
The Parliament of the Commonwealth of Australia

Review of the listing of four terrorist organisations

House of Representatives
Parliamentary Joint Committee on ASIO, ASIS and DSD

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Canberra

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Membership of the Committee

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Terms of reference

This inquiry and report is conducted under the following powers:

Criminal Code Act 1995

102.1A Reviews by Parliamentary Joint Committee on ASIO, ASIS and DSD

Review of listing regulation

- (1) If a regulation made after the commencement of this section specifies an organisation for the purposes of paragraph (b) of the definition of terrorist organisation in section 102.1, the Parliamentary Joint Committee on ASIO, ASIS and DSD may:
 - (a) review the regulation as soon as possible after the making of the regulation; and
 - (b) report the Committee's comments and recommendations to each House of the Parliament before the end of the applicable disallowance period.

Dated 23 March 2005 and 7 April 2005



List of recommendations

3 The Listings

Recommendation 1

The Committee requests ASIO and the Attorney General to specifically address each of the six criteria referred to in paragraph 3.2 in all future statements of reasons particularly for new listings.

Recommendation 2

The Committee does not recommend disallowance of these regulations.

Introduction

- 1.1 This review is conducted under section 102.1A of the *Criminal Code Act 1995* (the Criminal Code). Section 102.1A provides that the Parliamentary Joint Committee on ASIO, ASIS and DSD (the Committee) may review a regulation specifying an organisation as a terrorist organisation for the purposes of paragraph (b) of the definition of terrorist organisation in section 102.1 of the Criminal Code and report the Committee's comments to each house of the Parliament before the end of the applicable disallowance period. This is the fourth review undertaken under this power during the current Parliament.
- 1.2 The regulations under review have specified the following organisations as terrorist organisations for the purposes of section 102.1 of the Criminal Code:
- Hizballah External Security Organisation;
 - Hamas Izz al-Din al-Qassam Brigades;
 - Lashkar-e-Tayyiba;
 - Palestinian Islamic Jihad.
- 1.3 The Hizballah External Security Organisation, Hamas Izz al-Din al-Qassam Brigades and Lashkar-e-Tayyiba were initially listed as terrorist organisations under the Criminal Code in 2003. The Palestinian Islamic Jihad was initially listed as a terrorist organisation under the Criminal Code in 2004. Under subsection 102.1 (3) of the

Criminal Code, the regulations cease to have effect on their second anniversary.

- 1.4 The Attorney-General informed the Committee of the proposed re-listing of the four terrorist organisations in a letter received by the Committee secretariat on 18 May 2005.
- 1.5 The Attorney-General advised the Committee that although Hamas Izz al-Din al-Qassam Brigades and Lashkar-e-Tayyiba have another 6 months left to run before the second anniversary of their original listing and PIJ another 11 months, he was seeking an early re-listing to ensure that all regulations are being made in a uniform and free standing manner and to ensure that terrorist organisations do not sunset prematurely.
- 1.6 The Attorney-General issued a media release announcing the decisions to re-list the organisations on 25 May 2005. The media release provided open source details on the organisations.
- 1.7 The regulations were tabled in the House of Representatives on 2 June 2005.¹ The disallowance period of 15 sitting days for the Committee's review of the listing began from the date of the tabling. Therefore, the Committee is required to report to the Parliament by 5 September 2005.
- 1.8 The Committee advertised the inquiry in *The Australian* on 8 June 2005. Notice of the inquiry was also placed on the Committee's website and two submissions were received from the public.
- 1.9 Representatives of the Attorney-General's Department, ASIO and the Department of Foreign Affairs and Trade (DFAT) attended a private hearing on the listings on 8 August 2005 in Canberra.
- 1.10 In its first report, *Review of the listing of the Palestinian Islamic Jihad (PIJ)*, the Committee decided that it would test the validity of the listing of a terrorist organisation under the Criminal Code on both the procedures and the merits. Chapter 2 will examine the Government's procedures in listing the organisations and broader issues regarding the proscription power. Chapter 3 will consider the merits of the listings.

1 At the hearing on 8 August, the Attorney-General's Department brought to the attention of the Committee several 'misdescriptions' in the Statement of Reasons for three of the re-listings, namely: Hamas Izz al-Din al-Qassam Brigades; Lashkar-e-Tayyiba; and Palestinian Islamic Jihad. The re-listing of these three organisations will be re-made at a future date.

The Government's procedures

1.11 In a letter sent to the Committee on 8 June 2005, the Attorney-General's Department informed the Committee that it had adhered to the following procedures for the purpose of listing the organisations:

Hizballah External Security Organisation:

- An unclassified Statement of Reasons was prepared by ASIO detailing the case for re-listing the organisation.
- Chief General Counsel, Mr Henry Burmester QC provided written confirmation on 6 May 2005 that the Statement of Reasons was sufficient for the Attorney-General to be satisfied on reasonable grounds that the organisation is an organisation 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.
- AGD consulted with DFAT in order to identify issues of relevance with respect to that portfolio. In this instance, DFAT expressed support for the re-listing of the organisation by email dated 11 May 2005 DFAT provided the following comment:
"While the political component of Hizballah is undergoing a period of change and is likely to increase its involvement in domestic politics in Lebanon, this does not, in our view, detract from the grounds to re-list Hizballah's ESO as established in the Statement of Reasons".
- The Director-General for Security, Mr Dennis Richardson, wrote to the Attorney-General on 12 May 2005 outlining the background, training activities, terrorist activities and relevant statements of the organisation.
- A submission was provided to the Attorney-General on 12 May 2005 including:
 - ⇒ copies of the Statements of Reasons from ASIO for the organisation
 - ⇒ advice from the Chief General Counsel in relation to the organisation
 - ⇒ letter from the Director-General of Security
 - ⇒ the response from DFAT in relation to the proposed re-listing, and
 - ⇒ regulations and Federal Executive Council documentation.
- Having considered the information provided in the submission, the Attorney-General signed a statement

confirming that he is satisfied on reasonable grounds that the organisation is an organisation directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of a terrorist act, whether or not the act has occurred or will occur. The Attorney-General also signed a regulation in relation to the organisation, and approved associated Federal Executive Council documentation including an explanatory statement, explanatory memoranda, and an executive council minute.

- On 17 May 2005 the Attorney-General wrote to the Attorneys-General of the States and Territories advising of the decision to re-list the organisation. These letters were sent by facsimile on 17 May 2005. No comments were received from the Attorneys-General of the States and Territories.
- The Attorney-General wrote to the Prime Minister on 17 May 2005 advising of his intention to re-list the organisation.
- The Leader of the Opposition was advised of the proposed re-listing by letter dated 17 May 2005 and was offered a briefing in relation to the re-listing. To date no request for a briefing has been made.
- The Attorney-General wrote to the Chairman of the Parliamentary Joint Committee on ASIO, ASIS and DSD on 18 May 2005 advising of his decision to re-list the organisation.
- The Governor-General made the regulation on 25 May 2005.
- A press release was issued on 25 May 2005 and the Attorney-General's Department National Security website was updated.
- The Regulation was lodged with the Federal Register of Legislative Instruments (FRLI) on 25 May 2005 [FRLI Reference Number: F2005L01201].

Hamas Izz al-Din al-Qassam Brigades:

- An unclassified Statement of Reasons was prepared by ASIO detailing the case for re-listing the organisation.
- Chief General Counsel, Mr Henry Burmester QC provided written confirmation on 6 May 2005 that the Statement of Reasons was sufficient for the Attorney-General to be satisfied on reasonable grounds that the organisation is an organisation 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.

- AGD consulted with DFAT in order to identify issues of relevance with respect to that portfolio. In this instance, DFAT expressed support for the re-listing of the organisation by email dated 11 May 2005. DFAT provided the following comment:
“HAMAS has refused to give formal commitment to a Palestinian unilateral cease-fire and, although it has signed on to the Palestinian Authority brokered Cairo Declaration committing militant groups to a ‘period of calm’, it has declared its continuing right to undertake acts of violence and HAMAS Izz Al-Din Al-Qassam Brigades continues to conduct small scale attacks on Israeli targets”.
- The Director-General for Security, Mr Dennis Richardson, wrote to the Attorney-General on 12 May 2005 outlining the background, training activities, terrorist activities and relevant statements of the organisation.
- A submission was provided to the Attorney-General on 12 May 2005 including:
 - ⇒ copies of the Statements of Reasons from ASIO for the organisation
 - ⇒ advice from the Chief General Counsel in relation to the organisation
 - ⇒ letter from the Director-General of Security
 - ⇒ the response from DFAT in relation to the proposed re-listing, and
 - ⇒ regulations and Federal Executive Council documentation.
- Having considered the information provided in the submission, the Attorney-General signed a statement confirming that he is satisfied on reasonable grounds that the organisation is an organisation directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of a terrorist act, whether or not the act has occurred or will occur. The Attorney-General also signed a regulation in relation to the organisation, and approved associated Federal Executive Council documentation including an explanatory statement, explanatory memoranda, and an executive council minute.
- On 17 May 2005 the Attorney-General wrote to the Attorneys-General of the States and Territories advising of the decision to re-list the organisation. These letters were sent by facsimile on 17 May 2005. No comments were received from the Attorneys-General of the States and Territories.

- The Attorney-General wrote to the Prime Minister on 17 May 2005 advising of his intention to re-list the organisation.
- The Leader of the Opposition was advised of the proposed re-listing by letter dated 17 May 2005 and was offered a briefing in relation to the re-listing. To date no request for a briefing has been made.
- The Attorney-General wrote to the Chairman of the Parliamentary Joint Committee on ASIO, ASIS and DSD on 18 May 2005 advising of his decision to re-list the organisation.
- The Governor-General made the regulation on 25 May 2005.
- A press release was issued on 25 May 2005 and the Attorney-General's Department National Security website was updated.
- The Regulation was lodged with the Federal Register of Legislative Instruments (FRLI) on 25 May 2005 [FRLI Reference Number: F2005L01202].

Lashkar-e-Tayyiba:

- An unclassified Statement of Reasons was prepared by ASIO detailing the case for re-listing the organisation.
- Chief General Counsel, Mr Henry Burmester QC provided written confirmation on 6 May 2005 that the Statement of Reasons was sufficient for the Attorney-General to be satisfied on reasonable grounds that the organisation is an organisation 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.
- AGD consulted with DFAT in order to identify issues of relevance with respect to that portfolio. In this instance, DFAT expressed support for the re-listing of the organisation by email dated 11 May 2005 DFAT had no additional comment.
- The Director-General for Security, Mr Dennis Richardson, wrote to the Attorney-General on 12 May 2005 outlining the background, training activities, terrorist activities and relevant statements of the organisation.
- A submission was provided to the Attorney-General on 12 May 2005 including:
 - ⇒ copies of the Statements of Reasons from ASIO for the organisation

- ⇒ advice from the Chief General Counsel in relation to the organisation
 - ⇒ letter from the Director-General of Security
 - ⇒ the response from DFAT in relation to the proposed re-listing, and
 - ⇒ regulations and Federal Executive Council documentation.
- Having considered the information provided in the submission, the Attorney-General signed a statement confirming that he is satisfied on reasonable grounds that the organisation is an organisation directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of a terrorist act, whether or not the act has occurred or will occur. The Attorney-General also signed a regulation in relation to the organisation, and approved associated Federal Executive Council documentation including an explanatory statement, explanatory memoranda, and an executive council minute.
 - On 17 May 2005 the Attorney-General wrote to the Attorneys-General of the States and Territories advising of the decision to re-list the organisation. These letters were sent by facsimile on 17 May 2005. No comments were received from the Attorneys-General of the States and Territories.
 - The Attorney-General wrote to the Prime Minister on 17 May 2005 advising of his intention to re-list the organisation.
 - The Leader of the Opposition was advised of the proposed re-listing by letter dated 17 May 2005 and was offered a briefing in relation to the re-listing. To date no request for a briefing has been made.
 - The Attorney-General wrote to the Chairman of the Parliamentary Joint Committee on ASIO, ASIS and DSD on 18 May 2005 advising of his decision to re-list the organisation.
 - The Governor-General made the regulation on 25 May 2005.
 - A press release was issued on 25 May 2005 and the Attorney-General's Department National Security website was updated.
 - The Regulation was lodged with the Federal Register of Legislative Instruments (FRLI) on 25 May 2005 [FRLI Reference Number: F2005L01203].

Palestinian Islamic Jihad:

- An unclassified Statement of Reasons was prepared by ASIO detailing the case for re-listing the organisation.
- Chief General Counsel, Mr Henry Burmester QC provided written confirmation on 6 May 2005 that the Statement of Reasons was sufficient for the Attorney-General to be satisfied on reasonable grounds that the organisation is an organisation 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.
- AGD consulted with DFAT in order to identify issues of relevance with respect to that portfolio. In this instance, DFAT expressed support for the re-listing of the organisation by email dated 11 May 2005 DFAT provided the following comment:
“PIJ has refused to give a formal commitment to a Palestinian unilateral ceasefire and, although it has signed on to the Palestinian Authority brokered Cairo Declaration committing militant groups to a ‘period of calm’, it has declared its continuing right to undertake acts of violence”.
- The Director-General for Security, Mr Dennis Richardson, wrote to the Attorney-General on 12 May 2005 outlining the background, training activities, terrorist activities and relevant statements of the organisation.
- A submission was provided to the Attorney-General on 12 May 2005 including:
 - ⇒ copies of the Statements of Reasons from ASIO for the organisation
 - ⇒ advice from the Chief General Counsel in relation to the organisation
 - ⇒ letter from the Director-General of Security
 - ⇒ the response from DFAT in relation to the proposed re-listing, and
 - ⇒ regulations and Federal Executive Council documentation.
- Having considered the information provided in the submission, the Attorney-General signed a statement confirming that he is satisfied on reasonable grounds that the organisation is an organisation directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of a terrorist act, whether or not the act has occurred or will occur. The Attorney-General also signed a regulation in relation to the organisation, and approved associated Federal Executive Council documentation

including an explanatory statement, explanatory memoranda, and an executive council minute.

- On 17 May 2005 the Attorney-General wrote to the Attorneys-General of the States and Territories advising of the decision to re-list the organisation. These letters were sent by facsimile on 17 May 2005. No comments were received from the Attorneys-General of the States and Territories.
- The Attorney-General wrote to the Prime Minister on 17 May 2005 advising of his intention to re-list the organisation.
- The Leader of the Opposition was advised of the proposed re-listing by letter dated 17 May 2005 and was offered a briefing in relation to the re-listing. To date no request for a briefing has been made.
- The Attorney-General wrote to the Chairman of the Parliamentary Joint Committee on ASIO, ASIS and DSD on 18 May 2005 advising of his decision to re-list the organisation.
- The Governor-General made the regulation on 25 May 2005.
- A press release was issued on 25 May 2005 and the Attorney-General's Department National Security website was updated.
- The Regulation was lodged with the Federal Register of Legislative Instruments (FRLI) on 25 May 2005 [FRLI Reference Number: F2005L01204].

Procedural matters

Consultation with the States and Territories

- 2.1 Subclause 3.4(3) of the *Inter-Governmental Agreement on Counter-terrorism Laws* states that the Commonwealth will provide the States and Territories with the 'text of the proposed regulation and will use its best endeavours to give the other parties reasonable time to consider and to comment on the proposed regulation'.
- 2.2 The Attorney-General's Department has advised that:

On 17 May 2005 the Attorney-General wrote to the Attorneys-General of the States and Territories advising of the decision to re-list the organisation. These letters were sent by facsimile on 17 May 2005. No comments were received from the Attorneys-General of the States and Territories.
- 2.3 Consultation on these re-listings occurred between the Attorneys-General rather than the Prime Minister and Premiers and Chief Ministers.
- 2.4 At a previous hearing, the Attorney-General's Department advised the Committee that the Premiers of NSW and Western Australia requested that in accordance with the *Inter-Governmental Agreement on Counter-terrorism Laws*, future listings should be raised directly with the Premier. The Prime Minister responded by letter dated 4 April 2005 advising that the process adopted was consistent with the *Inter-Governmental Agreement on Counter-terrorism Laws* and that 'it is more practical administratively in the

case of re-listings to continue the current practice whereby the Commonwealth Attorney-General liaises with his counterparts in the States and Territories.’

2.5 The *Inter-Governmental Agreement on Counter-terrorism Laws* states:

Approval for regulations specifying terrorist organisations must be sought, and responses from other parties must be provided, through the Prime Minister and Premiers and Chief Ministers.¹

2.6 At the hearing on 2 May 2005, officers from the Attorney-General’s Department advised the Committee:

The States and the Commonwealth have a different view about whether it has to be done at head of government level when you are just talking about a re-listing....The federal government takes the view that the agreement is really only talking about fresh listings and the States are suggesting a wider interpretation. We are investigating that. Practically, we think there is some advantage in doing it at the Attorney-General level for re-listings. At the end of the day it is about consultation and probably the more important issue is making sure we consult them expeditiously.²

2.7 In its report the *Review of the listing of seven terrorist organisations*, it was noted that:

The Committee is not sure that it accepts the distinction made by the Attorney-General’s Department between procedures for listings and re-listings. The Committee expects to be advised of the outcome from discussions on this issue with the States and Territories.

2.8 With reference to the Attorney General’s words ‘are *just* talking about a re-listing’ in paragraph 2.6 above, the Committee asked the Attorney-General’s Department if the department gives less weight to the importance of re-listings than to original listings. The Committee noted that this may explain why the Statements of Reasons are very similar to those provided previously for each organisation and do not include much new or updated information. The Attorney-General’s Department informed the Committee that the department approaches re-listings from the

1 Division 3, subclause 3.4(6).

2 Transcript, private hearing 2 May 2005, p. 7.

perspective that the organisations are still active, albeit that in some cases there have been periods of calm, enabling efforts to get a peace process underway.

Consultation with DFAT

- 2.9 The Attorney-General's Department has advised that the Department consulted with DFAT on the re-listing of each organisation. DFAT provided responses by email dated 11 May 2005.
- 2.10 DFAT does not appear to have provided substantive input on the re-listings. For each re-listing the Attorney-General's Department advised that:
- 'AGD consulted with DFAT in order to identify issues of relevance with respect to that portfolio. In this instance, DFAT expressed support for the re-listing of the organisation by email on 11 May 2005.'
- 2.11 DFAT also provided the Attorney-General's department with brief comments relating to Hizballah External Security Organisation, Hamas Izz al-Din al-Qassam Brigades and the Palestinian Islamic Jihad. In the case of Lashkar-e-Tayyiba no additional comment was provided.
- 2.12 As with previous re-listings, consultation between the Attorney-General's Department and DFAT appears to have been minimal. At the hearing, the Committee asked officers from DFAT why so little information is forthcoming regarding the re-listings and was advised by DFAT that it is the Attorney General's department which provides most of the necessary information. DFAT sees its role as that of making a legal comment on the Statement of Reasons based on geographic factors if there are any. If DFAT sees any dangers to the national interest, then they would advise the Attorney-General's department accordingly.
- 2.13 The Committee asked the Department of Foreign Affairs if it views re-listings as an automatic process. DFAT responded that the department tries to add value to each process whether it is a new listing or a re-listing.

- 2.14 As noted in previous Committee reports³, the Committee advised that it expects DFAT to provide more detailed advice to the Attorney-General's Department and to the Committee in future listings under the Criminal Code. In particular, the Committee has asked that, in future, DFAT advise whether circumstances have changed since an organisation was originally listed and whether the re-listing would impact on any efforts to resolve a conflict.
- 2.15 The Committee noted that information in the Statement of Reasons for the Hizballah External Security Organisation differs from Jane's information on the Organisation.⁴ The Committee asked the Director-General of ASIO if he was aware of the discrepancy between Jane's information and ASIO's Statement of Reasons. The Director-General advised the Committee that information is gathered from a variety of publicly available sources and ASIO stands by the accuracy of its Statement of Reasons.
- 2.16 There is a further discussion of the information provided in relation to Hizballah in Chapter Three.

Community consultation

- 2.17 In its report, *Review of the listing of six terrorist organisations*, the Committee recommended that:
- a comprehensive information program, that takes account of relevant community groups, be conducted in relation to any listing of an organisation as a terrorist organisation.⁵
- 2.18 In its report on terrorist listings under the Criminal Code, for the *Review of the listing of seven terrorist organisations*, the Committee noted that the letter from the Attorney-General's Department did not state whether any community consultation on the listings had been conducted. However, at the hearing on 2 May 2005 the Attorney-General's Department advised that they were developing a response to the Committee's previous recommendation on community consultation.⁶

3 Joint Parliamentary Committee on ASIO, ASIS and DSD, *Review of the listing of Tanzim Qa'idat al-Jihad fi Bilad al-Rafidayn (the al-Zarqawi network)*, May 2005, p. 6 and *Review of the listing of seven terrorist organisations*, June 2005, p.20.

4 See Chapter 3, under sub-heading **Hizballah External Security Organisation**

5 Joint Parliamentary Committee on ASIO, ASIS and DSD, *Review of the listing of six terrorist organisations*, March 2005, p. 20.

6 Transcript, private hearing 2 May 2005, p. 5.

2.19 In his submission, Mr Emerton makes the important point that:

Community consultation in relation to listings is crucial if these are to be seen by those they affect as legitimate exercises of power within the framework of Australia's democracy, and not simply as anti-democratic interferences with civic and political freedom.⁷

2.20 Mr Emerton goes on to say that:

... it is not sufficient that the Attorney-General or ASIO be satisfied that an organisation is connected to political violence, and that the ordinary criminal law of this or some other country is inadequate to respond to that violence. Steps must be taken to ensure that those who will be directly affected by a listing are likewise satisfied of this.

2.21 The Committee looks forward to the implementation of the Committee's recommendation for future listings under the Criminal Code.

The listing provisions

2.22 The Committee will review the operation, effectiveness and implications of the listing provisions in section 102.1 of the Criminal Code in 2007.⁸ However, both submissions from the public raised concerns about the listing provisions which the Committee will note at this stage.

2.23 The Committee appreciates the public submissions made on these listings. They have been useful in the Committee's consideration of the listings. Both public submissions questioned whether the re-listing of the four organisations is about protecting Australia's security interests or about achieving a foreign policy imperative.

2.24 The Public Interest Advocacy Centre (PIAC) noted that:

... on each of the listed organisations, there is no reference to a security threat to Australian interests at home or abroad or any other policy imperative to justify the proscription and continued proscription of the organisations.⁹

7 Mr P. Emerton, Submission No.4, p.13

8 As required under subsection 102.1A(2) of the Criminal Code.

9 Public Interest Advocacy Centre, Submission No.3, p.3

2.25 PIAC suggested that the Attorney-General should be required to explicitly state why he intends to proscribe an organisation as a terrorist organisation, including why proscription of the organisation is a desirable outcome for Australia and its interests.

2.26 Also commenting on the absence of detailed information about why these particular groups have been listed, and how their listing relates to the needs, rights and interests of Australians, Mr Emerton stated:

... that an impression is created that the purpose of these listings is primarily a political one, of supporting the foreign policy goal of targeting militant Islamic organisations as part of the so-called 'war on terrorism'¹⁰.

2.27 Mr Emerton pointed out that most of the activities of these organisations listed by ASIO already constitute serious criminal offences under the law of Australia or the relevant foreign jurisdictions, and therefore:

... it seems reasonable to conclude that the enlivening of ASIO's powers of detention and questioning is one of the principal aims of these listings. If this is so then it should be acknowledged, and the case made as to why ordinary methods of criminal investigation and prosecution are inadequate in relation to the crimes of these organisations.¹¹

2.28 ASIO refuted this statement. The Director-General told the Committee that, on the contrary:

[I]t is certainly not our intention and not our policy to simply use powers so that they appear to have been justified by the exercise. If the argument is that we simply do things in order to make it seem to supervisory authorities and so on that we have been using the resources we have then I can assure the committee that that is not the case. As I said right at the very start, we have a very high degree of transparency and accountability within the system to demonstrate to the inspector-general, this committee, the minister, the parliament and so on that we use the resources we are given in a way that is directed at real problems, not simply ones that justify their existence.¹²

10 Mr P. Emerton, Submission No.4, p.15

11 Mr P. Emerton, Submission No.4, p.20

12 Transcript, classified hearing 8 August 2005.

The Listings

- 3.1 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).¹

- 3.2 At the 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. Factors included:

- engagement in terrorism;
- ideology and links to other terrorist groups/networks;
- links to Australia;
- threat to Australian interests;
- proscription by the UN or like-minded countries; and
- engagement in peace/mediation processes.²

1 Subsection 102.1(2) of Division 102, Subdivision A of the Criminal Code.

2 Confidential exhibit, ASIO, tabled 1 February 2005.

Lashkar-e-Tayyiba

- 3.3 Lashkar-e-Tayyiba was initially listed as a terrorist organisation under the Criminal Code by way of special legislation on 9 November 2003. A regulation was made re-listing the organisation as a terrorist organisation for the purposes of section 102.1 of the Criminal Code on 25 May 2005. The regulation commenced on 2 June 2005.
- 3.4 The Attorney-General's statement of reasons is as follows:

Lashkar-e-Tayyiba (LeT)

(Also known as: Lashkar-e-Toiba; Lashkar-e-Taiba; Army of the Pure and Righteous; Paasban-e-Kashmir; Paasban-i-Ahle-Hadith; Jamaat-ud-Dawa)

The following information is based on publicly available details about the Lashkar-e-Tayyiba (LeT), which is the military wing of Markaz-ud-Dawa-wal-Irshad (MDI). LeT is also known as Paasban-e-Kashmir and Paasban-i-Ahle-Hadith. These details have been corroborated by material from intelligence investigations into the activities of the LeT. ASIO assesses that the details set out below are accurate and reliable.

The LeT has been listed as a terrorist organisation by the United Nations and the governments of the United Kingdom, United States, Canada and the European Union.

Background

LeT is the military wing of Markaz-ud-Dawa-wal-Irshad (MDI). The MDI is a Pakistan based Sunni (Wahabbi) Islamic fundamentalist organisation centred on Muridke, near Lahore, and Muzaffarabad in Pakistan. The MDI was formed in 1987 by Abdullah Azam Saeed (who was killed in 1989), and Zafar Iqbal. Saeed and Iqbal formed LeT as the military wing of the MDI in 1989. After the MDI was banned in India in 2001 and in Pakistan in 2002 it changed its name to Jamaat-ud-Dawa, although this nomenclature is rarely used.

LeT is one of the three largest and best-trained separatist groups operating in Indian-administered Kashmir and is closely associated with a number of militant Islamic groups active in the India/Pakistan region, including Jaish-e-Mohammed (JeM), with whom it was implicated in an attack on the Indian Parliament building in 2001. LeT is led by an

Amir with regional commanders being responsible for 'military' districts. It is a highly secretive organisation that often seeks to conceal the identities of its senior members.

LeT operates primarily within Kashmir and India's Jammu region although it has also been implicated in attacks and planned attacks elsewhere in India, including New Delhi. It has used suicide squads to target Indian security forces and police stations.

Funding for LeT is derived from the Pakistani diaspora, particularly in the Persian Gulf and the United Kingdom, through a network of front organisations and charities. Islamic NGOs also provide funding to LeT.

Objectives

LeT aims to liberate Muslims within the Indian states of Jammu and Kashmir and to create an Islamic state, incorporating Pakistan and Kashmir together with other predominantly Muslim areas in north and south India. The Amir of LeT, Hafiz Mohammed Saeed, has called for jihad to create an Islamic state in Pakistan and for jihad to be waged against 'un-Islamic' states, citing Chechnya and Afghanistan as models for an international jihad.

Leadership and membership

Hafiz Mohammed Saeed was a founding member of MDI and later became the leader of LeT. He announced his resignation in December 2001 after the Pakistani Government froze LeT assets in Pakistan. Maulana Wahid Kashmiri was appointed as the new LeT commander, but there is considerable scepticism as to the impact of his 'resignation' and Saeed is still assessed to be the Amir of LeT.

LeT's exact membership is not known; however, it has several hundred members in Pakistan and Pakistan-administered Kashmir and in Indian-administered southern Kashmir. Most LeT members are recruited through madrassas in Pakistan and tend to be Pakistanis and Afghans rather than Kashmiris. LeT runs training camps, some of which are mobile camps, within Pakistan and in Pakistan-controlled areas of Kashmir, and it had trained in Afghanistan until late 2001. LeT trained the Australian, David Hicks, who was captured in Afghanistan allegedly fighting for the Taliban in December 2001.

LeT maintains links with Islamic extremist groups in the Middle East and Chechnya, and cooperates with al-Qa'ida and other Islamic terrorist groups both in training and in undertaking operations.

Terrorist activities

LeT has been responsible for a series of bombings and shootings, including suicide attacks, kidnappings and other attacks against non-Muslim civilians, Indian security forces and Indian Government installations in Kashmir and elsewhere. The LeT routinely conducts attacks on Indian security forces, and LeT members are often arrested by Indian security forces attempting to infiltrate into Indian-administered Kashmir in order to undertake terrorist activities.

Senior members of LeT have advocated the group develop an operational interest beyond its principal theatre of operation in Kashmir and India. In April 2004, an LeT operational commander was captured by British forces in Iraq. In 2003, two alleged members of an LeT cell in Australia were arrested and charged with planning terrorist activities.

LeT has coordinated attacks and other joint activities with a number of other Kashmiri separatist and Islamic extremist groups, including al-Qa'ida and Jaish-e-Mohammed, both of which are listed as terrorist organisations by the Australian Government.

Recent terrorist attacks for which responsibility has been claimed by, or reliably attributed to the LeT have included:

- March 2005: a planned suicide attack on a military academy and software companies in Bangalore was interdicted by India police who arrested two LeT and killed a further three in subsequent raids.
- 3 November 2004: LeT members attacked a mosque in the Pulwama District of Jammu and Kashmir, resulting in the death of five people.
- 17 October 2004: LeT members attacked Indian security forces in the Kupwara District of Jammu and Kashmir, resulting in the death of five people.
- August 2004: a planned bomb attack on a Hindu temple in Secunderabad was interdicted by police, who arrested eight LeT members.

- 25 June 2004: the LeT killed a railway worker abducted several days earlier from the Pulwama District of Jammu and Kashmir.
- 10 June 2004: LeT members kill four civilians in an attack in Udampur district of Jammu and Kashmir.

Conclusion

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

In the course of pursuing its objective of creating an Islamic state covering Pakistan and Kashmir, the LeT is known to have engaged in actions that:

- are aimed at advancing the LeT's political and religious causes;
- are intended to cause, or have caused, 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 sections of the public in India and other persons visiting areas in which it operates.

In view of the above information, the LeT 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 India. The actions or threatened actions which the LeT are assessed to be involved in would, if successfully completed, cause serious physical harm and death to persons and serious damage to property.

- 3.5 On the basis of the statement of reasons, other publicly available information, Jane's and evidence given at the hearing, LeT has been measured against ASIO's stated evaluation process as follows:

Engagement in terrorism

- 3.6 LeT has been responsible for a series of bombings and shootings, including suicide attacks, kidnappings and other attacks against non-Muslim civilians, Indian security forces and Indian Government installations in Kashmir and elsewhere.

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- 3.7 The LeT routinely conducts attacks on Indian security forces, and LeT members are often arrested by Indian security forces attempting to infiltrate into Indian-administered Kashmir in order to undertake terrorist activities.

Ideology and links to other terrorist groups/networks

Ideology

- 3.8 LeT is the military wing of Jamaat ud-Dawa (formerly Markaz-ud-Dawa-wal-Irshad or MDI). The MDI is a Pakistan based Suni (Wahabbi) Islamic fundamentalist organisation centred on Muridke, near Lahore, and Muzaffarabad in Pakistan.
- 3.9 LeT is one of the three largest and best-trained separatist groups operating in Indian-administered Kashmir and is closely associated with a number of militant Islamic groups active in the India/Pakistan region.
- 3.10 According to the US State Department, LeT is not connected to any political party.³

Links to other terrorist groups/networks

- 3.11 LeT has coordinated attacks and other joint activities with a number of other Kashmiri separatist and Islamic extremist groups, including al-Qa'ida and Jaish-e-Mohammed.
- 3.12 LeT maintains ties to religious/militant groups around the world, ranging from the Philippines to the Middle East and Chechnya through the fraternal network of its parent organisation Jamaat ud-Dawa.⁴

Links to Australia

- 3.13 At the hearing on 8 August, the Attorney-General's Department advised the Committee that the statement of reasons about two people being arrested in 2003 and charged with planning terrorist activities was incorrect. ASIO briefed the Committee on the question of the links between Australia and the LeT.⁵
- 3.14 LeT is said to have trained Australian David Hicks, who was captured in Afghanistan allegedly fighting for the Taliban in December 2001.
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3 US Department of State, *Country Reports on Terrorism 2004*, April 2005, page 103.

4 US Department of State, *Country Reports on Terrorism 2004*, April 2005, page 104.

5 Transcript, classified hearing 8 August 2005, p. 1.

- 3.15 The Committee is aware of other allegations of links between Australian residents/citizens and the LeT (beyond those referred to in paragraph 3.13).

Threat to Australian interests

- 3.16 In 2003, when LeT was first raised for listing, the Attorney-General, Hon Philip Ruddock, MP, said that 'Lashkar -e-Tayyiba had links to Australia and therefore posed a direct threat.'⁶ At the same time, the then Leader of the Opposition, Mr Crean informed the House of Representatives that 'the advice we have got [is that] clearly Lashkar-e-Tayyiba is a threat, posed by virtue of the fact that Willie Brigitte is associated with that organisation and he got into this country.'⁷ The Government tabled the original advice provided to it by ASIO about the LeT's activities. This advice included the statement 'Recent and ongoing investigations reveal that LeT has links into the Australian Community. Extensive reporting at the time of the introduction of the Bill to ban LeT cited authorities as believing that Brigitte and his associates were both connected to LeT and were plotting to commit terrorist acts.'⁸ Legal processes arising from these matters have yet to be finalised.
- 3.17 The Committee was informed at the hearings that recent intelligence suggests a trend towards LeT operational activity outside its main theatre of operations.

Proscription by the UN or like-minded countries

- 3.18 The Attorney-General's statement of reasons, and media release, on LeT state that the organisation has been listed as a terrorist organisation by the United Nations, the European Union and by the governments of the United Kingdom, the United States and Canada

Engagement in peace/mediation processes

- 3.19 There was no information provided on this matter.

6 Nicholson, B. and Forbes, M., 'Rush on laws to ban terror groups', *The Age*, 5 November 2003.

7 House of Representatives Hansard, 5 November 2003, p. 22070.

8 Chulov, M., 'Brigitte's N-reactor bomb plot', *Australian*, 10 November 2003.

Hamas Izz al-Din al-Qassam Brigades

- 3.20 Hamas Izz al-Din al-Qassam Brigades was originally specified as a terrorist organisation for the purposes of section 102.1 of the Criminal Code by way of special legislation on 9 November 2003. On 25 May 2005, a regulation was made re-listing the organisation as a terrorist organisation. The regulation commenced on 2 June 2005.
- 3.21 The Attorney-General's statement of reasons is as follows:

Hamas Izz al-Din al-Qassam Brigades

The following information is based on publicly available details regarding the Izz al-Din al-Qassam Brigades, the military wing of the Islamic Resistance Movement – more commonly referred to under its Arabic acronym HAMAS. These details have been corroborated by material from intelligence investigations into the activities of Izz al-Din al-Qassam Brigades. ASIO assesses that the details set out below are accurate and reliable.

The HAMAS' Izz al-Din al-Qassam Brigades has been proscribed by the United Kingdom. HAMAS (including the Izz al-Din al-Qassam Brigades) has been listed as a terrorist organisation by the United Nations and the governments of the United States, Canada and the European Union.

Background

The Izz al-Din al-Qassam Brigades are the military wing of HAMAS and are distinct from the civilian functions of HAMAS. HAMAS is a radical Sunni organisation which emerged from the Palestinian branch of the Muslim Brotherhood in late 1987, shortly after the commencement of the first Intifada. The Izz al-Din al-Qassam Brigades were first established in 1989 following an Israeli crackdown on HAMAS leadership.

HAMAS is generally divided into three distinct elements (political, military and communal or welfare activities). The Izz al-Din al-Qassam Brigades represent the military wing of HAMAS.

HAMAS quickly became the dominant Islamic extremist group in the Occupied Territories. Its main presence is in the Gaza Strip and some areas of the West Bank. Co-ordinating with Palestinian Islamic Jihad, the Izz al-Din al-Qassam

Brigades conducted a number of suicide bombings in the mid 1990's in an attempt to derail the peace process. The Izz al-Din al-Qassam Brigades and HAMAS have continued their involvement in terrorism, and supported the outbreak of the al-Aqsa Intifada in September 2000.

Funding for HAMAS is largely received from Palestinian expatriates, and private benefactors (particularly in moderate Arab states). Some of the funds collected are channelled into the Izz al-Din al-Qassam Brigades through specific charitable organisations located in the Occupied Territories, which also provide support to the families of HAMAS activists who have died as 'martyrs' or have been arrested for their activities against Israel. Iran provides some direct funding and support for HAMAS, however, HAMAS remains relatively independent from Iran in its political decision making.

Objectives

HAMAS aims to establish an Islamic Palestinian state which would include the territory of the current state of Israel. The Izz al-Din al-Qassam Brigades regularly engage in terrorist acts in support of HAMAS' political objectives. HAMAS has opposed all previous peace negotiations with Israel and refused to give a formal commitment to a Palestinian unilateral ceasefire in 2005. While it signed the Palestinian Authority brokered Cairo Declaration committing militant groups to a 'period of calm', HAMAS has declared its continuing right to undertake acts of violence and has continued to conduct small scale attacks on Israeli targets.

Leadership and membership

The leadership of the Izz al-Din al-Qassam Brigades is unclear, although they do report directly to the HAMAS political leadership. In order to protect the political leadership, there is a clear separation of the military command and political leadership. Sheikh Ahmed Yasin was the founding leader of HAMAS and spiritual head until his assassination in March 2004, by Israel security forces. He was replaced by Abdel Aziz Rantisi, who was assassinated one month later. Since then HAMAS has attempted to hide the identities of its leaders. HAMAS' current leader is believed to be Khalid al-Mashal, who controls operations from Damascus.

Due to the constant mobility of roles and activities between the civilian, military and welfare elements of HAMAS, the Izz al-Din al-Qassam Brigades are able to draw on those visiting HAMAS-sponsored mosques and communal facilities as candidates for terrorist operations.

Terrorist activities

The Izz al-Din al-Qassam Brigades has been responsible for a series of bombings, including suicide bombings, shootings and kidnappings of Israeli/Jewish soldiers and civilians in Israel and the Occupied Territories. The Izz al-Din al-Qassam Brigades do not discriminate between Israeli military and civilian personnel.

HAMAS has coordinated attacks and joint operations with a number of other Palestinian extremist groups, including Palestinian Islamic Jihad, which has been listed as a terrorist organisation by the Australian Government. HAMAS also has ties to Lebanese Hizballah, which through its External Security Organisation (which also has been listed as a terrorist organisation by the Australian Government) provides material support for terrorist operations by the Izz al-Din al-Qassam Brigades.

The Izz al-Din al-Qassam Brigades has not acted outside the Middle East or deliberately targeted Western interests; however, civilians from a number of countries, including the US, have been killed in terrorist attacks conducted by the group. The Izz al-Din al-Qassam Brigades recruited two British Muslims to carry out a suicide bombing of a bar in Tel Aviv on 30 April 2003, in which four people were killed and over 60 injured.

Since its formation the Izz al-Din al-Qassam Brigades has been involved in over 100 terrorist incidents resulting in the deaths of over 500 people and injuries to more than 3000. Attacks conducted by the Izz al-Din al-Qassam Brigades have included:

- Suicide bombings on buses and in crowded markets, nightclubs, and other highly populated places;
- Drive-by shootings at military check points and of civilians at the roadside;
- Abduction and murder of Israeli civilians and off-duty Israeli soldiers; and

- Rocket, mortar, small-arms and grenade attacks against civilian targets.
- Recent major terrorist attacks for which responsibility has been claimed by, or reliably attributed to, the Izz al-Din al-Qassam Brigades, have included:
- 18 January 2005: One person was killed and six injured when a suicide bomber attacked a security post in Kush Katif.
- 13 August 2004: Sixteen people were killed and up to 100 injured when two buses in Beersheba were attacked within minutes of each other by suicide bombers.
- 14 March 2004: Ten people were killed and 16 injured in a double suicide bombing in the Ashdod Post area.
- 14 January 2004: Four people were killed and 20 injured by a female suicide bomber attack at the Erez Crossing in the Gaza Strip.
- 15 October 2003: Three US nationals were killed and one injured when a bomb demolished an armoured jeep in the Bait Hanoun junction.

Conclusion

- ASIO assesses that the Izz al-Din al-Qassam Brigades is continuing to prepare, plan and foster the commission of acts involving threats to human life and serious damage to property. This assessment is corroborated by information provided by reliable and credible intelligence sources.
- In the course of pursuing its objective of creating an Islamic Palestinian state, the Izz al-Din al-Qassam Brigades is known to have engaged in actions that:
 - are aimed towards advancing its political and religious causes;
 - are intended to cause, or have caused, 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 sections of the public in Israel, and other persons visiting areas in which it operates.
- In view of the above information, the Izz al-Din al-Qassam Brigades is assessed to be directly or indirectly 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 Izz al-Din al-

Qassam Brigades is assessed to be involved in would, if successfully completed, cause serious physical harm and death to persons and serious damage to property.

- 3.22 On the basis of the statement of reasons, other publicly available information, Jane's and evidence given at the hearing, the Izz al-Din al-Qassam Brigades has been measured against ASIO's stated evaluation process as follows:

Engagement in terrorism

- 3.23 The Izz al-Din al-Qassam Brigades has been responsible for a series of bombings, including suicide bombings, shootings and kidnappings of Israeli/Jewish soldiers and civilians in Israel and the Occupied Territories.
- 3.24 The Izz al-Din al-Qassam Brigades has not acted outside the Middle East or deliberately targeted Western interests; however, civilians from a number of countries, including the US, have been killed in terrorist attacks conducted by the group.
- 3.25 The statement of reasons reports that since its formation the Izz al-Din al-Qassam Brigades has been involved in over 100 terrorist incidents resulting in the deaths of over 500 people and injuries to more than 3000.

Ideology and links to other terrorist groups/networks

Ideology

- 3.26 HAMAS is a radical Sunni organisation which emerged from the Palestinian branch of the Muslim Brotherhood in late 1987. HAMAS' charter, published in August 1988, implied the movement was a moral and political alternative to the PLO. It defined HAMAS as an Islamic Palestinian movement, with the ultimate aim of applying the rule of Islam over Palestine as a whole.⁹
- 3.27 In 1989 the Izz al-Din al-Qassam Brigades were established and took up arms and launched attacks against Israelis. HAMAS adopted the principle of holy war (jihad) as the means to liberate Palestine from the hands of Israel which is portrayed as the enemy of God (Allah) and Islam.

⁹ <http://jtic.janes.com/subscribe/jtic/doc view print.jsp?K2DocKey=/content1>, p.4.

- 3.28 The social and religious agenda of HAMAS, however, has remained of central importance. HAMAS worked through mosques and set up charitable institutions that, after the advent of the Palestinian Authority, has proved more efficient than their official counterparts.¹⁰
- 3.29 In 2004, HAMAS fielded candidates in municipal elections and subsequently won all 15 municipal council seats.

Links to other terrorist groups/networks

- 3.30 Jane's reports that, in principle, HAMAS always supported co-operation with other Palestinian and Islamic factions or states based on the common goal of jihad for the liberation of Palestine although struggles for power within Palestinian society has seen clashes with both Fatah and the ideologically similar Islamic Jihad group.
- 3.31 The Al-Aqsa Intifada blurred the boundaries between the rival Palestinian factions, and HAMAS has since coordinated attacks and joint operations with a number of other Palestinian extremist groups, including Palestinian Islamic Jihad. HAMAS also has ties to Lebanese Hizballah, which through its External Security Organisation, provides material support for terrorist operations by the Izz al-Din al-Qassam Brigades.
- 3.32 In the early 1990s, HAMAS established widespread international links, especially with Iran and Syria, as well as with Muslim Brotherhood branches in the Gulf, Europe and the US.

Links to Australia

- 3.33 There is no evidence of any links to Australia in the information reviewed by the Committee.
- 3.34 The use by the Izz al-Din al-Qassam Brigades of suicide bombing in Israel against targets such as buses, restaurants, coffee shops, hotels and so on means that there is always the possibility that an Australian or Australians visiting Israel will be involved in an attack.
- 3.35 In 2003, the Attorney-General said that the Government was not aware of HAMAS having links in Australia. The original ban was 'abundant caution'.¹¹ The leader of the Opposition noted that ASIO

10 Agha, H. and Malley, R., 'Now Hamas must come into its own', *The Guardian*, May 18, 2005.

11 Nicholson, B. 'Labor set to back terror laws', *The Age*, 6 November 2003. Attorney-General, transcript, interview 6 November 2003.

had briefed the Opposition on both LeT and HAMAS. He confirmed that the advice on the Let was that there were links to Australians but that the advice that was given in relation to HAMAS was different.¹²

- 3.36 At the hearing, the Committee sought further information on whether there are any Australian links with the Izz al-Din al-Qassam Brigades. ASIO briefed the Committee on the question of links between Australians and HAMAS and the Izz al-Din al-Qassam Brigades.

Threat to Australian interests

- 3.37 There is no evidence of any particular threat to Australian interests in any information reviewed by the Committee.
- 3.38 The use by the Izz al-Din al-Qassam Brigades of suicide bombing in Israel against targets such as buses, restaurants, coffee shops, hotels means that there is always the possibility that an Australian or Australians visiting Israel will be involved in an attack.

Proscription by the UN or like-minded countries

- 3.39 The Attorney-General's statement of reasons, and media release, on HAMAS' Izz al-Din al-Qassam Brigades state that the organisation has been listed as a terrorist organisation in the United Kingdom and that HAMAS (including the Izz al-Din al-Qassam Brigades) has been listed as a terrorist organisation by the United Nations, the European Union and by the governments of the United States and Canada.
- 3.40 At the private hearing, the Attorney-General's department corrected the information given on their Statement of Reasons and clarified that HAMAS (including the Izz al-Din al-Qassam Brigades) has not been listed as a terrorist organisation by the United Nations.

Engagement in peace/mediation processes

- 3.41 HAMAS rejected the 1993 Oslo peace accords with Israel that established an elected Palestinian government in parts of the occupied territories. The group also declined to take part in general elections¹³. Jane's notes that:

Despite its intransigent political platform, from mid-1995 Hamas also adopted the idea of truce (hudna) with Israel for an indefinite time provided that Israel return to the pre-1967

12 House of Representatives Hansard, p. 22070.

13 Wilson, S., 'In politics, Hamas gains in the West Bank', *Washington Post*, June 29, 2005.

war lines and dismantle all Jewish settlements in the Palestinian Territories.

- 3.42 The Committee notes from the statement of reasons that while HAMAS signed the Palestinian Authority brokered Cairo Declaration committing militant groups to a 'period of calm', it has declared its continuing right to undertake acts of violence and has continued to conduct small scale attacks on Israeli targets.
- 3.43 In 2004, HAMAS decided to field candidates in municipal elections and subsequently won all 15 municipal council seats. Following this electoral success, HAMAS officials met with European Union officials and in June 2005 low-level European Union diplomats were given permission to meet with elected officials of HAMAS.¹⁴
- 3.44 The Committee is aware of these changing circumstances and asked witnesses at the hearing whether the 'increasing success [of both Hamas and Hizballah] at democratic elections supervised by others ... [meant] that we are dealing with organisations that are just terrorist organisations or whether they are political liberation struggles within a country.'¹⁵ Furthermore, in respect of the ASIO's criteria for deciding on the proscription of a particular organisation within the legislative framework, a member expressed doubts that these organisations met the criteria:
- They are organisations whose commitment, motivation and area of geographic activity, their aims and objectives are focused around rejectionist policies for Israel. They do not specifically target Australians. We have no evidence suggesting they have any presence in terms of organised membership in Australia. We are told that none of them have been responsible for any damage or harm to Australians, even in the Middle East. ... It does seem to stand well outside the criteria that you have articulated as guiding principles.¹⁶
- 3.45 ASIO responded that 'the spelling out of the criteria was to help give the Committee some understanding of how we continue to attempt to give effect to the legislation and to make sure that the Committee understands that we have an interpretation of our legislative mandate that is consistent with some established criteria, so that we do not just reach capricious decisions. ... It was a matter of judgement as to

14 Wilson, S., 'In politics, Hamas gains in the West Bank', *Washington Post*, June 29, 2005.

15 Transcript, classified hearing 8 August 2005, p. 17.

16 Transcript, classified hearing 8 August 2005, p. 18.

where the scope of the definition bumps up against real world challenges.’¹⁷

Hizballah External Security Organisation

3.46 Hizballah External Security Organisation was initially listed as a terrorist organisation under the Criminal Code by way of special legislation on 5 June 2003. On 25 May 2005, a regulation was made re-listing Hizballah External Security Organisation as a terrorist organisation for the purposes of section 102.1 of the Criminal Code. The regulation commenced on 2 June 2005.

3.47 The Attorney-General’s statement of reasons is as follows:

Hizballah External Security Organisation (ESO)

(Also known as Islamic Jihad Organisation)

The following information is based on publicly available details about the organisation known as Hizballah’s External Security Organisation (ESO). These details have been corroborated by material from intelligence investigations into the activities of Hizballah’s ESO. ASIO assesses that the details set out below are accurate and reliable.

Hizballah’s External Security Organisation has been listed as a terrorist organisation by the United Kingdom. Hizballah (including the ESO) has been listed as a terrorist organisation by the United States and Canada.

Background

The Shi’a organisation Hizballah (Party of God) was formed in Lebanon in 1982 in the wake of the Iranian revolution and the Israeli invasion of Lebanon. While it began as a militia, the group has evolved into a multi-faceted organisation including political, social and military components. The functions of the organisation include legitimate political and social activities. However, the External Security Organisation (ESO) constitutes a distinct terrorist wing which evolved out of Hizballah’s early terrorist activities and which continues to operate.

17 Transcript, classified hearing 8 August 2005, p. 18.

Hizballah, including the ESO, receives substantial support from Iran, including financial, training, weapons, explosives, political, diplomatic and organisational assistance. Hizballah recently utilised Iranian supplied Unmanned Aerial Vehicles (UAV) over northern Israel. Syria is also a significant supporter, particularly in the provision of diplomatic, political and logistical assistance.

While Hizballah's ESO is based in Lebanon, reliable sources indicate that it has an international infrastructure including cells and business enterprises (both legal and illegal) in the Middle East, Asia, Africa, Europe and South America, from which it derives significant financial support. In the Tri-Border area of South America alone it is estimated that Hizballah has raised hundreds of millions of dollars through activities such as drug and arms smuggling and product piracy. In 2004, US authorities uncovered a number of individuals in the US who were providing material and financial support to Hizballah.

Objectives

Hizballah is committed to armed resistance to the state of Israel and aims to liberate all Palestinian territories and Jerusalem from "Israeli occupation". Ultimately, Hizballah aims to create a Shi'a Islamic state in Lebanon and remove all Western and Israeli influences in the region. The ESO has undertaken terrorist acts in Israel and other countries in support of Hizballah objectives.

Leadership and membership

The current head of the ESO is Imad Mughniyeh, who reports directly to the Secretary General of Hizballah, Sheikh Hassan Nasrallah. Mughniyah is one of the FBI's most wanted terrorists and has been indicted for planning and participating in the hijacking of a commercial aircraft in June 1985.

Hizballah is governed by Sheikh Hassan Nasrallah through a Majlis al-Shura (Consultative Council), which presides over administrative, legislative, executive, judicial, political and military matters in consultation with Iran. The ESO, however, exercises autonomy distinct from the conventional military structure.

The strength of the ESO is thought to be several hundred. Estimated of Hizballah's conventional military strength vary from 3000 to 5000 regular forces with 3000 to 15,000 reserves.

Terrorist activities

Hizballah's ESO is responsible for a series of suicide bomb attacks, aircraft hijackings and kidnappings of Western and Israeli/Jewish targets in Israel, Western Europe and South America dating back to the early 1980s. Major terrorist attacks for which responsibility has been reliably attributed to the ESO include:

- A bomb attack against the Israeli embassy in Buenos Aires in 1992, which killed 28
- A bomb attack on a Jewish cultural centre in Buenos Aires in 1994, which killed 96
- An aborted bomb attack in Bangkok in 1994, probably targeting the Israeli Embassy

Despite a downturn in terrorist attacks directly attributable to the ESO since 1994 reliable information indicates that Hizballah and the ESO maintain their capacity to undertake significant terrorist attacks and continue to engage in contingency planning for attacks against US and Israeli interest.

- Hizballah's ESO has continued efforts to recruit and infiltrate individuals into Israel to conduct acts of terrorism following the commencement of the second intifada in 2000 and has also been involved in at least three major attempts to smuggle arms to Palestinian militants since 2001.
- In October 2000, Hizballah's ESO carried out the kidnapping of Israeli businessman Elhanan Tennenbaum in the UAE, who was only released in January 2004 after negotiations between Hizballah and the Israeli government, which were facilitated by German authorities.
- In south-east Asia a number of Singaporean citizens were recruited by Hizballah's ESO in the late 1990s to carry out pre-attack intelligence on the US and Israeli embassies and regional shipping.
- Hizballah's ESO also attempted to establish networks in the Philippines, and to recruit Malaysian and Indonesian nationals, in the late 1990s.

The significant capabilities of the ESO which existed in 1994 remain extant. The ESO retains the capability to undertake

significant terrorist attacks at short notice both in the Middle East and further abroad, in the event of a perceived threat to its interests or the interests of its state sponsors.

The ESO also continues to provide training, operational support and material – including weapons and explosives – to Palestinian extremist groups engaged in terrorist acts inside Israel and the Palestinian Territories, including Palestinian Islamic Jihad and HAMAS Izz al-Din al-Qassam Brigades, both of which have been listed as terrorist organisations by the Australian Government.

Conclusion

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

In the course of pursuing its objective of creating a Shi'a Islamic state in Lebanon and removing all Western and Israeli influences in the region. Hizballah's ESO is known to have engaged in actions that:

- Are aimed at advancing the Hizballah's political and religious causes;
- Are intended to cause, or have caused, 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 sections of the public in Israel and other persons visiting areas in which it operates.

In view of the above information, Hizballah's ESO is assessed to be directly or indirectly 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 ESO are assessed to be involved in would, if successfully completed, cause serious physical harm and death to persons and serious damage to property.

- 3.48 On the basis of the statement of reasons, other publicly available information, Jane's and evidence given at the hearing, ESO has been measured against ASIO's stated evaluation process as follows:

Engagement in terrorism

- 3.49 The statement of reasons reports that the ESO is responsible for a series of suicide bomb attacks, aircraft hijackings and kidnappings of Western and Israeli/Jewish targets in Israel, Western Europe and South America, largely over 10 years ago. Despite a downturn in terrorist attacks directly attributable to the ESO since 1994, according to the statement of reasons, reliable information indicates that Hizballah and the ESO maintain their capacity to undertake significant terrorist attacks and continue to engage in contingency planning for attacks against US and Israeli interests.

Ideology and links to other terrorist groups/networks

Ideology

- 3.50 According to the US Department of State, Hizballah takes its ideological inspiration from the Iranian revolution and the teachings of the late Ayatollah Khomeini.
- 3.51 Jane's reports that Hizballah's initial aim was the establishment of a radical Shi'a Islamic theocracy in Lebanon and the destruction of the state of Israel. However, since the end of the Lebanese civil war:
- ... it has evolved into a socio-political movement, setting aside its plans to transform Lebanon into an Islamic republic and banishing ideological firebrands. ... It has gained political legitimacy, with a credible holding of seats in Lebanon's parliament and a social service that far outperforms the state's cumbersome bureaucracy.
- 3.52 Hizballah now operates as a legitimate political party in Lebanon. It participates in elections and holds seats in the National Parliament. Jane's describes Hizballah as:
- ... more than a guerrilla organisation, it is a political, social, welfare, commercial and educational network.
- 3.53 However, according to Jane's, Hizballah continues to pose a significant threat to Israeli and US interests. The ESO is the militia section of Hizballah. In the past, Hizballah has committed significant

terrorist attacks, and the leader of Hizballah-International, Imad Mughniyah, remains one of the world's most wanted men.

3.54 The Council on Foreign Relations, an independent US analytical group, assessed in 2005 that Hizballah 'opposes the West, seeks to create a Muslim fundamentalist state modelled on Iran, and is a bitter foe of Israel.'¹⁸

3.55 The International Crisis Group, however, as far back as 2003, assessed that Hizballah was 'at a crossroads' describing it at the time as adopting 'a stance of relative passivity':

Pressured to undertake a strategic shift, it faces a decision whether its future is one among many Lebanese political parties or whether it will maintain the hybrid nature, half political party and half armed militia, part local organisation and part internationalist movement.¹⁹

3.56 Various analysts in the United States have concurred with this assessment of change and transformation in Hizballah. A review of the literature on the subject recently made the following assessment:

Observing these changes, a growing number of American scholars, notably Augustus Norton of Boston university, Judith Harik of the American University in Beirut, and Sami Hajjar of the US Army War College, argue that the party has undergone a genuine transformation, that it cannot be regarded as a terrorist group comparable to Al Qaeda, and that it would be pragmatic to engage in talks with Hezbollah and test its intentions.²⁰

3.57 It is ASIO's view that the External Security Organisation should be considered separately from the rest of the organisation and they asserted that in their judgement it continued to be a global terrorist organisation.²¹

Links to other terrorist groups/networks

3.58 Jane's reports that Hizballah is wary of alliances with other guerrilla organisations, being mistrustful of outsiders and believing most Palestinian groups to be riddled with informants.

18 <http://www.terrorismanswers.org/groups/hezbollah> 11 August 2005

19 <http://www.crisisgroup.org/home/index.cfm>

20 <http://www.mafhoum.com/press7/190P8.htm>

21 Transcript, classified hearing 8 August 2005, p.16.

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- 3.59 Allegations made following the terrorist attacks on the United States on 11 September 2001, that Hizballah was allied to the Al-Qaeda network, were strongly denied by senior Hizballah figures which were dismissive of any operational alliance between the two organisations given their religious and ideological differences.
- 3.60 During 2002 there were reports that Hizballah was co-ordinating with militant Palestinian groups in the confrontation with Israel. The groups were said to include Hamas, Islamic Jihad and Ahmed Jibril's Democratic Front for the Liberation of Palestine.
- 3.61 The US Department of State reports that in March 2004, Hizballah and HAMAS signed an agreement to increase joint efforts to perpetrate attacks against Israel.

Links to Australia

- 3.62 There is no evidence of any current links to Australia in any information reviewed by the Committee.
- 3.63 At the hearing, the Committee sought further information on whether there are any Australian links with the ESO. ASIO briefed the Committee on the question of links between Australians and the ESO.²²

Threat to Australian interests

- 3.64 There is no evidence of any threats to Australian interests in any public information reviewed by the Committee.
- 3.65 At the hearing on 2 May 2005 for the *Review of the listing of seven terrorist organisations*, speaking on the relationship between Australian interests and the selection of organisations for proscription, ASIO advised the Committee:

One of the criteria we look at in terms of these sorts of groups is to look at which ones are operating in areas where we assess the threat to Australia as high. If we assess the threat to Australia as high and our interests are seen as among Western interests, then we will look at groups operating in those countries.²³

22 Transcript, classified hearing 8 August 2005, p. 21.

23 Transcript classified hearing, 2 May 2005, p. 6.

- 3.66 At the hearing, the Committee sought specific information on threats by the ESO to Australian interests. ASIO agreed that the objective of re-listing the ESO was broadly preventative.²⁴

Proscription by the UN or like-minded countries

- 3.67 The Attorney-General's statement of reasons, and media release, on Hizballah's External Security Organisation state that the ESO has been listed as a terrorist organisation in the United Kingdom and that Hizballah (including the ESO) has been listed as a terrorist organisation by the governments of the United States and Canada.

Engagement in peace/mediation processes

- 3.68 It has been reported that the United States is pressing Hizballah to abandon its weapons in line with the 2004 United Nations Security Council Resolution 1559, however, Hizballah refuses to disarm²⁵.

Palestinian Islamic Jihad

- 3.69 The Palestinian Islamic Jihad was initially specified as a terrorist organisation under the Criminal Code on 3 May 2004. On 25 May 2005, a regulation was made re-listing the organisation as a terrorist organisation. The regulation commenced on 2 June 2005.
- 3.70 The Attorney-General's statement of reasons is as follows:

The Palestinian Islamic Jihad (PIJ)

(Also known as Islamic Jihad Palestine (IJP), Islamic Jihad - Palestine Faction, Islamic Holy War)

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. ASIO assesses that the details set out below are accurate and reliable.

PIJ has been listed as a terrorist organisation by the United Nations and the governments of the United Kingdom, United States, Canada and the European Union.

24 Transcript, classified hearing 8 August 2005, p. 21.

25 Dakroub, H. 'Hezbollah wins easy victory in elections in southern Lebanon', *Washington Post*, June 6, 2005.

Background

PIJ was founded in 1979-80 in Egypt by Palestinian members of the Muslim Brotherhood Movement. However, inspired by the Iranian revolution and disillusioned with the actions of existing Palestinian nationalist movements, the group rejected the Muslim Brotherhood's non-violent position and grew to be one of the main Palestinian Islamic extremist movements.

In August 1988 Israel expelled two primary leaders of PIJ, Fathi Shaqaqi and Abd al-Aziz Odah, to Lebanon where Shaqaqi reorganised the group, developing closer ties with Iranian Revolutionary Guard Corps elements and Lebanese Hizballah. From this time, PIJ increasingly used terrorist actions, including suicide bombings, to promote its cause. Co-ordinating with the HAMAS military wing (Izz al-Din al-Qassam Brigades), PIJ conducted a number of suicide bombings in the mid 1990's in an attempt to derail the peace process. Although the Palestinian Authority (PA) 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.

Funding for the group comes primarily from Iran and Syria, but also from sympathisers in the Gulf, Europe and the United States. PIJ relies on training in safe-houses in Gaza and Southern Lebanon, or facilities run by other groups including Lebanese Hizballah.

Objectives

PIJ aims to establish an Islamic Palestinian state which would include the territory of the current state of Israel. It also believes that Palestinian liberation would inspire a wider Islamic revolution across the Arab and Muslim world.

PIJ has opposed all previous peace negotiations with Israel and refused to give a formal commitment to a Palestinian unilateral ceasefire in 2005. While it signed the Palestinian Authority brokered Cairo Declaration committing militant groups to a 'period of calm', PIJ has declared its continuing right to undertake acts of violence and PIJ members conducted a suicide bombing in Tel Aviv on 25 February 2005.

Leadership and membership

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

PIJ draws support from a small membership base of approximately 50-200 as well as recruiting suicide bombers from mosques, or heavily screened volunteers. PIJ's main membership base is in the West Bank (particularly Hebron and Jenin), Gaza and South Lebanon. PIJ also has members and supporters throughout the Middle East, US and Europe, and maintains offices in Beirut, Damascus and Tehran.

Terrorist activities

PIJ has been responsible for a series of bombings, including suicide bombings, shootings, kidnappings and stabbings of Israeli/Jewish soldiers and civilians in Israel and the Occupied Territories. The group's favoured tactic is suicide bombings using explosive belts or car bombs. PIJ have at times carried out double suicide bombing attacks at the same location within a short space of time to target bystanders and emergency workers responding to the first attack.

PIJ has coordinated attacks and joint operations with a number of other Palestinian extremist groups, including HAMAS Izz al-Din al-Qassam brigades, which has been listed as a terrorist organisation by the Australian Government. PIJ also has ties to Lebanese Hizballah, which through its External Security Organisation (which also has been listed as a terrorist organisation by the Australian Government) provides material support for terrorist operations by PIJ.

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

Recent terrorist attacks for which PIJ has claimed responsibility, or for which responsibility has been reliably attributed to PIJ, have included:

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- 25 February 2005: a suicide bombing at a nightclub in Tel Aviv which killed five people and injured 50
 - 10 January 2005: PIJ gunmen ambushed an Israeli military vehicle in the Gaza Strip, killing three people
 - 21 November 2004: gunmen from PIJ and the Popular Front for the Liberation of Palestine (PFPL) ambushed a convoy of Israeli settlers in the Gaza Strip, injuring nine
 - 8 July 2004: PIJ detonated an explosive device next to an Israeli military jeep in the Gaza Strip, injuring two people.

Conclusion

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

In the course of pursuing its objective of creating an Islamist Palestinian and the destruction of the state of Israel, PIJ is known to have engaged in actions that:

- are aimed at advancing PIJ's political and religious causes;
- are intended to cause, or have caused, 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 sections of the public in Israel and other persons visiting areas in which it operates.

In view of the above information, 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.

- 3.71 On the basis of the statement of reasons, other publicly available information, Jane's and evidence given at the hearing, PIJ has been measured against ASIO's stated evaluation process as follows:

Engagement in terrorism

- 3.72 PIJ has been involved in terrorist attacks including bombings, suicide bombings, shooting attacks, kidnappings and stabbings against Israeli civilian and military targets inside Israel and the territories. The favoured method of attack by the group is suicide bombings, using either explosive belts or car bombs.
- 3.73 According to the statement of reasons, PIJ has at times carried out double suicide bombing attacks at the same location within a short space of time to target bystanders and emergency workers responding to the first attack.
- 3.74 Jane's reports that although the group is small, its suicide bombing tactics make it a deadly organisation. It is also politically sophisticated, and has a good understanding of when and where to strike to gain the maximum political advantage for its own radical agenda.

Ideology and links to other terrorist groups/networks

Ideology

- 3.75 The PIJ emerged from the Muslim Brotherhood Movement in 1979 in Egypt. It was inspired by the Islamic Revolution in Iran. Rejecting the non-violent stance of the Muslim Brotherhood, it has grown to be one of the main Palestinian Islamic extremist movements.
- 3.76 The PIJ is committed to the creation of an Islamic Palestinian state and the destruction of Israel through attacks against Israeli military and civilian targets inside Israel and the Palestinian territories.²⁶
- 3.77 PIJ seeks no political or social role in the Palestinian conflict.

Links to other terrorist groups/networks

- 3.78 The PIJ's organisational and decision making processes are highly secretive as it remains very concerned about infiltration by Israeli agents. The group is sufficiently small for the leader to maintain tight control. Only those who can demonstrate the most dedicated and disciplined adherence to PIJ's philosophy are permitted to join in the first place.
- 3.79 However, the PIJ has political connections with Iran, Syria and Lebanese Hizballah and, according to Jane's, the group's closest

26 US Department of State, *Country Reports on Terrorism 2004*, April 2005, page 106.

relationship is with Hamas, although since late 2004 there has been some reported “violent exchanges” between PIJ and Hamas and Jane’s warns that:

... these verbal clashes are not to be taken lightly. While infighting between militant Islamist groups would undermine their operational capacity, it could also make restoring law and order to the streets of Gaza much more difficult²⁷

Links to Australia

- 3.80 There was no evidence in any of the papers reviewed by the Committee of links between Australia and the PIJ. ASIO briefed the on the question of links between Australians and the PIJ.
- 3.81 This organisation was listed only 15 months ago. At that time, ASIO acknowledged to the Committee 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. ²⁸

Threat to Australian interests

- 3.82 ASIO advised as they had at the last inquiry, Australian interests should be considered at threat if they are part of a generalised threat from any organisation which clearly targets Western or foreign interests in a given country or region.

Proscription by the UN or like-minded countries

- 3.83 The PIJ is proscribed by the European Union and by the governments of the United Kingdom, the United States and Canada. The PIJ has not been listed by the United Nations.
- 3.84 At the private hearing, the Attorney-General’s Department pointed out that the information given on their statement of reasons incorrectly stated that PIJ has been listed as a terrorist organisation by the United Nations.

27 <http://jtic.janes.com/subscribe/jtic/>

28 Joint Parliamentary Committee on ASIO ASIS and DSD, *Review of the listing of the Palestinian Islamic Jihad*, tabled June 2004, pp. 21, 24.

Engagement in peace/mediation processes

- 3.85 It has been reported that the PIJ:
- ... is bitterly opposed to peace talks between Israel and the Palestinians and has often stepped up attacks when the talks show promise. It has also targeted sites symbolic of coexistence, such as a Haifa restaurant co-owned by Jews and Palestinians, where an operative of the terrorist group exploded a bomb that killed 21 people in 2003.²⁹
- 3.86 The PIJ signed the Palestinian Authority brokered Cairo Declaration committing militant groups to a 'period of calm', but PIJ has declared its continuing right to undertake acts of violence.

Conclusion

- 3.87 The Committee reiterates its previously stated view³⁰ that while political violence is not an acceptable means of achieving a political end in a democracy:
- ... 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

29 Mintz, J. 'Trial to reveal reach of US surveillance', *Washington Post*, 5 June 2005.

30 Joint Parliamentary Committee on ASIO, ASIS and DSD, *Review of the listing of the Palestinian Islamic Jihad (PIJ)*, June 2004, p. 23.

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.³¹

- 3.88 The Committee notes that both HAMAS and Hizballah have had significant electoral victories in recent months in the West Bank and in southern Lebanon respectively and the Committee is therefore mindful of the role that these organisations are playing, with the support of large numbers of citizens, in the changing political scene in that part of the Middle East.
- 3.89 One member of the Committee, the Hon Duncan Kerr SC MP, while not wanting to elevate his concerns to a dissent, includes these factors, among other matters, as relevant to his view that there is lesser case for listing HAMAS, Hizballah and the PIJ than exists with respect for the LeT. Mr Kerr notes that the Attorney General's Statement of Reasons advanced no suggestion that there are current links (other than some general sympathy for their rejectionist objectives) to Australia by the relevant sections of Hizballah, HAMAS or the PIJ and concluded that neither HAMAS nor the PIJ have ever conducted terrorist operations outside the Middle East or targeted Australian or Western interests. The Statement of Reasons stated that although Hizballah has a past history of targeting Israeli/Jewish targets outside of the Middle East, that organisation has not engaged in such attacks for over ten years. Mr Kerr therefore notes that, while falling within the definition of a terrorist organisation within the meaning of section 102.1 of the Criminal Code, in the case of the Izz al-Din al Qassam Brigades (HAMAS), the ESO (Hizballah) and the PIJ, at least two of the six criteria applied by ASIO and adopted by the Committee to discriminate between those organisations which warrant listing and those which do not--the criteria relating to links to Australia and threats to Australian interests (see paragraph 3.2) were not met. Mr Kerr therefore has asked to register his reservations regarding these significant factors and his view that the case made out for the proscription, other than for the LeT, is not strong. Weighing against those concerns, Mr Kerr acknowledges that ASIO gave evidence that

31 Transcript, classified briefing, 3 June 2004, p. 6.

the continuing proscription of the organisations was justified in Australia's security interests as a 'preventative' measure.³²

- 3.90 The Committee will review the proscription powers and listing criteria as part of its wider examination that it is required to undertake in 2007. In that review it is likely to give further consideration to the principles that should apply to future re-listings of such organisations.
- 3.91 The Committee recognises that the six criteria set out in paragraph 3.2 of this Report are not to be applied other than as matters to be taken into consideration. The Committee renews its request to ASIO and the Attorney General to specifically address each of the six criteria in future Statements of Reasons.
- 3.92 The Committee does not recommend the disallowance of these regulations.

Recommendation 1

The Committee requests ASIO and the Attorney General to specifically address each of the six criteria referred to in paragraph 3.2 in all future statements of reasons particularly for new listings.

Recommendation 2

The Committee does not recommend disallowance of these regulations.

Senator Alan Ferguson

Acting Chairman

32 This view has been put to the Committee and reported on two other occasions: at paragraph 2.28 in the *Review of the listing of the Al-Zarqawi organisation* and at paragraph 3.17 of the *Review of the listing of seven terrorist organisations*.



Appendix A – List of submissions

1. Attorney-General's Department (Hizballah External Security Organisation, Hamas Izz al-Din al-Qassam Brigades, Lashkar-e-Tayyiba, Palestinian Islamic Jihad)
2. Security Law Branch, Security and Critical Infrastructure Division, Attorney-General's Department.
3. Public Interest Advocacy Centre
4. Mr Patrick Emerton
5. Federation of Community Legal Centres (Vic) Inc



Appendix B – Witnesses appearing at the private hearing

Canberra (Private Hearing)

Monday, 8 August 2005

Attorney-General's Department

Mr Geoff McDonald, Assistant Secretary, Security Law Branch, Security and Critical Infrastructure Division

Ms Annabel Knott, Acting Principal Legal Officer, Counter-Terrorism Section, Security Law Branch, Security and Critical Infrastructure Division

Department of Foreign Affairs, Defence and Trade

Mr James Larsen, Assistant Secretary, Legal Branch

Mr Andrew Goledzinowski, Assistant Secretary, Counter-Terrorism Branch

Australian Security Intelligence Organisation

Mr Paul O'Sullivan, Director-General of Security

Director – Government and Communications

Legal Adviser



Appendix C – Exhibits

Jane's Assessments:

Sourced from: <http://www4.janes.com/subscribe>

Lashkar-e-Tayyiba

Hamas Izz al-Din al-Qassam Brigades

Hizballah External Security Organisation

Palestinian Islamic Jihad

US Department of State, *'Country Reports on Terrorism 2004'* April 2005

Foreign Terrorist Organizations:

HAMAS

Hizballah

Lashkar e-Tayyiba

Palestinian Islamic Jihad

Other Web Sites used:

<http://www.terrorismanswers.org/groups/hezbollah>

<http://www.crisisgroup.org/home>

<http://www.mafhoum.com/press7/190P8.htm>

Newspaper Articles – Various:

Agha, H. and Malley, R., 'Now Hamas must come into its own', *The Guardian*, May 18, 2005

Chulov, Martin, 'Brigitte's N-reactor bomb plot', *Australian*, 10 November 2003

Dakroub, H. 'Hezbollah wins easy victory in elections in southern Lebanon', *Washington Post*, June 6, 2005

Mintz, J. 'Trial to reveal reach of US surveillance', *Washington Post*, 5 June 2005

Nicholson, B., 'Labor set to back terror laws', *The Age*, 6 November 2003

Nicholson, B. and Forbes, M., 'Rush on laws to ban terror groups', *The Age*, 5 November 2003

Wilson, S., 'In politics, Hamas gains in the West Bank', *Washington Post*, June 29, 2005