

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, planning, assisting in or fostering the doing of a terrorist act (whether or not a terrorist act has occurred or will occur): or
 - advocates the doing of a terrorist act (whether or not a terrorist act has occurred or will occur).¹
- 2.2 In previous reports, the Committee has commented on the breadth 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, whereas others have. To date, no organisation has been listed on the basis of the advocacy of terrorism.
- 2.3 In order to understand the process of selecting organisations for listing, the Committee sought guidance from ASIO. At the hearing on 1 February 2005 for the *Review of the listing of six terrorist*

¹ Paragraphs 102.1(2) (a) and (b) 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.

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.³

2.4 The Committee accepted these criteria as useful and has used them as the basis of its reviews over the last three years. However, matching information within the statements of reasons with the criteria has proved to be elusive. Therefore, the Committee has asked the Attorney-General to use the criteria as the basis of statements of reasons. This has not yet occurred. The statement of reasons on TQJBR, provided by ASIO for the Attorney-General, is not structured to address these factors specifically.⁴

The re-listing of TQJBR

2.5 The Attorney-General informed the Committee of the proposed listing by letter dated 2 February 2007 with an attached statement of reasons. On 19 February 2007, the Attorney-General issued a media release announcing the decision to re-list TQJBR. The media release provided open source details on the organisation.

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

Tanzim Qa'idat al-Jihad ft Biiad al-Rafidayn

(Also known as: the al-Zarqawi network; ai-Tawhid; Jama'at al-Tawhid wa'al-Jihad; Al-Tawhid and al-Jihad; The Monotheism and Jihad Group; Qa'ida 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 Land of the Two Rivers; The Organisation of Jihad's Base in the Country of the Two Rivers; The Organisation Base of

3 Confidential exhibit, ASIO, tabled 1 February 2005.

4 See discussion of this issue in Chapter 1.

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; Al-Qa'ida in Iraq; Al-Qa'ida in Iraq - Zarqawi; Islamic State in Iraq and; Mujahidin Shura Council.)

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. ASIO assesses that the details set out below are accurate and reliable.

TQJBR is listed in the United Nation's 1267 Committee's consolidated list and as a proscribed terrorist organisation by the government of the United States.

Current status of TQJBR

TQJBR is a Sunni Islamic extremist network established and originally led by Abu Mus'ab al-Zarqawi until his death on 7 June 2006. He has been replaced by Abu Hamza al-Muhajir, also known as Abu Ayyub al Masri.

The network, al-Tawhid wal-Jihad, first emerged as a group of, mainly Jordanian, individuals under the leadership of al-Zarqawi over a period of several years, following his release from a Jordanian prison in 1999. From May 2002 al-Zarqawi worked closely with Ansar al-Islam, until Ansar al-Islam and its members were scattered following intense action in northern Iraq in 2003. Al-Zarqawi's group found prominence following the attacks against the UN headquarters in Baghdad on 19 August 2003 and the kidnap and televised beheading of US hostage Nicolas Berg in May 2004.

During 2004 al-Zarqawi's group operated under the name Jama'at al-Tawhid wa'al-Jihad. The name Jama'at al-Tawhid wa'al-Jihad was subsequently changed to Tanzim Qa'idat al-Jihad fi Bilad al-Rafidayn 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. TQJBR literally translates to the al-Qa'ida of Jihad Organisation in the Land of the Two Rivers. It is now commonly referred to as al-Qa'ida in Iraq.

On 15 January 2006 it was announced that al-Zarqawi had brought together five jihadi groups in Iraq under one umbrella group, the Mujahideen Shura Council. TQJBR is the dominant group under the Council but other members include Victorious Sect Army, Ansar al-Tawhid, al-Ghuraba, al-Jihad al-Islami and al-Awhal. On 15 October 2006 the Mujahideen Shura Council declared the establishment of the Islamic State of Iraq. While attacks are claimed by the Ministry of Information of the Islamic State of Iraq, TQJBR conducts or directs these attacks in its own right as the dominant member of the Mujahideen Shura Council. TQJBR no longer publicly claims responsibility for attacks it has conducted.

TQJBR maintains a finance committee which collects the necessary funds to finance TQJBR's various activities. The finance committee relies on a global network of activists who collect donations from businesses, mosques and individuals. Funding is also supplemented by the individual finances of the operatives. Many operatives and cells are self funded, including through criminal activity, and require a minimum of upkeep when undertaking jihad in Iraq.

Australia is seen as a 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.

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 suicide bombings, vehicle bombs, small arms ambushes, kidnappings and executions. The network has also undertaken attacks outside of Iraq, including in Jordan.

TQJBR makes frequent statements advocating the conduct of terrorist activities using al-Qa'ida's media outlet, the Global Islamic Media Group. The statements have advocated the use of violence in achieving its aims.

Objectives

The objectives of TQJBR within Iraq are to overthrow the current Iraqi Government, expel the Multi-National Forces from the country, combat Shiite centres of power and establish an Islamic state under Sharia law.

More broadly, TQJBR seeks, through jihad, to liberate all Muslim territories from infidel regimes, and the removal of governments of Muslim nations assessed by the network to be apostate.

Leadership and membership

TQJBR was established and continuously led by al-Zarqawi until his death on 7 June 2006. As of 13 June 2006 Abu Hamza al-Muhajir has led TQJBR. Field commanders, in coordination with battalion commanders and regional organisation leaders, make decisions with regard to day to day operations but defer to the leadership on major operational issues.

The strength of the operational network in Iraq is not known. The group claims to have 15 brigades with these ranging from 100 to 300 operatives each. Given these figures, an estimate of between 1500 and 4500 operatives is plausible. Zarqawi historically maintained a network in Europe and the Middle East.

TQJBR's engagement in terrorist activities

TQJBR currently conducts several attacks a day in Iraq against a variety of sectarian, Iraqi Government and Coalition targets. Significant terrorist attacks for which responsibility has been claimed by, or reliably attributed to TQJBR have included:

- 10 April 2004: Kidnap and murder of US civilian contractor Nicolas Berg. His decapitated body was found on 10 May 2004;
- 24 April 2004: Attempted suicide boat bombing of Iraq's Basra oil terminal;
- 24 June 2004: Attacks on Iraqi security forces in Baghdad, Baquba, Mosul, Fallujah and Ramadi;
- 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);

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- 25 October 2004: Vehicle bombing of an Australian Defence Force convoy in Baghdad, killing and wounding a number of Iraqi civilians and wounding a further three ADF personnel;
 - 19 January 2005: Vehicle bombing near the Australian Embassy, Baghdad, killing two Iraqi nationals and injuring several people including two ADF personnel;
 - 19 August 2005: Two rockets fired on US warships moored offal Aqaba port in Jordan. Both missed;
 - 24 October 2005: Three suicide car bombs exploded at the Sheraton and Palestine Hotels complex in Baghdad in a coordinated operation. At least 15 people were killed in the operation;
 - 9 November 2005: Grand Hyatt, Radisson SAS and Days Inn hotels bombed killing 52 people and injuring 115. Suicide bombers carried out simultaneous attacks at around 8.50pm on the three hotels;
 - 27 December 2005: Ten rockets fired on northern Israeli towns from southern Lebanon;
 - 22 February 2006: Attack on the Shi'a al-Askariyah Golden Mosque in Samarra;
 - 20 June 2006: Two US soldiers taken hostage on 16 June are found dead. Both bodies were mutilated and one was beheaded; and
 - 25 June 2006: Four Russian diplomats taken hostage on 3 June 2006 were executed. The executions were filmed showing one shot in the head and at least two being beheaded.

Conclusion

The Criminal Code provides that, for an organisation to be listed as a terrorist organisation, the Attorney-General must be satisfied that:

(i) the organisation is directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of a terrorist act (whether or not a terrorist act has occurred or will occur); or

(ii) the organisation advocates the doing of a terrorist act (whether or not a terrorist act has occurred or will occur).

On the basis of the above information, ASIO assesses TQJBR is directly engaged in preparing, planning, assisting in or fostering the doing of terrorist acts. It is submitted that the acts attributable to TQJBR are terrorist acts as they:

(i) are done with the intention of advancing a political cause, namely, creating an Islamic state in Iraq.

(ii) are intended to coerce or influence by intimidation the governments of foreign countries, including Iraq and Coalition countries, and/or intimidate a sections of the public.

(iii) constitute acts which cause serious physical harm to persons, including death, as well as serious damage to property.

This assessment is corroborated by information provided by reliable and credible intelligence sources.

- 2.7 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

- 2.8 It was clear in the last review of this organisation that it had engaged in terrorist acts of a particularly gruesome kind. On 7 June 2006, the leader of the network, Al-Zarqawi himself, was killed as a result of a Coalition air attack on his safe house.
- 2.9 According to the statement of reasons, in the period under review, 2005 to 2007, TQJBR has been subsumed (January 2006) into a 'larger coalition of groups', the Mujahideen Shura Council, of which TQJBR is the 'dominant group'.⁵ On 15 October 2006, the Council declared the establishment of the Islamic State of Iraq. It is the Council that has claimed responsibility for terrorist activity in the period under review.
- 2.10 The last review listed numerous cases of violence for which the group claimed responsibility. Many of these are included in the new statement of reasons.
- 2.11 The current statement lists seven actions which have occurred since the last review. Of these, four were conducted inside Iraq. These have involved rocket attacks on US war ships, car bombings and suicide bombings, kidnapping and the beheading of hostages. Of these actions, five occurred in the 12 months prior to al-Zarqawi's

5 Statement of Reasons p. 1.

death and two have occurred since his death, both in the same month. [Since October 2004, TQJBR] 'has lost dozens of lieutenants and high ranking network members through Coalition and Iraqi security force operations',⁶ according to the US State Department.

- 2.12 The Committee was advised that there had been no amelioration in the activities of TQJBR and that the death of the leader had not lessened its operations.
- 2.13 TQJBR claims that it has 1500 to 4500 operatives based on 15 brigades ranging from 100 to 300 operatives each.⁷ This is an increased estimate from the last review when the network was said to number 500 to 1000 people. The US State Department describes its strength as 'more than 1,000 members, but the exact number is unknown'. Jane's and other terrorism databases suggest that its strength is 'impossible to estimate', Jane's commenting that 'its membership is likely to be very small given the unpopularity of indiscriminate attacks against Muslim civilians.'⁸
- 2.14 Estimates of the insurgency itself, of which TQJBR is a part, have varied enormously. Much of the information available through open sources predates the period of this review. Jane's quotes US military sources as estimating the number of insurgents active in Iraq as having grown from 5,000 in November 2003 to 15, 000 to 20,000 in June 2005. The Iraqi Intelligence Chief, General Muhammad Adbullah Shahwani said in January 2006 that there were 200,000 insurgents, spearheaded by at least 40,000 hardcore fighters. Foreign fighters have been estimated to be 5 to 10 per cent of the insurgency.⁹ The Australian security commentator, Clive Williams, in a recent article described the Sunni insurgency as 'probably 20,000 fighters, with considerable local support' and the 'international terrorists in Iraq, also mostly Sunnis, including al-Qa'ida in Iraq, probably number 1500.'¹⁰
- 2.15 At the hearing the Committee was told that Iraqis comprised the majority of al-Qa'ida in Iraq, that this was the dominant organisation within the insurgency and that the numbers involved

6 US State Department, The Country Reports on Terrorism 2005, "Al-Qa'ida in Iraq"

7 See the statement of reasons above.

8 <http://jtic.com/JDIC>, *al-Tawhid*, p.6. <http://www.tbk.org/Group.jsp>, *MIPT Terrorism Knowledge Base*, p. 1.

9 <http://jtic.com/JDIC>, *Iraqi Sunni Insurgents*, p. 7.

10 Clive Williams, *Australia's continuing presence in Iraq remains unclear*, The Canberra Times, 8 March 2007.

were trending upward. Officers of DFAT reiterated that the organisation is the dominant part of the Mujahideen Shura Council, but retains a distinct identity and is no less potent because of its cooperation with others.¹¹

Ideology and links to other terrorist groups/networks

Ideology

- 2.16 Although ASIO has listed ideology as one of the criteria for choosing to list an organisation as a terrorist organisation, ideology is not a category addressed in the statement of reasons. The closest the statement comes to ideology is under the heading 'Objectives'. These words are not necessarily synonymous.
- 2.17 In the initial review in 2005, the objective of TQJBR was cited as one that 'supports and promotes the global jihadist movement, as espoused by al-Qa'ida'. The objective of TQJBR within Iraq was reportedly to overthrow the Interim Iraqi Government, to expel the Multi-National Forces from the country and to establish an Islamic state under Sharia law. These objectives are unchanged.¹² There is a mixture here of military, revolutionary and political objectives. Expelling the Multi-National Forces from Iraq is a military objective. This objective, consistent with al-Qa'ida's objectives, is broadened to include the liberation of 'all Muslim territories from infidel regimes and the removal of governments of Muslim nations assessed by the network to be apostate.'¹³
- 2.18 Changing governments and political systems, even to one that institutes Sharia law, is a fundamentally political objective, albeit a revolutionary one in the case of the overthrow of existing regimes in the Middle East. However, it is the use of extreme violence directed at civilians to achieve that aim that defines the organisation as a terrorist organisation and puts the organisation outside acceptable political debate and processes.
- 2.19 TQJBR's record in this respect is self-proclaimed.

11 Transcript, Private hearing 23 March 2007, p.5.

12 ASIO's analysis in the current statement of reasons has altered little since that report, substituting the overthrow of the 'current Iraqi government' for the 'Interim Iraqi government'.

13 See the statement of reasons above.

Links to other terrorist groups

- 2.20 TQJBR is also known as al-Qa'ida in Iraq. The Attorney-General's statement of reasons reports that TQJBR is linked to, and supports, al-Qa'ida. This is evidenced by the 'public pledge of allegiance to Usama bin Laden via an internet posting' and a 'subsequent statement by Usama bin Laden, broadcast on 27 December 2004, [which] welcomed the union and exhorted the mujahideen in Iraq to obey al-Zarqawi.'¹⁴ These statements were part of the original statement of reasons in 2005.
- 2.21 As discussed in the previous review, while not doubting the overlapping objectives between al-Qa'ida and TQJBR to remove foreign forces from Muslim lands, the nature of the relationship between them is not necessarily clear or aligned. In the last review the Committee noted that Jane's argued:
- 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.¹⁵
- 2.22 This question as to whether TQJBR and al-Qa'ida are partners, rivals or autonomous entities, has been added to by the alleged reaction of al-Qa'ida to the bombings in Amman in November 2005.
- 2.23 Clearly, since the last review, the organisation has merged with other insurgents groups in Iraq under the umbrella of the Mujahideen Shura Council. These are listed in the statement of reasons as: the Victorious Sect Army; Ansar al-Tawhid; al-Ghuraba; al-Jihad al-Islami; and al-Awhal.

Links to Australia

- 2.24 As noted in previous reports, the Committee understands that a direct link to Australia is not legally necessary in order for an

14 See the statement of reasons above.

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

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 and it has been the Committee's view that it should be a primary consideration. 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. Evidence was given on this matter.

Threat to Australian interests

- 2.26 The current statement of reasons repeats the information in the last regarding TQJBR being a threat to Australian interests:

Australia is seen as a 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.

Proscription by the UN or like-minded countries

- 2.27 The group is included in the 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, although it is not on the US Terrorist Exclusion List.
- 2.28 Since the last review by this Committee, Canada has included the group as a specified group.
- 2.29 As noted in Chapter 1 DFAT has confirmed that TQJBR is listed by the European Union pursuant to UNSCR 1267 and the obligations in relation to travel bans and the freezing of assets are implemented through the law of EU Member States. There was no information made available about whether TQJBR is listed for general criminal law purposes in any EU Member State except for the UK. The UK regards TQJBR as an integral part of al-Qa'ida and as such it is subsumed under the listing of al-Qa'ida.

Engagement in peace/mediation processes

2.30 TQJBR is not involved in any peace processes.

Conclusion

- 2.31 It is evident TQJBR has in the past committed violent crimes in pursuit of its objectives. The group has kidnapped and murdered civilians and attacked Multi-National Forces and members of the Iraqi Government. The US State Department states that 'al-Qa'ida in Iraq (TQJBR) has lost dozens of lieutenants and high ranking network members through Coalition and Iraqi security force operations. The Committee notes, in addition, that apart from two 'activities' shortly after the death of al-Zarqawi in June 2006, no other terrorist activities have been attributed to TQJBR. In making a judgement about the continuing strength of TQJBR and the need to re-list the organisation, the Committee is aware of the incorporation of the organisation into the Mujahideen Shura Council and the paucity of reliable information coming out of the difficult situation in Iraq.
- 2.32 The Committee strongly condemns violent acts in pursuit of political objectives. The proscription of TQJBR in Australia is potentially useful insofar as it prevents Australians from assisting the organisation either financially or personally.

Recommendation 1

The Committee does not recommend disallowance of the regulation.

Hon David Jull, MP

Chairman