

## The Proposed Re-listings

### The Evaluation Process

- 2.1 To be specified as a terrorist organisation under the *Criminal Code Act*, the Minister must be satisfied on reasonable grounds that the organisation:
- (a) is directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of a terrorist act (whether or not a terrorist act has occurred or will occur); or (b) advocates the doing of a terrorist act (whether or not a terrorist act has occurred or will occur).<sup>1</sup>
- 2.2 As mentioned in chapter 1, ASIO's evaluation process in selecting entities for proscription under the Criminal Code includes examining the following criteria in relation to the group:
- 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

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

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- engagement in peace/mediation processes.<sup>2</sup>

- 2.3 As with all reviews of listings and re-listings, the Committee used these criteria as the basis of its review of the re-listing of the Abu Sayyaf Group, Jamiat ul-Ansar, the Armed Islamic Group, and the Salafist Group for Call and Combat.
- 2.4 These groups were originally listed in 2002 under the *Criminal Code Act* following their listing by the United Nations Security Council. The Committee first considered the listing of these organisations in 2004 after the Committee's role in the Criminal Code procedure had been established. These four organisations were re-listed for the first time on 5 November 2004.
- 2.5 In a letter to the Committee Chair on 16 October 2006, the Attorney-General advised that he intended to re-list the four organisations prior to the lapsing of the current listing as provided for in section 102.1(3). New regulations were made on 1 November 2006.

## Currency of information about the groups

- 2.6 At a private hearing relating to these re-listings, the Committee specifically sought information about the activities of the groups since the last re-listing. In response to this request, ASIO told the Committee that where there is a lack of available new evidence regarding each or any of the organisations, this does not necessarily mean that the organisation is not still active and dangerous. A lack of 'evident activity' may mean that the organisation is preparing for a future act of terrorism.<sup>3</sup>
- 2.7 The Committee accepts that this may be the case, but it believes that it is by examination of new information that it can best decide if a re-listing is warranted and thus the Committee continues to urge the Attorney-General and ASIO to provide it with as much relevant up-to-date information as possible when seeking to list or re-list a terrorist organisation.

## The use of open source material

- 2.8 In view of the limited amount of information about recent activities of the groups, the question of the adequacy of using only information

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2 Confidential exhibit, ASIO, tabled 1 February 2005.

3 Private hearing transcript.

from open sources to assess listings and re-listings of groups was discussed at the private hearing.

- 2.9 A member of the Committee pointed out that in at least one of ASIO's statements of reasons, the evidence for re-listing from open sources was not sufficient to provide a basis for re-listing the organisation and, therefore, the conclusion must be drawn that ASIO has made an independent assessment, using information that may not be open source. ASIO advised the Committee that it uses a number of sources of publicly available information on terrorist groups but often the information from those sources is not up-to-date when compared to what ASIO has learned about the group through intelligence. Thus, ASIO's statements of reasons use open-source material backed up by intelligence.
- 2.10 ASIO confirmed that in one or more of the statements of reasons being considered at the hearing, while historic information was open source material, the key judgement in regard to the recent activity of the organisations was not derived from open source evidence.<sup>4</sup>
- 2.11 The point was made by a Committee member that it was Parliament which originally decided that only open source material would be used when assessing the listing of a terrorist organisation and that security matters would not be discussed in a disallowance motion. This was not at the request of ASIO and the process has always relied to some extent on ASIO backing-up open source evidence with its intelligence when it decides to list or re-list a group.
- 2.12 The Committee was assured by ASIO that:
- We have a very detailed process by which we fact-checked every point that was made in our statement of reasons and each fact is generally supported by open-source and classified supporting corroborating intelligence.<sup>5</sup>
- 2.13 At the request of the Committee, ASIO provided details about the number of hours its staff spent on preparing information about the re-listings for the Committee.

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4 Private hearing transcript.

5 Private hearing transcript.

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## Evaluation of the Re-listings

- 2.14 In the following paragraphs, the current nature and reach of the four organisations under review, with particular emphasis, to the extent possible, on what might have changed since the Committee last reviewed the listing of these organisations, is examined. The Committee believes that it is important that the Parliament seek to establish as accurate a picture as possible of the nature, size, reach and effectiveness of organisations and that these reviews should reflect the most current information available about the organisations under review.
- 2.15 Using the statements of reasons and other publicly available information, the four groups have to the extent possible, been measured against ASIO's stated evaluation process.

### Abu Sayyaf Group (ASG)

- 2.16 ASIO's statement of reasons did not specifically address most of ASIO's criteria for evaluation of a listing and there was not a lot of new information relating to activities of the group in the last two years.
- 2.17 Jane's reports that since 2004 there has been some indication that the ASG may have shifted back towards its Islamist ideology, although criminal motivations remain, and:
- Increasing co-operation between the ASG and Jemaah Islamiyya (JI) could lead to ASG members carrying out actions in pursuit of JI's objectives, which include the creation of an Islamic caliphate in Southeast Asia.<sup>6</sup>
- 2.18 The International Crisis Group also observed this increasing cooperation between JI and ASG, reporting at the end of 2005 that during the previous two years key JI fugitives from Indonesia and Malaysia had moved closer to the ASG, as the MILF engaged in peace talks with the Philippines government.<sup>7</sup>
- 2.19 Regarding the peace process, the Committee heard that:

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6 Jane's Terrorism and Insurgency Centre, Abu Sayyaf Group (ASG), page 1 of 12, <http://jtic.janes.com>.

7 International Crisis Group: Asia Report No.110, *Philippines Terrorism: The Role of Militant Islamic Converts*, December 2005, page 1.

... in a general sense, there has been some progress in terms of a peace process that has continued to be the subject of ongoing negotiation, particularly between some mainstream elements of the MILF and the Philippines government. That process has been ... variable in terms of the optimism one might have as to it producing a genuine outcome of resolution of this conflict. Nonetheless, ... there has been a belief on both sides that the process has delivered a useful breathing space and has a benefit of itself in that it has possibly restricted violent acts to some extent.<sup>8</sup>

- 2.20 In early 2005, a terrorist with ties to ASG and JI, killed four bus passengers in Manila's Makati business district. The blast was coordinated with blasts in Davao and General Santos cities in the south. The Makati bomber, Angelo Trinidad, a convert to Islam, admitted his guilt, as well as his ties to the ASG and JI.<sup>9</sup>
- 2.21 All the acts of terrorism which were claimed by or attributed to the ASG since the last listing of the group occurred in the Philippines. However, a tenuous link may be made between the ASG and Australia, Australian interests or Australian citizens in that, as reported in the Australian press in late 2006, Patek and Dulmatin who are both listed by the Australian Federal Police as among Australia's most wanted terrorists after the 2002 Bali nightclub bombings, fled to the Philippines after the bombings and formed an alliance with the ASG. Both were said to be hiding out in a region which is a stronghold of the ASG.<sup>10</sup>
- 2.22 US special operations in the Philippines have been credited with helping to weaken the ASG through military training, road building and medical aid. It has been reported that the help provided by the US won popular support and led to the collection of useful new intelligence.<sup>11</sup>
- 2.23 The Committee heard during the private hearing that recent efforts by the Philippines military, with advice from US special operations,

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8 Private hearing transcript.

9 International Crisis Group: Asia Report No.110, *Philippines Terrorism: The Role of Militant Islamic Converts*, December 2005, page 8.

10 O'Brien, N., 'Wanted terrorist killed in shootout', *The Australian*, 14 September 2006. (The reports of Patek's death, as referred to in the title of this article, were later proven to be incorrect).

11 Robinson, L., 'Pentagon's secret plan to defeat the terrorists', *The Weekend Australian*, 9 September 2006.

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have 'seriously impacted' the ASG and diminished the capability of the group to conduct terrorist activities, but have not negated the Group's capability.<sup>12</sup>

- 2.24 The ASG continues to be listed in the United Nations 1267 Committee's consolidated list and as a proscribed terrorist organisation by the governments of Canada, New Zealand, the United States and the United Kingdom.
- 2.25 The Committee is satisfied that the ASG is or has the potential to be active and dangerous and the Committee does not recommend disallowance.

### Jamiat ul-Ansar (JuA)

- 2.26 It was noted by the Committee that although the Harakat-ul-Mujahideen changed its name to Jamiat ul-Ansar in 2003, Australia is one of the few countries which refers to the group as Jamiat ul-Ansar, while the United Nations, Canada, the UK and the US all continue to refer to the group as Harakat-ul-Mujahideen.
- 2.27 Terrorist groups sometimes change their name to avoid the restrictions imposed upon them by proscription. This often enables group members to continue going about their activities under a new identity which is not recognised as part of the official listing and it was suggested to the Committee that this could be the reason why most other countries have not adopted the more recent name of this group.
- 2.28 According to Jane's, the level of threat from JuA is now extremely low although former members have joined other groups or operate under various guises, and therefore remain highly dangerous, especially in Pakistan.<sup>13</sup>
- 2.29 ASIO's statement of reasons for Jamiat ul-Ansar did not specifically address most of ASIO's criteria, however, it provided some evidence that the group remains active.
- 2.30 In the private hearing, the Committee was told that although the organisation may have decreased in numbers over recent years, they have neither ceased to exist nor ceased to have a capacity to act as a

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12 Private hearing transcript.

13 Jane's Terrorism and Insurgency Centre, Harakat-ul-Mujahideen (HuM), page 1 of 5, <http://jtic.janes.com>.

terrorist group and the organisation 'presents itself as a destabilising influence on the subcontinent'.<sup>14</sup>

- 2.31 The Committee heard that there is a concern by Australian authorities that JuA continues to provide training capacity to 'organisations which are antithetical to Australia's interests'.<sup>15</sup> Individuals trained at JuA facilities have engaged in terrorist operations in places where Islamist resistances have arisen including Tajikistan and Bosnia, and also Afghanistan to participate in the post-Taliban insurgency. In June 2005, several JuA trained individuals were arrested in Afghanistan preparing to carry out acts of terrorism and two American citizens who were arrested for suspected participation in an al-Qa'ida plot to attack the US claimed to have attended a terrorist training camp run by JuA leader Fazlur Rehman Khalil.<sup>16</sup>
- 2.32 Since the previous re-listing of the group in November 2004, JuA is reported to have been responsible for multiple attacks directed at a range of security and civilian targets in and around Jammu and Kashmir, in conjunction with the group Hizb-ul-Mujahideen. In June 2005, such attacks resulted in 15 deaths, including two school children.<sup>17</sup>
- 2.33 The JuA continues to be listed in the United Nations 1267 Committee's consolidated list and as a proscribed terrorist organisation by the governments of Canada, the United States, the United Kingdom, and Pakistan.
- 2.34 The Committee found that there was enough evidence of activities relating to the group in the last two years to warrant re-listing. The Committee is satisfied that the JuA continues to exist, albeit in a diminished capacity from its capability of the late 1990s, and that it has the capacity to act as a terrorist group. The Committee does not recommend disallowance.

## Armed Islamic Group (GIA)

- 2.35 The Committee found little evidence that the GIA has engaged in terrorism activities since early 2005. In its report of September 2005, the Australian Strategic Policy Institute reported that 'the GIA is

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14 Private hearing transcript.

15 Private hearing transcript.

16 Attorney-General's Department submission No 1, statement of reasons, page 2.

17 Attorney-General's Department submission No 1, statement of reasons, page 2.

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considered to be essentially defunct<sup>18</sup>. ASIO's statement of reasons states that the GIA's current strength is between 30 and 100 active members.<sup>19</sup>

- 2.36 Jane's lists the group as 'active' but since late 2004 it 'appears to have disintegrated into autonomous cells with logistics and communications seriously disrupted by the security forces'. Jane's assesses that the GIA's 'current threat now lies in the dispersal of its radical cadres both within alternative groups in Algeria and through the diaspora in Europe'.<sup>20</sup>
- 2.37 The Committee heard that Australian authorities have noted that the GIA has been less active since the last re-listing, and this is thought to be due to some internal splintering within the group: however, the Committee was told that the GIA carried out 'fairly heinous activities in 2003, 2004 and 2005 [and] ... we should not assume that they would not have the capacity to do so again.'<sup>21</sup>
- 2.38 Since the last re-listing, the GIA is accused of killing 14 civilians in an attack in Blida Province in Algeria on 7 April 2005. Following the attack, Algerian authorities moved against the GIA and recovered caches of weapons and explosives. ASIO reported that this action and defections to the GSPC, have resulted in GIA's reduced strength.
- 2.39 GIA continues to be listed in the United Nations 1267 Committee's consolidated list and is a proscribed terrorist organisation by the governments of Canada, the United States and the United Kingdom.
- 2.40 The Committee found no evidence that the GIA has links to Australia or has threatened Australian interests but it notes that the GIA has been a deadly organisation and, although it appears that its numbers and support have been drastically reduced, the Committee accepts that the group may still be capable of terrorist activity and it does not recommend disallowance.

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18 Australian Strategic Policy Institute 'Local Jihad: Radical Islam and terrorism in Indonesia', September 2005, p.55.

19 Jane's Terrorism and Insurgency Centre, Group Islamique Armée (GIA), page 7 of 10, <http://jtic.janes.com>.

20 Jane's Terrorism and Insurgency Centre, Group Islamique Armée (GIA), page 4 of 10, <http://jtic.janes.com>.

21 Private hearing transcript.

## Salafist Group for Call and Combat (GSPC)

- 2.41 The statement of reasons for the GSPC provided substantial evidence of recent engagement in terrorism activity by this group, citing eight terrorist attacks during 2006 for which 'responsibility has been claimed by, or reliably attributed to, the GSPC'.<sup>22</sup>
- 2.42 The statement of reasons stated that there is evidence that the GSPC is evolving from a domestically focussed group to one with a global Jihadist ideology. For example, on the fifth anniversary of the terrorist attacks of 11 September 2001, al-Qa'ida's second in command, Ayman al-Zawahiri officially announced an alliance between al-Qa'ida and the GSPC and the GSPC subsequently made a statement on 13 September 2006 pledging allegiance to Usama bin Laden.
- 2.43 Jane's reports that the group 'has suffered from in-fighting and factionalism, and these internal divisions have sharpened as the group has come under increasing international pressure since 2002. It is estimated that the GSPC's current membership is 'no more than 500 cadres and falling'.<sup>23</sup>
- 2.44 The GSPC officially rejected the Charter for Peace and National Reconciliation which was an Algerian government initiative offering amnesty for all persons convicted of insurgency related crimes.
- 2.45 While the presence of GSPC sleeper cells among Algerian communities is a concern in Western Europe, no evidence has been provided to link GSPC members in any way with Australia or Australians apart from the 2004 statement which the GSPC released declaring 'war on all foreigners and foreign interests in Algeria'.<sup>24</sup>
- 2.46 The GSPC continues to be listed as a proscribed terrorist organisation by the United Nations and by the governments of Canada, the United States and the United Kingdom.
- 2.47 The Committee is satisfied that the GSPC is still active and dangerous although a direct threat to Australia and Australians was not demonstrated. The Committee does not recommend disallowance.

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22 Attorney-General's Department submission No 1, statement of reasons, pages 2-3.

23 Jane's Terrorism and Insurgency Centre, Groupe Salafiste pour la Prédication et le Combat (GSPC), pages 2-3 of 9, <http://jtict.janes.com>.

24 Attorney-General's Department submission No 1, statement of reasons, page 1.

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## Conclusions

2.48 The Committee reiterates the view it expressed in its *Review of the listing of six terrorist organisations, March 2005*, that is:

... that it is important to include, in any decision about listing an organisation, its links to Australia and Australians, because, despite the lack of a legislative requirement for this, the listing will have little practical effect without it.

Application of the powers of the Criminal Code under the geographical extraterritoriality provisions appears to be an unlikely prospect. Prosecution of Australians, or foreigners acting in Australia, has a greater prospect of success.

Therefore, listing only terrorist organisations which Australians support through financial contributions or by providing personnel makes sense in the fight against international terrorism. As well, listing those organisations that have a presence and operatives in Australia, where there is an immediacy of threat to the Australian community, also makes sense. All else is symbolism that is costly in time and effort and possibly distracting for Australia's anti-terrorism efforts.

2.49 As with some previous reviews of listings and re-listings, the Committee will err on the side of caution with respect to these re-listings and will not recommend to the Parliament that any of these regulations be disallowed, although, the Committee found that the evidence for re-listing several of the groups could be deemed to be inadequate for the Committee to judge the case for proscription with confidence.

**Recommendation 2**

**The Committee does not recommend the disallowance of the regulations on the four terrorist organisations:**

- **Abu Sayyaf;**
- **Jamiat ul-Ansar;**
- **The Armed Islamic Group; and**
- **The Salafist Group for Call and Combat.**

**Hon David Jull, MP**

Chairman

