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The Parliament of the Commonwealth of Australia

# Review of the re-listing of ASG, JuA, GIA and GSPC

Parliamentary Joint Committee on Intelligence and Security

February 2007  
Canberra

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## Membership of the Committee

Chair           The Hon David Jull MP

Deputy Chair   Mr Anthony Byrne MP

Members       The Hon Duncan Kerr SC MP

Mr Stewart McArthur MP

Mr Steven Ciobo MP

Senator Alan Ferguson

Senator the Hon Robert Ray

Senator the Hon John Faulkner

Senator Fiona Nash

## Committee Secretariat

Secretary           Ms Margaret Swieringa

Inquiry Secretary   Dr Cathryn Ollif

Administration Officer   Mrs Donna Quintus-Bosz





# Terms of reference

This inquiry and report is conducted under the following powers:

*Criminal Code Act 1995*

## **102.1A Reviews by the Parliamentary Joint Committee on Intelligence and Security**

*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 Intelligence and Security 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.

And

### Relisting of Abu Sayyaf Group (ASG)

*Criminal Code Amendment Regulations 2006 (No 4)*

**Select Legislative Instrument 2006 [FRIL Reference No: F2006L03473]**

Dated 2 November 2006

### Relisting of Jamiat ul-Ansar (JuA)

*Criminal Code Amendment Regulations 2006 (No. 5)*

**Select Legislative Instrument 2006 [FRIL Reference No: F2006L03474]**

Dated 2 November 2006

Relisting of Armed Islamic Group (GIA)

*Criminal Code Amendment Regulations 2006 (No 6)*

**Select Legislative Instrument 2006 [FRIL Reference No: F2006L03475]**

Dated 2 November 2006

Relisting of Salafist Group for Call and Combat (GSPC)

*Criminal Code Amendment Regulations 2006 (No. 7)*

**Select Legislative Instrument 2006 [FRIL Reference No: F2006L03476]**

Dated 2 November 2006



# List of recommendations

## 1 Introduction

### Recommendation 1

- The Committee renews its request that the Attorney-General and ASIO incorporate the criteria ASIO has provided for determining which organisations should be listed in future statements of reason.
- The Committee requests that the Attorney-General and ASIO provide the Committee with a set of criteria outlining under what circumstances an organisation will not be relisted.

## 2 The Proposed Re-listings

### 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.



## 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 Intelligence and Security (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.
- 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:
  - Abu Sayyaf Group (ASG);
  - Jamiat ul-Ansar (JuA);
  - Armed Islamic Group (GIA);
  - Salafist Group for Call and Combat (GSPC).
- 1.3 Under section 102(3) of the Criminal Code regulations, the listing of organisations as terrorist organisations ceases to have effect on the second anniversary of the day on which they took effect. The organisations must, therefore, be re-listed or the regulation will lapse.
- 1.4 These organisations were originally listed in 2002 under the *Criminal Code Act* following their listing by the United Nations Security

Council. Prior UNSC listing was a requirement under the Act up to 10 March 2004, when amendments to the *Criminal Code Act* came into force, removing that pre-condition.<sup>1</sup>

- 1.5 The Committee first considered the listing of Abu Sayyaf Group, Jamiat ul-Ansar, the Armed Islamic Group, and the Salafist Group for Call and Combat in 2004 after the Committee's role in the Criminal Code procedure had been established. The four organisations under review were re-listed on 5 November 2004. This is a review of the second re-listing of these four organisations.
- 1.6 The Committee Chair received a letter on 16 October 2006 from the Attorney-General, advising 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). The Attorney provided statements of reasons for the re-listings. The letter and attached statements of reasons are accepted as submission number 1 to this review (see Appendix A).
- 1.7 The regulations were tabled in the Senate on 7 November 2006 and in the House of Representatives on 27 November 2006. The disallowance period of 15 sitting days for the Committee's review of the listings began from the date of the first tabling. Therefore the Committee is required to report to the Parliament by 26 February 2007.
- 1.8 At a Committee meeting on 19 October 2006, it was resolved to hold hearings to review these listings and to invite public submissions.
- 1.9 The Committee advertised the inquiry in *The Australian* on Wednesday, 15 November 2006. Notice of the inquiry was also placed on the Committee's website. No submissions were received from the general public.

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1 The Attorney-General introduced the Criminal Code Amendment (Terrorist Organisations) Bill in 2003. The purpose of this bill was to revisit the proscription regime and to reinstate the provisions removed by Senate amendment in 2002. This effectively reintroduced the proscription power of the Attorney-General and severed the connection between listing and the UN Security Council. The amendments also required that there be consultation with the Leader of the Opposition prior to the listing of an organisation, and it introduced a delisting provision by which an individual or organisation might make an application to the Minister to the effect that it no longer is directly engaged in, preparing, planning, assisting in or fostering the doing of a terrorist act. The Minister is required to consider such applications. The delisting provision is not subject to parliamentary review and it is not a disallowable instrument. The amendment also inserted a review mechanism for both individual listings and for the listing process itself. This provision, 102.1A, enabled the Parliamentary Joint Committee on ASIO, ASIS and DSD (now the Parliamentary Joint Committee on Intelligence and Security) to review a regulation as soon as possible after the making of the regulation and report the Committee's comments and recommendations to Parliament before the end of the applicable disallowance period.

- 1.10 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 27 November 2006 in Canberra.
- 1.11 Since its first report, *Review of the listing of the Palestinian Islamic Jihad (PIJ)*, the Committee has tested the validity of the listing (and re-listing) of a terrorist organisation under the Criminal Code on both the procedures and the merits. The Government's procedures in listing the organisations are examined below. Chapter 2 of this report will consider the merits of the listings.

## Selecting Organisations for listing

- 1.12 Before discussing the specific re-listings being considered in this report, it is worth noting that during the private hearing, the Committee discussed the process of discrimination between choosing those organisations which are selected for proscription and those which are not. This process has been touched upon in previous reviews but some Committee members noted that they continue to be unconvinced as to the robustness of the process.
- 1.13 It was noted by a Committee member that while some organisations which 'seem to be now concentrating their activities locally' and demonstrate no links to Australia, Australians or Australian interests are proscribed, others such as the LTTE, which has membership and links to Australia, have not been proscribed.<sup>2</sup>
- 1.14 The Committee heard from ASIO that many of the organisations currently proscribed in Australia belong to 'a Jihadist network which is global' and thus while there may not be current evidence of connections to Australia, they 'can work into Australia' through networks which 'can lead to people being brought into Australia'<sup>3</sup>.
- 1.15 The Committee was assured that other more prominent groups have not been ignored and they are being kept under constant review.

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2 Private hearing transcript.

3 Private hearing transcript.

## Government's procedures for specific listings

1.16 In a submission received by the Committee on 24 November 2006 (see Appendix B), the Attorney-General outlined his Department's procedures in the making of the regulations for the four organisations under consideration, as follows:

- An unclassified Statement of Reasons was prepared by ASIO in relation to each organisation detailing the case for listing with respect to each organisation.
- Special Counsel of the Australian Government Solicitor, Mr George Witynski, provided written confirmation on 4 October 2006 (in respect of ASG and GSPC) and 6 October 2006 (in respect of GIA and JuA) that each Statement of Reasons was sufficient for the Attorney-General to be satisfied on reasonable grounds that each 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.
- The Director-General for Security, Mr Paul O'Sullivan, wrote to the Attorney-General on 5 October 2006 (in respect of ASG and GSPC) and 9 October 2006 (in respect of GIA and JuA) outlining the background, training activities, terrorist activities, and attaching separate Statements of Reasons for each organisation.
- On 10 October 2006, the Attorney-General's Department provided to the Attorney-General a submission attaching:
  - ⇒ copies of the Statements of Reasons from ASIO for each organisation;
  - ⇒ advice from the Special Counsel in relation to each organisation;
  - ⇒ separate regulations and Federal Executive Council documentation for each organisation.
- Having considered the information provided in each submission, the Attorney-General signed separate statements for each organisation confirming that he is satisfied on reasonable grounds that each organisation is 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 separate regulations with respect to each organisation, and approved associated Federal Executive Council documentation including an explanatory memorandum, Executive Council minutes and explanatory statements.

- A letter from the Attorney-General was delivered to the Prime Minister on 16 October 2006 advising of the Attorney-General's intention to re-list each organisation as a terrorist organisation under the Criminal Code.
- The Attorney-General advised the Leader of the Opposition by letter dated 16 October 2006 of the proposed re-listings of the organisations as terrorist organisations under the Criminal Code. The Leader of the Opposition was offered a briefing in relation to the re-listing of each organisation.
- On 13 October 2006, the Attorney-General wrote to the Attorneys-General of the States and Territories advising them of the decision to re-list the organisations. A copy of the Statements of Reasons for each organisation was attached to the letters.
- The Attorney-General wrote to the Chairman of the Parliamentary Joint Committee on Intelligence and Security on 16 October 2006 advising of his decision to re-list the organisations.
- The Governor-General made the regulations on 1 November 2006.
- The regulations were lodged with the Federal Register of Legislative Instruments (FRLI) on 2 November 2006.
- A press release was issued on 3 November 2006 and the Attorney-General's Department's National Security website was updated.<sup>4</sup>

## Procedural matters

### Re-listing an Organisation

1.17 For the purpose of the re-listing the Attorney-General must be satisfied on the same grounds as for the original listing, that is '(a) 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 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>5</sup>

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4 Attorney-General's Department submission No 2.

5 *Criminal Code Act 1995*, section 102.1(2).

- 1.18 The Attorney-General explains his reasons for the regulation in a statement of reasons provided to the Committee and publicly released by media release. The statement of reasons uses open source material to examine the terrorist activity of the organisation which is the subject of the regulation. In the initial consideration of the listing of organisations the statement of reasons canvassed activity over a period of many years. More recently, the Committee has advised the Attorney-General's Department that, for the purpose of a re-listing it would be preferable, from the Committee's perspective, to see arguments about the activities of the organisation in the period since the last listing. While background information about the history of the terrorist activities of an organisation is useful, the Committee believes that the arguments for a re-listing should concentrate on recent activities including information about what has changed since the last review, whether that be an increase or a decrease in terrorist activity. The re-listing of an organisation is a fresh exercise of executive discretion and the Committee believes that there must, therefore, be a sufficient degree of currency in the evidence to warrant the use of the power.

## Consultations

- 1.19 The Attorney-General wrote to the Attorneys-General of the states and territories on 13 October 2006, advising of his intention to re-list the organisations. The Attorney-General received no responses disagreeing with the re-listings from the states and territories. In fact, only one state acknowledged the communication and no states or territories commented on the re-listings themselves.
- 1.20 The Committee asked the Attorney-General's Department if it was satisfied, in view of the lack of responses, that the states and territories did not disagree with the re-listing. The Committee was advised that it has been the experience of the Attorney-General's Department that the states and territories are quick to communicate if they have a problem or disagree with an action the Department plans to take, so their silence was taken as agreement with the re-listings.
- 1.21 The Attorney-General's Department noted that ASIO prepared the statements of reasons in consultation with DFAT and the Attorney-General's Department did not have specific discussions with DFAT on the re-listing of these four groups.
- 1.22 The procedural submission dealing with the re-listing of the four organisations makes no reference to any consultations with the

community and it was therefore noted that, except for the Attorney-General's Department's media release on the making of the regulation on 3 November 2006, no actions were taken to inform the community of the re-listings.

- 1.23 The Committee reiterates its previous concerns<sup>6</sup> that lack of adequate community consultation means that the community is not properly informed of its obligations with regard to the re-listed organisations.

## Criteria for listings

- 1.24 The legal test for the listing of an organisation is set out in the Criminal Code. As mentioned above, the Attorney-General 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).<sup>7</sup>

- 1.25 ASIO has provided the Committee with a set of criteria which it uses to determine which organisations it seeks to proscribe. These criteria are:

- Engagement in terrorism;
- Ideology and links to other terrorist groups or networks;
- Links to Australia;
- Threats to Australian interests;
- Proscription by the UN or like minded countries; and
- Engagement in peace/mediation processes.<sup>8</sup>

- 1.26 Previous reports by this Committee have noted that there has been considerable discussion about the validity of these criteria in public submissions put to the Committee in past reviews. The Committee has never resolved to its satisfaction through a continuing discussion with ASIO, how the criteria might logically be applied. Nevertheless, the Committee has found the criteria useful as a means of assessing the arguments provided by the Government in each statement of reasons.

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

7 *Criminal Code Act 1995*, section 102.2

8 Criteria given at a hearing on 1 February 2005. The last factor was seen as an exclusionary factor.

- 1.27 In previous reports, in order to make greater sense of the decision-making process, the Committee has asked the Government to address these criteria in future statements of reasons. The Government has not altered the structure or the content of the subsequent statements of reasons although the Committee continues to argue that a clearer exposition of the criteria would strengthen the Government's arguments, provide greater clarity and consistency in the evidence and therefore increase public confidence in the regime as a whole. Therefore, the Committee reiterates that it would greatly facilitate the Committee's review process if this change occurred.
- 1.28 While considering the second re-listing of the four terrorist organisations being reviewed in this report, the Committee found evidence (discussed in Chapter 2) that at least one of the organisations has become much less active in the last two years, even to the point where the Australian Strategic Policy Institute has stated that the group can be 'considered to be essentially defunct'<sup>9</sup>. To further facilitate future Committee review processes, the Committee would find it useful to receive a set of criteria from the Attorney-General and ASIO outlining under what circumstances an organisation will not be relisted.

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### **Recommendation 1**

- **The Committee renews its request that the Attorney-General and ASIO incorporate the criteria ASIO has provided for determining which organisations should be listed in future statements of reason.**
- **The Committee requests that the Attorney-General and ASIO provide the Committee with a set of criteria outlining under what circumstances an organisation will not be relisted.**

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<sup>9</sup> Australian Strategic Policy Institute *'Local Jihad: Radical Islam and terrorism in Indonesia'*, September 2005, p.55.

## 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**

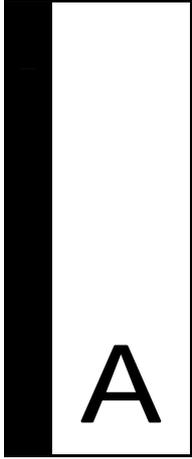
**The Committee does not recommend the disallowance of the regulations on the four terrorist organisations:**

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

**Hon David Jull, MP**

Chairman

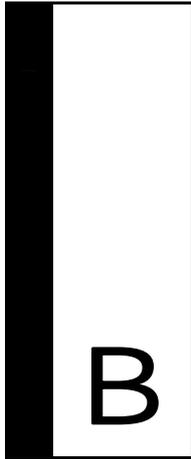




## Appendix A – List of submissions

1. Attorney-General's Department
2. Attorney-General's Department – Process for listing





## Appendix B – Witnesses appearing at private hearing

Canberra (Private Hearing)  
Monday, 27 November 2006

### **Australian Security Intelligence Organisation**

Deputy Director-General of Security

Manager, National Threat Assessment Centre

### **Attorney-General's Department**

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

Ms Kirsten Kobus, Principal Legal Officer, Security Law Branch, Security and Critical Infrastructure Division

Ms Annabel Knott, Senior Legal Officer, Security Law Branch, Security and Critical Infrastructure Division

**Department of Foreign Affairs, Defence and Trade**

Mr Perry Head, Assistant Secretary, Counter-Terrorism Branch

Mr John Fisher, Director, South and West Asia Section

Mr Paul Foley, Assistant Secretary, Middle East and Africa Branch

Ms Susan Grace, Director Counter-Terrorism Policy Section

Mrs Helen Horsington, Executive Officer, International Law and Transnational Crime Section

Ms Kate Duff, Assistant Secretary, South-East Asia (North) Branch

Ms Alison Duncan, Executive Officer, Counter-Terrorism Policy Section