



Australian Government
Classification Review Board

19, 20, 23 June and 3, 5 July 2006

23-33 MARY STREET
SURRY HILLS, NSW

MEMBERS: Ms Maureen Shelley (Convenor)
The Hon Trevor Griffin (Deputy Convenor)
Mr Rob Shilkin
Mrs Kathryn Smith
Mrs Gillian Groom
Ms Ann Stark
Mr Anthony Hetrih

APPLICANT: Commonwealth Attorney General, the Hon Philip Ruddock
MP, not represented.

INTERESTED PARTIES: NSW Council for Civil Liberties.

BUSINESS: To review the Classification Board's decision to classify the publication *The Absent Obligation: And Expel the Jews and Christians from the Arabian Peninsula* 'Unrestricted'.

DECISION AND REASONS FOR DECISION

1. Decision

The Classification Review Board (the Review Board) in a 5-2 majority decision classified the publication *The Absent Obligation: And Expel the Jews and Christians from the Arabian Peninsula* 'Unrestricted'.

2. Legislative provisions

The *Classification (Publications, Film and Computer Games) Act 1995* (the Act) governs the classification of publications and the review of classification decisions. Section 9 of the Act provides that publications are to be classified in accordance with the National Classification Code (the Code) and the classification guidelines.

Section 11 of the Classification Act requires that the matters to be taken into account in making a decision on classification include:

- (a) the standards of morality, decency and propriety generally accepted by reasonable adults; and
- (b) the literary, artistic or educational merit (if any) of the publication or film; and
- (c) the general character of the publication or film, including whether it is of a medical, legal or scientific character; and
- (d) the persons or class of persons to or amongst whom it is published or is intended or likely to be published.

Three essential principles underlie the *2005 Guidelines for the Classification of Publications* (the Publication Guidelines), determined under s.12 of the Act:

1. The importance of context;
2. Assessing impact; and
3. The six classifiable elements – themes, violence, sex, language, drug use and nudity.

3. Procedure

The Review Board convened on 19 June 2006 in response an application dated 5 June 2006 from the Attorney General, the Hon Philip Ruddock MP (the Applicant).

The original application for classification of the publication was lodged by the Australian Federal Police on 15 December 2005 (application reference L05/1457). The Classification Board classified the publication as ‘Unrestricted’ on 23 December 2005.

At its meeting on 19 June 2006 seven members of the Review Board received oral and written submissions from Mr Drew Kovacs representing the New South Wales Council for Civil Liberties, and then adjourned to consider the substance of the application ‘in camera’. The Review Board continued to deliberate ‘in camera’ on 20 and 23 June 2006 and on 3 July 2006. At its meeting on 3 July 2006 the Review Board determined it was not able to reach a decision without obtaining a translation of the Arabic Publishers Note on page 7 of the publication and adjourned until such a translation could be obtained.

The Review Board reconvened on 5 July 2006 for a final time and, after careful consideration of all of the relevant issues, determined in a majority decision that the publication be classified ‘Unrestricted’.

4. Evidence and other material taken into account

In reaching its decision the Review Board had regard to the following:

- (i) The Attorney General’s application for review;
- (ii) The NSW Council of Civil Liberties’ written and oral submissions;
- (iii) The Publication *The Absent Obligation: And Expel the Jews and Christians from the Arabian Peninsula* (L05/1457);
- (iv) The relevant provisions in the Act;

- (v) The relevant provisions in the Code, as amended in accordance with s.6 of the Act;
- (vi) Translation of the Arabic Publishers Note on page 7;
- (vii) The Classification Board's report; and
- (viii) The *2005 Guidelines for the Classification of Publications*.

5. Synopsis

The Absent Obligation: And Expel the Jews and Christians from the Arabian Peninsula is a book of 110 pages that examines the Islamic concept of Jihad and establishing the Law of Allah upon the earth - specifically the Arabian peninsula. The author is an Egyptian Islamist Muhammad Abdus Salam Faraj.

6. Findings on material questions of fact

The Review Board found that the publication contains aspects or scenes of importance, under various classifiable elements:

Classifiable elements

There are no descriptions or depictions of sex, drug use, nudity or coarse language in the publication. The descriptions of violence in the book are fleeting and mild.

The underlying themes of the publication would undoubtedly be rejected by most Australians and would be considered extreme. However, their impact in the publication is not high, largely due to the turgid academic style of the publication and the lack of real detail. The treatment of themes is not offensive as that term is defined in the Guidelines, although it may be offensive to some people given the ordinary use of the word.

Promotion, incitement or instruction in matters of crime or violence

The publisher's note states that this is a "*truly revolutionary work*", that it has been published numerous times in Arabic and that this is the first time that it has been produced in English.

This edition of the book was published in 2000. It contains a prayer for "*our family struggling throughout the globe and in particular those in Chechnya and Palestine.*" Other than this, there are no contemporary references.

The fundamental thesis of the publication is that it is obligatory upon every Muslim to fight in order to re-establish the Islamic State. The book provides various Koranic quotes and quotes of prophets and Islamic scholars that purport to support this obligation.

The book is stated to "*illustrate...how the obligation of fighting in the cause of Allah is truly absent and forgotten - except by a few Lions and swords of Allah. Bring back the desire for Jihad and establishing the Law of Allah upon the earth will surely be a revolutionary step for the Muslims of today.*"

The book notes that many rulers of formerly Islamic lands have "*apostatized from Islam. They have been brought up over colonial tables be they Christian, Communist or Zionist*". The book quotes from scholars and the Koran to support the notion that fighting such leaders is obligatory until "*the religion is for Allah (alone)*".

The book notes that other Islamic obligations - such as obedience to Allah, pursuing education and intensive worship - are secondary to the obligation of Jihad. The publication notes that the most important task is to establish the laws of Allah "*in our own land*" rather than "*destroying the imperialists*" which is "*not a useful action and is a waste of time*".

The book emphasises the importance of rebellion against non-Islamic leaders in Islamic lands "*it is obligatory upon the Muslims to raise their swords against the rulers who are hiding the truth and are manifesting falsehood, otherwise the truth will never reach the hearts of the people.*" The book notes the benefits in the afterlife that "martyrs" in the cause of Allah allegedly receive.

The book notes that "*it is permissible for a Muslim to plunge himself into the thick of the disbelieving enemy if there is benefit in it for the Muslims...even if that leaves to his killing and before he sees the benefit of his plans with his own eyes*".

The book appears to suggest in one part that the killing of the children of the pagans is permissible, but in a subsequent paragraph suggests that women, children and prisoners should not be killed.

The book contains an Appendix entitled "Martyrdom Operations". This states that the proper term for "suicide operations" is "martyrdom operations" and "*there is a vast difference between the one who ends his life due to his inability to bear the difficulties of life...and the one who offers his life for the cause of Allah and to bring benefit and protection to the Muslims.*"

Without explicitly stating that suicide/martyrdom operations are justified or permissible, the book contains a list of incidents from the Koran and the tales of various scholars in which Muslims have engaged in attacks against the enemy which have caused their own death.

The publication is hostile towards "disbelievers" and, in particular, towards the leaders of formerly Muslim countries who do not themselves observe Islam. The book states that it is incumbent on Muslims to fight such leaders. The book also implies that suicide/martyrdom operations are permissible.

7. Reasons for the decision

The Review Board considered that most Australians would find the attitudes and sentiments expressed in the publication to be contemptible and extreme. Having said that, the Review Board is required to take a conservative approach to the interpretation of the Code.

The Review Board noted that the book was written in a descriptive, matter of fact manner, rather than as an emotive or an impassioned plea, or an attempt to persuade Muslims to engage in any particular act of Jihad.

There was no detail of any particular types of violence or crime that should be committed, nor any particular reference to any modern theatres of Jihad (other than a brief reference to the Mujahideen in “Palestine” and Chechnya) but no detail about the operations engaged in there, nor any demand that Muslims should assist in those particular theatres.

The majority of the Review Board concluded that the publication did not contain any tangible instruction, in the sense required, in matters of crime or violence.

In relation to “promotion” or “incitement”, the Review Board noted that it is obliged to consider “the objective purpose of the publication”, and that the publication must have the intention of “*encouraging a disposition*” towards crime in someone who otherwise does not have one or “*magnify a pre-existing disposition*” (*Chief Executive Officer of Customs v Carman* [2004] QDC 433).

The majority of the Review Board found that the publication’s objective purpose was to provide broad support for the broad notion of fighting against “disbelievers” but, in the absence of anything specific, there were no “matters of crime or violence” that were being incited or promoted.

In the majority view the book stopped short of advocating any particular crime or violence. The majority of the Review Board formed the view that such a generalised call to fight in the name of Allah, without details of where, by what means and at what time could not comprise the promotion or incitement in matters of crime or violence as that term has been interpreted by the Courts (see *Carman and Brown v Classification Review Board*).

Minority reasons

The guidelines for the classification of publications (2005) provide:

1. That publications will be refused classification (RC) if they contain “detailed instruction in:
 - (i) matters of crime or violence”
2. That one of the criteria for classifying a publication RC is that it: “*promote, incite or instruct in matters of crime or violence.*”
3. That in both Category 1- Restricted and Category 2- Restricted: *Publications which promote, incite or instruct in violence are not permitted.*

“Promote” means “to further the growth, development, progress etc, of; encourage” according to the Macquarie Dictionary (on-line edition).

“Incite” is described as: “to urge on; stimulate or prompt to action”

“Violence” means: “any unjust or unwarranted exertion of force or power, as against rights, laws, etc; injury; wrong; outrage.”

The Publisher’s Note states that the “work was originally published in Arabic and has been subsequently re-published on a number of occasions”. The 2000 edition is the first English-language version. The note states

“when a book such as this is made available to readers in the English language, neglecting it becomes a great disservice to the Islamic obligation”.

Further it states

“It also causes great injury to oneself, in the form of humiliation in this in (sic) life, by not practicing what has been clarified and confirmed from the texts, thus being subjugated by the enemies of Allaah”.

At page 7 the note describes the book as “this truly revolutionary work”. It states that it “is revolutionary not just because of the topic at hand but also by the nature of the title which illustrates so clearly how the obligation of fighting in the cause of Allaah is truly absent and forgotten – except by a few Lions and Swords of Allaah, Bringing back the desire for Jihaad and establishing the Law of Allaah upon the earth will surely be a revolutionary step for the Muslims of today.”

It states further “It is therefore imperative, and ordained for us to follow all of those duties and obligations of Islaam and not to pick and choose those parts of the religion, which happen to be in accordance with our weak desires.” In the same ‘Publishers Note’ (page 10) it says: “And at what time on earth was Jihaad more needed that it is now, when the enemies of Islaam have surrounded our lands like wolves, taking from there what they wish.”

On page 12 the publishers add a note about the author, stating that he was executed by hanging in central Cairo and that he was a “household name” in the Islamic movement along with Umar Abdur Rahman who is “serving a life term prison sentence in the USA as a result of a conspiracy between the United States and Egyptian governments.”

Throughout the book, references lead to the conclusion that, while there is no detailed instruction in violence or crime, there is promotion of violence and crime and incitement to violence and crime. The language used in describing the obligation of Muslims to fight is frequently inflammatory. There are several passages, when taken in context, which urge fighting for Islam. These passages, some of which are listed below, reflect the tenor of the publication.

The underlying obligation on Muslims is claimed to be “establishing the Islamic State” “...If the state can only be established by fighting, then it is compulsory on us to fight” (page 20).

On page 23 it states

“It is the obligation of Muslims to oppose such a ruler [one who rules by law taking precedence over the book of Allah and the Sunnah] by all necessary means until he returns to the rule of Allaah and His Messenger, So that no other than Him should rule, neither in a minor or major way.”

The publication argues that: “The present rulers have apostatized from Islaam. They have been brought up over colonial tables be they Christian, Communist or Zionist, What they carry of Islaam is nothing but names, even if they pray, fast and claim to be Muslims” (page 24)

Then the conclusion is: “if part of the religion is for Allaah and another is for other than Him, fighting is obligatory until the religion is for Allaah (alone)” (page 25). Further references to this obligation also appear at pages 32, 33 and 44.

On page 38 it states: “Whoever really desires to be engrossed in the highest degree of obedience and be on the peak of worship, then let him make Jihaad in the cause of Allaah.”

In a section headed “Reply to those who say that Jihaad in Islaam is for defence only” the following appears:

“Concerning this, it is worth giving a reply to the one who has said that Jihaad in Islaam is for defence and the sword did not spread Islaam. This is a false saying that has been repeatedly uttered by a lot of those who are known in the Islamic da’wah [preaching, inviting, propagating, calling (to Islam, Jihad etc)]. But the truth is in the answer given by the Messenger [the Prophet Mohammad] when he was asked:

‘Which Jihaad is in the cause of Allaah?’ He said: ‘He who has fought to raise the word of Allaah supreme is in the cause of Allaah.’

So fighting in Islaam is to raise Allaah’s word highest either offensively or defensively. Also Islaam was spread by the sword, but only against the leaders of kufr (sic) [disbeliever, infidel, non-Muslim, anyone who does not believe in the creed of Islam], who veiled it from reaching the people, and after that no one was forced to embrace it. It is obligatory upon the Muslims to raise their swords against the rulers who are hiding the truth and manifesting falsehood, otherwise the truth will never reach the hearts of the people” (page 49).

At page 58, reference is made (as it is in other parts of the publication) that “it is clear; by the Quraanic text that fighting means (physical) opposition and killing”. See also page 65: “It is obligatory upon the Muslim to prepare himself for Jihaad in the cause of Allaah”.

Further on page 59 it states

“As for the Muslim lands, the enemy resides in their countries, In fact the enemy is controlling every thing, The enemies are these rulers who have snatched the leadership of the Muslims, Thence Jihaad against them is fardh ‘ayn. Besides the Islamic Jihaad is now in need of the effort of every Muslim. And it should be borne in mind that when Jihaad is *fardh ‘ayn* (an individual obligation), it is not required to seek permission from one’s parents for the to (sic) march forth as scholars said: ‘it becomes like praying and fasting.’ ”

The book also outlines the punishments for those abandoning Jihaad including humiliation, division amongst the Muslims, “painful torment” and being replaced by Allaah by “another people”.

On page 69 it details that human shields, whether they be Muslim or not, is no excuse for not taking up Jihad: “if the kuffaar (sic) army take Muslims prisoners as human shields, and it is feared that harm will afflict the Muslims if they do not fight, then they must fight even if it results in the killing of the Muslims (sic) prisoners”. Further, the book states: “Such Muslims, if they are killed, will be martyrs but obligatory Jihaad must not to be abandoned because of the one who will be killed as a *shaheed* (martyr)”.

It is the view of the minority that by giving religious justification of martyrdom for killing Muslims in the cause of Jihad, the publication glorifies Jihad and incites those who may not otherwise take up “the fight” to do so.

One of the Arts of fighting in Islam” at page 73 refers to the words of the Prophet that “war is deceit”. That is referred to in the context of fighting the present rulers of the Muslims and also in dealing with the “kufaar” in war.

Appendix 1 (p 95) deals with “Martyrdom Operations”:

“This issue is of paramount importance in our times as we hear the term “suicide operations” in occupied Palestine and Chechnya, carried out by the Mujahadeen, In fact the correct term is martyrdom operation and the people of knowledge both past and present have discussed the issue. Indeed there is a vast difference between the one who ends his life due to his inability to bear the difficulties of life and its various tribulations, and the one who offers his life for the cause of Allaah and to bring benefit and protection to the Muslims.”

The cumulative impact of these passages, taken with the tenor of the remainder of the publication, lead the minority to conclude that the publication promotes and incites violence and/or crime. There is no specific exhortation in the publication to undertake a specific martyrdom operation or to undertake such an operation in a specific area. However, the general tenor of the publication is to encourage and incite Muslims “everywhere” to undertake Jihad, that is to fight for Islam, including physical fighting, the over throwing of leaders of countries – particularly in the Arabian peninsula – that are not committed to Shariah law and to undertake martyrdom operations, even where such operations result in the deaths of Muslims.

Given that the publication was published for the first time in English in 2000, it appears that the objective purpose of its publication and its sale in Australia is to encourage and incite Muslims – who may not otherwise be so encouraged – to undertake Jihad. Therefore, it is the minority view that the publication must be refused classification.

8. Summary

In light of the impact of the classifiable elements and the way in which the Courts have interpreted the term “promote, incite or instruct in matters of crime or violence”, the Review Board decided in the majority that the publication should be classified “Unrestricted”. The decision of the Review Board was reached by majority of 5 to 2.

It was the view of the minority that the publication should be refused classification.