

STATEMENT OF CASE TO RENEW THE DESIGNATION OF EJERCITO DE LIBERACION NACIONAL (ELN) AS A TERRORIST ENTITY

PURPOSE

1. The purpose of this paper is to assess whether Ejercito de Liberacion Nacional, also known as National Liberation Army (ELN), meets the statutory criteria to renew its designation as a terrorist entity within New Zealand pursuant to the Terrorism Suppression Act 2002 (TSA).
2. The paper concludes that the group meets the criteria for renewal as a designated terrorist entity under the TSA.

STRUCTURE OF THIS PAPER

3. This paper sets out updated information about ELN's continued involvement in terrorist activity and covers any changes and /or developments to the organisation since its original designation, including to its objectives, structure, weapons and tactics and includes any recent attacks which meet the definition of a terrorist act under the TSA.
4. This updated information, together with the information contained in the original designation paper¹ inform the analysis of whether reasonable grounds for designation still exist and provide the basis for the conclusion that the group meets the legal criteria to renew its designation as a terrorist entity under the TSA.

STATUTORY CRITERIA FOR THIS DESIGNATION RENEWAL UNDER THE TSA

5. Section 35(1) of the TSA provides that a designation of a terrorist entity expires three years after the date of designation unless it is earlier revoked or renewed by the Prime Minister. The original designation is made pursuant to s 22 of the TSA, which provides that the Prime Minister may designate an entity as a terrorist entity if the Prime Minister believes on reasonable grounds that the entity has knowingly carried out, or has knowingly participated in the carrying out of, one or more terrorist acts ("terrorist act" is defined in s 5). Carrying out a terrorist act includes the planning, preparation or credible threat to carry out the act, whether it is actually carried out or not (s 25(1)(a) and (b)) and also includes an attempt to carry out the act (s 25(1)(c)).
6. The Prime Minister may renew that designation for a further three years under s 35(2) if satisfied that there are still reasonable grounds as set out in s 22 for the entity to be designated under that section.
7. Before the expiry of an order made under s 35(2), the Prime Minister may make another order under s 35(3) renewing the designation concerned for a further three years. The Prime Minister may make any number of orders under s 35(3) in respect of the same designation (s 35(5)).

CREDIBILITY OF SOURCES

8. This paper has been prepared using open or unclassified sources which have a reputation for careful and unbiased reporting. These are: BBC, Jane's Terrorism series, Reuters, Royal United Services Institute, Alert Net, The Economist, Christian Science Monitor, Council on Foreign Relations, Global Post, Start Global Terrorism Database, Landmines and Munitions Monitor and ISN Security Watch.

9. In addition, some Latin American news media sources have been consulted including El Tiempo, El Colombiano, Latin American Herald Tribune and Colombia Reports. A report on Colombian human rights written by the United Nations Human Rights Council and the official website of ELN were also utilised.

CONTINUED INVOLVEMENT IN TERRORIST ACTIVITY

10. ELN was designated as a terrorist entity on 15 December 2010.²
11. On 17 March 2011, four soldiers were killed and two others wounded when ELN militants opened fire on a military vessel near Amparo on the Arauca River in Arauca.³ The two injured soldiers suffered bullet wounds to their backs. The ELN militants, who were also travelling by boat, fired at the stationed military vessel at close range before fleeing.⁴ Four ELN members were captured in Venezuela the next day.⁵
12. On 22 March 2011, Judge Gloria Constanza Gaona was shot and killed by members of ELN as she made her way to a municipal court in northern Colombia.⁶ The Judge was shot in a motorbike drive-by style shooting.⁷ In May 2011, Colombian police arrested three men, alleged to be ELN members, for the assassination. Authorities stated that ELN executed the attacks to discredit national security forces.⁸
13. On 7 May 2011, a hospital in the municipality of Sucre, Cauca was nearly completely destroyed when it was hit by six explosives.⁹ Nearby homes were also badly damaged.¹⁰ The attack, which involved explosives including grenades and mortar rounds, was attributed to ELN.¹¹ The hospital's emergency room and laboratories were decimated and one civilian was injured.
14. On 18 June 2011, a police officer was killed and 16 other people, including civilians, were wounded when ELN militants detonated a Vehicle-Borne Improvised Explosive Device (VBIED) at a security checkpoint on the outskirts of the city of Popayan, Cauca department.¹² The driver of the car admitted to police that he was a member of ELN, but he and his passenger were able to escape after police discovered the bomb in the back of the car.¹³ Police warned bystanders to leave the area, but the explosive was detonated minutes after being discovered. This was ELN's first recorded use of a VBIED.¹⁴ Following the incident, local security sources claimed that the intended target was the centre of the city, rather than the non-residential area in which it was detonated.¹⁵ Police stated the bomb could have been in retaliation for anti-narcotics operations in the area.¹⁶
15. On 9 July 2012, three Colombian police officers were killed and one injured when ELN members attacked them with explosives. The police officers were providing protection for an oil company in the Casanare department in eastern Colombia when they were ambushed.¹⁷ The ambush followed a three-day assault (4-6 July 2012) on oil infrastructure in Colombia to mark the 48th anniversary of ELN's operations.¹⁸ In advance of the group's July 4 anniversary, fliers declaring an 'armed strike'¹⁹ were circulated in the eastern departments of Boyaca, Casanare, and Arauca. Although no civilian deaths or injuries occurred during 4-6 July, ELN caused significant disruption²⁰. The group launched a grenade at, and had skirmishes with, police in Casanare.²¹ They also set fire to three vehicles outside a Casanare oil factory which was reportedly part of a greater attack plot which was thwarted by the Colombian army.²² The group also isolated parts of Boyaca with the threat of violence, as transportation companies suspended travel to certain areas.²³

16. On 8 October 2012, three Colombian soldiers were wounded in an Improvised Explosive Device (IED) attack by suspected ELN militants near Puerto Narino Saravena, Arauca department.²⁴ Colombian authorities reported that the soldiers were attacked by the ELN near the Venezuelan border while developing military control operations in the area.²⁵
17. On 17 November 2012, a bomb allegedly planted by ELN killed one and injured three others in El Tarra, Colombia, close to the Venezuelan border. According to reports, several explosives were detonated in a rural area of the municipality as a group of civilians, accompanied by a soldier, were passing by.²⁶

Ideology and objectives

18. ELN is a left-wing rebel group operating in Colombia which takes its doctrine from a mix of Maoism and Marxism, as well as being influenced by Castro. It aims to initiate a Marxist revolution to overthrow the Colombian government, to be replaced with a socialist administration.²⁷ ELN is opposed to privatisation and foreign investment and often targets such organisations. ELN seeks to undermine and discredit the Colombian government with its attacks.
19. ELN continue to be driven by their ideological beliefs. On 4 July 2012, ELN released a statement to Colombia's "political prisoners," saying the group would continue to fight on their behalf: "Forty-eight years later, we still choose to push until the end".
20. On 27 August 2012, ELN leader, Nicolas Rodriguez, released a video statement to *Reuters* announcing the group was willing to hold peace talks with the Colombian government, stating the group "seek room for open dialogue without conditions and start to discuss the nation's biggest problems". However, the group was not willing to declare a ceasefire or surrender any of its weapons prior to the talks.²⁸
21. Since peace talks began between the government and the Colombian guerrilla group Fuerzas Armadas Revolucionarias (FARC)²⁹ in November 2012, ELN have repeatedly expressed their desire to be involved. However, they have been turned away due to concerns the group's inclusion will slow down the FARC peace process.³⁰ Displeased at being excluded from negotiations, the group has launched a new campaign of attacks, including kidnapping foreign mine workers³¹, launching attacks on infrastructure³² and threatening attacks on multinational companies.³³

Organisation and Structure

22. In recent years, counterterrorism operations have restricted ELN's capacity to carry out attacks, with security forces focusing on counter terrorism initiatives involving the capture of senior leaders and the seizure of weapons, drugs and money.³⁴
23. Estimates of the group's total membership vary from approximately 1500³⁵-2500³⁶. In a Colombian intelligence report obtained by a Colombia newspaper, *El Espectador*, in September 2011, it was stated ELN maintains approximately 1200 militants in small, urban-based cells. The purpose of these cells is to infiltrate social organisations and recruit members from universities.³⁷
24. The intelligence report also claimed that ELN's High Command (known as COCE or Commando Central) was decreasing in influence³⁸ and suggested an increase in infighting

between the senior leadership was a catalyst for the group's increasingly autonomous factions.³⁹

Weapons and Tactics

25. ELN's tactics have not changed. The group specialises in economic sabotage against the state, including attacks on infrastructure such as bridges, oil pipelines and electricity pylons. ELN uses guerrilla warfare tactics when engaging with security forces, including the use of small arms, IEDs and more recently VBIED (see paragraph 14). ELN installs explosives on rural roads known to be patrolled by law enforcement.⁴⁰ In June 2011 alone, the Colombian army recovered 500 mines it believed belonged to ELN from the village of El Porvenir in San Francisco municipality, Antioquia department.⁴¹

Law of Armed Conflict (LOAC)

26. The situation continues to be an internal armed conflict between the ELN and the Colombian government, as neither party's actions against each other constitute sporadic or isolated violent attacks. The case studies cite two attacks by ELN against civilians and civilian objects, as well as military personnel. The ELN therefore does not adhere to the principle of distinction and their actions cannot be regarded as compliant with the rules of international law applicable to armed conflict. The exemption in section 5(4) does not apply and the operations of ELN continue to constitute terrorist acts.

Conclusion

27. On the evidence set out above, this paper concludes that there are still reasonable grounds, as set out in s 22 of the TSA, for ELN to be designated under that section.
28. Despite showing a desire to participate in peace talks, ELN has so far not shown a commitment to cease operations. Since its designation in December 2010, ELN has continued to carry out attacks which meet the definition of terrorist acts in ss 5 and 25 of the TSA (paragraphs 11-17). Accordingly, given there are still reasonable grounds to believe that ELN has knowingly carried out terrorist acts as set out in s 22 of the TSA, ELN meets the legal criteria for renewal of its designation as a terrorist entity under s 35.
29. The designation must be renewed by 16 December 2013 to be effective.

¹ The statement of case, dated 15 December 2010 can be accessed at: www.police.govt.nz/service/counterterrorism/designated-terrorists.html

² Ibid.

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- ¹⁸ (8/01/2013) "Ejército de Liberación Nacional (ELN)", Jane's World Insurgency and Terrorism at page 19, available on subscription. Accessed 8/05/2013.
- ¹⁹ "Armed strike" is a Colombian term used to denote the enforced shutdown of businesses
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