
The Parliament of the Commonwealth of Australia

Review of the relisting of Hizballah's External Security Organisation (ESO)

Parliamentary Joint Committee on Intelligence and Security

July 2007
Canberra

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ISBN 978-0-642-78962-4 (Printed version)

ISBN 978-0-642-78963-1 (HTML version)



Contents

Membership of the Committee	iv
Terms of reference	v
Recommendation	vi

THE REPORT

1 Introduction	1
The Government's procedures	2
2 The relisting of Hizballah's ESO	5
Hizballah, the ESO and the IR	6
Engagement in terrorism	8
Ideology and links to other terrorist groups/networks	9
Links to Australia	10
Threat to Australian interests	10
Proscription by the UN or like-minded countries	10
Engagement in peace/mediation processes	11
Conclusion	11

APPENDICES

A Appendix A – List of Submissions	13
B Appendix B – Witnesses appearing at the private hearing.....	15



Membership of the Committee

Chair The Hon David Jull MP

Deputy Chair Mr Anthony Byrne MP

Members Mr Stewart McArthur MP

 The Hon Duncan Kerr SC MP

 Mr Steven Ciobo MP

Senator Alan Ferguson

Senator the Hon Robert Ray

Senator the Hon John Faulkner

Senator Fiona Nash

Committee Secretariat

Secretary Ms Margaret Swieringa
(till 1 June 2007)

 Mr Stephen Boyd
(from 4 June 2007)

Inquiry Secretary Dr Cathryn Ollif

Administrative Officer Mrs Donna Quintus-Bosz



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 Intelligence and Security

Review of listing regulation

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

And

Criminal Code Amendment Regulations 2005 (No 1)

Select Legislative Instrument 2007 No.3

Registered: 24 May 2007 (FRLI: F2007L01465)



Recommendation

2 The relisting of Hizballah's ESO

Recommendation 1

The Committee does not recommend the disallowance of the regulation made to proscribe Hizballah's External Security Organisation.

Introduction

- 1.1 This review is conducted under section 102.1A of the *Criminal Code Act 1995* (the Criminal Code). Section 102.1A provides that the Parliamentary Joint Committee on Intelligence and Security (the Committee) may review a regulation specifying an organisation as a terrorist organisation for the purposes of paragraph (b) of the definition of terrorist organisation in section 102.1 of the Criminal Code and report the Committee's comments to each house of the Parliament before the end of the applicable disallowance period.
- 1.2 Under section 102(3) of the Criminal Code regulations, the listing of organisations as terrorist organisations ceases to have effect on the second anniversary of the day on which they took effect. The organisations must, therefore, be relisted.
- 1.3 The Committee is currently conducting a full review of the operations, effectiveness and implications of the proscription powers and expects to report on this matter soon. A number of approaches to the proscription process are being examined and it is hoped that procedures may be refined as a result of the review. In particular, the criteria and the way in which they are applied will be addressed. In the meantime, in this review, the Committee has used the criteria and assessment methods which it has used throughout its consideration of listings and relistings over the last three years.
- 1.4 This review covers the relisting of Hizballah's External Security Organisation (ESO). The ESO (also known as Islamic Jihad Organisation and Hizballah International) was originally listed in 2003 under legislative arrangements which required that

organisations to be listed had to be on the United Nations list of terrorist organisations. In 2005, the ESO came up for review under new legislative arrangements, which had been passed by the Parliament in 2004. At that time, the Committee reviewed the relisting of the ESO and reported to Parliament in September 2005. This review is of the second relisting.

- 1.5 The Attorney-General wrote to the Chairman of the Committee on 7 May 2007 advising that he had decided to relist Hizballah's ESO as a terrorist organisation for the purposes of section 102.1 of the *Criminal Code Act 1995*.
- 1.6 The regulation was tabled in the House of Representatives on 29 May 2007 and in the Senate on 12 June 2007. The disallowance period of 15 sitting days for the Committee's review of the listing began from the date of the first tabling. Therefore, the Committee is required to report to the Parliament by 15 August 2007.
- 1.7 The Committee advertised the inquiry in *The Australian* on 5 June 2007. Notice of the inquiry was also placed on the Committee's website. Two submissions were received from the public.
- 1.8 The Committee wrote to all Premiers and Chief Ministers inviting submissions. One response was received in which the Chief Minister of the Northern Territory advised the Committee that the Northern Territory did not wish to make a submission to the enquiry.
- 1.9 Representatives of the Attorney-General's Department, ASIO and the Department of Foreign Affairs and Trade (DFAT) attended a private hearing on the listings on 18 June 2007 in Canberra.
- 1.10 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 relisting the ESO and chapter 2 will consider the merits of the listing.

The Government's procedures

- 1.11 In a letter sent to the Committee on 29 May 2007, the Attorney-General's Department informed the Committee of its procedures in relation to the relisting of Hizballah's ESO. These procedures are set out in Appendix A.

- 1.12 An unclassified Statement of Reasons¹ for the relisting of the ESO was prepared by ASIO in consultation with DFAT. The Committee heard that DFAT was consulted at the initial stage of developing the statement of reasons and, also, 'there was consultation on the finalised document'².
- 1.13 There were twelve working days between the time when the Attorney-General sent letters to the Prime Minister, the Leader of the Opposition, the Attorneys of the States and Territories and the Chairman of the Parliamentary Joint Committee on Intelligence and Security on 7 May 2007 and when the Governor-General made the regulation on 23 May 2007. The Committee notes, as it has in previous reports, that letters were addressed to Attorneys in the States and Territories rather than the Premiers and Chief Ministers as agreed under subclause 3.4(6) of the *Inter -Governmental Agreement on Counter-terrorism Laws*.
- 1.14 The Leader of the Opposition did not seek a briefing on the matter and, at the time of the hearing, two State governments (Western Australia and Queensland) had replied to the Attorney-General advising no objection to the relisting.³
- 1.15 On 24 May 2007, the Attorney-General issued a media release announcing the decision to relist Hizballah's ESO. There was no other community consultation regarding this relisting.
- 1.16 In his submission Dr Emerton noted that community consultation would have provided 'members of the Australian community who oppose the listing of the ESO as a terrorist organisation' with the opportunity to express their views.⁴ While the Committee agrees that community consultation would be desirable, it notes that, as

1 The *Statement of Reasons* is in Submission No.1 at Appendix B.

2 Transcript, private hearing 18 June 2007, p. 10.

3 During the course of this enquiry, the Committee secretariat was contacted by a staff member in the Chief Minister's Department of the Northern Territory government. The caller noted that because the Attorney-General's Department had sent the letter asking for comments about the relisting to the NT Attorney rather than to the Chief Minister, the letter did not enter the consultative process as it would have done if it had been sent to the Chief Minister. Therefore, the Chief Minister did not know of the relisting until she received the Committee's letter inviting submissions. It was then too late to respond to the Attorney-General if the Chief Minister so wished. On this occasion, the Chief Minister's office did not have any comments to make on the relisting, however the Chief Minister's office noted that it would be preferable if, as agreed under the *Inter - Governmental Agreement on Counter-terrorism Laws*, future notification of listings and relistings could be sent to the Chief Minister.

4 Dr Patrick Emerton, Submission No.5.

mentioned above, it placed an advertisement in *The Australian* calling for submissions from the public in order to provide a forum for members of the Australian community who oppose the listing of the ESO to do so but, apart from submissions by two academics, the Committee received no submissions from any other members of the Australian community.

The relisting of Hizballah's ESO

- 2.1 The current review is for the relisting of an organisation previously listed and fully reviewed. The Committee has previously asked that the information presented to justify each relisting contain a sufficient degree of currency in the evidence to warrant the use of its power of executive discretion. Therefore, the Committee has asked that the emphasis in the material be on the activities of the organisation in the period since the last listing.¹
- 2.2 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 Attorney-General must be satisfied on reasonable grounds that:
- the organisation is directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of a terrorist act (whether or not the terrorist act has occurred or will occur); or
 - the organisation advocates the doing of a terrorist act (whether or not a terrorist act has occurred or will occur).²
- 2.3 The Director-General of ASIO previously advised the Committee of ASIO's evaluation process in selecting entities for proscription under the Criminal Code. Factors included:
- engagement in terrorism;

1 Parliamentary Joint Committee on Intelligence and Security, *Review of the relisting of ASG, JuA, GIA and GSPC*, February 2007, p. 4.

2 Paragraphs 102.1(2) (a) and (b) of the Criminal Code.

- 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 has used these criteria as the basis of its reviews over the last three years.
- 2.5 After the following brief discussion about where the ESO fits into the Hizballah organisation, an assessment of the relisting of the ESO will be made against the above criteria using the statement of reasons and other open sources.

Hizballah, the ESO and the IR

- 2.6 Hizballah is a Lebanese Shi'a political organisation with deep roots in Lebanese society. It is said to have widespread and loyal following amongst the Lebanese Shi'a who are the largest and poorest of the ethno-religious communities that make up Lebanese society.
- 2.7 Hizballah has grown and changed significantly since it began and 'has developed into both a legitimate Lebanese political party and an umbrella organisation for myriad social welfare institutions'⁴. Professor Hogg stated:
- [Hizballah] has a strong reputation for honesty and competence that for many observers, including its critics, distinguish it from many other political organisations and politicians in Lebanon. ... Hizballah is a pragmatic organisation that is firmly rooted in and strongly responsive to its national constituency.⁵
- 2.8 After the 2005 elections, Hizballah won fourteen seats in the 128-member Lebanese Parliament and it has two ministers in the government.

3 Confidential exhibit, ASIO, tabled 1 February 2005.

4 Deeb, L, July 2006, 'Hizballah: A Primer', www.merip.org/mero/mero073106.html

5 Associate Professor R. Hogg, Submission No.3.

- 2.9 In its statement of reasons, regarding the relationship between the ESO and Hizballah, ASIO told the Committee only that Hizballah's ESO 'constitutes a distinct terrorist wing within Hizballah's structure'⁶. Dr Patrick Emerton argues that the statement of reasons does not discuss:

The relationship (if any) between Hizballah's political activities and its military activities, and the relationship (if any) between the military activities of the ESO and those of the Lebanese army.⁷

- 2.10 Jane's Terrorism and Insurgency Centre (Jane's) says of the ESO:

[Hizballah] is also said to have a formidable international wing which has been blamed for significant terrorist attacks in the 1980s and early 1990s. The suspected leader of Hizballah's external wing, Imad Mughniyah, remains one of the world's most wanted men.⁸

- 2.11 Separate from the ESO, Hizballah's guerrilla wing in Lebanon is the Islamic Resistance (IR). IR is widely regarded as 'the most capable non-state armed group in the Middle East'.⁹ The Committee heard that 'there is a very clear hierarchy that separates the ESO from the IR'¹⁰.
- 2.12 In July 2006, the IR wing of Hizballah triggered a 34-day conflict with Israel¹¹ when it captured two Israeli soldiers. The performance of Hizballah's military wing during the conflict 'reinforced the conviction that it is one of the most formidable guerrilla organisations in the world ... prepared to take on the might of the Israeli army'¹².
- 2.13 The ESO, according to Jane's, 'is even more secretively run' than the IR, however, Jane's also notes that there is now some debate as to whether the ESO continues to exist, given Hizballah's renewed focus on internal Lebanese politics and defence and the lack in recent years of any terrorist attacks carried out overseas in the ESO's name. Other

6 *Statement of Reasons*, p 1.

7 Dr Patrick Emerton, Submission No.5.

8 <http://jtic.janes.com/JDIC/JTIC/> (accessible by subscription)

9 <http://jtic.janes.com/JDIC/JTIC/>

10 Transcript classified hearing, 18 June 2007, p. 3.

11 In its Middle East Report No.59 the International Crisis Group reported that in Lebanon 1,191 people (civilians, as well as armed fighters) were killed, several thousand were injured and up to one million were displaced as a result of the 2006 conflict. In Israel, 43 civilians were killed and tens of thousands were displaced.

12 <http://jtic.janes.com/JDIC/JTIC/>

commentators believe that the ESO is now no more than '... an umbrella name under which all the terrorist acts associated with [Hizballah] are lumped'¹³.

- 2.14 At the private hearing, the Committee asked ASIO what evidence it has that the ESO does, in fact, still exist. ASIO told the Committee that due to the clandestine nature of the ESO, its activities do not have a high profile and the ESO does not claim responsibility for terrorist attacks so it is difficult to confirm its existence. However, ASIO stated there is no reason to believe the organisation has relinquished its worldwide capability even though this is hard to prove, using open source material. ASIO stated:

... the ESO has a global reach which has been detected in countries around the world. The ESO has mounted international terrorist attacks and there is no reason to believe the organisation has relinquished this worldwide capability.¹⁴

Engagement in terrorism

- 2.15 Both the statement of reasons and Jane's attribute to the ESO responsibility for a series of suicide bomb attacks, aircraft hijackings and kidnappings of Western and Israeli/Jewish targets in Israel, Western Europe and South America, dating back to the early 1980s and into the early 1990s.
- 2.16 Jane's most recent information about specific ESO activity is the 2002 killing of five Israeli civilians and one Israeli Defence Force soldier in northern Israel.¹⁵
- 2.17 Despite lack of evidence of recent ESO activity, ASIO told the Committee that:

The ESO maintains its capacity to undertake significant terrorist attacks and, in February 2007, there were renewed reports that Mughniyeh [the ESO's suspected leader] was undertaking contingency planning for future attacks. It is assessed such planning includes identification and surveillance of prospective targets.¹⁶

13 Blanford, N, *Middle East Report Online: Hizballah in the Firing Line*, April 2003, at: www.merip.org/mero/mero042803.html

14 Submission No.4, Classified Secret.

15 <http://jtic.janes.com/JDIC/JTIC/>

16 *Statement of Reasons*, p 2.

Ideology and links to other terrorist groups/networks

Ideology

2.18 When Hizballah formed in 1982, its stated aim was the establishment of a radical Shi'a Islamic theocracy in Lebanon and the destruction of the state of Israel. While those goals remain core ideological pillars, since the end of the Lebanese civil war in October 1990:

... [Hizballah] has evolved into a more pragmatic socio-political movement. It has gained political legitimacy, with a credible holding of seats in Lebanon's parliament and a social service that far outperforms the state's cumbersome bureaucracy.¹⁷

2.19 The statement of reasons makes no mention of this shift in Hizballah's aims. It states only that 'ultimately, Hizballah aims to create a Shi'a Islamic state in Lebanon and remove all Western and Israeli influences in the region'¹⁸.

2.20 Hizballah's ideology has, according to various commentators, evolved since 1982 and the organisation now no longer actively seeks to impose an Islamic agenda on Lebanon:

Hizballah has genuinely adjusted to the sectarian fabric of Lebanon's society, gradually emphasizing *muqawama*¹⁹ instead of Islamism in its rhetoric and ideology. Hizballah has not abandoned its Islamist ideal, but to the extent that this goal complicates its ability to pursue *muqawama* or erodes its image, Hizballah is willing to do away with it.²⁰

2.21 The International Crisis Group states that Hizballah is now adopting 'a stance of relative passivity', and:

Pressured to undertake a strategic shift, it faces a decision whether its future is one among many Lebanese political parties or whether it will maintain the hybrid nature, half political party and half armed militia, part local organisation and part internationalist movement.²¹

17 <http://jtic.janes.com/IDIC/JTIC/>

18 *Statement of Reasons*, p 1.

19 *Muqawama* is resistance against a formidable occupier, i.e. Israel.

20 El-Hokayem, E. 'Hizballah and Syria: Outgrowing the Proxy Relationship', *The Washington Quarterly*, Spring 2007, The Center for Strategic and International Studies and the Massachusetts Institute of Technology, Volume 30:2, p 45.

21 <http://www.crisisgroup.org/>

Links to other terrorist groups/networks

2.22 In the statement of reasons the Attorney-General told the Committee that:

Hizballah, including the ESO, receives substantial support from Iran, including financial, training, weapons, political and military assistance. Syria is also a significant supporter, particularly in the provision of political and military assistance.²²

2.23 Jane's notes that during 2002 there were reports that Hizballah was co-ordinating with militant Palestinian groups in the confrontation with Israel. The groups were said to include Hamas, Islamic Jihad and Ahmed Jibril's Democratic Front for the Liberation of Palestine. However, Hizballah is reputedly wary of alliances with other guerrilla organisations and is mistrustful of outsiders, believing most Palestinian groups are riddled with informants.²³

Links to Australia

2.24 At the hearing the Committee sought further information on whether there are any Australian links with the ESO. Evidence was given on this matter.

2.25 The Committee took evidence as to whether financial support had been provided to the ESO from Australia. No Australians have been prosecuted for financial support to the ESO, in line with the existing proscription.

Threat to Australian interests

2.26 Nothing in the statement of reasons refers to ESO activity as having had any direct impact on any Australian citizen either domestically or overseas.

Proscription by the UN or like-minded countries

2.27 Hizballah's External Security Organisation has been listed as a terrorist organisation by the government of the United Kingdom. Hizballah (including the ESO) has been listed as a terrorist organisation by the governments of the United States and Canada.

22 *Statement of Reasons*, p 1.

23 <http://jtic.janes.com/JDIC/JTIC/>

Engagement in peace/mediation processes

- 2.28 The statement of reasons does not address this criterion. However, any discussion of participation in peace processes would presumably involve Hizballah in general, with the ESO participating as part of that organisation.
- 2.29 The International Crisis Group reports that United Nations' Resolution 1701 – which was accepted by Israel, Lebanon and Hizballah to bring the 2006 conflict to an end – 'brought quiet but no sustainable peace to the border region'²⁴.
- 2.30 Following 'post-war restrictions on the IR', Hizballah has been 'undergoing a major re-assessment of its options' and is 'resisting domestic and international calls to disarm'²⁵. Further, 'Hizballah's insistence on maintaining the IR has created serious political and sectarian rifts in Lebanon which show no sign of dissipating in the coming months and may indeed worsen'.²⁶

Conclusion

- 2.31 At the hearing, the Committee sought confirmation from ASIO that it is satisfied beyond doubt that the ESO is still a dangerous organisation. ASIO stated that:
- ... the ESO continues to prepare and plan for terrorist acts. It is the ESO that is responsible for planning and coordinating Hizballah's international terrorist related activities. ... the absence of terrorist operations against Western interests during the past decade reflects a calculated policy decision rather than any lack of capability.²⁷
- 2.32 As with some previous reviews of listings and relistings, the Committee will err on the side of caution with respect to this relisting and will not recommend to the Parliament that the regulation be disallowed.

24 International Crisis Group: 'Israel/Hizballah/Lebanon: Avoiding Renewed Conflict' Middle East Report No.59, 1 November 2006, P 1.

25 <http://jtic.janes.com/JDIC/JTIC/>

26 <http://jtic.janes.com/JDIC/JTIC/>

27 Transcript classified hearing, 18 June 2007.

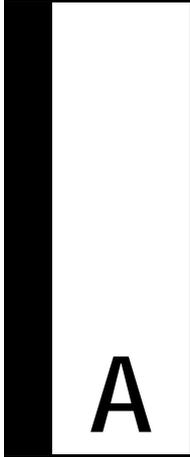
Recommendation 1

The Committee does not recommend the disallowance of the regulation made to proscribe Hizballah's External Security Organisation.

The Hon David Jull, MP

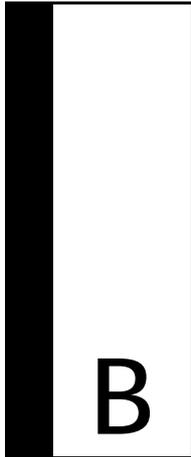
Chairman

24 July 2007



Appendix A – List of Submissions

1. The Hon Philip Ruddock MP, Attorney-General - Statement of Reasons
2. The Hon Philip Ruddock MP, Attorney-General - Process
3. Associate Professor Russell Hogg
4. Australian Security Intelligence Organisation -
Answers to Questions on Notice (Classified SECRET)
5. Dr Patrick Emerton



Appendix B – Witnesses appearing at the private hearing

Canberra (Private Hearing)

Monday, 18 June 2007

Australian Security Intelligence Organisation

Mr Paul O’Sullivan, Director-General

Manager, National Threat Assessment Centre

Attorney-General’s Department

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

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

Department of Foreign Affairs and Trade

Mr Perry Head, Assistant Secretary, Counter-Terrorism Branch

Ms Octavia Borthwick, Director, Middle East Section

Mr Peter Scott, Director, Sanctions and Transnational Crime Section

Ms Alison Duncan, Acting Director, Counter-Terrorism Policy Section

