978. Jane's Terrorism and Insurgency Centre, *Partiya Karkaren Kurdistan (PKK)*, 3 September 2009, <http://jtic.janes.com>.

Turkey, and an easing of the conditions of imprisoned PKK leader Abdullah Ocalan leading eventually to his release.⁴⁸

Links to other terrorist groups/networks

2.64 The statement of reasons contains no information on this matter. Jane's states that:

The PKK currently has close links with the Kurdistan Free Life Party (Partiya Jiyana Azada Kurdistanê: PJAK), a militant group of Iranian Kurds which also has training camps in northern Iraq.⁴⁹

Links to Australia

2.65 No links between Australia and the PKK are mentioned in the statement of reasons. The Committee has no information to indicate this organisation has any links to Australia.

Threat to Australian interests

2.66 The statement of reasons contains no information on this matter. PKK attacks on tourist locations are a threat to civilians of any nationality. The PKK therefore pose a threat to Australian interests and Australians such as businesspeople, tourists or government officials who may be caught in a PKK attack.

Proscription by the UN or like-minded countries

2.67 The PKK has not been listed by the United Nations (UN) 1267 Committee.⁵⁰

2.68 According to the State Department, as at July 7 2009, the United States Government has designated the PKK as a Foreign Terrorist Organisation (FTO) under the *Immigration and Nationality Act* under the name Kongra Gel.⁵¹

48 Jane's Terrorism and Insurgency Centre, *Partiya Karkaren Kurdistan (PKK)*, 3 September 2009, <http://jtic.janes.com>

49 Jane's Terrorism and Insurgency Centre, *Partiya Karkaren Kurdistan (PKK)*, 21 October 2009, <http://jtic.janes.com>

50 <http://www.un.org/sc/committees/1267/consolidatedlist.htm>

51 <http://www.state.gov/s/ct/rls/other/des/123085.htm>

- 2.69 The PKK is listed as a proscribed terrorist organisation by the UK and Canada. The PKK is listed by the European Union for the purposes of its anti-terrorism measures.
- 2.70 Submission 6 by the Australian Kurdish Association, Kurdish association of Victoria and the Kurdish Association of Western Australia referred to the 3 April 2008 decision of the European Court of First Instance, relating to decisions taken by the EU Council of Ministers, to include the Kongra-Gel/PKK on the EU's terrorist list. The submission stated:
- It must be noted that the international community is slowly but surely realizing the political realities and facts in Turkey. European Court only last year annulled the European Union decision of enlisting PKK as a terrorist organization. The law suit was supported by Britain.⁵²
- 2.71 The UK *did not* support the PKK in the lawsuit against the EU. Such a view is incorrect. The Council of the EU were joined by United Kingdom and Ireland in defending the suit brought by Kongra-Gel.
- 2.72 The Committee has previously considered the 3 April 2008 decision of the European Court of First Instance, and has sought and received advice from the Attorney-General's Department on the detail of this matter. The Attorney-General's Department has advised:
- The Court of First Instance annulled the EU's decision to include Kongra Gel on the EU's terrorist list for the purposes of asset freezing, as the EU had not provided reasons to support the inclusion of Kongra-Gel on the list at this time, or shortly after, the listing decision was made.
- The PKK was not a party to the proceedings and the Court made no specific ruling with respect to the PKK.
- ...[however] the EU Council Secretariat told the Australian Embassy in Brussels that the Court's decision would have no practical impact as the EU's current listing of the PKK/Kongra-Gel was based on an EU regulation made in December 2007 (whereas the Court only annulled the 2001 decision). The EU regulation listing both the PKK and its aliases, Kongra-Gel and KADEK, would therefore remain unaffected.⁵³

52 Australian Kurdish Association, Kurdish Association of Victoria and Kurdish Association of Western Australia, *Submission 6* p. 9

53 Committee correspondence from Attorney-General's Department, 8 May 2008.

- 2.73 The Committee notes that it made these points in its previous report into the PKK tabled on 25 June 2008.
- 2.74 At its hearing the Committee made the Kurdish Association of Australia and Kurdish Association of Victoria witnesses aware of this inaccuracy in their submission.

Engagement in Peace and Mediation processes

- 2.75 Janes' Terrorism and Counterinsurgency Centre makes the following statement:

More recently however, acting PKK leader Murat Karayilan explained that the group was seeking a mutual ceasefire and possible peace talks with the government. On 6 May 2009 he stated: "The priority is a ceasefire. Arms will be laid down later on...First the guns will be silenced, then dialogue will start". However, Karayilan's comments may not be representative of the entire PKK leadership. This was evidenced by his reference to the recent attack on 29 April in which nine Turkish soldiers were killed by suspected PKK militants in Diyarbakir. He explained: "We, too, are sorry for the deaths of those soldiers".

The unilateral ceasefire was extended on 1 June and then again on 15 July. Karayilan stated that the ceasefire had been extended to 1 September in anticipation of the release of a "roadmap for a democratic solution" to the conflict by imprisoned leader Abdullah Ocalan. While giving no further details Karayilan stated that the roadmap was expected in August. He also reiterated that under the ceasefire the group would carry out no attacks "apart from fighting in self-defence", cautioning that "our movement is stronger than ever and in a position to defend itself". *On 1 September the ceasefire was further extended until 22 September.*⁵⁴

- 2.76 The Committee noted that this information was not included in the statement of reasons.
- 2.77 In addition the Committee has become aware of the surrender of Kurdish Forces as a 'goodwill' gesture to Turkey. Jane's reports:

54 Jane's Terrorism and Insurgency Centre, *Partiya Karkaren Kurdistan (PKK)*, 3 September 2009, <http://jtic.janes.com>

The 34 rebels surrendered in a gesture towards government efforts to extend Kurdish rights, and to test its willingness and ability to deliver on pledges to behave fairly towards those who give up the armed struggle. Thousands of people gathered by the Habur gate on the southeastern border to welcome the militants, the first to give themselves up since the 1990s. It is thought that the guerrillas were acting on orders from Abdullah Öcalan, the group's imprisoned leader. Turkish television channels interrupted their broadcasts to report on the surrender. The rebels were immediately arrested by security forces who had been waiting for them.

The surrender had been announced by a PKK official, who described it as a "goodwill gesture" in response to the government's 'Democratic Initiative'. Under this push for reconciliation, launched earlier in the year, the government has held negotiations with a wide range of parties over the Kurdish issue. These have included the country's main Kurdish party, the Democratic Society Party (Demokratik Toplum Partisi: DTP), accused by some opposition politicians of being linked to the PKK. Earlier in the year, a Kurdish-language channel was launched on Turkish state television for the first time.⁵⁵

2.78 The Committee asked ASIO if there were 'peace discussions of a substantial character⁵⁶' would ASIO advise the Minister that it the PKK be de-listed. ASIO stated that:

The short answer to that is that, yes, we would be looking at a de-listing process, which is essentially like going through the whole re-listing process, so we would look at all the evidence. But it is one trigger that would cause us again to look again at any circumstance, any group.⁵⁷

2.79 However, ASIO also noted that:

...with the PKK there is still a large chunk of the organisation that still adheres to the use of terrorist tactics to get its point across and its ideology.⁵⁸

2.80 Dr Patrick Emerton, in a supplementary submission, refers to an article stating that in Turkey, the crime of being a member of the PKK carries a

55 *PKK rebels 'surrender' to Turkish security forces*, 20 October 2009, <http://jtic.janes.com>

56 *Private Hearing Transcript*.

57 *Private Hearing Transcript*.

58 *Private Hearing Transcript*.

penalty of several years in jail, but 'Turkish law pardons PKK members not involved in attacks'⁵⁹. Noting that the Australian offences operate fully extraterritorially via the operation of extended geographical jurisdiction category D, per section 102.9 of the Criminal Code Dr Emerton makes this statement:

If the listing goes ahead, the penalty for membership in Australia will be a maximum of 10 years - at least as, if not more, severe than in Turkey, the country in which the PKK actually operates. Furthermore, the criminal penalties associated with a wide range of conduct falling far short of involvement in attacks would be very severe (under the various offences found in Division 102 of the Criminal Code). It would be an absurd result for members of the PKK who have not engaged in violent actions to go free in Turkey, while being subject to extreme criminal penalties in Australia.⁶⁰

- 2.81 The Committee notes that this report states that Turkey 'pardons' PKK membership it does not de-criminalise it.
- 2.82 The Committee is heartened to see that there are signs that both the PKK and the Turkish government are moving towards peace. Whilst peace is yet to prevail the Committee will take an interest in any developments in this matter as, no doubt, will ASIO and other government departments and agencies.

Conclusion

- 2.83 Having regard to all of the information before it and based on the best assessment of the current situation the Committee concludes that the Kurdistan Worker's Party (PKK) continues to engage in activities that satisfy section 102.1 of the Criminal Code. The Committee does not recommend disallowance of the regulation.

59 Dr Patrick Emerton, *Submission 10* referring to Christopher Torchia, *Turkey releases Kurdish rebels, some face charges*, <<http://www.chron.com/disp/story.mpl/ap/world/6676195.html>>

60 Dr Patrick Emerton, *Submission 10* p. 1.

Recommendation 2

The Committee does not recommend the disallowance of the regulations, made under the Criminal Code section 102.1, to list the organisation:

- **Kurdistan Worker's Party (PKK)**

as a terrorist organisation.

Lashkar-e-Tayyiba (LeT)

- 2.84 This organisation was initially listed on 9 November 2003, re-listed 5 June 2005, 7 October 2005 and 10 September 2007.
- 2.85 The statement of reasons is attached at Appendix F. They confirm that, the information provided, whilst publicly available, has been ‘corroborated by classified information.’⁶¹

Engagement in Terrorism

- 2.86 The statement of reasons state that LeT is ‘one of the most active of the Pakistan based Kashmiri militant groups.’⁶²
- 2.87 Jane’s states:
- The LeT is one of the most active and best known Kashmiri groups owing to its involvement in the 13 December 2001 suicide attack on India's parliament and represents one of the most significant threats to security forces and civilians in Indian-administered Kashmir (IAK) and beyond.⁶³
- 2.88 Although the LeT formally denied any involvement, the most significant operation conducted by LeT were the attacks on multiple targets in the Indian city of Mumbai between 26-29 November 2008. 172 persons were killed and at least 248 wounded. Ten militants, of whom nine were killed and one detained, made an amphibious landing in the south of the city and attacked multiple targets including the Chhatrapati Shivaji Terminus (CST), the Leopold Café, the Taj Mahal Palace & Tower hotel, the Trident-Oberoi hotel, and finally Nariman House where the Chabad Lubavitch Jewish centre is based. In the aftermath of the attack the Indian government attributed responsibility to LeT, reporting that the captured attacker, Mohammed Ajmal Amir Kasab, had admitted to belonging to the group.⁶⁴

61 See *Statements of Reasons*, Appendices F.

62 Statement of reasons, *Submission 1*, Appendix F.

63 Jane’s Terrorism and Insurgency Centre, *Lashkar-e-Tayyiba (LeT)*, 2 July 2009, www.jtic.janes.com

64 Jane’s Terrorism and Insurgency Centre, *Lashkar-e-Tayyiba (LeT)*, 2 July 2009, www.jtic.janes.com

Ideology and links to other terrorist groups/networks

Ideology

2.89 The statement of reasons states that 'LeT subscribes to an extreme Salafist interpretation of Islam which is closely related to the Wahhabi form of Islam associated with al-Qa'ida and the Taliban.'⁶⁵

2.90 Jane's state that:

The LeT's overall objective is to Islamicise South Asia, with a primary aim of 'liberating' Muslims in IAK⁶⁶. Its declared policy is the creation of regional Muslim states - one involving accession of Kashmir to Pakistan, a second formed by the Muslims of northern India, and a third formed by the Muslims of southern India. The 'Amir' of the LeT called first for a jihad to turn Pakistan into a purely Islamic state and second for the waging of jihad against countries with non-Islamic governments. The Amir cited Chechnya and Afghanistan as models for international jihad.⁶⁷

Links to other terrorist groups/networks

2.91 The statement of reasons states that:

LeT maintains links to the Taliban and al-Qa'ida, and to several Pakistani Islamic extremist groups, including the Kashmir focused terrorist group Jaish-e-Mohammed (JeM), and the Sunni sectarian group Lashkar-e-Jhangvi (LeJ). LeT is reported to have been involved with militant Islamists in other places where conflict including Muslims have arisen; including Bosnia, Chechnya, Kosovo, and Afghanistan. In 2004, several LeT operatives were also captured by British forces in Iraq.⁶⁸

2.92 Jane's state that LeT is linked to or associated with:

- Osama bin Laden's 'Islamic Front for Jihad against Jews and Crusaders'
- United Jihad Council (UJC) - a loose consultative and planning alliance of militant groups fighting against Indian rule in Kashmir.⁶⁹

65 Statement of reasons, *Submission 1*, Appendix F.

66 Indian Administered Kashmir.

67 Jane's Terrorism and Insurgency Centre, *Lashkar-e-Tayyiba (LeT)*, 2 July 2009, www.jtic.janes.com

68 Statement of reasons, *Submission 1*, Appendix F.

69 Jane's Terrorism and Insurgency Centre, *Lashkar-e-Tayyiba (LeT)*, 2 July 2009, www.jtic.janes.com

2.93 In addition, Jane's states:

More recently, during the trial of a suspected LeT militant in June 2009, it was alleged that the group also had links with the Communist Party of India - Maoist (CPI-M). The suspect claimed that CPI-M militants from India's Jharkhand had interacted with LeT militants in Pakistan-occupied Kashmir.⁷⁰

Links to Australia

2.94 The statement of reasons says:

Several individuals with links to LeT have been arrested in Australia, the US, and Canada since 2003 for allegedly planning terrorist activities. In March 2007, a French court convicted French national, Willie Brigitte, for planning terrorist attacks in Australia in 2003 in conjunction with suspected LeT chief for overseas operations, Sajid Mir. An Australian associate was also convicted of planning acts of terrorism by the New South Wales Supreme Court jury in June 2006; . . .⁷¹

Threat to Australian interests

2.95 In the November 2008 attack (see para 2.86) the Indian financial hub, Mumbai, LeT members killed more than 170 people, including two Australians.⁷²

2.96 LeT's attacks show a reckless disregard for civilians of any nationality. LeT therefore pose a threat to Australian interests and Australians such as businesspeople, tourists or government officials who may be unwittingly caught in a LeT attack.

Proscription by the UN or like-minded countries

2.97 The LeT is listed in the United Nations 1267 Committee's consolidated list and as a proscribed terrorist organisation by the governments of Canada, the United Kingdom, the United States, Pakistan and India.

70 Jane's Terrorism and Insurgency Centre, *Lashkar-e-Tayyiba (LeT)*, 2 July 2009, www.jtic.janes.com

71 Statement of reasons, *Submission 1*, Appendix F.

72 Statement of reasons, *Submission 1*, Appendix F.

Engagement in Peace and Mediation processes

- 2.98 There is no mention in the statement of reasons of this organisation's engagement in peace or mediation processes. The Committee has no information to indicate this organisation is engaged in peace or mediation processes.

Conclusion

- 2.99 The Committee found that LeT continues to engage in activities that satisfy section 102.1 of the Criminal Code. The Committee does not recommend disallowance of the regulation.

Recommendation 3

The Committee does not recommend the disallowance of the regulations, made under the Criminal Code section 102.1, to list the organisation:

- **Lashkar-e-Tayyiba (LeT)**

as a terrorist organisation.

Palestinian Islamic Jihad (PIJ)

- 2.100 This organisation was initially listed on 3 May 2004, re-listed 5 June 2005, 7 October 2005 and 10 September 2007.
- 2.101 The statement of reasons is attached at Appendix G. They confirm that, the information provided, whilst publicly available, has been 'corroborated by classified information.'⁷³

Engagement in Terrorism

- 2.102 PIJ is considered to be one of the militarily more effective of the Palestinian militant groups and it has a significant presence in the Gaza and the West Bank. The group's rejection of any political process with Israel, combined with its regional alliances, magnifies the prospect it will use armed attacks to undermine eventual Israeli-Palestinian political understanding and/or support Iran in any confrontation with Israel and the United States.⁷⁴
- 2.103 The statements made by the Committee about the Brigades putting Palestinian civilians at risk by firing rockets into Israel from civilian areas apply equally to the PIJ.⁷⁵

Ideology and links to other terrorist groups/networks

Ideology

Links to other terrorist groups/networks

- 2.104 PIJ maintains close organisational relations and ideological affinity with the Lebanese Hizbullah movement and Iran.⁷⁶ Jane's states that:

73 See *Statements of Reasons*, Appendices G.

74 Jane's Terrorism and Insurgency Centre, *Palestinian Islamic Jihad(PIJ)*, 16 July 2009, www.jtic.janes.com

75 See Human Rights Watch, *Gaza/Israel: Hamas Rocket Attacks on Civilians Unlawful*, 6 August 2009, <<http://www.unhcr.org/refworld/docid/4a8126ea1e.html>>

76 Jane's Terrorism and Insurgency Centre, *Palestinian Islamic Jihad(PIJ)*, 16 July 2009, www.jtic.janes.com

In the Palestinian arena, PIJ's alliances have been more fluid. It has at various times cooperated or competed with every other organisation, while generally seeking cordial relations with all. Most of its joint armed operations have been with the Al-Aqsa Martyrs Brigades (AMB) affiliated with the Palestinian National Liberation Movement (Fatah), while those with the Hamas military wing (the Izz al-Din al-Qassam Brigades) are few and far between. Many PIJ militants are former Fatah members; Fatah often lent support to PIJ during its formative years and the ideological and organisational rivalry between PIJ and Islamist Hamas appears more intensive than that with the more militant elements of the nationalist Fatah.⁷⁷

- 2.105 The PIJ has wide links with many terrorist organisations throughout the Middle East.

Links to Australia

- 2.106 No links between Australia and the PIJ are mentioned in the statement of reasons. The Committee has no information to indicate this organisation has any links to Australia.

Threat to Australian interests

- 2.107 PIJ's attacks show a reckless disregard for civilians of any nationality. PIJ therefore pose a threat to Australian interests and Australians such as businesspeople, tourists or government officials who may be unwittingly caught in a PIJ attack.

Proscription by the UN or like-minded countries

- 2.108 The PIJ is listed as a proscribed terrorist organisation by the governments of the United Kingdom, United States and Canada. The PIJ is also listed by the European Union for the purposes of its anti-terrorism financing measures.

Engagement in Peace and Mediation processes

- 2.109 There is no mention in the statement of reasons of this organisation's engagement in peace or mediation processes. The Committee has no

⁷⁷ Jane's Terrorism and Insurgency Centre, *Palestinian Islamic Jihad(PIJ)*, 16 July 2009, www.jtic.janes.com

information to indicate this organisation is engaged in peace or mediation processes.

2.110 The Committee notes the following:

The PIJ sees itself as a radical military organisation. The PIJ refused to give a formal commitment to a Palestinian unilateral ceasefire in 2005 and *has previously conducted terrorist attacks to derail peace processes.*⁷⁸

Conclusion

2.111 The Committee found that the PIJ continues to engage in activities that satisfy section 102.1 of the Criminal Code. The Committee does not recommend disallowance of the regulation.

Recommendation 4

The Committee does not recommend the disallowance of the regulations, made under the Criminal Code section 102.1, to list the organisation:

- **Palestinian Islamic Jihad (PIJ)**
as a terrorist organisation.

Hon Arch Bevis, MP

Chairman

⁷⁸ Statement of reasons, *Submission 1*, Appendix G. (emphasis added)

