

# **PROPOSAL TO DESIGNATE THE KURDISTAN WORKERS PARTY/PARTIYA KARKEREN KURDISTAN (“PKK”) AS A TERRORIST ENTITY**

## **Purpose**

1. The purpose of this paper is to set out the case for designating the Kurdistan Workers Party/Partiya Karkeren Kurdistan (“the PKK”) as a terrorist entity within New Zealand pursuant to the Terrorism Suppression Act 2002 (“TSA”).
2. As set out at paragraphs 39 to 43 below, the PKK is an entity comprising the following divisions (among others): the People's Defence Force/Hezen Parastine Gel (“HPG”), the Kurdistan Freedom Falcons (“TAK”), Kongra-Gel and the Kurdish Democratic Foundation (“KKK”).
3. The paper concludes that the PKK meets the legal criteria for designation as a terrorist entity under the TSA and recommends that it should be so designated.

## **Terrorist Designations Working Group**

4. The process for advancing the designation of non-United Nations listed terrorist entities has been underpinned by the establishment of a Terrorist Designations Working Group, coordinated by the Department of the Prime Minister and Cabinet, and including officials from Police, the New Zealand Defence Force, Crown Law, the Ministry of Foreign Affairs and Trade, the Ministry of Justice, the New Zealand Security Intelligence Service and the External Assessments Bureau.
5. This paper has been jointly prepared by the agencies represented on the Terrorist Designations Working Group.

## **Legal framework for designation**

### ***Terrorism Suppression Act 2002***

6. In October 2002 New Zealand enacted the TSA. The TSA establishes a legal framework for the suppression of terrorism. In particular, it is the mechanism by which New Zealand gives effect to the United Nations Security Council (“UNSC”) mandatory resolutions requiring UN member states to take certain steps to suppress terrorism. An important feature of this framework is the Prime Minister’s power under the TSA to designate individuals or groups as terrorist or associated entities. Designation can be on an “interim” (s 20 TSA) or “final” (s 22 TSA) basis.<sup>1</sup>
7. The TSA criminalises various forms of interaction with designated entities. It is an offence under the TSA to deal with a designated entity’s property or provide such an entity with property, financial or related services. It is also an offence to knowingly recruit for a group which is a designated entity, or participate in a group for the purpose of enhancing its ability to carry out a terrorist act, knowing, or being reckless as to whether the group is a designated entity. Simple membership of a designated entity, however, is not an offence.

8. The TSA also enables action to be taken against designated entities' property. For example, the TSA empowers Customs officials to seize and detain goods or cash they have good cause to suspect are owned or controlled by designated entities. In certain specified circumstances, the TSA also permits an application by the Attorney-General to the High Court for orders that property owned or controlled by designated entities be forfeited to the Crown.
9. There are two broad categories of entities that are affected by the TSA – entities listed by the UN as terrorist entities (by the UNSC's 1267 Committee) and non-UN listed entities designated under the TSA.
10. UN listed entities are defined as designated terrorist entities in the TSA and so engage the criminal provisions of the TSA without the need for further designation under s 22. The UNSC listing process involves only Al-Qaida and the Taliban and associated individuals and organisations.
11. The legal consequences that flow from designation under the TSA are primarily a response to international legal obligations. The two categories of entities described above reflect two different obligations.
  - 11.1 First, New Zealand is specifically obliged to take action against those terrorist entities listed by the UNSC 1267 Committee.
  - 11.2 Secondly, and by contrast, while UNSC Resolution 1373 obliges New Zealand (inter alia) to outlaw the financing of, participation in and recruitment to, terrorist entities, it does not specifically identify those entities. The Resolution effectively leaves it to Member States to identify the entities against which they should act.

## **Non-UN entity designation process**

### ***Satisfying the s 22 legal requirements***

12. The Prime Minister has the power under the TSA to designate individuals or groups as terrorist entities. Section 22 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.
13. It does not follow, however, that every entity that meets the legal test in s 22 must be designated. Section 22 confers a discretion on the Prime Minister ("the Prime Minister may designate ...") as to whether to designate an entity that meets the legal test for designation. No specific factors are identified for the Prime Minister's consideration when exercising his discretion. However, it would be reasonable to suggest that both the TSA's purpose (as stated in s 3 of the TSA) and the matrix of obligations in UNSC Resolution 1373 that the TSA was enacted, in part, to implement, point to the guiding consideration being whether designation of the relevant entity would effectively assist the suppression of terrorism.

14. A terrorist act is defined in s 5 of the TSA. A number of different acts fall within this definition. The s 5 criteria relevant to this paper are those criteria which deem an act to be a terrorist act if that act:
  - 14.1 Is intended to cause the death of, or serious bodily injury to, one or more persons; and
  - 14.2 Is carried out for the purpose of advancing an ideological, political, or religious cause; and
  - 14.3 Is intended to either:
    - 14.3.1 Induce terror in a civilian population; or
    - 14.3.2 Unduly compel or force a government or an international organisation to do or abstain from doing any act; and
  - 14.4 Is not an act that occurs in a situation of armed conflict and which is, at the time and in the place that it occurs, in accordance with rules of international law applicable to the conflict.

***The legal threshold and reliance on non-classified information***

15. In deciding whether reasonable grounds exist to support a belief that an entity has knowingly carried out, or has knowingly participated in the carrying out of, one or more terrorist acts, s 30 of the TSA provides that the Prime Minister may consider any relevant information, including classified security information.
16. This paper relies only on unclassified open source information. Open source information may include newspaper reports, literature, and public statements by the entity itself. It may include unclassified information supplied to New Zealand by foreign governments and material from domestic agencies. The case describing an entity's involvement in terrorism need not be constructed from evidence that would ordinarily be admissible in court proceedings.

***The formal process***

17. In 2003 Cabinet agreed to a process for advancing requests to designate non-UN listed terrorist entities. This is set out in the Cabinet Minute CAB (03) 34/15A.
18. Cabinet agreed that the following factors may be relevant in deciding whether to recommend the designation of a non-UN listed terrorist entity that meets the s 22 TSA criteria:<sup>2</sup>
  - 18.1 New Zealand presence;
  - 18.2 Regional presence;
  - 18.3 The nature and scale of involvement in terrorist acts or support activity;

- 18.4 Links with New Zealand citizens but no known New Zealand presence;
  - 18.5 Risk to New Zealand citizens; and
  - 18.6 The rationale for going beyond the UN listing.
19. Cabinet also agreed that a further factor in deciding whether to make the request may be the need for New Zealand to contribute to the international security environment by preventing activities such as recruiting, harbouring, participating in or financing terrorist entities that fall outside the scope of the UN listing process.
  20. The process formally agreed to by Cabinet requires the Working Group to refer recommendations relating to non-UN listed entity requests to ODESC. ODESC is to make the final determination on whether to proceed with presenting the request to the Prime Minister. In making this determination, the Working Group and ODESC consider those factors identified by Cabinet that are relevant. They are examined specifically at paragraphs 85 to 94 below.
  21. Upon presentation of the recommendation for designation to the Prime Minister, the Prime Minister must then be satisfied that the PKK falls within the scope of the designation power in s 22 of the TSA. If on that material the Prime Minister considers that the PKK meets the legal criteria for designation as a terrorist entity, the Prime Minister must then consult the Attorney-General about the designation and may then exercise his discretion under s 22 as to whether to designate, bearing in mind New Zealand's international obligations under UNSCR 1373 and the guiding consideration of whether designation would effectively assist the suppression of terrorism.
  22. The TSA requires that the designation be publicly notified in the Gazette and also that the designated entity itself be notified, if practicable and where the entity or a representative of it is in New Zealand, with all reasonable speed.
  23. The designated entity can apply in writing to the Prime Minister for the designation to be revoked on the grounds that the entity does not satisfy the s 22 TSA test or that the entity is no longer involved in any way in acts of the kind that made, or that would make, the entity eligible for designation. Judicial review proceedings are also possible in respect of a designation under the TSA.

### **Consideration of designation of PKK**

24. The PKK was identified by the Working Group as an entity that was consistent with the relevant factors agreed by Cabinet and ODESC endorsed consideration of designation of the PKK in May 2008. The PKK is listed as a terrorist entity by the United States, Canada, the United Kingdom, Australia and the European Union (See Paragraph 97 below).

### **Structure of this paper**

25. This paper sets out background and historical information about the PKK and also discusses various other aspects of the organisation including its targets,

tactics, weapons and intentions, before detailing three case studies of recent attacks which meet the definition of a terrorist act under the TSA.

26. In the discussion preceding the case studies, a number of other attacks either claimed by the PKK or attributed to the PKK are mentioned. These have been included as part of the background and general discussion on the organisation and along with that information, help inform the analysis of the specific attacks in the case studies below. The attacks detailed in the three case studies represent recent and serious attacks attributed to and/or claimed by the PKK. It is these three attacks that have been analysed as meeting the definition of a “terrorist act” under s 5 of the TSA that provide the basis for the paper’s conclusion that the PKK meets the legal criteria for designation as a terrorist entity under the TSA.

### **Credibility of sources**

27. Material from a large range of sources in the public domain has been used in the preparation of this paper. These include Jane's Terrorism and Insurgency Centre, the Jamestown Foundation, the BBC, the International Herald Tribune, International Crisis Group, Human Rights Watch, the UK Foreign and Commonwealth Office, the Australian Department of Foreign Affairs and Trade, the Canadian Ministry of Foreign Affairs and International Trade, the US State Department, the CIA Factbook and the US National Counterterrorism Centre.
28. These sources have been consulted because their reporting is considered to be reliable and they provide a good factual basis for the events detailed in this paper.

### **The PKK**

#### ***Background***

29. The PKK was established in 1974 with the original aim of creating an independent and socialist Kurdish state in south-eastern Turkey. From its beginning, the PKK has presented itself as representing all Kurds in Turkey. This is not the case. Jane's states that the PKK “has traditionally attacked any organisation it perceives to be a potential rival to its claim to be the sole representative of Kurdish nationalism.”<sup>3</sup>
30. The PKK began its campaign of armed violence in 1984.<sup>4</sup> Between then and now, the PKK’s campaign has gone through three phases: armed violence until 1999; a ceasefire during 1999-2004; and a return to violence in 2004. The United State’s National Counterterrorism Centre (NCTC) reports that the PKK’s campaign of armed violence, including terrorism, has resulted in over 30,000 deaths.<sup>5</sup>

#### ***The first phase: 1984 - 1999***

31. Between 1984 and 1999 the PKK mounted a guerrilla-based insurgency which had the aim of 'liberating' the Kurdish areas of Turkey's south-east. The PKK targeted the assets of the Turkish state – both infrastructure and state

employees (civil servants, including teachers) – and also those Kurds who did not accept the PKK's leadership.<sup>6</sup>

32. In the late 1980's and early 1990's the organisation stopped attacking Kurdish civilians and split its campaign in two. It continued an insurgency in the rural south-east of Turkey against agents of the Turkish state and began a bombing campaign in urban areas targeting tourists and civilians in the western, central and coastal towns of Turkey.<sup>7</sup> It also attacked Turkish targets (such as diplomatic offices) in western European cities.<sup>8</sup>
33. In 1989 the Turkish government launched major military operations against the PKK. By 1995 as many as 150,000 Turkish troops and police were involved in the fight against the PKK.<sup>9</sup>

### ***The second phase: 1999 - 2004 ceasefire***

34. The PKK instituted a ceasefire in 1999. The information available suggests there were two reasons for this. First, the organisation needed time to rebuild its strength following the losses it had suffered in the conflict with Turkey's armed forces. Second, the PKK's captured leader, Abdullah Ocalan,<sup>10</sup> facing the death penalty, used his trial as a platform to make the case that the time for a political solution had come. In August 1999, Ocalan announced an indefinite unilateral ceasefire starting on 1 September 1999.<sup>11</sup> The government did not adopt a ceasefire of its own. The PKK ended its ceasefire in 2004, partly because Ocalan, who was concerned at the erosion of the PKK's claim to be the only representative of Kurdish nationalism, ordered a return to armed violence.<sup>12</sup>
35. During the ceasefire the PKK underwent a number of name and structure changes. The group found that continuing to use the name of a proscribed terrorist organisation made becoming a political organisation impossible.<sup>13</sup> Therefore in 2002, the PKK changed its name to Kurdistan Democracy and Freedom Congress ("KADEK"). In 2003 it again changed its name, to the Kurdistan People's Congress (Kongra Gele Kurdistan ("KONGRA-GEL")).<sup>14</sup> By 2005, after failed attempts to reinvent itself and the end of its ceasefire in 2004, the organisation reverted back to its original name, PKK<sup>15</sup>, which it retains.

### ***The third phase: 2004 return to violence***

36. Resuming its use of armed force in 2004,<sup>16</sup> the PKK returned to fighting the two campaigns it ran before 1999 - the insurgency in the south-east of Turkey and the urban violence in the more developed areas of western, central and coastal Turkey.

### ***PKK's objectives***

37. The PKK's objectives have changed and narrowed over time. The group's initial objective was the creation of "Kurdistan" by separating the Kurdish parts of Turkey, Syria, Iran and Iraq and uniting them in a new state. In the third phase of its campaign (see paragraph 36), this changed to the "liberation" of the Kurdish area of Turkey.<sup>17</sup>

38. Jane's reports that, in practice, the PKK's objectives in 2005 were:
- 38.1 greater cultural and political rights for Turkey's Kurdish minority, including the amendment of the Turkish constitution to include an explicit recognition of a Kurdish identity;
  - 38.2 a comprehensive amnesty for PKK militants; and
  - 38.3 an easing of the conditions of imprisoned PKK leader Abdullah Ocalan leading to his eventual freedom.<sup>18</sup>

### ***Structure of the PKK***

39. The PKK has a strict hierarchical structure. Decisions are imposed from the top down, despite the group's claims that power flows up from its members.<sup>19</sup> The personality cult surrounding Ocalan allows him to retain his position at the top of the organisation.<sup>20</sup> He retains responsibility for the PKK's ideology and strategic objectives and methods of achieving these.<sup>21</sup>
40. Ocalan's imprisonment means that the day to day running and leadership of the PKK is carried out by Murat Karayilan who is reported to be the president of the PKK's executive committee, the Kurdish Democratic Federation ("KKK"). They work within the strategic parameters set by Ocalan.<sup>22</sup>
41. The current structure of the PKK, which emerged in 2005, was formulated by Ocalan.<sup>23</sup> It was at that time that the KKK was created as the overarching executive body of the organisation. The Kongra-Gel serves as the legislative body<sup>24</sup> and the armed wing of the organisation is the People's Defence Force/Hezen Parastine Gel ("HPG").<sup>25</sup> The HPG is divided into regional commands.<sup>26</sup> Each Unit Commander is responsible for a small number of militants (Jane's puts this at approximately 8 - 10 but up to a maximum of 15-20) who receive training in the Qandil Mountains.<sup>27</sup>
42. Units operating in the field have a considerable degree of autonomy, primarily because of the difficulty in maintaining secure communications with PKK headquarters.<sup>28</sup> It appears that the PKK's attack infrastructure which supports the urban bombing campaign in the central, western and coastal areas of Turkey is skeletal (see paragraph 52 below).
43. In 2004, a group named the Kurdistan Freedom Falcons ("TAK") emerged. It has claimed responsibility for some bomb attacks carried out in 2006 in the west of Turkey.<sup>29</sup> Jane's reports that the TAK is made up of PKK militants under the overall command of the KKK Executive Committee<sup>30</sup> and, therefore, also the PKK.<sup>31</sup>

### ***Current PKK activity, tactics and weapons***

44. Since resuming the use of violence in 2004 many attacks causing death, injury and/or destruction of civilian infrastructure have been claimed by or attributed to the PKK.
45. In the predominantly Kurdish areas of rural south-east Turkey the PKK continues to conduct a guerrilla war against the Turkish state. There have been

instances of terrorism in this region as is clear from one of the case studies detailed below. The bombing campaign in the western, central and coastal areas of Turkey is not part of the guerrilla war, being instead a campaign aimed at creating urban terror. Different tactics and methods of operation are employed, as is explained in paragraphs 51 to 53 below.

46. It is unlikely that either campaign will result in victory for the PKK. Rather, it is thought that the group persists with both in order to guarantee participant status in any negotiations with the government that might eventuate and also to secure leverage against the government in any such talks.<sup>32</sup>

### ***The insurgency in the south-east of Turkey***

47. The primary targets of the PKK insurgency in the south-east continue to be Turkish security forces, state institutions and infrastructure, state officials and the state-funded "Village Guards."<sup>33</sup> In this area the PKK typically uses 'pin-prick' attacks, made by forces that move away rapidly before the Turkish security forces can respond. They largely use harassing fire, armed assaults by small groups, ambushes, IEDs and the placing of mines (often remotely controlled) on railway lines, roads and pipelines.<sup>34</sup> These attacks are mounted in both the rural areas of the south-east and in the region's towns and there have often been civilian casualties.
48. Recent photographs and video of PKK fighters training in the Qandil mountains (which span across south-east Turkey, northern Iraq and Iran) show individuals wearing a rudimentary uniform.<sup>35</sup> It is not known whether they also wear these uniforms while in combat.
49. The nature of PKK actions in the south-east is illustrated by the following examples of recent attacks attributed to the PKK:
  - 49.1 On 15 May 2009 PKK militants clashed with members of the Village Guards in the Eruh District of Siirt province.<sup>36</sup> Three Village Guards and two PKK members were reported killed.
  - 49.2 On 29 April 2009 an M-113 armoured personnel carrier was attacked, near the town of Lice in the south-eastern Province of Diyarbakir killing ten soldiers. The APC was scouting ahead of a military convoy. The Turkish authorities have attributed this attack to the PKK and it is consistent with their operations in this area.<sup>37</sup>
  - 49.3 On 21 October 2007 the PKK attacked Turkish soldiers at a site three miles from Turkey's south-eastern border with Iraq. Twelve troops were killed, about 16 were injured and eight taken captive.<sup>38</sup> Those captured were released in November.<sup>39</sup>
50. Since 2006 Ankara has more than doubled the number of troops deployed to the south-eastern areas of Turkey close to the Iraqi border. There are now approximately 250,000 troops stationed there.<sup>40</sup> The Turkish armed forces have targeted PKK camps inside Turkey but also across the border into northern Iraq. That action has included shelling camps in the Qandil Mountains of northern Iraq,<sup>41</sup> air raids, (from 2007)<sup>42</sup> and at least one ground assault into the



area in February 2008.<sup>43</sup> The air raids continue.<sup>44</sup> Jane's reports that these attacks have caused disruption to the PKK's organisational infrastructure and its supply lines into Turkey.<sup>45</sup>

### ***The urban bombing campaign in western and central Turkey***

51. The PKK's urban bombing campaign is separate from the insurgency in the south-east of Turkey. Mostly the explosions are from small bombs/IEDs.<sup>46</sup> It is a campaign of relatively low intensity, partly because many attempted attacks have been disrupted by the Turkish authorities<sup>47</sup> and other bombs have failed to detonate.<sup>48</sup> Since the campaign resumed in 2004, approximately 55 lives, including those of seven foreigners, have been lost.<sup>49</sup>
52. Jane's reports that "militants responsible for the bombing campaign in western Turkey operate in small cells or as individuals, under the command of the organisation's leadership in the Qandil mountains."<sup>50</sup> They are usually trained in the mountains and then sent to their area of operation where difficulty in maintaining secure communication means they have a considerable degree of operational autonomy.<sup>51</sup>
53. There were two waves of bombings in western Turkey in 2006, mostly aimed at the tourism industry. Seven people were killed (three of them foreign tourists) and over 150 injured.<sup>52</sup> The precise number of intended attacks is not known because the Turkish authorities "frequently officially attributed explosions caused by bombs to accidents, typically faulty gas canisters"<sup>53</sup> and partly also because some of those IEDs which failed to explode might not be known to the Turkish authorities. The most recent bomb attack attributed to the PKK outside of the insurgency in the south-east occurred in July 2008 and is detailed in the second case study below.
54. Jane's reports that the impact of the recent Turkish military operations against the PKK insurgency in the south-east of Turkey (see above at paragraph 50) has caused the PKK to use its urban bombing campaign to demonstrate its resilience and continued capability.<sup>54</sup> This is consistent with the PKK's more immediate objective, discussed above at paragraph 46, to force negotiations with, and gain leverage over, the government.

### **The current situation**

55. The Turkish security forces currently have the upper hand,<sup>55</sup> helped by an extensive and capable intelligence system and large Army and Police forces. In recent years, these have been able to gradually diminish the PKK's capabilities. "A high level of penetration of PKK sympathisers" has allowed the security forces to disrupt many PKK operations, especially those in western Turkey.<sup>56</sup>
56. Despite the government's advantages, the situation has reached a stalemate. The chief of Turkey's military has stated that the PKK are unlikely to be defeated by military means alone and that "social and economic measures are

required.”<sup>57</sup> This judgment is evidently shared in Ankara because Turkey has turned in recent years to supplementing the military's efforts with large scale expenditures on civilian projects and, late last year, reorganised Turkey's domestic security structures, giving civilian institutions a greater role and endeavouring to improve the coordination of anti-terrorism policies and actions across government.<sup>58</sup>

## **Case studies**

### **Attack on bus carrying Police recruits, Diyarbakir, 8 October 2008**

#### ***The facts***

57. On 8 October 2008, a bus carrying police recruits was attacked in a residential area in the city of Diyarbakir.<sup>59</sup> The attackers opened fire on the bus with long-range weapons<sup>60</sup> and explosives.<sup>61</sup> The attack killed five people, (four recruits and the driver),<sup>62</sup> and injured at least 15, some seriously.<sup>63</sup>
58. The ambush on the bus came days after an attack by the PKK on a military outpost near the Iraqi border which killed 17 soldiers<sup>64</sup> and at the same time as Turkey's parliament was debating whether to extend its authorisation for another year for the military to target the PKK in northern Iraq.<sup>65</sup> Only hours before the ambush, the parliament voted to extend its authorisation. Jamestown reports that the bus attack was most probably timed to follow up on the attack on the military outpost and to coincide with the parliamentary vote.<sup>66</sup>
59. The PKK are known to target police in the southeast of Turkey<sup>67</sup> and claimed responsibility for the bus attack, calling it a “successful action” in a statement posted on their website.<sup>68</sup>

#### ***Attack meets TSA designation criteria***

60. The attack is consistent with the definition of a terrorist act under s 5 of the TSA.
61. The nature of the attack as an ambush and the kinds of weapons used by the attackers shows a clear intention to cause death or serious injury to those individuals targeted (s 5(3)(a) TSA). Carrying out the ambush in a residential area and targeted against civilians shows a clear intention to terrorise the civilian population (s 5(2)(a)). Further, as these civilians had a connection to the Turkish state, the attack on them also shows an intention to unduly compel or force the Turkish government to act in a certain way (s 5(2)(b) TSA), namely to accede to the PKK's objectives, particularly to stop the air campaign against PKK targets in Northern Iraq.
62. The political context of the bus attack and the following statement made by the PKK demonstrate that the ambush was carried out to advance the PKK's political cause of greater rights/autonomy for the Kurdish people (per s 5(2) TSA).

## **Attack on Police minibus, Izmir, 21 August 2008**

### ***The Facts***

63. On 21 August 2008 a car bomb placed in a residential area of the western Turkish city of Izmir exploded as a Turkish police minibus and a military car passed by. The road where the explosion occurred is reported to be a known route for police, gendarmes and Turkish military forces.<sup>69</sup> The explosion injured between 13 and 16 people,<sup>70</sup> including civilians. One of the soldiers injured was in a critical condition following the attack.<sup>71</sup> In addition to these injuries, the explosion was reported to have caused damage to almost 100 buildings and many vehicles in the area.<sup>72</sup> It is likely that the blast was a result of plastic explosives set off by remote control.<sup>73</sup>
64. On 23 August 2008 the PKK and TAK claimed responsibility on their websites for the attack.<sup>74</sup> In its statement the TAK said the attacks were “acts of revenge” against Ankara's mistreatment of Kurds. The statement also threatened further attacks, saying: “[e]very bullet fired against our people will be responded to with these bloody attacks. We warn that every attack against our people will not go without a response.”<sup>75</sup>
65. The PKK have targeted the city of Izmir in the past with bomb attacks. Prior to 21 August 2008, the most recent attack in Izmir was 2 October 2007 when two bombs exploded several hours apart in a shopping area, killing one civilian and injuring seven others.<sup>76</sup>

### ***Attack meets TSA designation criteria***

66. The attack is consistent with the definition of a terrorist act under s 5 of the TSA.
67. The blast caused serious injury to a number of people and also significant damage to the surrounding area. The size and nature of explosives necessary to achieve that result, together with the placement of the bomb in an area where people are usually present and the use of a remote control device to specifically target people, shows that the PKK intended to cause serious injury and/or death with the explosion (per s 5(3)(a) TSA).
68. The use of a car bomb in a residential area of a city outside the region where the PKK is fighting an insurgency, and targeted primarily against the civilian police, demonstrates the PKK's intention to terrorise the civilian population (per s 5(2)(a) TSA). The TAK statement following the attack that the bombing was “revenge” against the Turkish state and threatening further attacks shows that the bombing of the Police minibus was also intended to unduly compel the Turkish government to change its position in relation to the PKK and the Kurdish people (per s 5(2)(b) TSA). The statement also demonstrates the attack was carried out with the purpose of advancing the PKK's political cause of greater rights/autonomy for the Kurdish people (per s 5(2) TSA).

## **Gungoren shopping district bombing, 27 July 2008**

### ***The facts***

69. On 27 July 2008 two bombs, planted in rubbish bins, exploded in a busy shopping area of Istanbul. The first one caused a minor explosion and was reported to be designed to attract onlookers who were then caught up in the second much larger explosion occurring approximately 10 minutes later. The second explosion, a fragmentation bomb using RDX, caused the majority of the 17 civilian deaths (including 5 children) and most of the injuries to more than 150 people. This was reported as the deadliest attack in Turkey since 2003,<sup>77</sup> and the first time that this double bomb tactic had been used by a terrorist group in Turkey.<sup>78</sup>
70. Although the PKK denied responsibility for the attack there is sufficient evidence from a range of sources.
71. The basis for the conclusion that the PKK were responsible for the attack includes the following factors:
  - 71.1 the PKK are known on occasion to deny responsibility for attacks;<sup>79</sup>
  - 71.2 while other terrorist groups operate in Turkey, they have a history of attacking specific targets, usually related to the West. This attack was aimed at a working class, residential neighbourhood of Istanbul, containing no obvious targets such as government buildings, diplomatic representatives or offices belonging to major local or foreign corporations;<sup>80</sup>
  - 71.3 the attack fits with the trend in PKK attacks over the previous 12 months, in which the organisation has shown a greater willingness to target and kill civilians;<sup>81</sup> and
  - 71.4 although this is the first time a small bomb has been used to attract onlookers, followed by a second larger IED designed to kill people, the overall characteristics of the attack are consistent with known tactics of the PKK in its bombing campaign in the west of Turkey. This includes the use of bombs, planted in rubbish bins, as seen in attacks by the PKK in Istanbul in April 2006,<sup>82</sup> June 2006,<sup>83</sup> October 2007<sup>84</sup> and December 2007.<sup>85</sup>

### ***Attack meets TSA designation criteria***

72. The attack is consistent with the definition of a terrorist act under s 5 of the TSA.
73. The use of two bombs to cause a small explosion to draw people towards the area where a second, much larger, bomb is detonated, clearly shows the PKK intended to cause death or serious injury to a number of people (per s 5(3)(a) TSA). Detonating these bombs in a residential area shows a specific targeting of civilians with the intention to terrorise the civilian population (per s 5(2)(a) TSA).

74. This bombing is part of the PKK's urban bombing campaign which has been assessed, as noted above at paragraph 54, as being pursued to demonstrate the PKK's resilience and continued capabilities. Such a demonstration in turn promotes the PKK's objective of forcing negotiations with, and obtaining leverage over, Ankara. The shopping district bombing can thus readily be seen as having been carried out with the purpose of advancing the PKK's broader political/ideological cause of greater rights and/or autonomy for the Kurdish people in Turkey (per s 5(2) TSA).

### **Law of armed conflict**

75. Section 5(4) of the TSA states that an act is not a terrorist act if "it occurs in a situation of armed conflict and which is, at the time and in the place that it occurs, in accordance with the rules of international law applicable to the conflict."
76. For the s 5(4) exemption to apply, two conditions must be satisfied. First that there is a state of armed conflict in Turkey and second that the attack accords with the law of armed conflict ("LOAC"). If one of these conditions is not met, the exemption does not apply.
77. This exemption does not apply to the acts detailed in the case studies.

### ***Is there an armed conflict in Turkey and are members of the PKK combatants?***

78. An international armed conflict involves a conflict between the armed forces of two states.<sup>86</sup> An internal armed conflict exists where the conflict is fought between government forces and opposing non-state forces, or amongst armed groups, none of whom qualify as a legitimate government.
79. As detailed in this paper, the PKK are currently carrying out an insurgency in south east Turkey, hitting military and other state-connected targets, and have detonated bombs against a range of targets in other parts of the country. Both PKK attacks and Turkish military actions against PKK targets appear to often be taken in response to the actions of the other.
80. LOAC makes a key distinction between armed conflict and other internal disturbances or tensions such as riots and isolated and sporadic acts of violence. The nature of the PKK's actions and the Turkish state's response does not at present reach a degree of intensity and continuity, on the part of either the PKK or the Turkish state, which would make the situation an armed conflict. Therefore, there is no armed conflict in Turkey at present, and the exemption in s 5(4) of the TSA does not apply.
81. Even if it is accepted that there is a current armed conflict in Turkey, the second threshold for applying LOAC is also not met. In accordance with LOAC, only combatants have the right to conduct attacks. This generally means members of regular armed forces. Although not strictly entitled to combatant status, in order to be carrying out their operations in accordance with the law of armed conflict the PKK would have to distinguish themselves from the civilian population while engaged in an attack or operations preparatory to an attack.<sup>87</sup>

82. None of the material reviewed suggests that members of the PKK distinguish themselves from the civilian population when carrying out attacks or operations preparatory to those attacks. Nor does it suggest that there is a responsible internal disciplinary system within the PKK which enforces compliance with LOAC. The PKK is not carrying out its attacks in a way indicative of combatant status which, again, means that the exemption in s 5(4) TSA does not apply.

### ***The case studies***

83. For completeness, even if the two threshold questions were answered in the affirmative and LOAC did apply to the PKK,<sup>88</sup> in all three instances detailed in the case studies, the PKK has breached the LOAC principle of distinction.
84. The principle of distinction is that attacks on enemy combatants and military objectives are lawful, whereas attacks on the civilian population, civilian objects and peoples rendered *bors de combat*<sup>89</sup> are not. In each of the three attacks detailed in the case studies, the PKK has targeted civilians. This includes the police as the police are a civilian organisation and therefore not a legitimate target under LOAC, unless they were to take a direct part in hostilities. The material reviewed in preparation of this paper provides no support for the proposition that the police targeted in the two attacks detailed in this paper were taking part in any hostilities.

### **Cabinet Criteria**

85. As discussed above at paragraphs 19 and 20, there are a number of Cabinet agreed relevant factors for deciding whether to recommend the designation of a non-UN listed terrorist entity. The factors that are specifically relevant in relation to the recommended designation of the PKK are discussed below.

### ***Regional presence***

86. The 2006 Australian census puts the number of people declaring that they have Kurdish ancestry at 5468.<sup>90</sup> Some of these will be Iraqi or perhaps Iranian Kurds and therefore are unlikely to support the PKK. Allowing for these, it is possible that some Kurds in Australia remit money to the PKK.

### ***The nature and scale of involvement in terrorist acts or support activity***

87. The information presented in this paper shows that the nature and scale of the PKK's involvement in terrorist acts is long-standing and extensive. It is a well established organisation that has either claimed responsibility for or been attributed with many terrorist attacks, and it continues to carry out such attacks.

### ***Links with New Zealand***

88. There are no figures available on the current number of Turkish Kurds in New Zealand, but the population is thought to be very small. While it is possible that some Kurds living here might be remitting money to the PKK there is no known PKK support activity being undertaken in New Zealand at present.

### ***Risk to New Zealand citizens***

89. Terrorist activity may pose a risk to the security of New Zealand citizens or interests. A risk to New Zealand citizens, albeit that this is most likely to be in an overseas jurisdiction rather than in New Zealand, will constitute an important factor in considering whether to request the designation of that entity.
90. New Zealand's consular advice to New Zealanders travelling to Turkey (as at March 2009) is that there is a high risk to people's security in areas close to the Iraq border in Southeast Turkey due to terrorist activity (mainly that of the PKK) and as such all tourist and non-essential travel to those areas is discouraged. For other parts of the country, there is some risk to people's security arising from terrorism (from the PKK and other groups) and caution is advised. Significant numbers of New Zealanders visit Turkey as tourists throughout the year - around 20,000 per annum in recent years. Anzac Day commemorations are a particular focus for New Zealand tourists, with around 3,000 New Zealanders travelling to Gallipoli in late April, many of them young New Zealanders travelling in Europe.
91. In terms of the risk of New Zealand citizens being directly affected by PKK attacks, there is some risk to New Zealanders travelling in Turkey's major cities as well as possibly in some tourist areas. The small number of New Zealanders living in the country face these risks to a higher degree given their greater exposure (there were just over 100 New Zealanders registered with the Embassy at time of writing, but the actual figure is likely to be significantly higher). The three attacks detailed in the case studies above which took place in residential or other areas where civilians are exposed, are examples of this risk.
92. In terms of the possibility of a New Zealand designation of the PKK increasing the risk to New Zealand citizens or interests either in Turkey or elsewhere, a degree of risk exists, but it is assessed as being low. The PKK has targeted foreign tourists in the past, but this has been indiscriminate rather than focussing on nationals of countries that have designated the group. In recent times PKK attacks have concentrated on Turkish Government and civilian targets, and as such the PKK may take little or no notice of a New Zealand designation, especially given most Western governments have already designated the group. The relatively small size of the overall New Zealand presence in Turkey (official, commercial and private, including tourists) is another factor in the assessment of any risk arising from the designation as being low.

### ***The rationale for going beyond the UN listing***

93. As outlined at paragraph 10 above, pursuant to UN Security Council Resolution 1267, the UN maintains one list of terrorist entities – individuals and entities belonging to or associated with Al Qaida and the Taliban. The PKK is not on this consolidated list and, in the absence of any signs of the PKK having associations with Al Qaida or the Taliban, or being likely to form them in the future, the group is unlikely to be listed by the UN. A UN Working Group established in part to develop a broader listing process has made very little progress in the face of general opposition to expanding the UN designation

regime. UNSCR 1373 (2001) does not establish any further UN listing process to cover terrorist entities beyond those on the consolidated list. Therefore, any designation of the PKK must be a New Zealand national decision.

### *Contribution to international security*

94. The designation of terrorist entities not already listed by the UN helps New Zealand implement its obligations under UNSCR 1373. As the threat of terrorism and terrorist activity in New Zealand is low, the primary purpose of New Zealand designating terrorist entities is usually to contribute to international efforts to constrain the operating space of terrorist entities as much as possible. By making New Zealand an unwelcome environment for terrorist entities, in particular regarding their financing, we make it more difficult for them to operate internationally. As well, designation by New Zealand would send a broader political signal to the PKK that its activities are condemned not just by Turkey and regional governments, but also by countries around the world.

### *The case to designate*

95. This paper concludes that the PKK meets the legal criteria for designation as a terrorist entity and also that it is consistent with the Cabinet relevant factors for recommending designation to the Prime Minister.
96. The nature of the PKK's engagement in terrorist acts is that of an energetic, persistent and willing organisation that has used terrorism within Turkey for over 25 years. Terror is an integral part of the PKK's methods for mounting a drive for greater cultural and political rights for Turkey's Kurdish minority. The PKK has tried to induce terror amongst the population of Turkey. It has also tried to force the Turkish Government to take actions it would otherwise not do; and it wants to maintain either the allegiance or the acquiescence of the Turkish Kurds.
97. There being no formal established PKK links to Al Qaida or the Taliban, the designation of the PKK by the UN is very unlikely. The PKK has been designated by Australia,<sup>91</sup> Canada,<sup>92</sup> the European Union,<sup>93</sup> the United Kingdom<sup>94</sup> and the United States.<sup>95</sup>
98. The main purpose for designating the PKK would be to contribute to international security by assisting international efforts to constrain the operating space of terrorist entities as much as possible.
99. Designation by New Zealand of the PKK would not contribute, in any material way, to defeating the PKK. That will depend on whether the Turkish Kurds continue to be willing to join the PKK and to fight for its cause, and the ongoing responses of the Turkish Government.
100. If the Prime Minister were to agree that the PKK meets the legal criteria for designation under the TSA, he must consult with the Attorney-General on the case and may then exercise his discretion in s 22 of the TSA to designate.



101. While the Police would be responsible for enforcement action were the PKK to be designated, the resource implications are likely to be minimal.

## **Recommendation**

102. It is recommended that you:

- (i) Note that officials, acting in accordance with Cabinet mandated procedures, have concluded that the PKK meets the legal criteria for designation as a terrorist entity under the TSA and recommend that the PKK be so designated.
- (ii) Note that, should the Prime Minister be inclined to proceed to designation, he is required to consult the case with the Attorney-General.
- (iii) Note that the decision to designate otherwise falls within the statutory discretion of the Prime Minister.

Howard Broad  
Commissioner of Police

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- <sup>1</sup> Final designations expire under the TSA after 3 years unless renewed by the Prime Minister (section 35 TSA).
- <sup>2</sup> See CAB (03) 34/15A.
- <sup>3</sup> See page 10 of the report by Jane's titled: "Workers' Party of Kurdistan (PKK)", dated 8 June 2009, last accessed 22 June 2009. This is available only on subscription.
- <sup>4</sup> See page 114 of the US National Counterterrorism Centre's Counterterrorism calendar for 2009. This is available at <http://www.nctc.gov>. Date last accessed 15 June 2009.
- <sup>5</sup> See above, note 4
- <sup>6</sup> See:
- See above, note 3, page 19.
  - See above, note 4.
- <sup>7</sup> See above, note 3, pages 19 and 20.
- <sup>8</sup> See above, note 3, page 7.
- <sup>9</sup> See "Disarming, Demobilizing, and Reintegrating the Kurdistan Worker's Party", National Committee on American Foreign Policy, written by David L. Phillips, dated 15 October 2007, date last accessed 28 July 2009, see page 13 report can be found at: <http://www.ncafp.org/aboutus/pressreleases/articles/PKKFINALReport10-15.pdf>
- <sup>10</sup> See above, note 3, page 21.
- <sup>11</sup> See above, note 3, page 21.
- <sup>12</sup> See above, note 3, page 2.
- <sup>13</sup> This is shown by the listing of the PKK as a terrorist entity by a number of states around this time. In 2001, the United States listed the PKK as a foreign terrorist organisation, followed by the United Kingdom and Canada. The EU listed the PKK as a terrorist organisation in 2002, and Australia has since listed it also.
- <sup>14</sup> See above, note 3, page 1.
- <sup>15</sup> See above, note 3, page 1.
- <sup>16</sup> On 2 September, 2004, the BBC reported the PKK as announcing the end of its unilateral ceasefire. See <http://news.bbc.co.uk/2/hi/europe/3200907.stm>
- <sup>17</sup> See above, note 3, "Aims and Objectives", page 2.
- <sup>18</sup> See above, note 3, "Aims and Objectives", page 2.
- <sup>19</sup> See above, note 3, "Group Structure and Logistics", page 15.
- <sup>20</sup> Pages 329 and 330, Dogu Ergil in M.Heiberg, B.O'Leary and J. Tirman (eds), *Terror, insurgency and the State, Ending Protracted Conflicts*, (University of Pennsylvania Press 2007).
- <sup>21</sup> See above, note 3, page 15.
- <sup>22</sup> See above, note 3, page 15
- <sup>23</sup> See above, note 3, page 14.
- <sup>24</sup> See above, note 3, page 14.
- <sup>25</sup> See above, note 3, page 1.
- <sup>26</sup> See above, note 3, page 15.
- <sup>27</sup> See above, note 3, page 15.
- <sup>28</sup> See above, note 3, page 15.
- <sup>29</sup> See:
- statement by Kurdistan Freedom Falcons (TAK) published on the TAK website <http://www.teyrenkurdistan.com/>, last accessed 25 June 2009. In this statement the TAK claims responsibility for 17 attacks in 2006. The statement has been translated by the Ministry of Foreign Affairs and Trade. The TAK are known to claim accidents as acts of sabotage. Although these attacks have been claimed by the TAK, they are not necessarily attributed to the TAK by other sources or accepted as carried out by the group;  
See:
  - "PROFILE: Kurdistan Freedom Falcons (TAK)" published by Janes' Terrorism and Security Monitor - November 15, 2006; dated 3 October 2006, last accessed 12 May 2009. Available only on subscription.
- <sup>30</sup> See above, note 3, page 3.

<sup>31</sup> See TAK statement, note 29 above. In this statement, the TAK pledge that they "determine our action policy and our status according to our Master Apo (Abdullah Ocalan) and our nation and no other word or power can have an impact on us." The group further state that "we want APO to be released. APO's being locked up is the reason to our actions as well".

<sup>32</sup> See above, note 3, pages 5 and 22 for example.

<sup>33</sup> See above, note 3, page 5. The "Village Guards" are a pro -Turkey militia which help protect individual villages from PKK attack.

<sup>34</sup> See above, note 3, page 5.

<sup>35</sup> See:

- CNN news item, "Inside the PKK's hidden camps 2008.10.06", which is available at: <http://www.youtube.com/watch?v=NF4CqdZQHws>, last accessed 24 June 2009.
- CNN news item, "Inside the PKK 2008.10.06", which is available at: <http://www.youtube.com/watch?v=CRP-9ZfzY9A>, last accessed 24 June 2009.
- Al Jazeera news item, "PKK "far from defeated" after Turkish incursion 02 Mar 2008", which is available at: <http://www.youtube.com/watch?v=LqBloy-2K-8>, last accessed 24 June 2009.

<sup>36</sup> See the report from Jane's Terrorism and Insurgency Centre entitled "[PKK](#) militants and guards die in armed clash in Turkey's Siirt" dated 15 May 2009. Last accessed 28 July 2009. This is available only on subscription at:

[http://www8.janes.com/JDIC/JTIC/documentView.do?docId=/content1/janesdata/mags/jtic/history/jtic2009/jtic0315.htm@current&pageSelected=janesReference&keyword=&backPath=http://search.janes.com/JDIC/JTIC/search&Prod\\_Name=&activeNav=http://www8.janes.com/JDIC/JTIC](http://www8.janes.com/JDIC/JTIC/documentView.do?docId=/content1/janesdata/mags/jtic/history/jtic2009/jtic0315.htm@current&pageSelected=janesReference&keyword=&backPath=http://search.janes.com/JDIC/JTIC/search&Prod_Name=&activeNav=http://www8.janes.com/JDIC/JTIC).

<sup>37</sup> See:

- Jane's Terrorism and Insurgency Centre's report entitled "IED attack kills nine Turkish soldiers in Diyarbakir" and dated 29 April 2009. Last accessed 27 July 2009.. This is available only on subscription at: [http://www8.janes.com/JDIC/JTIC/documentView.do?docId=/content1/janesdata/mags/jtic/history/jtic2009/jticg9083.htm@current&pageSelected=janesReference&keyword=&backPath=http://search.janes.com/JDIC/JTIC/search&Prod\\_Name=&activeNav=http://www8.janes.com/JDIC/JTIC](http://www8.janes.com/JDIC/JTIC/documentView.do?docId=/content1/janesdata/mags/jtic/history/jtic2009/jticg9083.htm@current&pageSelected=janesReference&keyword=&backPath=http://search.janes.com/JDIC/JTIC/search&Prod_Name=&activeNav=http://www8.janes.com/JDIC/JTIC) and;
- Eurasia.org's Eurasia Insight entitled "Turkey: Hopes fading for a Turkish truce with militant Kurds" dated 30 April 2009, last accessed 19 June 2009. This article can be found at: <http://www.eurasianet.org/departments/insightb/articles/eav043009d.shtml>

<sup>38</sup> See report by Jane's Terrorism and Insurgency Centre dated 21 October 07 and entitled "Turkish clash with Kurd rebels heightens tensions", last accessed 27 July 2009. This is available only on subscription at: [http://search.janes.com/JDIC/JTIC/documentView.do?docId=/content1/janesdata/mags/jtic/history/jtic2007/jticd8048.htm@current&pageSelected=janesReference&keyword=&backPath=http://search.janes.com/JDIC/JTIC/search&Prod\\_Name=&activeNav=http://search.janes.com/JDIC/JTIC](http://search.janes.com/JDIC/JTIC/documentView.do?docId=/content1/janesdata/mags/jtic/history/jtic2007/jticd8048.htm@current&pageSelected=janesReference&keyword=&backPath=http://search.janes.com/JDIC/JTIC/search&Prod_Name=&activeNav=http://search.janes.com/JDIC/JTIC)

<sup>39</sup> See above, note 3, page 6.

<sup>40</sup> See above, note 3, page 22.

<sup>41</sup> See above, note 3, page 22.

<sup>42</sup> See above, note 3, page 6.

<sup>43</sup> See above, note 3, page 6.

<sup>44</sup> See, for example, a report in Voice of America news entitled "Turkey blasts PKK in Iraq after deadly mine blast", dated 28 May 2009. Refer to <http://www.voanews.com/english/2009-05-28-voa10.cfm>

<sup>45</sup> See above, note 3, page 24.

<sup>46</sup> See above, note 3, page 4.

<sup>47</sup> See above, note 3, page 23.

<sup>48</sup> See above, note 3, page 4.

<sup>49</sup> See above, note 3, page 2.

<sup>50</sup> See above, note 3, page 15.

<sup>51</sup> See:

- above, note 3, page 15
- "PROFILE: Kurdistan Freedom Falcons (TAK)", page 2 above note 29.

<sup>52</sup> See above, note 3, page 4.

<sup>53</sup> See above, note 3, page 22.

<sup>54</sup> See above, note 3, page 6.

<sup>55</sup> See above, note 3, page 6.

<sup>56</sup> See above, note 3, page 23.

<sup>57</sup> See page 1 of "Stone throwers in glass houses" published in the Economist, dated 21 May 2009, last accessed 19 June 2009. This article can be found at:

[http://www.economist.com/world/europe/PrinterFriendly.cfm?story\\_id=13702749](http://www.economist.com/world/europe/PrinterFriendly.cfm?story_id=13702749).

<sup>58</sup> See "Destruction of Turkish Outpost by PKK Leads to Counter-terrorism Reforms", carried in Terrorism Focus, Volume 5, Issue 37 dated 30 October 2008. Last accessed 28 August 2009. Available at [http://www.jamestown.org/single/?no\\_cache=1&tx\\_ttnews%5Btt\\_news%5D=5242](http://www.jamestown.org/single/?no_cache=1&tx_ttnews%5Btt_news%5D=5242)

<sup>59</sup> See "Five dead in police bus attack", published in Herald Sun newspaper, dated 9 October 2008, last accessed 19 June 2009. This article can be found at:

<http://www.news.com.au/heraldsun/story/0,21985,24469234-5005961,00.html>

<sup>60</sup> See "Turkey extends Iraq raid window" published by the BBC, dated 8 October 2008, last accessed 19 June 2009. This article can be found at: <http://news.bbc.co.uk/2/hi/world/europe/7659194.stm>

<sup>61</sup> See "Turkey re-authorises strikes in Iraq" published by the International Herald Tribune, dated 9 October 2008, last accessed 19 June 2009. This article can be found at:

<http://www.iht.com/articles/2008/10/09/europe/09turkey.php>

<sup>62</sup> See "Turkey's military attacks rebels in Northern Iraq" published by ABC News, last accessed 19 June 2009. This article can be found at: <http://www.abcnews.go.com/print?id=6009942>

<sup>63</sup> See above, note 61.

<sup>64</sup>

- See above, note 60.
- See above, note 61.

<sup>65</sup>

- See above, note 60.
- See above, note 61.

<sup>66</sup> See "PKK attack in Diyarbakir deepens public doubts about Turkey's counterterrorism strategy" published by the Jamestown Foundation in Eurasia Daily Monitor Volume: 5 Issue: 194, date 9 October 2008, last accessed 19 June 2009. This article can be found at:

[http://www.jamestown.org/single/?no\\_cache=1&tx\\_ttnews%5Btt\\_news%5D=34011](http://www.jamestown.org/single/?no_cache=1&tx_ttnews%5Btt_news%5D=34011)

<sup>67</sup> See "Five killed in attack on police bus in Turkey", published by Reuters, dated 9 October 2008, last accessed 19 June 2009. This article can be found at:

<http://www.reuters.com/article/worldNews/idUSTRE4977NZ20081008>

<sup>68</sup> See:

- Southeast European Times "PKK claims responsibility for attack on Turkish Police bus" dated 12 October 2008, last accessed 19 June 2009. This article can be found at: [http://www.setimes.com/cocoon/setimes/xhtml/en\\_GB/features/setimes/newsbriefs/2008/10/13/nb-05](http://www.setimes.com/cocoon/setimes/xhtml/en_GB/features/setimes/newsbriefs/2008/10/13/nb-05)
- "Turkish planes bomb northern Iraq" published by the BBC, dated 13 October 2008, last accessed 19 June 2009. This article can be found at: <http://news.bbc.co.uk/2/hi/europe/7666423.stm>
- "PKK claims deadly attack on police bus in Turkey" published by Hurriyet Daily News, last accessed 3 July 2009. This article can be found at: <http://www.hurriyet.com.tr/english/home/10103793.asp?scr=1>
- "Turkish air raid targets senior Kurdish rebels in Iraq: army" published by ABC News, dated 13 October 2008, last accessed 19 June 2009. This article can be found at: <http://www.abc.net.au/news/stories/2008/10/13/2388839.htm?section=justin>

<sup>69</sup> See "Responsibility for bombings in Western Turkey Disputed by PKK and the Kurdistan Freedom Falcons" published by the Jamestown Foundation in Terrorism Focus, Volume: 5, Issue: 31 dated 2 September 2008, last accessed 19 June 2009. This article is available at:

[http://www.jamestown.org/single/?no\\_cache=1&tx\\_ttnews%5Btt\\_news%5D=5127](http://www.jamestown.org/single/?no_cache=1&tx_ttnews%5Btt_news%5D=5127)

<sup>70</sup> See:

- "Car bomb blast in western Turkey" published by BBC News, dated 21 August 2008, last accessed 19 June 2009. This article can be found at: <http://news.bbc.co.uk/2/hi/7575337.stm>
- "Car bomb injures 16 Turkish policemen and soldiers in Turkey" published by EKurd.net, dated 21 August 2008, last accessed 19 June 2009. This article can be found at: <http://www.ekurd.net/mismas/articles/misc2008/8/turkeykurdistan1940.htm>
- "Responsibility for bombings in Western Turkey Disputed by PKK and the Kurdistan Freedom Falcons" published by the Jamestown Foundation in Terrorism Focus, Volume: 5, Issue: 31 dated 2 September 2008, last accessed 19 June 2009. This article is available at: [http://www.jamestown.org/single/?no\\_cache=1&tx\\_ttnews%5Btt\\_news%5D=5127](http://www.jamestown.org/single/?no_cache=1&tx_ttnews%5Btt_news%5D=5127)

<sup>71</sup> See "Car bomb blast in western Turkey" published by BBC News, dated 21 August 2008, last accessed 19 June 2009. This article can be found at: <http://news.bbc.co.uk/2/hi/7575337.stm>

<sup>72</sup> See above, note 70, Jamestown Foundation article.

<sup>73</sup> See above, note 70, Jamestown Foundation article.

<sup>74</sup> See above, note 70, Jamestown Foundation article.

<sup>75</sup> See above, note 70, Jamestown Foundation article.

<sup>76</sup> See above, note 3, page 4.

<sup>77</sup> The 2003 terrorist attacks hit two synagogues in Istanbul, killed approximately 23 people, and injured more than 300, were blamed on Islamic extremist groups.

See

- "Double bombing in Istanbul kills 17" published in Jane's, dated 28 July 2008, last accessed 10 June 2009. Available only on subscription.
- "Istanbul shopping centre blasts toll rises to 17" published by the Independent, dated 28 July 2008, last accessed 24 June 2009. This article can be found at: <http://www.independent.co.uk/news/world/europe/istanbul-shopping-centre-blasts-toll-rises-to-17-878791.html>
- "Istanbul bombings kill 17 evening strollers" published by the New York times, dated 28 July 2008, last accessed 24 June 2009. This article can be found at: <http://www.nytimes.com/2008/07/28/world/europe/28iht-28turkey.14817007.html>

<sup>78</sup> See "Istanbul bombings suggest PKK Insurgency may be entering a more ruthless phase" published by the Jamestown Foundation in Terrorism Focus, Volume: 5 Issue: 29 dated August 6 2008, last accessed 19 June 2009. This article can be found at:

[http://www.jamestown.org/single/?no\\_cache=1&tx\\_ttnews%5Btt\\_news%5D=5104](http://www.jamestown.org/single/?no_cache=1&tx_ttnews%5Btt_news%5D=5104)

<sup>79</sup> See:

- "After bombing, Turkish leader urges unity", published by the New York Times, dated 29 July 2008, last accessed 25 June 2009. This article can be found at: <http://www.nytimes.com/2008/07/29/world/europe/29turkey.html>; and
- "Attacks put Turkey in a bind over rebel Kurds", published by the New York Times, dated 24 May 2007, last accessed 25 June 2009. This article can be found at: <http://www.nytimes.com/2007/05/24/world/europe/24iht-turkey.4.5857579.html>
- See "JTIC Briefing: Istanbul bombs indicate PKK escalation", page 3 published by Jane's, dated 31 July 2008, last accessed 10 June 2009. Available only on subscription

<sup>80</sup> See "JTIC Briefing: Istanbul bombs indicate PKK escalation", page 1 published by Jane's, dated 31 July 2008, last accessed 10 June 2009. Available only on subscription.

<sup>81</sup> See above, note 3, page 5.

<sup>82</sup> See "In Turkish Bombings, 'Who Benefits'" published in The Washington Post, dated 20 April 2006, last accessed 19 June 2009. This article can be found at: <http://www.washingtonpost.com/wp-dyn/content/article/2006/04/19/AR2006041902334.html>

<sup>83</sup> See "Turkey Struggles to Find Effective Anti-Terror Strategy" published in Spiegel, dated 30 August 2006, last accessed 19 June 2009. This article can be found at <http://www.spiegel.de/international/0,1518,434373,00.html>

<sup>84</sup> See:

- "Turkey vows crackdown on PKK after 15 soldiers killed" dated 8 October 2007, last accessed 19 June 2009. This article can be found at: <http://www.bloomberg.com/apps/news?pid=20601087&sid=aPObPvHK39Gw#> and;
- See above, note 3, page 4.

<sup>85</sup> See "Istanbul rocked by explosion", published by AFP, dated 25 December 2007, last accessed 19 June 2009. This article can be found at:

<http://www.france24.com/france24Public/en/archives/news/europe/20071226-turkey-explosion-istanbul-city-police-station.php>

<sup>86</sup> An international armed conflict also exists where there is a state of military occupation, even if the occupation meets with no armed resistance. The PKK attacks are occurring within the internationally recognised borders of the Republic of Turkey and is therefore not in response to an occupation. For parties to Geneva Protocol I an international armed conflict also exists where peoples are fighting against colonial domination and alien occupation and against racist regimes in the exercise of their right of self determination. The PKK appear to have argued that this is the situation in Turkey; however Turkey is not a party to Geneva Protocol I.

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<sup>87</sup> Combatant 'status' only arises in international armed conflict however irregular forces in internal armed conflicts can also enjoy some recognition under international law if the conditions stated are met – Additional Protocol I (1977) to the Geneva Convention 1949 art 44.

<sup>88</sup> The applicable LOAC would be Common Article 3 of the Geneva Conventions 1949.

<sup>89</sup> A person is *hors de combat* if he or she is wounded, sick or shipwrecked or captured by the opposing force.

<sup>90</sup> Australian Bureau of Statistics, 2006 Census Statistics on Ancestry, information can be found at: [http://www.censusdata.abs.gov.au/ABSNavigation/prenav/ViewData?breadcrumb=TLPD&method=Place%20of%20Usual%20Residence&subaction=-1&issue=2006&producttype=Census%20Tables&documentproductno=0&textversion=false&documenttype=Details&collection=Census&javascript=false&topic=Ancestry&action=404&productlabel=Ancestry%20\(full%20classification%20list\)%20by%20Sex&order=1&period=2006&tabname=Details&areacode=0&navmapdisplayed=true&](http://www.censusdata.abs.gov.au/ABSNavigation/prenav/ViewData?breadcrumb=TLPD&method=Place%20of%20Usual%20Residence&subaction=-1&issue=2006&producttype=Census%20Tables&documentproductno=0&textversion=false&documenttype=Details&collection=Census&javascript=false&topic=Ancestry&action=404&productlabel=Ancestry%20(full%20classification%20list)%20by%20Sex&order=1&period=2006&tabname=Details&areacode=0&navmapdisplayed=true&)

<sup>91</sup> Listed 17 December 2005 and re-listed 27 September 2007:

<http://www.nationalsecurity.gov.au/agd/www/nationalsecurity.nsf/AllDocs/95FB057CA3DECF30CA256FAB001F7FBD?OpenDocument>

<sup>92</sup> Listed 10 December 2002, reviewed 20 November 2008: <http://www.publicsafety.gc.ca/prg/ns/le/cle-eng.aspx>

<sup>93</sup> The PKK was listed by the EU in 2002: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:023:0037:01:EN:HTML>

<sup>94</sup> <http://security.homeoffice.gov.uk/legislation/current-legislation/terrorism-act-2000/proscribed-groups#>

<sup>95</sup> The PKK was listed by the United States in 2001: <http://www.america.gov/st/peacesec-english/2008/April/20080429115651dmslahrellek0.9584772.html>