

## The Listing

### The criteria for listing an organisation

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

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

(b) advocates the doing of a terrorist act (whether or not a terrorist act has occurred or will occur).<sup>1</sup>

2.2 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.<sup>2</sup>

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

<sup>2</sup> Confidential exhibit, ASIO, tabled 1 February 2005.

2.3 The Committee was grateful for the provision of these specific criteria used by ASIO in deciding whether to list a particular organisation. The Committee has, since February 2005, used them as the basis for testing the listings which it has reviewed. This has generated some discussion with ASIO which has told the Committee that the criteria are a guide only and that they are applied flexibly, that not all elements of the criteria are necessary before a decision might be taken to list an organisation. At a hearing in May 2005, ASIO explained to the Committee that:

They are taken as a whole; it is not a sort of mechanical weighting, that something is worth two points and something is worth three points. It is a judgement across those factors, and some factors are more relevant to groups than others.<sup>3</sup>

2.4 Understanding the application of these criteria has not been simple. Mr Patrick Emerton argued in his submission that there was no evidence in past listings of a systematic application of the criteria or any clear definition of the meaning of some of them. For example, he noted that the first criteria, engagement in terrorism, if interpreted broadly<sup>4</sup>, does nothing more than reiterate the statutory requirement in the Criminal Code, thereby giving no additional guidance for the selection of a particular organisation over hundreds of others which also indulge in political violence. If there is a narrower definition of terrorism used for the purpose of the criteria, he believed that this ought to be made clear.<sup>5</sup>

2.5 Similarly with the second criteria, ideology, Mr Emerton asked: Does this refer to the political or religious outlook of its members or, given the coupling of ideology with links to other groups, does ideology mean the conception of itself as a player in the geo-political arena? He argued that if it is the former, then ASIO must define what ideologies are considered illegitimate.

In a democracy, it must always be a matter of concern when a necessarily clandestine security agency is given a significant degree of power in determining which political outlooks are legitimate and which are not, and are liable to lead to criminal prosecution. A democratic culture cannot thrive under such conditions. If only certain ideologies are regarded as criminal by those authorities who actually apply the Criminal Code, this should be made explicit and incorporated into the statutory definition.<sup>6</sup>

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3 Classified transcript, Private hearing 2 May 2005, p. 1.

4 Given the very broad definition of terrorism in the Criminal Code.

5 Mr Patrick Emerton, Submission No. 18, p. 6.

6 Mr Patrick Emerton, Submission No. 18, p.7.

2.6 Finally, Mr Emerton was critical of the emphasis in a number of the criteria on foreign policy rather than domestic security considerations in the arguments for a listing. Threat to Australian interests, proscription by the UN or like minded countries and participation in peace processes were, he believed, all foreign policy considerations.

There is no doubt that Australia's democratically elected government has the right to pursue its foreign policy goals in accordance with its conception of the country's national interest. But the criminal law should not be used as a tool to enforce these foreign policy preferences.<sup>7</sup>

2.7 Mr Emerton suggested the following alternative criteria,<sup>8</sup> which recognised that the operation of Australian criminal law will be primarily confined to Australia and that the impact of a listing upon what would otherwise be the lawful activity of Australian citizens and residents must be given the foremost consideration. This criteria would ask ASIO to explain:

- the nature of the political violence engaged in, planned by, assisted or fostered by the organisation;
- the nature of the political violence likely to be engaged in, planned by, assisted or fostered by the organisation in the future;
- the reasons why such political violence, and those who are connected to it via the organisation, ought to be singled out for criminalisation by Australia in ways that go beyond the ordinary criminal law;
- the likely impact, in Australia and on Australians, of the proscription of the organisation, including, but not limited to:
  - ⇒ an indication of the sorts of training Australians may have been providing to, or receiving from, the organisation;
  - ⇒ an indication of the amount and purpose of funds that Australians may have been providing to, or receiving from, the organisation;
  - ⇒ the way in which the concept of 'membership', and particularly 'informal membership', will be applied in the context of the organisation;
  - ⇒ the extent to which ASIO intends to take advantage of the proscription of an organisation to use its detention and questioning power to gather intelligence.<sup>9</sup>

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7 Mr Patrick Emerton, Submission No. 18, p.7.

8 These criteria, which had been put forward in an earlier review, are reiterated in his current submission.

9 Mr Patrick Emerton Submission No. 18, p. 8.

- 2.8 The matters raised by Mr Emerton go to the specifics of the relationship between an organisation or people supporting it and the definition of a terrorist organisation in the Criminal Code. The Committee has found them valuable and has used them and will continue to use them as the basis of questions at hearings on particular listings. The proscription of an organisation creates serious criminal offences. The Committee would like to stress the need for clear and coherent reasons explaining why it is necessary to proscribe an organisation under the Criminal Code.

## **The listing of the PKK**

- 2.9 The Attorney-General informed the Committee of the proposed listing by letter dated 2 December 2005 with an attached statement of reasons. On 15 December 2005, the Attorney-General issued a media release announcing the decision to list PKK. The media release provided open source details on the organisation similar to those supplied to the Committee in the Attorney's letter.
- 2.10 The Attorney-General's statement of reasons is as follows:

(Also known as: Peoples Congress of Kurdistan, Kongra Gel, Kongra Gele Kurdistan, Partiya Karkeren Kurdistan, New PKK, Freedom and Democratic Congress of Kurdistan, Kurdistan Freedom and Democracy Congress, KADEK, Kurdistan Halk Kongresi, KHK, Kurdistan Labor Party, Kurdistan Peoples Congress, Kurdish Freedom Falcons, Kurdish Liberation Hawks, Kurdistan Ozgurluk Sahinleri, Teyrbazln Azadiya Kurdistan, TAK.)

The following information is based on publicly available details about the Kurdistan Workers Party (PKK). These details have been corroborated by material from intelligence investigations into the activities of the PKK and by official reporting. ASIO assesses that the details set out below are accurate and reliable.

The Kurdistan Workers Party (PKK) is listed as a proscribed terrorist organisation by the governments of the United Kingdom and Canada. The organisation is proscribed by the government of the United States under the name of Kongra Gel. The PKK is listed by the European Union for the purposes of its anti-terrorism measures.

### *Background*

The PKK is Kurdish separatist organisation founded in Turkey by Abdullah Ocalan in 1974. The organisation initially presented itself as part of the 'worldwide Marxist revolution'. During the 1980s and early 1990s, the PKK was responsible for numerous attacks on Turkish security forces and civilians accused by the PKK of collaborating with the state. After a crackdown by Turkish forces in 1989, the PKK shifted its focus to concentrate on military targets and urban terrorism, although civilians were still targeted. In the late 1980s, the PKK had difficulty mobilising support from the Kurdish community, in which religious sentiment is strong, and began to adopt Sunni Islamic beliefs. However, the organisation was founded on a Marxist-Leninist ideology and remains predominantly secular. Ocalan was arrested by Turkish authorities in February 1999 and announced a unilateral ceasefire in September 1999, directing members to refrain from violence. Despite this, the PKK's military wing, the Kurdistan Freedom Brigade (Hazen Rizgariya Kurdistan, HRK), was maintained and sporadic attacks continued.

The PKK changed its name to KADEK in April 2002, claiming the PKK had accomplished its mission. KADEK announced its dissolution in October 2003 and re-formed as Kongra Gel, a 'new' political organisation with the stated aim of pursuing Kurdish rights through negotiation with the Turkish Government rather than seeking independence. The armed wing of KADEK, known as the Peoples' Defence Forces (HPG), remained active. In early 2004 Kongra Gel split, with militants taking control of the organisation when others broke away to form a new political party. Kongra Gel ended its unilateral ceasefire with the Turkish Government in June 2004, and warned foreigners against visiting or investing in Turkey.

Kongra Gel, and the front group Kurdish Freedom Falcons (TAK), carried out violent attacks in Turkey in late 2004 and early 2005 and members have vowed to defend the Kurdish liberation movement. In April 2005 Kongra Gel reverted to the name Kurdistan Workers Party (PKK) or the 'New' PKK. However, it is not clear if all elements of the organisation have reverted to the name PKK.

On 19 August 2005 the PKK unilaterally announced it would suspend attacks against Turkish security forces until 20 September, stating that it might permanently extend the ceasefire if the Turkish government met its conditions. While PKK initiated

attacks decreased during the ceasefire period, continued clashes between Turkish security forces and the PKK, including attacks by the TAK, indicate the ceasefire was not recognised or adhered to by either side. The ceasefire was subsequently extended to 3 October 2005. However, in a statement faxed to the international media in early October 2005, the PKK announced it would resume its armed campaign against Turkish security forces because the Turkish government had not met their demands.

#### *Objectives*

The PKK's aims and objectives have evolved over time and have ranged from the separation of Kurdistan from Turkey, Syria, Iraq and Iran, and the creation of a Kurdish federation in the Middle East, to the establishment of an independent Kurdish state in south eastern Turkey. The organisation has now ostensibly abandoned the goal of a separate Kurdish state and instead seeks to promote and advance the rights of Kurds living in Turkey, specifically the right to maintain ethnic identity.

#### *Leadership and membership*

Abdullah Ocalan, although currently serving life imprisonment in Turkey, is still considered the leader and figure-head of the PKK. Although the organisation has undergone numerous name changes, there is a continuity of key PKK/KADEK/Kongra Gel leaders, including Abdullah Ocalan, Cemil Bayik (a member of the original PKK's Chairmanship Council and a senior member of the Kongra Gel Presidency Council) and Murat Karayilan (commander of the Peoples Defence Forces (HPG) and recently appointed general spokesman of the re-formed PKK Assembly).

PKK membership is estimated at approximately 5000, predominantly based in northern Iraq and south-eastern Turkey. There is also a large support base in Europe, particularly Germany. The PKK maintains camps in northern Iraq where training is provided in ideology, weaponry and guerrilla warfare. PKK funding is generated largely through criminal activity, including extortion and smuggling, and from the fundraising activities of the Kurdish diaspora worldwide (collected by both voluntary donation and through intimidation). Some money is also raised through the sale of publications.

#### *Terrorist activities*

Recent terrorist activities ascribed to the PKK, or for which it has claimed responsibility, include:

- July 2003 - Eight Iranian soldiers were killed in a raid on an outpost in Shinava, Iran.
- December 2003 - Five Turkish soldiers were killed in Turkey when their vehicle hit a land-mine planted by PKK/KADEK.
- June 2004 - Three Turkish security personnel were killed during an attack in Hatay Province, Turkey.
- 11 Aug 2004 - Two hotels and a gas depot in Istanbul centre were bombed, resulting in the death of two foreign tourists and injuries to others.
- 27 Aug 2004 - Turkish security forces captured two PKK members who were planning bomb attacks in Istanbul and Ankara. Explosive materials were also found with the terrorists.
- 24 Oct 2004 - PKK members attacked a Turkish Oil Corporation pipeline in the southeastern city of Batman, Turkey.
- 27 Oct 2004 - One security officer was killed and three wounded in an attack in the eastern city of Bingol, Turkey.
- 27 Jan 2005 - PKK members opened fire in the city of Mardin, Turkey, killing one soldier and injuring another.
- 2 July 2005 - A bomb attack against a passenger train in Bingol province was followed by a small arms attack on a second train sent to assist. Approximately six people were killed and 12 injured.
- 10 July 2005 - A bomb in Cesme injured at least 15 people. Responsibility was claimed by the Kurdish Freedom Falcons (TAK), considered to be a front for PKK.
- 16 July 2005 - An explosion on a bus in Kusadasi killed five people, including one British and one Irish citizen, and injured 13. Some media reported that the TAK had claimed responsibility. Turkish police attributed the attack to the PKK, although they denied responsibility.
- 27 July 2005 - The mayor of Yayladere in Bingol province was kidnapped by Kurdish separatists, and released five days later.
- 10 October 2005 - A policeman was abducted at a roadblock set up by the PKK near Idil in Simak Province.
- 15 October 2005 - A bomb detonated in a vehicle at a service station in Istanbul, injuring five people. The TAK claimed responsibility.

#### *Conclusion*

ASIO assesses the PKK 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 promoting and advancing the rights of Kurds living in Turkey, the PKK is known to have engaged in actions that:

- are aimed at advancing the PKK's political 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 the public in Turkey and other persons visiting areas in which it operates.

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

- 2.11 On the basis of the statement of reasons, submissions, assessments by the US State Department, Jane's Terrorism and Insurgency Centre database, other open source intelligence, news reports and evidence given at the hearing, the PKK has been measured against ASIO's stated evaluation process as follows:

### Engagement in terrorism

- 2.12 The statement of reasons lists a number of the violent acts in the period 2003 to 2005 ascribed to or claimed by the PKK, the most recent being in October 2005. The Committee notes that between 1999 and approximately 2004 there was a generally effective ceasefire. The ceasefire was formally ended in June 2004, re-established in August 2005 until October 2005.
- 2.13 The historical context of the Kurdish question is an important starting point for any discussion of the listing of the PKK. Not all political violence must be defined as terrorism. The United Nations in the Universal Declaration of Human Rights acknowledges the right of people to engage in armed struggle in the face of tyranny and as a last resort.<sup>10</sup>

Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and

oppression, that human rights should be protected by the rule of law.

- 2.14 Whether the Kurdish people have a right to self determination under international law is an open question. However, international law has increasingly come to recognise the legitimacy of the struggle of peoples for liberation to use all means, including armed struggle. While, this does not justify violence, which breaches the rules that apply to armed conflicts of this nature or other violations of human rights, it does acknowledge and reflect the complexity of political violence and the fundamental importance of the respect for the rule of law. With the defeat of the Ottoman Empire in the First World War, the Kurdish people expected to gain a nation state, in line with the application to the post war settlement of the US President Woodrow Wilson's 14 Points. This held out the offer of self-determination to all substantial national groups. The Treaty of Sevres (1920), which dismantled the Ottoman Empire, provided for Kurdish autonomy; however, it was overturned by the Treaty of Lausanne (1923) after objections from Turkey and British reluctance. The prohibition on Kurdish language and culture led to uprisings in 1925 and 1930, which were forcibly put down. There have followed 25 uprisings by Kurdish groups against Turkish rule. In 1937-38, Kurdish positions were bombed. Continued pressure on the Kurdish population led to the creation of the PKK, a Marxist, revolutionary organisation preaching self-determination. From its establishment in 1974 to the late 1990s, the PKK led a violent, separatist insurgency matched by severe repression by Turkish Government military and security forces.<sup>11</sup> Both sides of the conflict have been accused of serious abuses:

As part of its fight against the Kurdistan Workers Party (PKK), the Government forcibly displaced non-combatants, failed to resolve extrajudicial killings, tortured civilians, and abridged freedom of expression. The PKK itself committed widespread abuses, including the frequent murder of non-combatants, as part of its terrorism against the Government and civilians, mostly Kurds. Estimates of the total number of villagers forcibly evacuated from their homes since the conflict began vary widely from 330,000 to 2 million. A credible estimate given by a former Member of Parliament from the region is around 560,000.<sup>12</sup>

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11 Jane's Terrorism and Insurgency Centre, *Workers' Party of Kurdistan (PKK)*, 25 April 2004, <http://jtic.janes.com>, p. 2.

12 Attachment to Submission No 1. David Brown, <http://www.fas.org/irp/world/para/pkk.htm>

- 2.15 The Federation of Community Legal Services presented a similar story. They told the Committee at the hearing that the actions of the Turkish state in the conflict have included 'the destruction of Kurdish villages, extra-judicial killings, the torture of Kurdish arrestees, the banning of political organisations and the prohibition on publications calling for Kurdish self-determination. Those engaged in pro-Kurdish non-violent democracy activity or merely expressions of opinion ... are routinely met with systematic political repression.'<sup>13</sup>
- 2.16 Mr Kaplan in his submission to the review made the point that:
- In such a context of severe political repression, with a plethora of state security forces and armed actors, it is extremely difficult to assess the veracity of reports of any 'terrorist' incidents with certainty. ASIO's unreferenced and unverified 3-page security assessment needs to be read in this context.<sup>14</sup>
- 2.17 On this point, that it is difficult to assess with certainty what is happening on the ground, Stephen Kinzer, who was the *New York Times* bureau chief in Istanbul, 1996 to 2000, related an incident during his recent visit where:
- Soon after I passed through Hakkari, a car bomb exploded in an outlying town, the second such attack there in a week. It was staged to look like the work of the PKK, but bystanders chased and caught the fleeing bombers, and they turned out to be men tied to the government security forces.<sup>15</sup>
- 2.18 The Federation of Community Legal Services, quoting the BBC news, offered some corroboration of this uncertainty:
- There are credible reports that the PKK's five year ceasefire was called off due to sustained annihilation operations against the PKK by the Turkish authorities.<sup>16</sup>
- 2.19 This view was reiterated by the Federation at the hearing:
- [I]t is very difficult to verify the credibility of intelligence if the primary source of intelligence is the Turkish military or the intelligence of Turkish allies who also consider the PKK as being terrorist. There is credible and publicly available evidence of systematic corruption, military influence on government and

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13 In-camera transcript, private hearing 6 February 2006, p. 2.

14 Mr. Dalit Kaplan, Submission No. 2, p. 2.

15 Stephen Kinzer, *Kurds in Turkey: The Big Change*, New York Review of Books, 12 January 2006, pp. 36. See also Federation of Community Legal Services (Vic), Submission No. 12, p.24.

16 Federation of Community Legal Centres (Vic), Submission No 12, p.23.

military involvement in routine bombings against civilians which have at times been attributed to the PKK.<sup>17</sup>

- 2.20 The Committee asked ASIO about the intelligence upon which the listing was based. ASIO could not comment on the grounds that sources were operational matters.<sup>18</sup>
- 2.21 It appears to the Committee that invariably only critics of a listing are motivated to lodge a public submission.
- 2.22 Over the period from 2002 there has been a number of splits in the PKK. It changed its name to KADEK in 2002. KADEK was dissolved in 2003 and reformed as Kongra Gel. In April 2005, Kongra Gel reverted to the name PKK. It would appear that these splits were occasioned by disputes over policy, particularly over the degree of militancy and the use of violence and over whether the organisation would continue to be separatist or seek only to protect the rights of the Kurdish minority within the existing Turkish state.<sup>19</sup>
- 2.23 Armed wings of the organisation have not disarmed and large numbers of the active membership have located to northern Iraq, where they have been tolerated by the Kurdish and US authorities.<sup>20</sup> The participation of Kurdish parties (although not the PKK) in the Iraqi elections is interpreted by Jane's as a possible indication of the PKK moving into democratic politics.<sup>21</sup> Under pressure from the EU Turkey has moved to accommodate Kurdish aspirations and the consequent pull for Kurdish organisations to be involved in mainstream politics appears to have had some effect in calming the regional conflict.<sup>22</sup>
- 2.24 In response, ASIO noted that the PKK's participation in the political process does not decrease the group's relevance to security so long as militants continue to plan and conduct terrorist attacks.<sup>23</sup>

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17 In-camera transcript, private hearing 6 February 2006, p. 2.

18 Classified transcript, private hearing 6 February 2006, p. 32.

19 Jane's Terrorism and Insurgency Centre, *Workers' Party of Kurdistan (PKK)*, 25 April 2004, <http://jtic.janes.com>, p. 4. See also: Stephen Kinzer, *Kurds in Turkey: The Big Change*, New York Review of Books, 12 January 2006, pp. 34-36.

20 Jane's Terrorism and Insurgency Centre, *Workers' Party of Kurdistan (PKK)*, 25 April 2004, <http://jtic.janes.com>, p. 4.

21 Jane's Terrorism and Insurgency Centre, *Workers' Party of Kurdistan (PKK)*, 25 April 2004, <http://jtic.janes.com>, p. 4.

22 Stephen Kinzer, *Kurds in Turkey: The Big Change*, New York Review of Books, 12 January 2006, pp. 34-36.

23 ASIO's response to the draft report, 5 April 2006.

## Ideology and links to other terrorist groups/networks

### Ideology

- 2.25 Since its establishment in 1974,<sup>24</sup> the PKK has defined itself as a separatist organisation fighting for the creation of an 'independent, democratic Kurdish state in the Middle East'<sup>25</sup>. It was established as a Marxist revolutionary organisation, centred in and, until the mid 1990s, conducting most of its activities in rural eastern Turkey.
- 2.26 As a Marxist organisation, it was and remains a predominantly secular organisation. However, the statement of reasons notes that 'in the late 1980s the PKK had difficulty mobilising support from the Kurdish community, in which religious sentiment is still strong, and began to adopt Sunni Islamic beliefs.'
- 2.27 In 1999, the leader of the PKK, Abdullah Ocalan, announced a ceasefire, ordered members to refrain from violence and sought to establish a dialogue with the government of Turkey. This was endorsed by the party congress in 2000 and reiterated in 2002 when the party, then named KADEK, proclaimed a commitment to 'non-violent activities in support of Kurdish rights.'<sup>26</sup> Separatism as an objective gave way to minority rights for Kurds within the Turkish state.<sup>27</sup> However, the statement of reasons notes that the military wing did not disarm and 'sporadic attacks continued.' In 2004 Kongra Gel<sup>28</sup> ended the unilateral ceasefire with the Turkish Government. The ceasefire was briefly revived in 2005. Jane's states that the ceasefire ended because of splits in the PKK over tactics, especially the decision of fighters from northern Iraq to infiltrate into Turkey. This was compounded by a renewal of the offensive by the Turkish security forces.<sup>29</sup>
- 2.28 The PKK claims to have 10,000 fighters. The statement of reasons, however, numbers the members of the PKK at 5,000, mostly located in northern Iraq. Both the US State Department and Jane's agree, suggesting membership of 4,000 to 5,000. However, the number of sympathisers in Turkey and in Europe, where there are 700,000 Kurds, is said to be in the many thousands. Jane's notes that in March 2003 about 15,000 Kurds marched in Frankfurt in solidarity with Kurds in Turkey and Northern

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24 The US State Department states its establishment as 1978.

25 US State Department, *Patterns of Global Terrorism - 2003*.

26 US State Department, *Patterns of Global Terrorism - 2003*.

27 See the statement of reasons, p. 13 of this chapter.

28 KADEK dissolved itself in October 2003 and reformed as Kongra Gel.

29 Jane's Terrorism and Insurgency Centre, *Workers' Party of Kurdistan (PKK)*, 25 April 2004, <http://jtic.janes.com>, p. 3.

Iraq and calling for the release of Ocalan.<sup>30</sup> Stephen Kinzer, on a visit to south eastern Turkey in late 2005 reported that, with the easing of the 'war' between the Government and the PKK, a result in large measure of the pressure on Turkey from the EU, there was considerable, outspoken, popular support for the PKK in the region.<sup>31</sup> DFAT disputed that view, asserting that the PKK did not have majority support among Kurds in Turkey.<sup>32</sup> The basis for that assessment was not clear.

- 2.29 Members asked why no distinction was made between the military and other wings of the PKK, as was done with other listed organisations such as Hezbollah. The statement of reasons, however, makes a distinction. It talks about the PKK's military wing, the Kurdistan Freedom Brigade (Hazen Rizgariya Kurdistan HRK) and the armed wing of KADEK, known as the Peoples' Defence Forces (HPG). Jane's also specified a military wing for the organisation.<sup>33</sup> ASIO also characterised part of the organisation as the 'political arm'.<sup>34</sup> Nevertheless, both DFAT and ASIO argued at the hearing that they saw no political agenda coming forward from the PKK separate from its military agenda.<sup>35</sup> Asked if anyone who waved a PKK flag was therefore associating themselves with a military venture, the response was, 'that is certainly how it is perceived in Turkey.'<sup>36</sup>

#### Links to other terrorist groups

- 2.30 The Attorney-General's statement of reasons reports no links to other groups. However, Jane's claims that the PKK maintains relations with Sri Lanka's Liberation Tigers of Tamil Ealam (LTTE), the Palestinian Hamas organisation, Greece's November 17, the Armenian Secret Army for the Liberation of Armenia and the Red Army Faction.<sup>37</sup>
- 2.31 Nevertheless, the tactics of the PKK and the Turkish Government forces as described by Jane's are typical of those associated with a long-running,

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30 Jane's Terrorism and Insurgency Centre, *Workers' Party of Kurdistan (PKK)*, 25 April 2004, <http://jtic.janes.com>, p. 6.

31 Stephen Kinzer, *Kurds in Turkey: The Big Change*, New York Review of Books, 12 January 2006, pp. 34-36.

32 Classified transcript, private hearing 6 February 2006, p. 20.

33 See the statement of reasons, paragraph 2.10 and Jane's Terrorism and Insurgency Centre, *Workers' Party of Kurdistan (PKK)*, 25 April 2004, <http://jtic.janes.com>, p.2.

34 Classified transcript, private hearing 6 February 2006, p.30.

35 Classified transcript, private hearing 6 February 2006, p.21.

36 Classified transcript, private hearing 6 February 2006, p. 21. DFAT said that it based its judgement on this on 'a range of material, published and unpublished: intelligence, political assessments, statements by the PKK, claims of responsibility by the TAK.

37 Jane's Terrorism and Insurgency Centre, *Workers' Party of Kurdistan (PKK)*, 25 April 2004, <http://jtic.janes.com>, p. 6.

focussed and confined conflict. The PKK has operated a 'guerrilla campaign in southeast Turkey' ... with Turkish military positions the primary targets'.

Although Turkish government forces provide the principal targets, the group has carried out attacks on Turkish diplomatic and commercial facilities overseas. ... Villagers in the region and in northern Iraq provide sanctuary; assistance is assured by killing uncooperative civilians. ... The PKK has made some use of suicide bombing, using mainly female terrorists. When they have suffered military defeats in the past, the group has struck at economic targets, damaging the country's tourist industry ... This latter method did not prove effective and was short lived.

As the fighting between Turkish military forces and the PKK rebels intensified in 2004-05, the PKK's tactics centred on ambushing military convoys and temporary outposts. They used rocket launchers to attack gendarmerie outposts and mined roads that the Turkish forces would use. The Turkish forces used Cobra helicopters, tanks and mortar fire in their attempt to defeat the PKK.<sup>38</sup>

## Links to Australia

- 2.32 No links between Australia and the PKK are mentioned in the statement of reasons. The Committee understands that a direct link to Australia is not legally necessary in order for an organisation to be listed under the Criminal Code. However, ASIO has advised the Committee that it is one of the factors that it considers in deciding whether to list an organisation.
- 2.33 The Committee also notes that, as outlined in its report, *Review of the listing of the Palestinian Islamic Jihad (PIJ)*, the Attorney-General has indicated that links to Australia are a significant factor in deciding whether to list an organisation under the Criminal Code.<sup>39</sup> In an interview on *Lateline* on 21 April 2004, the Minister was asked:

TONY JONES: Does this organisation have members in Australia about whom you are worried?

PHILIP RUDDOCK: Look it is one of the factors that we've been taking into account. We may move from this, but generally speaking we look to see whether there are linkages in Australia.

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38 Jane's Terrorism and Insurgency Centre, *Workers' Party of Kurdistan (PKK)*, 25 April 2004, <http://jtic.janes.com>, p. 8.

39 Joint Parliamentary Committee on ASIO, ASIS and DSD, *Review of the listing of the Palestinian Islamic Jihad*, June 2004, p. 19

Those linkages can be in a variety of forms. They can be raising money for organisations, they can be having people who have trained with them, they can be people who are overtly supporting them. There are a range of factors, but we look for linkages.

...

PHILIP RUDDOCK: The aspects that have to be looked at first are – is it a terrorist organisation? Then you establish whether or not before you proscribe that as a terrorist organisation that it has linkages with Australia. I think the United Nations have proscribed – or have suggested proscription for – something like 100 or more organisations and we’ve proscribed to date 16. You can see that the fact that has been influencing us is whether there is a connection with Australia.

2.34 A submission from Mr Patrick Emerton to a previous inquiry emphasised this point and suggested that:

...it is the domestic impact of proscription that must be given the foremost consideration. The greater the number of Australians who are involved with an organisation, or whose friends, associates or family are involved, the greater will be the impact – the real legal impact...- upon Australian citizens, and Australian families, and Australian communities, of any decision to ban the organisation.<sup>40</sup>

2.35 Although the Committee understands that direct links to Australia are not legally necessary in order for an organisation to be listed under the Criminal Code, it is the Committee’s view that it should be an important consideration. The views of ASIO, the Attorney-General and Mr Emerton would appear to be consistent with the Committee’s opinion.

2.36 In the past, the Committee has been critical of the listing of organisations with negligible links to Australia, as the listing could have no practical effect. However, a more serious consideration exists where there are substantial links to Australia. Then the potential impact of the listing on Australians needs to be weighed carefully, especially when the offences under the legislation are tied into a broad range of activity.

2.37 At the hearing, the Attorney-General’s Department was asked whether an independent assessment was made of the impact the listing would have on the Australian diaspora. The department did not have information on the extent of the diaspora, but, on notice, provided the Committee with

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40 Submission No 3 to the review of the listing of the Al-Zarqawi Network, Mr Patrick Emerton, p. 4

statistics similar to those quoted from the Australian Bureau of Statistics in paragraph 2.44. Asked whether the impact on the Australian community was a legitimate question to consider prior to any listing, the departmental officer did not dispute it.<sup>41</sup> However, he believed that it was a question best put to ASIO.<sup>42</sup> When asked about the extent of the support in the community for the PKK or its aspirations for an independent Kurdistan, ASIO responded that that question was outside the legislative tests.<sup>43</sup>

- 2.38 The PKK is fragmented and its overall aims are likely to generate broad sympathy among large numbers of Australians, not only people of Kurdish background. The offences under the Criminal Code do not require that there be a direct link between the actions of a person and actual terrorism. The Combined Community Legal Centres Group (NSW) argued:

The objective of advancing Kurdish rights is likely to be shared by a large number of Australians. However, as no link to any terrorist act is required, and given the broad range of associated offences, virtually any support in relation to these objectives leaves Australians open to prosecution. Thus the proscription of PKK could have a potentially devastating impact on communities in Australia, and could have a disproportionately negative impact on Australians of Turkish or Kurdish origins.<sup>44</sup>

- 2.39 The Federation of Community Legal Services told the Committee that there was 'deep rooted fear' in the Kurdish community.

I have spoken to people who are on management committees of community organisations and to Kurdish people who are heavily involved in their communities. ... I think Kurdish people in Australia are aware of and communicate with people, friends, relatives internationally. They see the level of oppression happening in so called Western democratic countries such as, for example, Germany and the UK. ... Under the UK terrorism act, having the insignia of a terrorist organisation is an offence. ... the PKK flag, ... is also the a de-facto Kurdish flag.<sup>45</sup>

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41 Classified transcript, private hearing 6 February 2006, pp. 13-14.

42 Classified transcript, private hearing 6 February 2006, p. 12.

43 Classified transcript, private hearing 6 February 2006, pp. 35-36.

44 Combined Community Legal Centres Group (NSW) Submission No. 11, p.2 .

45 In-camera transcript, private hearing 6 February 2006, p. 8. In their submission, the Federation noted that charges brought against Kurdish people in England who had been involved in demonstrations and were collecting money for Kurdish language rights protest were dismissed by the Courts. Federation of Community Legal Services Submission No. 12, p.28.

[P]eople who have fled persecution are now fearing ongoing persecution by the Australian Government because of their political views or moreover merely by virtue of their ethnic identity.<sup>46</sup>

- 2.40 At the hearing, the Committee sought further information on whether there are any Australian links with the PKK either through membership or financial or other support. ASIO provided the Committee with information as to the links to Australia.<sup>47</sup> However, the Committee notes that, in the listing process, Government departments and agencies considered no information and made no distinction on whether support by the Kurdish population for the PKK was for its broader political aspirations or for its military tactics.
- 2.41 Whether or not this is the case for the PKK, the Committee notes that some terrorist organisations make no distinction between the political and military wings of the organisation so that they can maximise fundraising.
- 2.42 The Committee notes that, under the Charter of the UN Act, where the PKK is already listed there have been no prosecutions of Australians for the financing of the PKK. This may well indicate that the listings are working well.

### Threat to Australian interests

- 2.43 The Attorney-General's statement of reasons is silent on the question of whether the PKK threatens Australian interests. Australian interests have been defined for the Committee in previous reviews in terms of threats of harm to Australians travelling into the area of operation of a terrorist organisation or dangers to Australian businesses or trade in such places or threats to Australians in Australia.
- 2.44 The response of witnesses to the Committee's questions regarding the threat to Australia's security from the PKK was similar to previous views put to the Committee on this question: that there are indiscriminate attacks in Turkey, that 'a lot of Australians go to Turkey.'<sup>48</sup> ASIO's view was that the number of Australian tourists going to Turkey was a threshold issue in the decision to list the PKK rather than, say, the Tamil Tigers (LTTE).<sup>49</sup> ASIO quoted a figure of 50,000 Australians visiting

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46 In-camera transcript, private hearing 6 February 2006, p. 5.

47 Classified transcript, private hearing 6 February 2006, p. 30.

48 Classified transcript, private hearing 6 February 2006, p. 14. The Committee was told that 50,000 Australians visit Turkey each year.

49 Classified transcript, private hearing 6 February 2006, p.33.

Turkey each year;<sup>50</sup> however, the Committee received figures on tourists visiting Turkey in 2005 of 20,400, while the number visiting Sri Lanka in 2005 was 25,400.<sup>51</sup>

2.45 There have been no attacks on Australian businesses either deliberately targeting or inadvertently affecting Australian business in Turkey.

2.46 The Department of Foreign Affairs notes that there are considerable links between Australia and Turkey through the migration program that began in 1967:

The 2001 Census records 29,821 Turkey-born migrants and overall community size, including second and third-generation, as 54,596. Other estimates suggest the Turkish community in Australia could be as large as 100,000 people.<sup>52</sup>

2.47 Of these, according to the Australian Bureau of Statistics, 4,494 are Kurdish. Many of these people presumably return to Turkey on a regular basis.

2.48 There is also an unspecified level of tourism to Turkey, as increasing numbers of Australians have travelled to Turkey to visit Gallipoli in recent years. The Department of Foreign Affairs provides advice to Australians travelling to Turkey which says, without specifying the PKK, that the threat level in Turkey is high:

- We advise you to exercise a high degree of caution in Turkey because of the high threat of terrorist attack. We continue to receive reports that terrorists are planning attacks against a range of targets, including places frequented by foreigners.
- Domestic terrorist groups (some with links to international terrorists) have carried out attacks in Turkey. Further terrorist attacks in Istanbul, Ankara and other cities and tourist areas may occur.
- We advise you to reconsider your need to travel to rural areas in the border region between Turkey, Syria, Iraq and Iran at this time due to the unpredictable security situation. If you do decide to travel, you should exercise extreme caution when you are in this region.

2.49 In a detailed statement on security and terrorism, the department draws attention to the existence of the PKK in the border regions between Turkey and Iraq and Syria. The threat is described as a generalised one against foreigners and western tourists, not one specifically directed at

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50 Classified transcript, private hearing 6 February 2006, p.23.

51 [www.abs.gov.au](http://www.abs.gov.au), January 2006.

52 DFAT Country Briefs: [http://www.dfat.gov.au/geo/turkey/turkey\\_brief.html](http://www.dfat.gov.au/geo/turkey/turkey_brief.html)

Australians. It is possible that Australians travelling to Turkey might be 'threatened' by terrorist violence if there is a high level of threat in the country. DFAT advised that there had been no Australians targeted by terrorist violence in Turkey.

- 2.50 The Committee notes that, of the terrorist incidents listed in the statement of reasons, two have affected foreign tourists, for one of which the PKK denied responsibility. ASIO was asked how many of the 100 PKK attacks were directed at tourists. ASIO responded that since 2001 eight PKK attacks appear to have been specifically directed at tourists, [and] 25 further attacks have targeted public places.<sup>53</sup>
- 2.51 At the hearing, officers from ASIO were asked to explain how a listing would assist in the protection of Australian assets or personnel overseas. ASIO responded that 'the Parliament, and more generally the community, judges that taking action by way of proscription is a more prudent way of behaving than by not taking action. ... If you have information that leads you to conclude that this organisation is a terrorist organisation and you do not [proscribe it] you seem to be failing in your duty of care to the citizens.'<sup>54</sup>
- 2.52 The Committee asked whether there had been any violent actions taken by Australians of Kurdish origin in Australia. ASIO responded that there had been four incidents/protests between 1992 and 1999 directed at the Turkish, German and Greek consulates. Since 1999, protest activity had been peaceful.<sup>55</sup>

### Proscription by the UN or like-minded countries

- 2.53 The PKK has not been listed by the United Nations (UN) 1267 Committee; however, on 21 December 2001, Australia listed the PKK (and Kongra Gel on 4 May 2004) on the DFAT Consolidated List. The consequence of this listing is that it is illegal to deal with the organisation's assets or to make assets available to it.
- 2.54 At the hearings, the Committee asked witnesses whether any action had been taken as a result of this listing. The Committee was advised that there have been no prosecutions over the provision of funds to the PKK.
- 2.55 According to the State Department, the United States Government designated the PKK as a Foreign Terrorist Organisation (FTO) under the

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53 ASIO supplementary submission, 2 March 2006, p. 2.

54 Classified transcript, private hearing 6 February 2006, p. 38.

55 ASIO supplementary submission, 2 March 2006, pp.1-2.

*Immigration and Nationality Act* on 8 October 1997. It has recently added the name Kongra Gel to the listing.<sup>56</sup>

- 2.56 Canada listed the PKK on 11 December 2002 under the *Criminal Code Act*. The United Kingdom listed the PKK under the *Terrorism Act 2000*. The Committee notes that Norway does not recognise the EU listing of the PKK 'as it would conflict with Norway's role as a facilitator for peace in the region.'<sup>57</sup>

### Engagement in peace/mediation processes

- 2.57 Since the capture of Abdullah Ocalan in 1999, the overtures of the Turkish Government for EU membership and the war in Iraq, there has been considerable change in the activities of the PKK and the response of the Turkish Government and the security forces. A ceasefire was called for by the gaoled leader of the PKK in 1999 and it would appear to have had some effect up to June 2004 when the ceasefire was formally ended.<sup>58</sup>
- 2.58 Jane's reports that the PKK has been weakened by the capture of its leader in 1999 and the splits that have occurred since then in the organisation. It also notes that the organisation has been 'decentralised and autonomous cells retain the ability to attack Turkish targets.'<sup>59</sup> With the breakdown of the ceasefire, Jane's reports that the Turkish security forces have 'stepped up their offensive against the PKK from January 2005.' It is estimated that 240 people were killed in April and May, half of them soldiers and half PKK rebels. However, between 1987 and 2001 official figures state that the security forces in Turkey killed 23,438 guerrillas, 3,150 were captured and 2,380 surrendered.<sup>60</sup> Another unilateral ceasefire was announced from 20 August to 3 October 2005.<sup>61</sup> Therefore, the high point of the conflict appears to have passed.
- 2.59 Officers from DFAT said that the PKK had not been listed earlier as 'it was right and proper to give the processes (of the ceasefires and negotiations) time for assessments to be done.'<sup>62</sup> This argument does not appear to be consistent with a decision to list which, at the latest, must have been made in early November 2005, only one month from the breakdown of the last

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56 <http://www.state.gov/s/ct/rls/fs/2004/40945.htm>

57 Federation of Community Legal Centres (Vic), Submission No 12, p.31.

58 See paragraph 2.25.

59 Jane's Terrorism and Insurgency Centre, *Workers' Party of Kurdistan (PKK)*, 25 April 2004, <http://jtic.janes.com>, p. 9.

60 Jane's Terrorism and Insurgency Centre, *Workers' Party of Kurdistan (PKK)*, 25 April 2004, <http://jtic.janes.com>, p. 9.

61 DFAT Country Briefs: [http://www.dfat.gov.au/geo/turkey/turkey\\_brief.html](http://www.dfat.gov.au/geo/turkey/turkey_brief.html)

62 Classified transcript, private hearing 6 February 2006, p. 18.

ceasefire, but, more likely, according to other evidence given to the Committee, was actively being considered much earlier when the ceasefire was in place.<sup>63</sup>

- 2.60 Given that there is a safe haven and training camps in northern Iraq for hardline PKK rebels, the Turkish government has sought a resolution through tripartite talks between the Kurdish authorities in Northern Iraq, the US administrators and itself. These are continuing.
- 2.61 The rapprochement towards the Kurds inside Turkey by more liberal policies and cultural recognition appears to have added to the preparedness of Kurds to accept integration rather than separation and it has undercut support for the more radical position. The situation would appear to be at a delicate stage in terms of finding a resolution to a century old conflict and a thirty year old insurgency conducted on both sides with bitter savagery.

## **Terrorism, self-determination and minority rights**

- 2.62 The Committee has expressed concern in past reviews about intervention by outside forces in complex internal conflicts which pose no direct threat to Australia or Australians and which rightly should be, and can only be, resolved by negotiation between the parties. Submission No 2 to this review put it to the Committee:

I believe that the listing of this organisation is not necessary in order to protect the public from any politically and religiously motivated violence in Australia.<sup>64</sup>

- 2.63 More importantly, there are a large number of Australians of Kurdish origin and the historical experience of these people means that many of their grievances are real. It should be noted that general sympathy for the PKK's more legitimate aspirations for an autonomous homeland appears to have been widespread among Kurds both inside Turkey, in Europe and in Australia.<sup>65</sup>

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63 Attorney-General's Department, Submission No. 15, p. 1. See also timing of the listing in Chapter 1.

64 Mr. Dalit Kaplan, Submission No. 2, p. 2.

65 Federation of Community Legal Centres (Vic), Submission No 12, p.30. See also Stephen Kinzer, *Kurds in Turkey: The Big Change*, New York Review of Books, 12 January 2006, pp. 24-26 and Jane's Terrorism and Insurgency Centre, *Workers' Party of Kurdistan (PKK)*, 25 April 2004, <http://jtic.janes.com>, p. 9

2.64 The Combined Community Legal Centres make the point that, in future, with the banning of the PKK, refugee claims would expose the claimant to prosecution.

Claims of persecution due to real or alleged association with the PKK or related organisations will expose refugees and asylum seekers to criminal prosecution for membership or a number of other serious offences related to a proscribed organisation.<sup>66</sup>

2.65 Victoria Legal Aid makes the further point that:

Simple proscription of an organisation fails to take into account the sort of complex circumstances [investigation into a persons individual circumstances regarding past activities], and could place asylum seekers at risk of being unfairly denied refugee status and returned to a situation of serious danger despite having played no direct or indirect part in terrorist activities.<sup>67</sup>

2.66 The banning of the PKK under the Criminal Code not only affects people who might participate in violent action, but potentially criminalises an entire group who might support the organisation in broad and general ways; 'criminalises conduct distantly related to acts like bombings and hijackings.'<sup>68</sup> Liberty Victoria argues that there is a fundamental inconsistency in that the 'banning of the PKK raises the danger of criminalising refugees for the same reasons they were granted asylum.'<sup>69</sup>

2.67 Australia has obligations under international law to protect refugees. However, those granted refugee status in Australia have obligations to comply with Australian law. Past associations cannot be used to justify funding and support of terrorist organisations.

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66 Combined Community Legal Centres (NSW), Submission No. 11, p. 2.

67 Victoria Legal Aid, Submission No, 10, p.2.

68 Liberty Victoria, Submission No.6, p. 8.

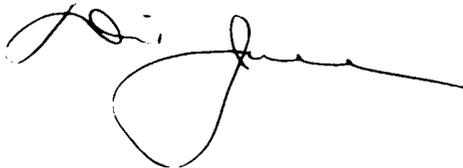
69 Liberty Victoria, Submission No.6, p. 9.

**Recommendation 1**

The Committee supports the listing.

However it also recommends that the matter be kept under active consideration and requests, in that process, that the Government take into account:

- the number of Australians of Kurdish origin who may support the broad aims of the PKK without endorsing or supporting its engagement in terrorist acts;
- whether it would be sufficient to proscribe the PKK's military wing, the Kurdistan Freedom Brigade (Hazen Rizgariya Kurdistan HRK) referred to in the Attorney's Statement of Reasons; and
- the fluid state of moves towards possible ceasefires.



**Hon David Jull, MP**  
Chairman

