

The politics of proscription in Australia

Introduction

Proscription is a mechanism by which a country can outlaw organisations deemed a threat to its national security, generally making it an offence to belong to, train with, recruit for, fund, or otherwise support a banned organisation. Until the passing of the Criminal Code Amendment (Terrorist Organisations) Bill on 4 March 2004 (and its assent on 10 March 2004), Australia could only proscribe those organisations which the UN had already identified as terrorist organisations¹, or create separate legislation for each individual group. The Australian Government now has the power to proscribe organisations it believes on reasonable grounds to be involved in terrorist activities (and which by implication, pose a threat to Australia's national security), without the prior approval of the Parliament. The question is, of course, which organisations should Australia proscribe now that it has the independent power to do so?

Proscribed groups in Australia

Australia has to date proscribed a total of 17 organisations:²

- al-Qaeda (21 October 2002)
- Jemaah Islamiyah (27 October 2002)
- Abu Sayyaf (14 November 2002)
- Salafist Group for Call and Combat (Groupe Salafiste pour la Predication et le Combat – GSPC) (14 November 2002).
- Armed Islamic Group (Groupe Islamique Armée – GIA) (14 November 2002)
- Harakat Ul-Mujahideen (14 November 2002)
- Ansar al-Islam (27 March 2003)
- Asbat al-Ansar (11 April 2003)

- Egyptian Islamic Jihad (11 April 2003)
- Islamic Army of Aden (11 April 2003)
- Islamic Movement of Uzbekistan (11 April 2003)
- Jaish-e-Mohammed (11 April 2003)
- Lashkar-e-Jhangvi (11 April 2003)
- Hezbollah (External Security Organisation) (5 June 2003)
- HAMAS (Izz al-Din al-Qassem Brigades) (9 November 2003)
- Lashkar-e-Taiba (9 November 2003)
- Palestinian Islamic Jihad (PIJ) (3 May 2004).

Australia bans Palestinian Islamic Jihad (PIJ)

Several of the above groups were banned in response to an apparent threat, link to, or specific incident involving Australia, as was the case with Jemaah Islamiyah after the Bali bombings in October 2002. The only group not listed by the UN which the Government has banned using the new power is PIJ. When asked in a media interview on 21 April 2004, immediately prior to the proscription of PIJ, about what links the then unnamed group might have with Australia, the Attorney-General appeared to indicate that a link to Australia is one of the primary factors in deciding whether or not to proscribe an organisation:

We may move from this, but generally speaking we look to see whether there are linkages in Australia. Those linkages can be in a variety of forms... There are a range of factors but we look for linkages... 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 it's been influencing us is whether there is a connection with Australia.³

In proscribing PIJ, Australia joins the US, the UK and Canada, all of which have proscribed PIJ, although the group's links with Australia remain unclear. Indeed, the press release issued by the Government on 3 May 2004 which announced the banning of PIJ, did not refer to any links the group might have with Australia.⁴ A subsequent media report cited Australia's Attorney-General as saying that PIJ has 'no known presence in Australia' and was proscribed by the Government 'because of its activities overseas'.⁵ The recent review by the Parliamentary Joint Committee (PJC) on ASIO, ASIS and DSD of the listing of PIJ notes that the Australian Security Intelligence Organisation (ASIO) 'acknowledged that there were no links to Australia and no Australian financing of the PIJ', and that ASIO initiated the listing of PIJ largely on the basis that other major countries had already listed it.⁶

Groups not proscribed in Australia

Proscribing groups which do not traditionally operate outside their immediate region or have any clear link to Australia, raises the possibility that any group might now be subject to proscription, regardless of whether or not it has links to Australia and irrespective of the threat it poses to Australia's security.

In order for the Government to proscribe a group, the Attorney-General need only 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)'.⁷ Although the Attorney-General has indicated that listings are determined on the basis of advice from ASIO⁸, there is in fact no requirement that the group to be proscribed has links to Australia or poses a threat to Australian interests. The PJC review has strongly urged that in considering future listings, the transnational nature of the group being considered and the threat to Australia or the involvement of Australians be given 'particular weight'.⁹

It is perhaps curious that the first group the Government has chosen to proscribe under the new power is one which ASIO has stated has no links to Australia when there are a number of groups not proscribed in Australia which perhaps have a more obvious connection with Australia than PIJ appears to have. The following examples illustrate the different types of links to Australia that exist and highlight what appear to be the inconsistencies of the proscription process as it is currently applied. Despite the violent track records of each of the following groups and their various connections with Australia, it has not been suggested that any of them pose a present or prospective threat to Australian interests.

Mujahideen-e-Khalq (MeK)¹⁰

The MeK, a militant Iranian opposition group also known as the People's Mujahideen Organisation of Iran (PMOI), is known for its attacks on Iranian officials in Iran. However, in what is perhaps one of the most notorious cases of organised politically motivated violence to have occurred in Australia, supporters of the MeK attacked the Iranian Embassy in Canberra in 1992 as part of a coordinated simultaneous attack on Iranian diplomatic missions worldwide.

The MeK does not appear to have ever targeted Australian interests as such, and today most of the MeK's activities outside Iran appear to be limited to fundraising and publicity campaigns. Furthermore, the MeK now attracts increasing overt political support in both the US¹¹ and the UK.¹²

Despite the fact that the embassy attack occurred over a decade ago, the Australian Federal Police (AFP) conducted raids on the homes of suspected Australian supporters of the MeK in June 2003 at about the same time that there was an apparent worldwide crackdown on the group.¹³ Suggestions at the time that the AFP raids were related to a visit to Iran by Australia's Foreign Minister in the preceding weeks were denied by the Government.¹⁴

The MeK is designated as a Foreign Terrorist Organisation in the US, although the Clinton administration's listing of the MeK in 1997 was reportedly 'widely interpreted as a goodwill gesture to the Iranian Government and its president'.¹⁵ The MeK is also banned by the UK and the European Union, but is still not listed as a terrorist organisation by the UN, or in either Canada or Australia, which, incidentally, were both recently reported to have been experiencing trade difficulties with Iran.¹⁶

Liberation Tigers of Tamil Eelam (LTTE)

Described as 'one of the most effective and devastating insurgencies in the world'¹⁷, the LTTE has fought an armed struggle for some 20 years against the Sri Lankan Government with the aim of establishing an independent Tamil state. A well-armed and resourced group, the LTTE has earned a reputation for suicide bombings and assassinations.

It has been claimed that the LTTE has a 'significant presence' in Australia and that it was raising 'A\$1 million a year in Australia'.¹⁸ Of perhaps more concern is the claim that the LTTE 'purchased two gliders from an Australian supplier in 1994 and unsuccessfully attempted to buy a helicopter the next year'.¹⁹

The LTTE was listed as a Foreign Terrorist Organisation in the US in 1997 and later banned in the UK, reportedly at the urging of the Sri Lankan Government.²⁰ It is not listed by the UN, Canada or Australia. The LTTE does not appear to have ever targeted Australian interests, and has technically been subject to a ceasefire since 2002.

Sendero Luminoso (Shining Path)

The Canadian Government claims that Shining Path 'has been stated to be among the world's most ruthless

guerrilla organizations'.²¹ A leftist Peruvian group, Shining Path aims to destroy state institutions, establish a peasant regime and ultimately rid Peru of foreign influences. Taking up arms in 1980, Shining Path has conducted sporadic bombings, kidnappings and murders against foreign companies and diplomatic missions in Peru ever since. Canadian and US interests have often been targeted, and the group is listed in both countries. The UK, like Australia, has not banned Shining Path.

Although Australia does not appear to have ever been a specific target of the group, Shining Path is alleged to have been responsible for the execution-style murder of an Australian nun, Sister Irene McCormack, in Peru in 1991.²² Although now much smaller than it once was, Shining Path is still believed to be active and well-armed.²³

Other Groups

There are numerous other organisations which may or may not be linked to Australia, but which, like PIJ, could be said to have engaged in terrorist acts and might be candidates for proscription 'because of their activities overseas'.

For example, the Basque separatist group, Euskadi Ta Askatasuna (ETA), has a clear history of politically motivated violence, as does the Revolutionary Organisation 17 November and other Greek leftist groups, which, given the recent bombings in Athens attributed to such groups, perhaps warrant particular scrutiny ahead of the 2004 Olympic Games. There are the Sikh groups Babbar Khalsa International and the International Sikh Youth Federation, both of which the US added to its Terrorist Exclusion List at the end of April 2004.²⁴ The radical Egyptian group (al-)Gama'a al-Islamiyya has been listed by the US, Canada and the UK. In addition to its spiritual leader being convicted over his involvement in the 1993 bombing of the World Trade Centre, (al-)Gama'a al-Islamiyya is also held responsible for the 1997 shooting attack on tourists in Egypt in which over 60 people were killed.²⁵

The following table outlines those organisations not already banned by the UN or Australia, but which have been proscribed by the US, the UK or Canada, as indicated.

Table 1: Groups not proscribed in Australia, but listed by the US, the UK or Canada

GROUP NAME	DESCRIPTION	UNITED STATES (Foreign Terrorist Organisations as at 22 April 2004)	UNITED KINGDOM (as at 7 June 2004)	CANADA (as at 17 May 2004)
Abu Nidal Organisation	Pro-Palestinian group	✓	✓	✓
Al-Aqsa Martyrs' Brigade	Pro-Palestinian group	✓	✗	✓
Aum Shinrikyo (Aleph)	Japanese cult	✓	✗	✓
Babbar Khalsa/Babbar Khalsa International	Sikh separatist group	✗	✓	✓
Communist Party of the Philippines/New People's Army	Militant Communist group	✓	✗	✗
DHKP/C (Devrimci Halk Kurtulus Partisi/Cephesi – Revolutionary People's Liberation Army/Front)	Turkish Marxist group	✓	✓	✗
ETA (Euskadi Ta Askatasuna)	Spanish Basque separatist group	✓	✓	✓
FARC (Fuerzas Armadas Revolucionarias de Colombia)	Colombian Marxist group	✓	✗	✓
(al-)Gama'a al-Islamiyya	Egyptian radical Islamic group	✓	✓	✓
International Sikh Youth Federation	Sikh separatist group	✗	✓	✓
Kahane Chai/Kach	Jewish extremist group	✓	✗	✗
LTTE (Liberation Tigers of Tamil Eelam)	Sri Lankan Tamil separatist group	✓	✓	✗
Mujahideen-e-Khalq/People's Mujahideen Organisation of Iran)	Militant Iranian opposition group	✓	✓	✗
National Liberation Army/Ejército de Liberación Nacional	Colombian leftist group	✓	✗	✓
Palestine Liberation Front	Pro-Palestinian group	✓	✗	✓
Popular Front for the Liberation of Palestine (PFLP)	Pro-Palestinian group	✓	✗	✓
PFLP – General Command	Pro-Palestinian group	✓	✗	✓
PKK (Partiya Karkeren Kurdistan)/KADEK	Kurdish separatist group (Turkey)	✓	✓	✓
Real IRA	Northern Irish group	✓	✓ (IRA)	✗

GROUP NAME	DESCRIPTION	UNITED STATES (Foreign Terrorist Organisations as at 22 April 2004)	UNITED KINGDOM (as at 7 June 2004)	CANADA (as at 17 May 2004)
Revolutionary Nuclei	Greek leftist group	✓	✗	✗
Revolutionary Organisation 17 November	Greek leftist group	✓	✓	✗
Shining Path (Sendero Luminoso)	Peruvian leftist group	✓	✗	✓
United Self-Defence Forces of Colombia	Colombian right-wing group	✓	✗	✓
Vanguards of Conquest	Egyptian radical Islamic group	✗	✗	✓

Sources:

- United States – *Foreign Terrorist Organisations* listed at <http://www.state.gov/s/ct/rls/fs/2003/12389.htm> (17 May 2004).
- United Kingdom – *Proscribed Groups* listed at <http://www.homeoffice.gov.uk/terrorism/threat/groups/index.html> (17 May 2004).
- Canada – *Listed Entities* listed at http://www.psepc-sppcc.gc.ca/national_security/counter-terrorism/Entities_e.asp (18 May 2004)

1. Refer to the UN's latest list of entities at <http://www.un.org/Docs/sc/committees/1267/pdflist.pdf> (7 June 2004).
2. Compared to 37 in the US, 25 in the UK and 35 in Canada.
3. ABC TV, *Lateline*, 21 April 2004, <http://www.abc.net.au/lateline/content/2004/s1091468.htm> (14 May 2004).
4. Attorney-General, 'Palestinian Islamic Jihad Listed as a Terrorist Organisation', press release, 3 May 2004.
5. *ABC News* online, 3 May 2004, <http://www.abc.net.au/news/newsitems/s1100133.htm> (14 May 2004).
6. Parliamentary Joint Committee on ASIO, ASIS and DSD, *Review of the listing of the Palestinian Islamic Jihad (PIJ)*, June 2004, p. 21.
7. *Criminal Code Act 1995*, subsection 102.1(2).
8. ABC radio, *AM*, 4 May 2004, <http://www.abc.net.au/am/content/2004/s1100891.htm> (31 May 2004).
9. Parliamentary Joint Committee on ASIO, ASIS and DSD, op. cit., p. 24.
10. For detailed information on the MeK, refer to Nigel Brew, 'Behind the Mujahideen-e-Khalq (MeK)', *Research Note*, No. 43, Parliamentary Library, 16 June 2003, <http://www.aph.gov.au/library/pubs/rn/2002-03/03rn43.pdf> (17 May 2004).
11. Sam Dealey, 'Iran "Terrorist" Group finds Support on Hill', *The Hill*, 2 April 2003, <http://www.hillnews.com/news/040203/terrorist.aspx> (4 June 2003).

12. 'British politicians against expulsion of Iran's Mujahedeen from Iraq', *Agence France Press*, 15 January 2004.
13. 'Iranian opposition leader Maryam Rajavi jailed in Paris', *Deutsche Welle* online, 22 June 2003, http://www.dw-world.de/english/0,3367,4789_W_89947_6,00.html (7 June 2004).
14. ABC TV, *7.30 Report*, 4 June 2003, <http://www.abc.net.au/7.30/content/2003/s872271.htm> (17 May 2004).
15. Douglas Jehl, 'US bombed bases of Iranian rebels in Iraq', *The International Herald Tribune*, 17 April 2003, <http://www.iht.com/articles/93507.html> (21 May 2004).
16. Ray Brindal, 'Australia Worried Trade Friction Brewing with Iran', 14 May 2004, *Dow Jones*, http://www.iranexpert.com/2004/austrad_e14may.htm (21 June 2004).
17. Paul Burton, *Jane's Terrorism and Insurgency Centre (JTIC)*, 24 February 2004, <http://jtic.janes.com> (4 June 2004).
18. Rohan Gunaratna in *Indo-Asian News Service*, 5 October 2001.
19. *ibid.*
20. *Sri Lanka News Update*, 3 November 2000, <http://www.lanka.net/lankaupdate/03%20November%202000.html> (7 June 2004).
21. Public Safety and Emergency Preparedness Canada, http://www.psepc-sppcc.gc.ca/national_security/counter-terrorism/Entities_e.asp#27 (4 June 2004).
22. Sisters of Saint Joseph of the Sacred Heart, 2001, <http://www.sosj.org.au/>

23. John Shields & Rob Fanney, *JTIC*, 8 August 2003, <http://jtic.janes.com> (4 June 2004).
24. United States Embassy (New Delhi), 'Four Additional Indian Groups Included in Terrorist Lists', press release, 30 April 2004, <http://newdelhi.usembassy.gov/www/opr43004.html> (7 June 2004).
25. Rob Fanney, *JTIC*, 16 May 2003, <http://jtic.janes.com> (7 June 2004).

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