

NEW ZEALAND

Prohibitions Against Terrorism

The Terrorism (Bombing and Financing) bill was meant to implement the International Convention for the Suppression of Terrorist Bombings and the International Convention for the Suppression of the Financing of Terrorism. Amendments have been made to also incorporate the UN Security Council resolution 1373 (2001), renaming the bill the “Terrorism Suppression bill”. A second terrorism bill is being contemplated, which will further supplement the Terrorism Suppression Act and amend the Crimes Act and the Immigration Act.

Apart “from the specific offences created by the international anti-terrorism treaties, there is no general offence of ‘terrorist act’ in the New Zealand Crimes Act.” The Criminal Code, however, covers many terrorist acts as criminal offences. The Sentencing and Parole Reform bill may list ‘terrorist activity’ as an aggravating factor for the purposes of sentencing. The Maritime Crimes Act, the Aviation Crimes Act, and the Crimes (INTERNATIONALLY PROTECTED PERSONS, UNITED NATIONS AND ASSOCIATED PERSONNEL AND HOSTAGES) Act all provide for up to 14 years’ imprisonment as punishment for offenses under these laws, e.g. hostage taking and hijacking of aircraft. Sentencing and Parole Reform bill will make it possible to increase sanctions to up to 17 years in prison for terrorist acts as aggravating circumstances.

The Crimes Act extends criminal liability for offences to persons who aid others to commit an offence, abet any person in the commission of the offence, or incite, counsel or procure any person to commit the offence. The Act also provides for criminal liability for the acts of others, when two or more persons pursue an unlawful purpose together as accomplices. Although the Act primarily foresees territorial jurisdiction, “it is sufficient to give jurisdiction if any act forming part of the offence or event necessary to its completion occurs in New Zealand.” Terrorist acts can also be prosecuted under the Crimes Act as complicity for an act that would be murder in New Zealand, which warrants up to 14 year in prison, and up to ten years prison for an attempt. Yet another possibility to prosecute perpetrators of terrorist acts in New Zealand is through the offense of conspiracy which entails up to seven years’ imprisonment for an act anywhere in the world that would be an offense in New Zealand. The second terrorism bill will also include an offense of harboring or concealing terrorists entailing up to seven years prison.

The acts contained in the international conventions to which the country is a party have been incorporated into national law as serious crimes in the Aviation Crimes Act, the Maritime Crimes Act and the Crimes (Internationally Protected Persons, United Nations and Associated Personnel and Hostages) Act. The Aviation Crimes Act implements the four international conventions and protocols involving aircraft, and covers acts from hijacking and other crimes to taking firearms, explosives and other offensive weapons on board aircraft. The Maritime Crimes Act deals similarly with crimes related to ships and fixed platforms in implementing the international legal instruments in this regard.

Under the Terrorism Regulations, it is prohibited for persons in New Zealand and its citizens abroad to make available, or cause to be made available, “directly or indirectly, without lawful justification or reasonable excuse, any property, or any financial or business or professional services, either to, or for the benefit of, and entity specified in the schedule.” The Terrorism Suppression bill similarly criminalizes any kind of support for anyone connected with terrorism under a maximum penalty of seven years in prison. It is also prohibited under the Terrorism Regulations “to recruit another person as a member of a group or organization knowing that the group or organization is a specified entity.” It is also prohibited to knowingly

participate in such a group. The Terrorism Suppression Bill provides for punishment for the recruiting for terrorist groups for up to 14 years imprisonment.

New Zealand has extraterritorial jurisdiction for offenses committed abroad by a citizen of New Zealand, by a stateless person who is a legal resident of New Zealand, any person on board New Zealand ships or aircraft, or vessels registered in New Zealand or part of the military, and lastly, when the offense caused a terrorist act in New Zealand, against a New Zealand citizen, a government facility abroad or with the purpose of forcing the national government to do or not to do something. It may be expanded under the second terrorism bill to cover any offense “committed by New Zealand citizens in the course of carrying out a terrorist act,” as defined in the Terrorism Suppression bill. New Zealand also has jurisdiction over offenders that are present in the country and not being extradited.

Counter-Terrorism Authorities

Inter-agency cooperation brings together the authorities in charge of narcotic control, financial tracking and security. The Police coordinates the National Drug Intelligence Bureau (NDIB), staffed with Customs Service and Police officers, who also work closely with the Ministry of Health on drug abuse issues. The NDIB is part of the National Bureau of Criminal Intelligence (NBCI), alongside the new Strategic Intelligence Unit for counter terrorism intelligence. The Combined Law Agency Groups (CLAG) brings together regionally and nationally officials from the Immigration and Internal Affairs Departments. The Domestic and External Security Secretariat (DESS) under the Department of Prime Minister and Cabinet coordinates security and terrorism matters, and coordinates with numerous government bodies, such as the Security Intelligence Service and the Police.

The Department of the Prime Minister and Cabinet lead an officials’ group, the Domestic and External Security Coordination System, to consider possible counter-terrorism measures. This necessitates collecting and evaluating foreign and domestic intelligence. The Government Communications Security Bureau bill provides that this group is to share any information about serious crimes, including terrorism, with the law enforcement agencies, and establishes safeguards for the privacy of the country’s citizens. The Interception Capability bill “will require all telecommunications network operators to make their networks interception capable and other, such as Internet service providers, to provide assistance to the police and the intelligence agencies, if called upon.” This bill will significantly strengthen the capabilities of police and intelligence services to monitor groups with links to terrorism.

Weapons Control and Weapons of Mass Destruction

The Terrorism Suppression Bill will prohibit the supply of weapons to terrorist groups. Currently, the Arms Act restricts the sale, ownership and carrying of firearms and gives a license requirement. Licenses are also required for the supply of explosives. The Crimes Act prohibits the supply or possession of “offensive weapon[s].”

The Customs and Excise Act provides for the administration and enforcement of Customs controls at the border. It specifies the general procedure to be followed for regulating imports and exports (Part 5). Furthermore, it defines offences and penalties for importation or exportation of prohibited goods (at most 6 months of imprisonment or a fine \$10 000 for a person or \$50 000 for a corporation). The Customs Export Prohibition Order (2002) prohibits weapons and dual-use weapon-related exports, specifically biological agents, without the consent of the Secretary of Foreign Affairs and Trade. A risk of diversion or potential use for terrorist acts leads to a refusal of a license.

The New Zealand Nuclear Weapon Free Zone, Disarmament and Arms Control Act implements the Nuclear Non-Proliferation Treaty and the Biological Weapons Convention. It is illegal for anyone to manufacture, acquire, possess, have control over, or to aid, abet or procure any person to do so any nuclear device, and prohibits anyone from such activity outside the New Zealand Nuclear Free Zone. Also prohibited is for any person to manufacture, station, acquire, possess or have control over any biological weapons in this Zone. Upon implementation of the Convention on the Physical Protection of Nuclear Materials, the law will better deal with the unlawful possession, use, threat of use (also by terrorists) or transfer of nuclear materials. New Zealand is also party to a Treaty that prohibits the use of the sea-bed and ocean-floor for nuclear weapons and other weapons of Mass Destruction, which includes biological weapons.

The Biological Weapons Convention is incorporated into domestic law which incorporates the Convention's definition of biological weapons. Serious penalties are set forth for a breach of the Act involving biological weapons. Any person committing an offense faces up to 10 years in prison.

New Zealand also participates in informal multilateral export control regimes to prevent exports from contributing to terrorist activity, especially, to programs of weapons of mass destruction. The Customs Service controls the movement of persons and goods across the country's borders. Border security is being tightened and steps are being taken to manage security risks. Special areas of interest that are being developed are an updated assessment of strategic goods, including the movement of goods that could be used as the precursors for terrorist weaponry; the links between terrorism and transnational organized crime, including activities such as drug dealing, people smuggling, money laundering and firearms trafficking; the redevelopment of terrorist profiles and the updating of the alert system; and the use of biometric systems to improve detection of persons on international watch lists.

Laws Pertaining To Biology

The Hazardous Substances and New Organisms Act, 10 June 1996 (Amended by Acts No. 32 1999, No. 89 2000, No. 13 2002), aims at protecting the environment, and the health and safety of people and communities, by preventing or managing the adverse effects of hazardous substances and new organisms. The Act defines as a hazardous substance any substances that possess the intrinsic properties of toxicity (including chronic toxicity), ecotoxicity (capable of causing ill health, injury, or death to any living organism), with or without bioaccumulation; or which on contact with air or water (other than air or water where the temperature or pressure has been artificially increased or decreased) generates a substance with any one or more of these properties. The Act also prohibits importation, transshipping or manufacture of hazardous substances or new organisms without approval by the Authority. A hazard classification system is established; the Governor General is authorized to regulate hazardous substances in order to reduce the risk and mitigate the adverse effects of unintended exposure. Penalties for violation of the Act are revocation of permit, imprisonment for a term not exceeding 3 months or a fine not exceeding \$500,000.

The Biosecurity Act, 26 August 1993 (amended by Acts 1993 No 129, 1994 No 24, 1996 No 23, 1996 No 78, 1997 No 89, 1998 No 12, 1999 No 29) is designed to protect New Zealand from importation of dangerous biological substances. It defines such substances (i.e. any organism, organic material, or other thing, or substance, that, by reason of its nature, origin, or other relevant factors, it is reasonable to suspect constitutes, harbours, or contains an organism that may cause unwanted harm to natural and physical resources or human health in New Zealand, or interfere with the diagnosis, management, or treatment, in New Zealand, of pests or unwanted organisms). The Act regulates port biosecurity areas and biosecurity clearance for goods to enter New Zealand

International Cooperation

New Zealand cooperates on an international level by contributing with military, intelligence, humanitarian and political support for the combat against terrorism. It cooperates with countries overseas for information gathering and exchange and is taking steps to strengthen existing relationships based on multilateral and bilateral agreements. New Zealand subscribes to the “extradite or prosecute” principle for perpetrators of terrorist acts, for example by considering amendments to the Customs and Excise Act and the Immigration Act to improve the exchange of information with other states.

The Mutual Assistance in Criminal Matters Act provides a regime for making and responding to request for legal assistance in criminal investigations and proceedings. The Act is broad in geographical as well as in legal scope, and it is not necessary that there be a bilateral agreement for New Zealand to grant legal assistance. The country has mutual legal assistance arrangements with countries with which it does not have treaties for that purpose, such as Australia, Niue, the United States of America, the United Kingdom and Fiji, and with countries with which it has entered into mutual assistance agreements: Hong Kong and Korea, and possibly soon Singapore. Interpol acts as an intermediary between police forces from different states that seek to cooperate in specific matters. The Immigration and Customs Services and security and intelligence agencies cooperate in similar ways.

Extradition is not contingent on the existence of an agreement either: the Extradition Act permits the granting of extradition requests from countries with which New Zealand does not have formal agreements to that purpose. Extradition is not available for the perpetrators of political offenses, which, although it is not defined, does exclude any offenses specified in international treaties to which New Zealand is a party or for which parties are obligated to extradite or prosecute offenders. Therefore, terrorist acts are practically exempt from this rule and therefore extraditable.

New Zealand is a party to eight of the 12 counter-terrorism related international conventions, and the Convention on Safety of United Nations and Associated Personnel. It will soon ratify the International Convention for the Suppression of Terrorist Bombings and the International Convention for the Suppression of the Financing of Terrorism, and enact implementing legislation to accede to the Convention on the Physical Protection of Nuclear Material and the Convention on the Marking of Plastic Explosives for the Purpose of Detection. The ratification of the United Nations Convention against Transnational Organized Crime and its two Protocols against the Smuggling of Migrants and Trafficking in Persons is under way. The government is considering the signing of the third protocol which addresses firearms.

Regionally, New Zealand is active in consulting with other countries, mainly Australia, to strengthen its contributions to the campaign against terrorism. Cooperation also occurs within the framework of regional organizations and the British Commonwealth. New Zealand wants “to raise Pacific Island countries’ awareness of the measures being taken by the international community to combat terrorism and their international obligations in this regard” and has offered practical support for the implementation. New Zealand cooperates with the OECD, the International Monetary Fund and the Asian Development Bank.

Suppressing the Financing of Terrorism and Money-Laundering, and Freezing Assets

New Zealand is active in the FATF and its activities to suppress the financing of terrorism. New Zealand does not currently fully meet all requirements of the FATF Special Recommendations, but it is close, and all areas are covered in some way according to national law and circumstances. Regionally, New Zealand is a member of the Asia/Pacific Group on Money Laundering.

Under the Terrorism Regulations, it is “an offence to provide or collect funds, directly or indirectly, willfully or without lawful justification or reasonable excuse, intending that they be used, in full or in part, by an entity specified in the schedule to the Regulations,” which lists the Taliban and associates, Osama bin Laden and Al-Qaida associated groups as designated by the competent Security Council Committee. The Terrorism Suppression bill will create the offense of financing of terrorism, which reads almost identically as under the Terrorism Regulations, except that it specifies that the acts to be carried out “would be terrorist acts.” The bill provides for a punishment of up to 14 years.

The Terrorism Suppression Bill and the Financial Transactions Reporting Act set out a requirement to report suspicious financial transactions to the law enforcement bodies, which the law imposes on financial institutions and lawyers involved in financial or real estate deals, as well as broadly anybody with reasonable suspicions or actual knowledge. Failure to report such suspicions is a punishable offense. The UN Sanctions (Terrorism Suppression and Afghanistan Measures) Regulations impose similar requirements. Although charitable organizations are covered by the existing laws, efforts are being made to ensure that such groups cannot not divert funds to terrorist purposes.

The government can freeze accounts and assets pursuant to the United Nations Act. The Terrorism Regulations prohibits anybody from “deal[in] with any property knowing that it is owned or controlled, directly or indirectly, by and entity specified in the schedule; or derived from or generated from any property of the kind referred to...” without authorization. It is an offense to do otherwise. But the Terrorism Suppression bill will allow for the freezing of assets of persons connected with terrorism in any way. The process will consist of four stages, in which the Prime Minister, the Minister of Foreign Affairs and Trade, the Inspector-General of Intelligence and Security, and the High Court will play an important role in the identification of assets, their freezing and the subsequent management and forfeiture of frozen property under the Proceeds of Crime Act. There is no specific court order for the freezing of property.

BIBLIOGRAPHY OF NEW ZEALAND LEGISLATION

Criminal Laws and Counter-Terrorism Authorities

1. Terrorism Suppression bill (formerly Terrorism (Bombings and Financing) bill, as amended) (2001), Clauses 10D, 10E
2. Draft Terrorism (Counter-terrorism) Bill (2002)
3. Crimes Act (1961), Sections 66, 68, 310
4. Immigration Act (1987)
5. United Nations Act (1946)
6. United Nations Sanctions (Terrorism Suppression and Afghanistan Measures) Regulations (2001) (“Terrorism Regulations”)
7. Crimes Amendment bill No. 6
8. Government Communications Security Bureau bill
9. Interception Capability bill
10. Aviation Crimes Act (1972) (as amended in 1999), Sections 3, 4, 5, 5, 7, 9, 11
11. Maritime Crimes Act (1999), Sections 4, 5, 9, 17
12. Crimes (Internationally Protected Persons, United Nations and Associated Personnel and Hostages) Act (1980), Sections 3, 4, 5, 6, 8, 10
13. Sentencing and Parole Reform bill

Weapons Control and Weapons of Mass Destruction

1. Customs Prohibition Order (1996)
2. Terrorism Suppression bill (2001)
3. Arms Act (1983)
4. Crimes Act (1961)
5. New Zealand Nuclear Weapons Free Zone, Disarmament and Arms Control Act, sections 5, 8
6. Chemical Weapons (Prohibition) Act (1996)

Laws Pertaining To Biology

1. Customs Export Prohibition Order, 2002
2. The Customs and Excise Act, 4 June 1996 (amended 1996 No 80, 1998 No 18, 1998 No 38, 1998 No 83, 2000 No 58, 2001, No 61, 2002 No 2, 2002 No 31)
3. The Hazardous Substances and New Organisms Act, 10 June 1996 (amended by Acts No. 32 1999, No. 89 2000, No. 13 2002).
4. The Biosecurity Act, 26 August 1993 (amended by Acts 1993 No 129, 1994 No 24, 1996 No 23, 1996 No 78, 1997 No 89, 1998 No 12, 1999 No 29) .
5. Toxic Substances Regulations No. 1993/385
6. Toxic Substances Regulations, 1983

International Cooperation

1. Mutual Assistance in Criminal Matters Act (1992)
2. Extradition Act (1999)
3. Transnational Organized Crime Bill (2002)

Suppressing the Financing of Terrorism and Money-Laundering, and Freezing Assets

1. Terrorism Suppression bill (formerly Terrorism (Bombings and Financing) bill, as amended) (2001), Clauses 5, 9, 13, 15, 16, 17R
2. Draft Terrorism (Counter-terrorism) Bill (2002)
3. United Nations Sanctions (Terrorism Suppression and Afghanistan Measures) Regulations (2001) (“Terrorism Regulations”)
4. United Nations Act (1946) & United Nations Act regulations
5. Proceeds of Crime Act (1992)
6. Financial Transactions Reporting Act (1996)