

STATEMENT OF CASE TO DESIGNATE THE REVOLUTIONARY PEOPLE'S LIBERATION PARTY/FRONT (DHKP/C) AS A TERRORIST ENTITY

Purpose

1. The purpose of this paper is to set out the case demonstrating that the Revolutionary People's Liberation Party/Front (which is customarily shortened to the DHKP/C)¹, meets the statutory criteria for designation as a terrorist entity within New Zealand pursuant to the Terrorism Suppression Act 2002 ("TSA").
2. The paper concludes that the Revolutionary People's Liberation Party/Front (DHKP/C) meets the criteria for designation as a terrorist entity under the TSA.

Structure of this paper

3. This paper sets out background information about the DHKP/C covering various aspects of the organisation including (briefly) its background and history; ideology and objectives; its size and structure; sources of income; targets, weapons and capabilities, before detailing a case study of a recent attack which meets the definition of a terrorist act under the TSA.
4. The discussion preceding the case study provides background about the situation in Turkey and about the DHKP/C which helps inform the analysis of the specific attack in the case study below. The attack detailed in the case study has been analysed as meeting the definition of a "terrorist act" under s 5 of the TSA, and it provides the basis for the paper's conclusion that the DHKP/C meets the legal criteria for designation as a terrorist entity under the TSA.

Statutory criteria for this designation under the TSA

5. 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.
6. Section 25 provides that a terrorist act is "carried out" if any one or more of the following occurs:
 - 6.1 Planning or other preparations to carry out the act, whether it is actually carried out or not;
 - 6.2 A credible threat to carry out the act, whether it is actually carried out or not;
 - 6.3 An attempt to carry out the act; or
 - 6.4 The carrying out of the act.
7. 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 which deem an act to be a terrorist act if that act:
 - 7.1 Is intended to cause the death of, or serious bodily injury to, one or more persons; and

- 7.2 Is carried out for the purpose of advancing an ideological, political, or religious cause; and
- 7.3 Is intended to unduly compel or force a government or an international organisation to do or abstain from doing any act; and
- 7.4 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.

CREDIBILITY OF SOURCES

- 8. This paper relies heavily on a report by Jane's World Insurgency and Terrorism entitled "Devrimci Halk Kurtulus Partisi/Cephesi (DHKP/C)", dated 7 September 2009. Various aspects of the Jane's report have been corroborated by such sources as the BBC, Jamestown Foundation, the US State Department and the US National Counterterrorism Centre; Europol and the UK Home Office.

Background

- 9. The DHKP/C has been designated as a Foreign Terrorist Organisation by the United States; proscribed as a terrorist group by the United Kingdom and listed by Australia.²

Terrorism in Turkey

- 10. A number of terrorist groups currently operate in Turkey. Some, such as the Kurdish PKK and the Marxist-Leninist DHKP/C, operate against the current Turkish political order. Others, such as al-Qaida, the Islamist Jihad Union and other Sunni extremist groups do not usually attack Turkish targets, preferring to use Turkey as a transit country. Terrorism does not pose a clear danger to the stability of the Turkish state.

Establishment of DHKP/C

- 11. The DHKP/C was formed in 1994. It emerged as the winning faction after an armed struggle in a militant group known as Devrimci Sol. Its leader, Dursan Karatus, announced the organisation's current name - Devrimci Halk Kurtulus Partisi/Cephesi or DHKP/C and that it would have both a political and a militant character. Since its foundation, DHKP/C has carried out a series of assassinations and bomb attacks in Turkey targeting senior politicians, the security forces and foreigners.

Size, Organisation and Structure, and Income

Size

- 12. Estimates of the organisation's size vary but there appears to be a consensus amongst observers that the organisation commands a limited number of operatives in Turkey itself (perhaps less than 100) and a support network in Europe. Such limited resources reflect:
 - 12.1 The declining attraction of Marxist-Leninism for "alienated" Turkish youth;

- 12.2 The considerable penetration of the organisation by the Turkish intelligence service; and
- 12.3 The decision by the organisation's leadership to launch a hunger strike campaign to protest prison conditions, which "depleted the DHKP/C's human resources through death and debilitation".³
- 13. Because the DHKP/C lacks the resources to mount a sustained campaign of violence against the Turkish state, it has had to settle for the occasional act of terrorism, often against important people or Turkish institutions, the aim probably being to demonstrate that it remains an effective organisation. However the Turkish security forces have been able to prevent many attacks. Jane's, for example, notes the successes of the Turkish police in foiling the attacks on the Defence Minister Vecdi Gonul in 2007 and on Prime Minister Erdogan in 2008.⁴ The security forces failed, however, to stop the suicide attack in 2009 on the former Minister of Justice, Hikmet Sami Turk. His life was spared only because the suicide bomb failed to ignite.

Organisation and Structure

- 14. As the group's name and its structure suggest, DHKP/C seeks to operate as both a political and a military force. It has a political wing - the "Devrimci Halk Kurtulus Partisi" (DHKP) or Revolutionary Peoples Liberation Party, and a military wing - the "Devrimci Halk Kurtulus Cephesi" (DHKC) or Revolutionary Peoples Liberation Front. There is also a third organisation - DHKC Enternasynol - which is responsible for coordinating DHKP/C's international activities. But, as Jane's states, the "leadership hierarchy in all three organisations is identical and all three are run by a Central Committee".⁵
- 15. There is a considerable DHKP/C presence in Europe. Jane's reports that a "large proportion of [its] higher echelons...are currently believed to be living in Belgium, the Netherlands and Germany".⁶ Often they remain politically active, operating DHKP/C offices in a variety of European cities. They also generate funds and acquire weapons and explosives which are sent to Turkey. In August 2009, a German court found three men (one German and two Turks) to be guilty of membership of a foreign terrorist organisation. Prosecutors said that all three were involved in raising funds and arranging couriers to transport money, weapons and explosives to Turkey.⁷ The intended recipient was the DHKP/C.
- 16. While the DHKP/C's leadership is believed to be in Europe, the organisation's operational units - known as Silahli Propaganda Birlikler (SPBs) or 'Armed Propaganda Units' are based in Turkey. There are no reliable estimates for the number of SPBs but if it is correct that there are less than 100 militants⁸ in the DHKP/C in Turkey, then it is likely (given the belief that the SPBs are numerically small cells) that SPBs have in total no more than 30 SPBs.
- 17. The SPBs lead a clandestine existence. They receive their orders directly from the DHKP/C leadership in exile or from their regional commander, who might be a prison inmate. They are not permitted to select targets or to attack targets of opportunity.

Income

18. The DHKP/C is self-funded. In Europe, it collects funds by "methods that include extortion or taxation campaigns".⁹ In Turkey itself, it raises funds through robberies¹⁰ and like activities.

Ideology and Objectives

19. The DHKP/C uses force to advance its political and social goals, which are the establishment of a Marxist-Leninist regime by means of an "armed revolutionary struggle".¹¹ It describes itself as internationalist and anti-imperialist, and it has attacked US and UK targets within Turkey.
20. The DHKP/C grew out of the Turkish leftist student movement of the 1960s and 70s which in turn was heavily influenced by the idealism of their European counterparts. Its ideology is largely derived from the thinking of a Turkish Marxist, Mahir Cayan. Jane's¹² reports that Cayan's thinking remains an inspiration for DHKP/C militants and that he is frequently quoted in DHKP/C publications. Cayan's theory of "Politicised Military War Strategy", which advocates "armed propaganda" in order to awaken, unite and politicise the masses in preparation for guerrilla war and eventual communist revolution still provides the ideological framework for the DHKP/C's use of violence".¹³ As such, DHKP/C's ideology has echoes of the logic of revolutionary warfare that took root in many countries at that time.

Tactics, Weapons and Capabilities

Tactics

21. In addition to targeting prominent people and leading institutions, the DHKP/C mounts revenge attacks on persons responsible for the death or mistreatment of DHKP/C militants.¹⁴ (This explains the attack in 2009 on the former Minister of Justice, who was in charge of prison policy during some of the hunger strikes by DHKP/C members (and others) when a series of changes were being implemented in Turkish prisons.) The DHKP/C also executes its own members who help the security forces. On the other hand, the DHKP/C has no record of indiscriminate mass casualty attacks, and the evidence suggests that it tries to avoid casualties amongst bystanders or those it deems not to be legitimate targets.¹⁵
22. Most attacks are carried out by SPBs operating alone. They follow a period of surveillance. Having used guns in its earlier years, the organisation in more recent years made greater use of IEDs. These have been used to attack infrastructural facilities such as ATMs that belong to foreign banks, and local branches of political parties.¹⁶ In 2004, during the run-up to the NATO Summit in Istanbul, Jane's records that the DHKP/C staged a number of attacks on Western business interests, mostly using small IEDs and petrol bombs¹⁷. As noted above, an intended attack utilising an IED against the Prime Minister in 2008 was thwarted by the Police.¹⁸

Weapons

23. The DHKP/C has traditionally used light weapons such as hand-guns and assault rifles plus explosives. In recent years, IEDs and petrol bombs have been used. Jane's reports that the DHKP/C has "no record of using vehicle borne improvised explosive devices".¹⁹

24. Beginning in 2001, the DHKP/C has deployed suicide bombers but only infrequently and with limited results. Two successful attacks against the Police were made in 2001. Since then, the DHKP/C has been unsuccessful. In July 2005, a DHKP/C militant on a suicide mission managed to enter the Ministry of Justice building in Ankara before being restrained by security officials and then being shot dead as he fled.²⁰ As mentioned in paragraph 13 above, the 2009 attempt on the life of the former Minister of Justice failed when the suicide bomb did not explode.

Capabilities

25. As noted above, the DHKP/C continues to be too weak to launch a sustained campaign of violence. It has not succeeded in conducting a high profile attack since September 2001.
26. Nevertheless, the DHKP/C remains a threat. The 2009 attempt to assassinate the former Minister of Justice nearly succeeded. In 2010 the DHKP/C was reportedly involved in another attempt on the Prime Minister's life.²¹ In the absence of any indication from the DHKP/C that it intends to withdraw from its attempt to seize power in Turkey through violent revolution, it must be assumed that the DHKP/C intends to continue on its present course. Further attacks on high-profile Turkish personalities are probable. At some stage, the probabilities are that an attack will be successful.

Areas of operation

27. The DHKP/C continues to operate within Turkey itself, principally in the urban areas of Istanbul, Ankara, Izmir and Adana. The support network in Europe continues in operation.

Case Study

Attempted assassination in 2009 of former Minister of Justice

The facts

28. On 29 April 2009, a former Turkish Minister of Justice, Hikmet Sami Turk, was scheduled to give a lecture at Bilkent University in Ankara. Didem Akman came close to the former Minister (Turk has subsequently said about a metre away), asked him a question and then attempted to detonate the bomb. It failed to detonate completely, but she was wounded, fell to the floor and was then captured by Turk's bodyguards. The bomb was then disarmed. The former Minister was lucky. Turk confirmed that he had been receiving death threats since a prison uprising in December 2000, and said that he had escaped similar attempts on his life, including one in 2002.²²
29. Material in the news media, made available by the Turkish Police, shows that Akman was jailed for eight months after being captured in a police operation against the DHKP/C in Ankara. Akman was reportedly trained at a terrorist camp outside Turkey's borders.²³

The act meets the TSA criteria for designation

30. The attempted suicide attack is consistent with the definition of a terrorist act under s 5 of the TSA.

31. The attempted detonation of a suicide bomb clearly shows an intention to cause the death of, or serious bodily injury to, the former Justice Minister(s 5(3)(a) TSA).
32. This attempted attack is consistent with the DHKP/C's practice, noted in paragraphs [13] and [21] above, of targeting prominent figures, particularly politicians, and also was very likely revenge for Minister Turk's acts affecting DHKP/C members when in government. The DHKP/C's ultimate aim is to establish a Marxist-Leninist regime in Turkey through the use of violence and guerrilla warfare (paragraphs [19]-[20] above). The assassination attempt on a target associated with the Turkish government is consistent with the DHKP/C's objective of provoking an armed revolution and intention to force the overthrow of the government (s 5(2)(b) TSA). This attack was therefore also carried out (within the s 25 TSA definition, which captures attempted acts) with the purpose of advancing the DHKP/C own ideological and political cause (s 5(2) TSA).

LAW OF ARMED CONFLICT

The law of armed conflict exemption

33. Section 5(4) of the TSA provides that an act does not constitute a terrorist act for the purposes of the TSA if two conditions are met. The first condition is that there must a situation of armed conflict in those areas in which DHKP/C conducts its operations, at the time the act occurs. Secondly, the act must accord with the law of armed conflict ("LOAC"). If one of these conditions is not met, the exemption does not apply.

Is there an armed conflict in Turkey and do members of DHKP/C conduct themselves as combatants?

34. There are two kinds of armed conflict:
 - 34.1 An international armed conflict exists where there is a conflict between the armed forces of two states²⁴; where there is a military occupation of one state by the armed forces of another²⁵; or where the peoples are fighting against colonial domination and alien occupation against racist regimes in the exercise of their self-determination²⁶.
 - 34.2 A non-international armed conflict exists where the conflict is fought within a State between government forces and opposing non-state forces; or between or amongst armed groups, none of whom qualify as a legitimate government²⁷. LOAC makes a key distinction between armed conflict and other internal disturbances or tensions such as riots; and isolated and sporadic acts of violence²⁸. Protocol II Additional to the Geneva Conventions 1949 (1977) adopts a higher threshold, requiring insurgent forces fighting the government to operate under responsible command; to control territory such that it would be able to carry out sustained and concerted military operations; and to implement the LOAC obligations arising out of Protocol II²⁹.
35. The attack detailed in the case study does not reach the threshold of armed conflict. Although neither duration nor casualties alone are determinative, most authorities do not regard limited political demonstrations of force of this nature to be an armed conflict. The aim of the violence was limited and the normal structures of the State remained in place.

36. Given that there is no situation of armed conflict, the exemption in s 5(4) TSA cannot apply to the DHKP/C action detailed in the case study.

Was the act carried out in accordance with the applicable rules of LOAC?

37. Having failed to meet the threshold of armed conflict, it is not strictly necessary to go further to examine whether the actions of DHKP/C detailed in the case study would have been in accordance with the LOAC. However, it is noted that even if it were considered that there was a current armed conflict, the second threshold for applying LOAC is also not met.
38. Only combatants have the right to conduct attacks in accordance with LOAC³⁰. This generally means members of armed forces; however irregular forces can still qualify provided they distinguish themselves from the civilian population while engaged in an attack or operations preparatory to an attack.
39. DHKP/C do not appear to meet the criteria for combatant status, including as a dissident armed force, because it does not sufficiently distinguish itself from the civilian population.³¹ While this paper indicates that the DHKP/C may have a command structure, it is not clear that this a responsible command structure for the purposes of LOAC.³² Further, it is not known whether DHKP/C members:
- 39.1 wear a uniform or some form of distinctive emblem recognisable at a distance;
 - 39.2 distinguish themselves during individual attack; or
 - 39.3 carry arms openly.³³
- Further, the material reviewed for the writing of this paper does not suggest there is an internal disciplinary system that enforces compliance with the LOAC³⁴.
40. The members of DHKP/C do not qualify for combatant status in respect of the case study because they do not distinguish themselves from the civilian population during the attack nor did they conduct the attacks according to LOAC. Further, the attack detailed in the case study targeted a civilian which breaches the LOAC principle of distinction. That principle provides that while attacks on enemy combatants and military objectives are lawful, attacks on the civilian population and civilian objects are not.
41. Thus, the case study could be properly categorised as a terrorist act under s 5 TSA.

¹ Other names often used to refer to the DHKP/C are Devrimci Sol (Revolutionary Left) and Dev Sol.

² See, for the United States <http://www.state.gov/s/ct/rls/other/des/123085;> for the United Kingdom: <http://www.homeoffice.gov.uk/publications/counter-terrorism/proscribed-terror-groups/proscribed-groups?view=Binary>;

³ See pp 5 and 15 of Jane's World Insurgency and Terrorism Report entitled "Devrimci Halk Kurtulus Partisi/Cephesi (DHKP/C)" dated 7 September 2009. This supported by the Jamestown Foundation report entitled "Turkish Police foil alleged DHKP/C attack on

Erdogan, US Companies", dated 11 March 2008 which states that "over the last eight years, nearly 100 DHKP/C members and supporters have starved themselves to death and several hundred more became seriously disabled". The loss of so many militants is thought to have seriously curtailed DHKP/C's ability to sustain a long-term campaign of violence and terrorism. For the Jamestown paper, google "Turkish Police Foil Alleged DHKP-C attack on Erdogan, U.S. Companies".

⁴ See p 19 of footnote 3, above.

⁵ See p 8 of footnote 3, above.

⁶ See p 4 of footnote 3, above.

⁷ See an item entitled "German court convicts three of membership in terrorist DHKP/C" dated 8 August 2009. The report, which is in the Turkish English language newspaper, Today's Zaman and includes material from Associated Press, is available at : <http://www.todayszaman.com/news-183293-germany-convicts-3-of-membership-in-terror-group.html>

⁸ See p 9 of footnote 3, above.

⁹ See p 14 of TE-SAT 2010. This report by Europol focuses on the "EU terrorism situation and trends..."

¹⁰ See p 9 of footnote 3, above.

¹¹ Source: See p 5 of the UK Home Offices's publication "Proscribed terrorist groups", which is available at <http://www.homeoffice.gov.uk/publications/counter-terrorism/proscribed-terror-groups/proscribed-groups?view=Binary>

¹² See p 12 of footnote 3, above.

¹³ See p 12 of footnote 3, above.

¹⁴ See p 6 of footnote 3, above.

¹⁵ See p 6 of footnote 3, above.

¹⁶ Much of the material in this paragraph has been extracted from pp 6 and 7 of footnote 3, above.

¹⁷ See p 18 of footnote 3, above.

¹⁸ For the 2008 attack, see p 19 of footnote 3 above.

¹⁹ See p 6 of footnote 3, above.

²⁰ This source, an item from Jamestown, is to be found by Googling "Turkish Police Foil Alleged DHKP-C attack on Erdogan, U.S. Companies".

²¹ See the article "DHKP/C planned to assassinate Erdogan" in the English language Turkish newspaper "Today's Zaman", published on 25 May 2010. This is available at: <http://www.todayszaman.com/tz-web/news-211100-100-dhkcpc-planned-to-assassinate-erdogan.html>. The Police reported that they captured two would-be assassins in Corlu, a town about 80-90 km west of Istanbul.

²² See pp 6 and 19 of footnote 3, above. See also the article entitled "Former Minister of Justice escapes assassination attempt" in Today's Zaman dated 30 April, 2009. This is no longer available on the Internet but a copy is held on file by Police.

²³ See the "Today's Zaman" item referred to in footnote 22 above.

²⁴ Article 2 (Common) of the Geneva Conventions of 1949; Article 1(3) of Protocol I Additional to the Geneva Conventions of 1949 (1977).

²⁵ Ibid.

²⁶ Article 1(4) of Protocol I Additional to the Geneva Conventions of 1949 (1977).

²⁷ Article 3 (Common) of the Geneva Conventions of 1949; Article 1 of Protocol II Additional to the Geneva Conventions of 1949 (1977).

²⁸ Article 2(2) of Protocol II Additional to the Geneva Conventions of 1949 (1977).

²⁹ Article 43(2) of Protocol I Additional to the Geneva Conventions of 1949 (1977). While it is noted that Turkey is not a state party to Additional Protocol I; the Protocol is still a legitimate consideration in a consideration of whether the TSA s. 5(4) exemption applies.

³⁰ Article 44(3) of Protocol I Additional to the Geneva Conventions of 1949 (1977).

³¹ Article 43(1) of Protocol I Additional to the Geneva Conventions of 1949 (1977).

³² Article 43(1) of Protocol 1 Additional to the Geneva Conventions of 1949 (1977)

³³ Article 44(3) of Protocol 1 Additional to the Geneva Conventions of 1949 (1977)

³⁴ Article 43(1) of Protocol I Additional to the Geneva Conventions of 1949 (1977).