

Review of the listing of Tanzim Qa'idat al-Jihad fi Bilad al-Rafidayn (the al- Zarqawi network) as a terrorist organisation

Parliamentary Joint Committee on ASIO, ASIS and DSD

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Canberra

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Membership of the Committee

Chair The Hon David Jull MP

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Terms of reference

This inquiry and report is conducted under the following powers:

Criminal Code Act 1995

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

Review of listing regulation

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

And

Criminal Code Amendment Regulations 2005 (No 1)

Select Legislative Instrument 2005 No. 23

Dated 24 February 2005



List of recommendations

2 The Listing

Recommendation 1

The Committee does not recommend disallowance of the regulation.

Introduction

- 1.1 This review is conducted under section 102.1A of the *Criminal Code Act 1995* (the Criminal Code). Section 102.1A provides that the Parliamentary Joint Committee on ASIO, ASIS and DSD (the Committee) may review a regulation specifying an organisation as a terrorist organisation for the purposes of paragraph (b) of the definition of terrorist organisation in section 102.1 of the Criminal Code and report the Committee's comments to each house of the Parliament before the end of the applicable disallowance period.
- 1.2 One review was undertaken in the last Parliament under this power, the *Review of the listing of the Palestinian Islamic Jihad (PIJ)*, tabled in June 2004. Another review was undertaken at the beginning of this Parliament, the *Review of the listing of six terrorist organisations*, tabled in March 2005.
- 1.3 The organisation for which the regulation has been made is Tanzim Qa'idat al-Jihad fi Bilad al-Rafidayn (TQJBR). The organisation is led by Abu Mus'ab al-Zarqawi and is also known as the al-Zarqawi network.
- 1.4 The Attorney-General wrote to the Chairman on 9 February 2005 advising that a regulation specifying TQJBR as a terrorist organisation for the purposes of section 102.1 of the Criminal Code was scheduled for consideration by the Federal Executive Council on 24 February 2005.
- 1.5 The regulation was tabled in the House of Representatives and the Senate on 7 March 2005. The disallowance period of 15 sitting days for the Committee's review of the listing began from the date of the

tabling. Therefore, the Committee is required to report to the Parliament by 30 May 2005.

- 1.6 The Committee advertised the inquiry in *The Australian* on 4 March 2005. Notice of the inquiry was also placed on the Committee's website and one submission was received from the general public.
- 1.7 Representatives of the Attorney-General's Department, ASIO and the Department of Foreign Affairs and Trade (DFAT) attended a private hearing on the listing on 2 May 2005 in Canberra.
- 1.8 In its first report, *Review of the listing of the Palestinian Islamic Jihad (PIJ)*, the Committee decided that it would test the validity of the listing of a terrorist organisation under the Criminal Code on both the procedures and the merits. This chapter will examine the Government's procedures in listing TQJBR and chapter 2 will consider the merits of the listing.

The Government's procedures

- 1.9 In a letter sent to the Committee on 23 March 2005, the Attorney-General's Department informed the Committee that it had adhered to the following procedures for the purpose of the listing:
 - An unclassified Statement of Reasons was prepared by ASIO detailing the case for listing the organisation.
 - Chief General Counsel, Mr Henry Burmester QC provided written confirmation on 21 January 2005 that the Statement of Reasons was sufficient for the Attorney-General to be satisfied on reasonable grounds that the organisation is an organisation directly or indirectly engaged in preparing, planning, assisting in or fostering the doing of a terrorist act whether or not the terrorist act has occurred or will occur.
 - The Director-General for Security, Mr Dennis Richardson, wrote to the Attorney-General on 21 January 2005 outlining the background, training activities, terrorist activities, and relevant statements of each organisation.
 - AGD consulted with DFAT in order to identify issues of relevance with respect to that portfolio. In this instance, DFAT expressed support for the continued listing of both organisations by email on 25 January 2005. No further detail was provided.
 - A submission was provided to the Attorney-General on 7 February 2005 including:

- ⇒ copies of the Statements of Reasons from ASIO for the organisation
- ⇒ advice from the Chief General Counsel in relation to the organisation
- ⇒ letter from the Director-General of Security
- ⇒ responses from DFAT in relation to the proposed listing, and
- ⇒ regulations and Federal Executive Council documentation.
- Having considered the information provided in the submission, the Attorney-General signed a statement confirming that he is satisfied on reasonable grounds that 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 act has occurred or will occur. The Attorney-General also signed a regulation in relation to the organisation, and approved associated Federal Executive Council documentation including an explanatory statement, explanatory memoranda, and an executive council minute.
- The Attorney-General wrote to the Prime Minister on 9 February 2005 advising of his intention to list the organisation.
- The Leader of the Opposition was advised of the proposed listing by letter on 9 February 2005 and was offered a briefing in relation to the listing.
- The Attorney-General wrote to the Chairman of the Parliamentary Joint Committee on ASIO, ASIS and DSD on 9 February 2005 advising of his decision to list the organisation.
- On 14 February 2005, the Prime Minister wrote to the Premiers of the States and Chief Ministers of the Territories advising them of the decision to list the organisation. The following responses were received:
 - ⇒ 18 February 2005 from the Premier of SA advising that the SA Government supported the listing. The Premier also requested a briefing from the Director-General of Security. This briefing was arranged by the Department of the Prime Minister and Cabinet. The briefing was provided by the Deputy-Director General of Security, Mr Ian Cousins, on Wednesday, 23 February 2005
 - ⇒ 23 February 2005 from the Premier of Victoria advising that Victoria supported the regulation. The Premier advised that Victoria did not currently intend to seek a

briefing from the Director-General of Security, but would reconsider its position if there is reason to believe that Al-Zarqawi poses a specific threat to Victoria

- ⇒ 24 February 2005 from the Chief Minister of the ACT advising that the ACT Government concurred with the proposed listing.
- ⇒ 24 February 2005 from the Premier of WA advising that WA had no objections to the listing and that it did not consider it necessary to receive a briefing from ASIO
- ⇒ 24 February 2005 from the Premier of Qld advising that the Premier did not object to the proposed listing
- ⇒ 28 February 2005 from the Chief Minister of the NT advising of the Chief Minister's support for the listing
- ⇒ 2 March 2005 from the Premier of NSW advising that the Premier had no objection to the listing
- The Governor-General made the regulation on 24 February 2005.
- A press release was issued 26 February 2005 and the Attorney-General's Department National Security website was updated.
- The Regulation was lodged with the Federal Register of Legislative Instruments (FRLI) on 1 March 2005 [FRLI Reference Number: F2005L00384]

Procedural concerns

Consultation with the States and Territories

- 1.10 The Committee is pleased that consultation on this listing occurred between the Prime Minister and Premiers and Chief Ministers as required under subclause 3.4(6) of the *Inter-Governmental Agreement on Counter-terrorism Laws*.
- 1.11 The States and Territories were advised ten days before the regulation was made and responses were received from the majority of States and Territories. It is worth noting that:
- two responses were received before the regulation was made;
 - three responses were received on the day the regulation was made; and

- two responses were received after the regulation was made.
- 1.12 Subclause 3.4(3) of the *Inter-Governmental Agreement on Counter-terrorism Laws* states that the Commonwealth will provide the States and Territories with the 'text of the proposed regulation and will use its best endeavours to give the other parties reasonable time to consider and to comment on the proposed regulation'.
- 1.13 The Committee is pleased that the States and Territories have been provided with more notice than previous listings. However, given that only two responses were received before the regulation was made, it would appear that ten days notice may still be insufficient time to consider and to comment on the proposed regulation.
- 1.14 Officers from the Attorney-General's Department advised the Committee that:
- You will see with this listing that we have responded to some of your concerns about giving the States a little more notice. I am happy to say that we have got a more comprehensive response from the States as well. I think that we might have struck a period that is a little more satisfactory than it was before. We will endeavour to continue with that.¹
- 1.15 The Committee appreciates this advice and expects that future consultation with the States and Territories on the listing of organisations under the Criminal Code will give full effect to the *Inter-Governmental Agreement on Counter-terrorism Laws*.

Consultation with DFAT

- 1.16 The Committee was advised by the Attorney-General's Department that:
- AGD consulted with DFAT in order to identify issues of relevance with respect to that portfolio. In this instance, DFAT expressed support for the continued listing of both organisations by email on 25 January 2005. No further detail was provided.
- 1.17 From this description, DFAT's input on the listing of TQJBR appears to be minimal. At the hearing, officers from DFAT confirmed that the substance of the email was 'basically a one-sentence confirmation that DFAT has no difficulty' with the proposed listing.² However, DFAT

1 Transcript, Private hearing 2 May 2005, p. 1.

2 Transcript, Private hearing 2 May 2005, p. 12.

noted that they would provide a more detailed response if they had additional information that would be valuable, including if the organisation was engaged in, or entering into, a political process or negotiations.³ DFAT also advised that there were no negative foreign policy implications in listing TQJBR.⁴

- 1.18 The Committee would encourage DFAT to provide more detailed advice to the Attorney-General's Department in future listings under the Criminal Code. This advice may include an assessment of the foreign policy implications of a listing and any information relating to Australia's obligations to the United Nations on the particular organisation. In particular, DFAT may provide advice on whether the organisation has been included in any of Australia's reports to the United Nations Security Council on the monitoring of financial transactions, people movement or the sale of arms.⁵

Community consultation

- 1.19 In its previous report, *Review of the listing of six terrorist organisations*, the Committee recommended that:

a comprehensive information program, that takes account of relevant community groups, be conducted in relation to any listing of an organisation as a terrorist organisation.⁶

- 1.20 The letter from the Attorney-General's Department does not state whether any community consultation on the listing was conducted.
- 1.21 At the hearing, the Attorney-General's Department advised that they are developing a response to the Committee's recommendation on community consultation.⁷ Officers from the Attorney-General's Department noted that they do not have any community consultation prior to a listing.⁸

3 Transcript, Private hearing 2 May 2005, pp. 12-15.

4 Transcript, Private hearing 2 May 2005, p. 13.

5 Australia is required to report to the United Nations Security Council on measures taken by the Australian Government to implement Security Council resolutions 1267, 1333, 1390, 1455 and 1373. These resolutions oblige member states to suppress terrorism, including freezing terrorist assets, preventing terrorists from entering into or transiting through their territories, preventing the supply, sale and transfer of arms and military equipment and denying safe haven to terrorists.

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

7 Transcript, Private hearing 2 May 2005, p. 5.

8 Transcript, Private hearing 2 May 2005, p. 5.

- 1.22 The Committee is pleased that the Attorney-General's Department is developing a process for community consultation in response to the Committee's recommendation. It is the Committee's view that it would be most beneficial if community consultation occurred prior to the listing of an organisation under the Criminal Code.
- 1.23 Overall, the Committee is pleased that the Government's procedure in listing terrorist organisations is developing into a more focused and thorough process.

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 is directly or indirectly engaged in, preparing, planing, assisting in or fostering the doing of a terrorist act (whether or not the terrorist act has occurred or will occur).¹
- 2.2 In previous reports, the Committee has commented on the broadness of this definition.² The definition does not explain why certain organisations who engage in, prepare, plan, assist in or foster the doing of a terrorist act have not been proscribed under the Criminal Code.
- 2.3 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;

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

2 See: Joint Parliamentary Committee on ASIO, ASIS and DSD, *Review of the listing of the Palestinian Islamic Jihad*, June 2004, p. 18 and Joint Parliamentary Committee on ASIO, ASIS and DSD, *Review of the listing of six terrorist organisations*, March 2005, Chapter 2.

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- links to Australia;
 - threat to Australian interests;
 - proscription by the UN or like-minded countries; and
 - engagement in peace/mediation processes.³

2.4 The statement of reasons on TQJBR, provided by ASIO for the Attorney-General, is not structured to specifically address these factors. However, at the hearing ASIO shed some light on a point of uncertainty discussed in the last report regarding the way these criteria are used. ASIO informed 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.⁴

2.5 While the Committee continues to gain an understanding of the process of selecting groups for listing, it is not always clear why some terrorist organisations are chosen for listing ahead of others.

2.6 The submission from Mr Patrick Emerton also expressed concern about the lack of clear reasons for the listing of terrorist organisations under the Criminal Code:

In the absence of more detailed information being provided about why these particular groups have been listed, and how their listing relates to the needs, rights and interests of Australians, an impression is created that the purpose of these listings is primarily a political one, of supporting the foreign policy goal of targeting militant Islamic organisations as part of the so-called 'war on terrorism'.⁵

2.7 Mr Emerton proposes that the Government should address the following set of criteria in deciding whether to list an organisation under section 102.1 of the Criminal Code:

- 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;

3 Confidential exhibit, ASIO, tabled 1 February 2005.

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

5 Submission No. 3, Mr Patrick Emerton, p.8.

- 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.⁶

2.8 The proscription of an organisation creates serious criminal offences. The Committee would like to stress the need for clear reasons explaining why it is necessary to proscribe an organisation under the Criminal Code.

The listing of TQJBR

2.9 The Attorney-General informed the Committee of the proposed listing by letter dated 9 February 2005 with an attached statement of reasons. On 26 February 2005, the Attorney-General issued a media release announcing the decision to list TQJBR. The media release provided open source details on the organisation.

2.10 The Attorney-General's statement of reasons is as follows:

Tanzim Qa'idat al-Jihad fi Bilad al-Rafidayn

Also known as: the al-Zarqawi network; al-Tawhid; Jama'at al-Tawhid wa'al-Jihad; Al-Tawhid and al-Jihad; The Monotheism and Jihad Group; Qaida of the Jihad in the Land of the Two rivers; Al-Qa'ida of Jihad in the Land of the Two Rivers; Al-Qa'ida of Jihad Organization in the

6 Submission No. 3, Mr Patrick Emerton, pp. 8-9.

Land of the Two Rivers; The Organisation of Jihad's Base in the Country of the Two Rivers; The Organisation Base of Jihad/Country of the Two Rivers; The Organisation Base of Jihad/Mesopotamia; Tanzeem Qa'idat al-Jihad/Bilad al Raafidaini; Kateab al-Tawhid; Brigades of Tawhid; Unity and Jihad Group; Unity and Holy Struggle; Unity and Holy War.

The following information is based on publicly available details about Tanzim Qa'idat al-Jihad fi Bilad al-Rafidayn (TQJBR). These details have been corroborated by material from intelligence investigations into the activities of the TQJBR and by official reporting. The Australian Security Intelligence Organisation (ASIO) assesses that the details set out below are accurate and reliable.

TQJBR has been proscribed as a terrorist organisation by the United Nations and the United States Government.

Background

TQJBR is a Sunni Islamist extremist network established and led by Abu Mus'ab al-Zarqawi.

The network first emerged as a loose-knit grouping of individuals and organisations under the leadership of al-Zarqawi over a period of several years, following his release from a Jordanian prison in 1999.

On 24 April 2004 it was publicly proclaimed under the name Jama'at al-Tawhid wa'al-Jihad in an internet statement attributed to al-Zarqawi. That name was subsequently changed to TQJBR on 17 October 2004 in a public pledge of allegiance to Usama Bin Laden via an internet posting. A subsequent statement by Usama bin Laden, broadcast on 27 December 2004, welcomed the union and exhorted mujahideen in Iraq to obey al-Zarqawi.

Australia is seen as a legitimate target by TQJBR. This is demonstrated by its claim of responsibility for an attack against an Australian Defence Force convoy in Baghdad on 25 October 2004 and an attack near the Australian Embassy in Baghdad on 19 January 2005.

Objectives

The objectives of TQJBR within Iraq are to overthrow the Interim Iraqi Government, expel the Multi-National Forces

from the country and establish an Islamic state under Sharia law.

More broadly, TQJBR supports and promotes the global jihadist movement, as espoused by al-Qa'ida, seeks the recovery of Muslim lands perceived as 'lost' at any point in history, and the removal of governments of Muslim nations assessed by the network to be apostate.

Leadership and membership

TQJBR was established and has been continuously led by al-Zarqawi. Al-Zarqawi was imprisoned in Jordan in 1994 for membership of an extremist organisation. After his release under an amnesty in 1999, he facilitated terrorist training in Afghanistan and later in Iraq. In October 2000 he was sentenced to death in absentia for planning attacks in Jordan.

The strength of the network in Iraq is not known, reported estimates of between 500 and 1000 operatives are consistent with available intelligence. Smaller numbers of operatives have been active in Europe, the Middle East and the Caucasus.

Terrorist activities

TQJBR has been involved in numerous terrorist attacks in Iraq against Multi-National Forces, Iraqi Security Forces, members of the Interim Iraqi Government, Iraqi and foreign civilians and international facilities. Particular terrorist activities include vehicle bombs, small arms ambushes, kidnappings and executions.

The network has also been linked to terrorist plots outside Iraq. Under the name al-Tawhid, the network planned attacks against American, Israeli and Christian sites in Jordan in 2000, and against Jewish and Israeli interests in Germany in 2001. Under the name Kateab al-Tawhid, the network planned attacks against multiple targets in Jordan in April 2004.

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

- 28 October 2002 – assassination of US diplomat Laurence Foley in Amman, Jordan;
- 7 August 2003 – vehicle bombing of the Jordanian Embassy in Baghdad;

- 19 August 2003 – vehicle bombing of the UN headquarters building in Baghdad killing 22 people including UN envoy Sergio Viera de Mello;
- 29 August 2003 – vehicle bombing of the Imam Ali mosque in Najaf killing at least 83 people including Shi’a leader Ayatollah Mohammad Bakr al-Hakim;
- 10 April 2004 – kidnap of US civilian contractor Nick Berg. His decapitated body was found on 10 May 2004;
- 24 April 2004 – attempted suicide boat bombing of Iraq’s Basra oil terminal, killing three US sailors;
- 17 May 2004 – suicide car bombing in Baghdad killing Iraqi Governing Council head Izzedin Salim;
- Early June 2004 – kidnap of South Korean contractor Kim Sun-Il. His decapitated body was found on 22 June;
- 24 June 2004 – attacks on Iraqi security forces in Baghdad, Baquba, Mosul, Fallujah and Ramadi killing more than 100 Iraqis and three US soldiers;
- 27 June 2004 – kidnap of Bulgarian truck drivers Georgi Lazov and Ivaylo Kepov. Lazov’s decapitated body was found on 13 July. Kepov’s decapitated body was found on 22 July;
- 14 July 2004 – assassination of the Governor of Mosul, Osama Kashmoula, and his two body guards;
- 16 September 2004 – kidnap of US contractors Jack Hensley (killed 21 September) and Eugene Armstrong (killed 22 September) and UK contractor Kenneth Bigley (killed 7 October);
- 24 October 2004 – assassination of at least 48 Iraqi Army recruits;
- 25 October 2004 – vehicle bombing of an Australian Defence Force convoy in Baghdad, wounding three ADF personnel;
- 3 December 2004 – attacks on a Shi’ite mosque and a police station in Baghdad, killing 30 people, and
- 19 January 2005 – vehicle bombing near the Australian Embassy, Baghdad, killing two Iraqi nationals and injuring several people including two ADF personnel.

Conclusion

ASIO assesses that the TQJBR 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 objectives of overthrowing the Interim Iraqi Government, expelling the Multi-National Forces from Iraq, establishing a state under Islamic Sharia law, and its broader objectives of supporting and promoting the jihadist cause as espoused by Al-Qa'ida, TQJBR is known to have engaged in actions that are:

- aimed at advancing the network's political and religious or ideological cause;
- done with the intention of coercing or influencing by intimidation the governments and people of numerous countries (including Australia);
- intended to cause or do serious damage to property, the death of persons and endangerment of life; and
- intended to cause, or have caused, serious risk to the safety of sections of the public in Iraq and Jordan and other persons in areas in which it operates.

In view of the above information, TQJBR is assessed to be directly or indirectly preparing, planning, and fostering the conduct of terrorist acts. Such acts include actions which are to be done and threats of actions which are to be made with the intention of advancing a political, religious or ideological cause and with the intention of coercing, or influencing by intimidation of the Government and people of numerous countries, including Australia. The actions or threatened actions which TQJBR 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, Jane's Terrorism and Insurgency Centre database and evidence given at the hearing, TQJBR has been measured against ASIO's stated evaluation process as follows:

Engagement in terrorism

- 2.12 TQJBR has engaged in and continues to engage in terrorist acts. A number of TQJBR's terrorist acts are listed in the statement of reasons, the most recent being a vehicle bombing in January of this year near the Australian Embassy in Baghdad. This attack killed two Iraqi nationals and injured several people.
- 2.13 The group has been held responsible for numerous other terrorist attacks in Iraq, including attacks against Multi-National Forces,

members of the Interim Iraqi Government and the abduction and beheading execution of foreign civilians.

Ideology and links to other terrorist groups/networks

Ideology

2.14 The statement of reasons reports that TQJBR is a Sunni Islamist extremist network which 'supports and promotes the global jihadist movement, as espoused by al-Qa'ida'. The objectives of TQJBR within Iraq are reportedly to overthrow the Interim Iraqi Government, expel the Multi-National Forces from the country and establish an Islamic state under Sharia law.

2.15 The submission from Mr Emerton raises the following point on ideology:

It needs to be reiterated that it is not generally a crime in Australia to hold a particular religious or political view. Nor is it generally a crime to advocate the overthrow of foreign governments (thus, the Prime Minister committed no crime in advocating the overthrow of the Iraqi government, and earlier governments committed no crime in advocating the overthrow of government to which they were opposed on various political grounds).⁷

Mr Emerton goes on to suggest that the relevant question to ask is whether there is a connection between ideology and violence.⁸

2.16 In the case of TQJBR, there does appear to be a strong connection between the group's ideology and violence. The group has been held responsible for numerous violent attacks, including the kidnapping and murder of foreign civilians, the bombing of the United Nations headquarters in Baghdad and attacks on Iraqi security forces. These violent attacks have been conducted in pursuit of the group's objective to expel the Multi-National Forces and establish an Islamic state in Iraq.

Links to other terrorist groups

2.17 The Attorney-General's statement of reasons reports that TQJBR is linked to, and supports, al-Qa'ida. The nature of the relationship between TQJBR and al-Qa'ida is significant. Former US Secretary of

7 Submission No 3, Mr Patrick Emerton, p. 10.

8 Submission No 3, Mr Patrick Emerton, p. 10.

State, Colin Powell, in his February 2003 address to the United Nations Security Council, described Abu Mus'ab al-Zarqawi, the leader of TQJBR, as 'an associate and collaborator of Bin Laden and his Al-Qaeda lieutenants.'⁹ The Attorney-General's statement of reasons reports that the group:

...was subsequently changed to TQJBR on 17 October 2004 in a public pledge of allegiance to Usama Bin Laden via an internet posting. A subsequent statement by Usama bin Laden, broadcast on 27 December 2004, welcomed the union and exhorted mujahideen in Iraq to obey al-Zarqawi.

- 2.18 Nevertheless, a *Newsweek* story which claimed to have seen secret transcripts of the interrogations of a Jordanian militant, suggested that TQJBR and al-Qa'ida interacted, but were 'competing with each other for funds and recruits'.¹⁰ Jane's notes that:

While they are both committed to waging a violent war in the name of Islam, the nature of the relationship between Zarqawi and Bin Laden remains unclear....The memberships of their groups allude to geographic divisions and rivalries. While Al-Qaeda's core membership is composed largely of Saudi, Yemeni and other Gulf Arab militants allied with a radical faction of El-Gihad (Egyptian Islamic Jihad), Zarqawi and his associates are mostly Jordanian, Syrian and Palestinian, apparently allied with Kurdish Islamists in Iraq.¹¹

- 2.19 The question remains as to whether TQJBR and al-Qa'ida are partners, rivals or autonomous entities? At the hearing on 2 May 2005, ASIO implied to the Committee that they accepted that there was a link between the two organisations.¹² The Committee also notes that TQJBR has been listed by the United Nations on the 1267 Committee List as a group that is associated with al-Qa'ida.

Links to Australia

- 2.20 The Committee understands that a direct link to Australia is not legally necessary in order for an organisation to be listed under the

9 Jane's Terrorism and Insurgency Centre, *Al-Tawhid*, 21 September 2004, <http://jtic.janes.com>, p. 6.

10 Jane's Terrorism and Insurgency Centre, *Al-Tawhid*, 21 September 2004, <http://jtic.janes.com>, p. 4.

11 Jane's Terrorism and Insurgency Centre, *Al-Tawhid*, 21 September 2004, <http://jtic.janes.com>, p. 6.

12 Classified transcript, Private hearing 2 May 2005, pp. 3-4.

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.

- 2.21 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.¹³ 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. 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.

- 2.22 The submission from Mr Patrick Emerton emphasises this point and suggests 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,

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

and Australian families, and Australian communities, of any decision to ban the organisation.¹⁴

- 2.23 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 a primary consideration. The views of ASIO, the Attorney-General and Mr Emerton would appear to be consistent with the Committee's opinion.
- 2.24 The Attorney-General's statement of reasons does not address whether there are any current or past connections between TQJBR and Australia, either through membership, support, training or financial donations.
- 2.25 At the hearing, the Committee sought further information on whether there are any Australian links with TQJBR. ASIO provided the Committee with information as to the links to Australia.¹⁵

Threat to Australian interests

- 2.26 The Attorney-General's statement of reasons is of the view that 'Australia is seen as a legitimate target by TQJBR.' At the hearing, officers from DFAT advised the Committee that:
- Al-Zarqawi has declared a jihad against Australia. He is active as we speak and is involved in anti-Australian activities.¹⁶
- 2.27 TQJBR has claimed responsibility for an attack on an Australian Defence Force convoy in Baghdad last year and a vehicle bombing near the Australian Embassy in Baghdad in January of this year. There is no suggestion that the proscription of this organisation will prevent such attacks in the future. Mr Emerton's submission suggests that the domestic criminal law in Iraq already protects Australians in Iraq against attacks by TQJBR.¹⁷ This, of course, is subject to the physical capacity of the authorities in Iraq to enforce their laws. However, the capacity of Australia's anti-terrorism laws in Iraq would be no greater.

14 Submission No 3, Mr Patrick Emerton, p. 4

15 Classified transcript, Private hearing 2 May 2005, p. 4 and p.9.

16 Transcript, Private hearing 2 May 2005, p. 14.

17 Submission No 3, Mr Patrick Emerton, p. 10.

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- 2.28 At the hearing, officers from ASIO were asked to explain how a listing would assist in the protection of Australian assets or personnel overseas. There was no direct answer to this question other than to say that the legislation was there for a deterrent effect to inhibit Australians from cooperating with any listed entities.¹⁸

Proscription by the UN or like-minded countries

- 2.29 The group was included in the United Nations (UN) 1267 Committee List on 18 October 2004 by the name Jama'at al-Tawhid wa'al-Jihad under the category of groups associated with al-Qa'ida. The United States Government designated the group as a Foreign Terrorist Organisation (FTO) under the *Immigration and Nationality Act* on 15 October 2004.
- 2.30 It is not clear how this factor is being applied in deciding whether to list an organisation under the Criminal Code.
- 2.31 The listing of TQJBR by the UN already imposes obligations on Australia. The individuals and entities on the UN 1267 Committee List are automatically incorporated onto a Consolidated List maintained by DFAT under the *Charter of the United Nations Act 1945*.¹⁹ It is a criminal offence to deal with the assets of, or make assets available to, individuals or entities on the Consolidated List.
- 2.32 Although the group has been designated as a FTO in the United States of America, TQJBR is not currently proscribed by the United Kingdom or Canada.
- 2.33 At the hearing, the Committee sought further guidance on this issue. ASIO did not know why the UK and Canada had not listed TQJBR. They took the question on notice; however, they suggested that the knowledge of the existence of a network under the name TQJBR supporting the individual, al-Zarqawi, was relatively recent.²⁰

Engagement in peace/mediation processes

- 2.34 TQJBR is not involved in any peace processes. However, at the private Committee hearing on 1 February 2005, the Director-General of Security elaborated on this factor to include the consideration of

18 Classified transcript, Private hearing 2 May 2005, p. 6.

19 See: http://www.dfat.gov.au/icat/freezing_terrorist_assets.html

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

whether terrorist actions are confined 'to targets within domestic or local struggles.'²¹

2.35 The Attorney-General's statement of reasons states that:

more broadly, TQJBR supports and promotes the global jihadist movement, as espoused by al-Qa'ida, seeks the recovery of Muslim lands perceived as 'lost' at any point in history, and the removal of governments of Muslim nations assessed by the network to be apostate.

2.36 However, Jane's notes the following on this issue:

While typically labelled as Al-Qaeda by officials keen to link their insurgency problems with the US-led 'war on terror', the majority of these militants appear to be pursuing more parochial agendas, rather than continuing the attempt to internationalise local conflicts with more attacks on the USA....Indeed, Zarqawi seems to present a particular threat to the countries of 'Greater Syria', which includes Jordan, Israel/Palestine, Syria and Lebanon, as well as Iraq.²²

2.37 The Committee remains unclear on the extent of TQJBR's objectives and operations.

Conclusion

2.38 It is evident from the Attorney-General's statement of reasons that TQJBR has committed violent crimes in pursuit of their objectives. The group has kidnapped and murdered civilians and attacked Multi-National Forces and members of the Interim Iraqi Government.

2.39 The Committee strongly condemns the violent acts of TQJBR. The proscription of TQJBR in Australia is potentially useful insofar as it prevents Australians from assisting the organisation either financially or personally.

21 Joint Parliamentary Committee on ASIO, ASIS and DSD, *Review of the listing of six terrorist organisations*, March 2005, p. 17.

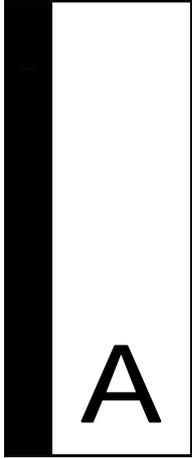
22 Jane's Terrorism and Insurgency Centre, *Al-Tawhid*, 21 September 2004, <http://jtic.janes.com>, pp. 8 -9.

Recommendation 1

The Committee does not recommend disallowance of the regulation.

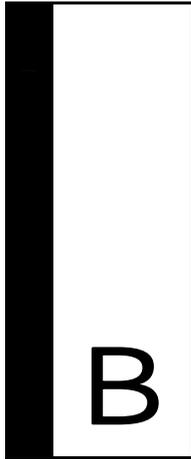
Senator Alan Ferguson

Acting Chairman



Appendix A – List of submissions

1. Attorney-General's Department
2. Attorney General's Department
3. Mr Patrick Emerton
4. Department of Foreign Affairs and Trade supplementary submission



Appendix B – Witnesses appearing at the private hearing

Canberra (Private Hearing)

Monday, 2 May 2005

Attorney-General's Department

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

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

Department of Foreign Affairs, Defence and Trade

Mr James Larsen, Assistant Secretary, Legal Adviser, Legal Branch

Mr Andrew Goledzinowski, Assistant Secretary, Counter-Terrorism Branch

Australian Security Intelligence Organisation

Mr Ian Cousins, Deputy Director-General of Security

Director – Government and Communications

Legal Adviser