



NEW ZEALAND
Permanent Mission
TE AKA AORERE

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The New Zealand Permanent Mission to the United Nations Office at Geneva presents its compliments to the Secretary General of the United Nations (High Commissioner for Human Rights) and the Special Procedures Branch and has the honour to refer to submit the attached information and observations of New Zealand in response to the questions posed by the Special Rapporteurs, in the “Joint Communication from Special Procedures” (OL NZL 1/2021) , dated 19 January 2022.

The New Zealand Permanent Mission takes this opportunity to renew to the Secretary General of the United Nations (High Commissioner for Human Rights) and the Special Procedures Branch the assurances of its highest consideration.



New Zealand Permanent Mission

GENEVA

2 May 2022

INTRODUCTION

The New Zealand Government submits the following information and observations in response to the Joint Communication from the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; the Working Group on Arbitrary Detention; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on rights to freedom of peaceful assembly and of association; the Special Rapporteur on the situation of human rights defenders; the Special Rapporteur on minority issues; the Special Rapporteur on the right to privacy and the Special Rapporteur on freedom of religion or belief (the Joint Communication). The Joint Communication concerns New Zealand's Counter-Terrorism Legislation Act 2021 and its compatibility with New Zealand's international legal obligations, including international human rights obligations.

1. The New Zealand Government recognises the important role that the UN Special Procedures play in the international human rights framework and welcomes the opportunity to respond to these concerns. Aotearoa New Zealand is committed to upholding the human rights of all people in New Zealand, and acknowledges its obligation to ensure measures to counter terrorism are consistent with international law and human rights.
2. All New Zealand legislation is scrutinised for consistency with domestic human rights legislation, which implements New Zealand's international human rights obligations. Accordingly, many of the issues highlighted in the Joint Communication were carefully considered throughout the drafting and legislative process to enact the Counter-Terrorism Legislation Act 2021 (the 2021 Act) alongside the Government's responsibility to keep New Zealanders safe. The New Zealand Government is confident the 2021 Act is consistent with New Zealand's international human rights obligations, and provides the following information in response to the Joint Communication.
3. Recently New Zealand has upheld its human rights obligations in its response to the terrorist attacks on Christchurch masjidain in 2019. The New Zealand Government has prioritised: a victim centred approach; engagement and collaboration with diverse communities to strengthen social cohesion and build resilient inclusive communities able to resist extremist ideologies of all types; and enabling inclusive public dialogue on matters of national security to inform policy making. Additionally, New Zealand's leadership (with France) of the Christchurch Call to Action has been instrumental in setting international norms for the upholding of international human rights law, including freedom of expression, when taking measures to address terrorist and violent extremist content online.
4. New Zealand considers that its domestic law responds appropriately to the risks presented by terrorism while respecting human rights in line with its obligations. Recent amendments have strengthened and clarified the law.

Background to the 2021 Act

Purpose of the Counter-Terrorism Legislation Act 2021

5. The 2021 Act amends the Terrorism Suppression Act 2002 (TSA), and the Terrorism Suppression (Control Orders) Act 2019 (Control Orders Act).¹ The purposes of the 2021 Act are to strengthen New Zealand's counter-terrorism

¹ The key amendments in the 2021 Act:

- a. update the definition of terrorist act to improve clarity;
- b. criminalise planning or preparation for a terrorist act (and apply warrantless powers of entry, search, and surveillance to that offence);
- c. more clearly criminalise weapons training or combat training for terrorist purposes;
- d. criminalise travel to, from, or via New Zealand with the intention to carry out an offence under the TSA;
- e. extend the terrorism finance offences to criminalise wider forms of material support for terrorist activities or organisations;
- f. improve the workability of the TSA; and
- g. extend the control orders regime so that individuals who have completed a prison sentence for specified offences related to terrorism may be subject to the regime if they continue to present a real risk of engaging in terrorism-related activities.

legislation to better prevent and respond to terrorism, and to enhance New Zealand's compliance with international obligations, including United Nations Security Council Resolutions. The 2021 Act improves the clarity of the TSA and provides law enforcement agencies with the means and clear legal authority to intervene early to help prevent harm and to avert escalation to a terrorist act. The Act meets the need to protect the public from terrorist-related harm, while also recognising the fundamental rights and freedoms affirmed in the International Covenant on Civil and Political Rights (ICCPR).

6. In 2019, the New Zealand Government commissioned a Royal Commission of Inquiry (Royal Commission) into the terrorist attacks on Christchurch masjidain, the most far-reaching and significant form of independent inquiry available under New Zealand law. The New Zealand Government accepted, in principle, all 44 recommendations made by the Royal Commission, and is working to implement them. The 2021 Act responds in part to one of the Commission's recommendations: that the Government review all legislation related to the counter terrorism effort, including prioritising the consideration of creation of precursor terrorism offences.

Human rights scrutiny central to development of the policy contained in the 2021 Act

7. New Zealand has incorporated the ICCPR in domestic legislation through the New Zealand Bill of Rights Act 1990 (the Bill of Rights Act). As the ICCPR provides, many of the rights and freedoms it protects can be subject to restrictions that are prescribed by law and necessary to achieve another policy purpose (such as public safety). The Bill of Rights Act therefore allows rights and freedoms to be subject to reasonable limits that are prescribed by law and demonstrably justified in a free and democratic society.
8. Accordingly, the provisions of the 2021 Act have been carefully drafted to ensure that where provisions have the potential to limit rights and freedoms, these limitations were justified and proportionate to their aim of ensuring public safety (and therefore consistent with both the Bill of Rights Act and New Zealand's international human rights obligations). The Attorney General, in his independent scrutiny of the legislation under s 7 of the Bill of Rights Act, considered that the Bill was consistent with human rights.²

Response to concerns raised with regards to the Counter-Terrorism Legislation Act 2021

(1) Absence of regular review of counter-terrorism legislation

9. The New Zealand Government agrees with the Joint Communication's observation that international best practice requires counter-terrorism and emergency laws to be subject to regular independent review, to reassess whether legislation remains necessary and that its impacts on human rights are proportionate to its objectives and consistent with international law. However, it is not accepted that a regular

² Under the New Zealand Bill of Rights Act, the Attorney-General must report to Parliament when he or she considers that a Bill is inconsistent with rights and freedoms protected by the Bill of Rights Act. It is the practice of the Attorney-General to also release advice received that a Bill is consistent with those rights and freedoms. This advice is available on the Ministry of Justice's website at: [20210408-NZ-BORA-Advice-Counter-Terrorism-Legislation-Bill.pdf \(justice.govt.nz\)](https://www.justice.govt.nz/bill-of-rights/20210408-NZ-BORA-Advice-Counter-Terrorism-Legislation-Bill.pdf)

review needs to be codified in the legislation itself. New Zealand has demonstrated a flexible approach to reviewing legislation as needed.

10. The Royal Commission was a form of an independent review of counter-terrorism legislation as it was at the time of the terrorist attacks against the Christchurch masjidain. It made a number of recommendations about changes to New Zealand's counter-terrorism framework:
 - **Recommendation 2:** Establish a new national intelligence and security agency that is well-resourced and legislatively mandated to be responsible for strategic intelligence and security leadership functions;
 - **Recommendation 3:** Investigate alternative mechanisms to the voluntary nature of the Security and Intelligence Board including the establishment of an Interdepartmental Executive Board as provided for by the Public Service Act 2020 to, amongst other things:
 - (a) align and coordinate the work, planning and budgets across relevant public sector agencies addressing all intelligence and security issues;
 - (b) report to the Cabinet External Relations and Security Committee, including on current and emerging risks and threats, on a quarterly basis;
 - (c) in relation to the counter-terrorism effort:
 - i. recommend to Cabinet the strategy for preventing and countering extremism, violent extremism and terrorism developed by the national intelligence and security agency (Recommendation 4); and
 - ii. ensure the activities to implement the strategy for addressing extremism and preventing, detecting and responding to current and emerging threats of violent extremism and terrorism are identified, coordinated and monitored.
 - **Recommendation 18:** Review all legislation related to the counter-terrorism effort (including the Terrorism Suppression Act 2002 and the Intelligence and Security Act 2017) to ensure it is current and enables public sector agencies to operate effectively, prioritising consideration of the creation of precursor terrorism offences in the Terrorism Suppression Act, the urgent review of the effect of section 19 of the Intelligence and Security Act on target discovery and acceding to and implementing the Budapest Convention.
11. The New Zealand Government considers it is premature to implement a further independent regular review mechanism for counter-terrorism and emergency legislation. Work is ongoing to implement the recommendations of the Royal Commission and part of that work may assess the need for an independent regular review of a range of legislation.
12. Related legislation, the Intelligence and Security Act 2017 (ISA), is presently the subject of an external review. Section 235 of the ISA provides for regular reviews of the legislation and this review has been brought forward. The intent of this review is to understand what improvements need to be made, if any, so that the Act is clear, effective, and fit for purpose, as well as considering the relevant matters raised by the Royal Commission.
13. In response to the Joint Communication's understanding that a 2013 review of the TSA was cancelled by the Government, the following information is provided. The

Government decided in 2013 that the proposed Law Commission review of the TSA should not proceed. It assessed that the Commission had, at that time, more urgent matters to deal with and that the Search and Surveillance Act 2012 addressed concerns that were to be considered as part of the Commission's proposed review, such as the authority for covert surveillance.

Other oversight mechanisms

14. The New Zealand Government also notes that under existing legislation, specialist independent oversight bodies (as well as the Courts) currently scrutinise New Zealand's Police and security agencies' use of their counter-terrorism powers (as opposed to the legislation in isolation – but concerns from these bodies could well lead to legislative reform). There are a number of ways intelligence and security agencies are subject to independent scrutiny:
 - the Commissioners of Intelligence Warrants: the Commissioners, former High Court Judges, have functions under the Intelligence and Security Act to approve warrant applications and access to restricted information.
 - the Intelligence and Security Parliamentary Committee: this Committee is made up of Members of Parliament from both government and opposition parties. The Intelligence and Security Committee provides parliamentary scrutiny of the intelligence and security agencies' policies, administration and expenditure.
 - Inspector-General of Intelligence and Security: the Inspector-General's role is to ensure that intelligence and security agencies carry out their activities lawfully and properly and to independently investigate complaints about the intelligence and security agencies. He or she is independent of the New Zealand Government and the intelligence and security agencies. The Inspector-General can investigate any matter concerning an intelligence and security agency and has full access to agency records and premises.
 - The Independent Police Conduct Authority investigates complaints into Police conduct and may also investigate incidents where Police have caused death or serious injury.
15. By way of example of how these processes can work, following an attack on members of the public at a supermarket in west Auckland by a man who had previously been identified as a terrorist threat, the Inspector-General of Intelligence, the Independent Police Conduct Authority and the Inspectorate at the Department of Corrections announced a joint review of the circumstances that lead to Police shooting and killing the attacker.
16. There are also practices by the security agencies themselves which are designed to enhance scrutiny. The NZSIS publishes an annual report which details the work the NZSIS has undertaken over the year to meet the security and intelligence priorities set by Government and outlines the agency's contribution to the ongoing wellbeing and security of New Zealand.
17. The New Zealand Government is taking active steps to increase civil society and community engagement with national security issues. Initiatives under way include the establishment of an annual National Counter Terrorism Hui³ to enable civil society and communities to hold the Government to account with respect to

³ In this context, a hui is a large meeting or conference.

upholding of human rights in relation to the implementation of New Zealand's counter-terrorism legislation. The establishment of a National Centre of Excellence before the end of 2022 will also promote further dialogue and facilitate New Zealand specific research on these issues, which will be available to policy makers.

(2) Definition of 'terrorist act'

18. The Joint Communication invites New Zealand's comment on the changes to the definition of 'terrorist act' in section 5 in relation to intimidating a population and coercing a government or international organisation, an explanation of why the definition has been amended, and its intended application and scope.
19. As amended by the 2021 Act, the section now provides:

5 Terrorist act defined

- (1) An act is a terrorist act for the purposes of this Act if—
 - (a) the act falls within subsection (2); or
 - (b) the act is an act against a specified terrorism convention (as defined in section 4(1)); or
 - (c) the act is a terrorist act in armed conflict (as defined in section 4(1)).
- (2) An act falls within this subsection if it is intended to cause, in any 1 or more countries, 1 or more of the outcomes specified in subsection (3), and is carried out for [1 or more purposes that are or include] advancing an ideological, political, or religious cause, and with the following intention:
 - (a) to [intimidate a population]; or
 - (b) to [coerce] or to force a government or an international organisation to do or abstain from doing any act.
- (3) The outcomes referred to in subsection (2) are—
 - (a) the death of, or other serious bodily injury to, 1 or more persons (other than a person carrying out the act):
 - (b) a serious risk to the health or safety of a population:
 - (c) destruction of, or serious damage to, property of great value or importance, or major economic loss, or major environmental damage, if likely to result in 1 or more outcomes specified in paragraphs (a), (b), and (d):
 - (d) serious interference with, or serious disruption to, [critical infrastructure], if likely to endanger human life:
 - (e) introduction or release of a disease-bearing organism, if likely to [cause major damage to] the national economy of a country.
- (4) However, an act does not fall within subsection (2) if it occurs in a situation of armed conflict and is, at the time and in the place that it occurs, in accordance with rules of international law applicable to the conflict.
- (5) To avoid doubt, the fact that a person engages in any protest, advocacy, or dissent, or engages in any strike, lockout, or other industrial action, is not, by itself, a sufficient basis for inferring that the person—
 - (a) is carrying out an act for a purpose, or with an intention, specified in subsection (2); or
 - (b) intends to cause an outcome specified in subsection (3).

20. New Zealand's definition of "terrorist act" broadly aligns with relevant international conventions,⁴ and comparable jurisdictions. Although model definitions have been advanced, it is left to each jurisdiction to define what constitutes a terrorist act having regard to its criminal and constitutional legal framework, taking into account international best practice. Inevitably there are differences in the terminology used in different jurisdictions that may impact at the margins the scope of what is considered terrorism.
21. Before the enactment of the 2021 Act, there was one particular area where New Zealand's definition was inconsistent with comparable jurisdictions' approach to defining what constitutes a terrorist act. That was in relation to intimidation of a population and that anomaly has been corrected, as explained in more detail below.
22. Before commenting specifically on the particular changes in the definition raised by the Joint Communication, it is necessary to discuss the construction of the New Zealand definition of terrorist act in the TSA to provide clarity on the place and effect of the amendments within the overall statutory framework.

Construction and effect of the terrorist act definition in section 5 of the TSA

23. None of the elements in the definition of "terrorist act" exist in isolation or constitute a terrorist act in and of themselves. The definition has three main components, and all must be met for a terrorist act to be made out. This means that the person must be proved to have:
 - a. intended to cause the serious outcomes, such as death or serious bodily injury, in section 5(3); and
 - b. the purpose of advancing an ideological, political, or religious cause; and
 - c. intended to intimidate a population or coerce or force a government or international organisation to do or abstain from doing any act.
24. All three components constituting a terrorist act must be met to give rise to any criminal liability under the TSA or provide a basis for designation as a terrorist entity. In addition, no prosecution may be brought for any offence under the TSA in reliance of the terrorist act definition without the Attorney-General's consent (which, by convention, is an independent decision). The prosecution must prove beyond reasonable doubt that all three essential elements exist.

Change from terror to intimidation in section 5(2)(a)

25. The amendment to section 5(2)(a) to change the aspect of the definition requiring intent to "induce terror" in a civilian population to "intimidate" a population received a great deal of scrutiny by the Parliamentary Select Committee considering the Bill. The rationale for the change was multi-faceted.
26. As outlined above, in the New Zealand context the intimidation limb in the definition of "terrorist act" goes to the terrorist's intent (not whether any member of a population is actually intimidated). There was a concern that having the high threshold of intent to induce terror could enable an accused terrorist to defend the charges on the basis that they did not intend to induce terror even when on any objective test the acts concerned would have that effect on a reasonable person. This has important legal ramifications, discussed below.

⁴ For example, the International Convention for the Suppression of the Financing of Terrorism.

27. Under the previous “intention to induce terror” limb of the definition of terrorist act, a person could be found not guilty of committing a terrorist act despite admitting they intended to kill a particular population based on an extremist hateful ideology, on the basis they only wanted to intimidate (or cause fear) in that population, rather than induce terror. As proof of intent requires the Crown to establish the person’s deliberate objective or aim, it would be inappropriate given the seriousness of the conduct at issue if a person could make a legal argument of this kind and potentially be acquitted on this basis alone.
28. New Zealand considers that the term ‘intimidation’ strikes the correct level of concern or anxiety intended, it is easily understood and it is non-circular (in that it doesn’t define a terrorist act by reference to “terror”, being, in effect in this context, “terror is terror”). Proving an intention to intimidate is still a very high threshold, as it requires proof of an intention to bring about a particular state of mind in a population, as opposed to simply proving an intent to carry out a particular action.
29. New Zealand also notes that although the model definition of terrorism has been endorsed by UN Security Council Resolution 1566, that resolution also enjoins states to criminalise acts which are committed with an intention to create ‘a state of terror within the general public’ and those which are intended to ‘intimidate a population’. The definition of terrorist act in the TSA therefore is broadly consistent with this element of the definition of terrorism. The definition of terrorist act in the TSA also includes an additional element, not present in the model definition, that the purpose of the act must be to advance an ideological, political, or religious cause, and to this extent it is narrower and more precise than the model definition.
30. Accordingly, the New Zealand Government considers that lowering this threshold to intimidation is appropriate. As noted above, the essential components to establish a terrorist act are cumulative. All three elements must be present before any person falls within the scope of the definition. That means, for example, if a person acts with an ideological purpose and intends to intimidate a population this will not be a terrorist act unless the person also intends to cause one of the serious outcomes in section 5(3). The prospect of people being inadvertently captured by the scope of the definition is minimised by the need to prove all three of the essential elements of the definition.
31. The New Zealand Government considers that there is strong rationale for a person who acts with the purpose of advancing an ideological, political, or religious cause AND intends to intimidate a population AND intends to cause death or the other serious outcomes in section 5(3) to face the consequences of having committed a terrorist act. This conduct reaches the high standard of seriousness which ought to fall within the definition of terrorism.
32. New Zealand also considers reference to ‘intimidation’ is sufficiently certain. It is used elsewhere in New Zealand’s domestic law and internationally. The term terror is inherently vague because there is no clear dividing line between ‘terror’ and ‘fear’, the one being simply a heightened version of the other and understanding of when ‘fear’ reaches the level of ‘terror’ is contestable. In contrast ‘intimidate’ has a clear meaning: to use fear to compel, coerce or deter by threats. It avoids the problem of the fear/terror distinction and requires a focus on whether the intent was to create fear with the aim of compelling, coercing or pressuring the population.

33. In considering the 2021 legislation under s 7 of the Bill of Rights Act, the advice accepted by the Attorney-General observed that there is no real risk that the activities of protestors or strikers will be criminalised under the TSA, because the person must not only intend to cause the relevant level of apprehension in a population but must also intend to cause the significant types of harm associated with terrorism (such as death, injury or destruction). Further the definition of terrorist act also specifically excludes protest and strike (and other related activities) as alone providing a sufficient basis to infer that person has the requisite intention or purpose (see section 5(5) TSA).

Change from “civilian population” to “population” in section 5(2)(a)

34. In response to this aspect of the Joint Communication, the New Zealand Government notes that the Police and Armed Forces are not generally considered to be part of a civilian population. That means, for example, that an attack against a military base in peace time that otherwise meets all the other definitional requirements necessary to constitute a terrorist attack would have fallen outside the scope of a terrorist act
35. The New Zealand Government considers that there are no good policy reasons for excluding the Police and Armed Forces as populations in which a terrorist intends to intimidate. Such an exclusion is not required by international law. The definition of terrorist act excludes acts that occur in situations of armed conflict that are in accordance with the rules of international law from the definition of terrorist act (section 5(4) of the TSA).
36. It is important to note that nothing in this change affects or limits any other population being included within the scope of this element of the terrorist act definition. The amendment broadens the scope of the provision rather than limiting it.

Change from “unduly compel” to “coerce” in section 5(2)(b)

37. Before the enactment of the Counter-Terrorism Legislation Act 2021, there was a concern from those responsible for enforcing the TSA that the use of the word “unduly” could allow for a legal argument in any prosecution that because that person’s beliefs are genuinely held any steps they took were warranted and thus is did not “unduly” compel a government to do or abstain from doing any act. Where all other elements of the terrorist act definition are met, this ought not be an available defence and would undermine the goal of prosecuting for this serious offence.
38. “Coerce” in this context is seen as a legitimate alternative to “unduly compel” to reflect the nature of the targeted conduct and to avoid any criticism that just removing the word “unduly” makes the test as to what constitutes a terrorist act too easy to satisfy (and thus inappropriately capturing too many people within its scope).
39. The New Zealand Government considers that the use of the word “coerce” in section 5(2)(b) of the TSA will not increase the scope of the provision in any disproportionate manner. Coercion is still a high bar, arguably as high as “unduly compel”. Further:

- the word closely aligns with the existing word “force” *already* used in section 5(2)(b); and
 - the cumulative elements of the definition, outlined above, need to be proved before any person falls within the scope of the terrorist act definition in the TSA.
40. The protections in section 5(5) (the exclusion of protest and strikes and related activity) ensure that the law could not be improperly used.

(3) Provisions relating to ‘material support’ for terrorist acts

41. We note the Joint Communications has raised concerns that the term ‘lawful justification or reasonable excuse’ is not defined in the TSA, particularly with regard to the provision of material support to terrorism or designated terrorist entities and that the TSA could have a chilling effect on the work of NGOs providing support to vulnerable communities.

Lawful justification or reasonable excuse

42. New Zealand legislation does not define what constitutes lawful justification or reasonable excuse but both phrases, as well as ‘lawful excuse’, are commonly used in legislation. While there is no one definition for all purposes, the common law has developed definitions for particular provisions, having regard to the statutory context and purpose.⁵
43. The New Zealand Government agrees with the Joint Communication that legal certainty is a fundamental principle of the criminal law but it considers that no uncertainty arises here given the frequency with which these phrases have been used in New Zealand law. To the extent that there might be any lack of clarity at the boundaries of the definitions, the courts will continue to provide guidance as the relevant provisions are considered through case law.
44. It is also important to note that in New Zealand the need for the defendant to put in issue the existence of a lawful authority or reasonable excuse only places an evidential burden on the person, it does not alter the burden of proof. In other words, the defendant is required to raise only credible evidence before the court as to the existence of lawful justification or reasonable excuse, which the prosecution must then negate. It is then for the prosecution to disprove it beyond reasonable doubt. There is never a burden upon a defendant to prove the existence of the lawful justification or reasonable excuse.
45. The New Zealand Government is acutely aware of the potential for unduly broad material or financial support provisions in counter-terrorism legislation to impact upon non-governmental organisations’ ability to deliver aid, particularly in and around conflict zones. To avoid the potential for such adverse impacts the following two broad carve outs have been included in the relevant legislation:

⁵ *Auckland Area Health Board v Attorney-General* [1993] 1 NZLR 235, the Court commenting that ‘lawful excuse’ has no one defined, comprehensive meaning.

- financing or material support for terrorism is lawful where it is necessary to satisfy basic needs and is provided in good faith for genuine humanitarian reasons; and impartially or neutrally as between people who have those needs (see section 8(5) of the TSA).
- If the recipient individual or entity is a designated terrorist entity, it is lawful to provide property or material support provided there is a lawful justification or reasonable excuse for doing so (see section 10(1)(b) of the TSA).

Engagement with NGOs

46. The New Zealand Government is in active conversations with NGO partners and aid providers about this concern. As with other counter-terrorism legislation, this aspect can form part of the review of all counter-terrorism legislation recommended by the Royal Commission of Inquiry.

Recklessness standard

47. The Joint Communication raises concerns about the inclusion of the recklessness standard for criminal liability in the terrorist financing and material support provisions in the TSA.
48. The United Nations Security Council Resolutions 1373 and 2178 require the criminalisation of conduct that takes place with 'intent' or 'knowledge'. New Zealand considers this is not limited to 'intentional' conduct but also includes conduct with a degree of knowledge of the consequences. This is captured by the recklessness standard in the TSA, as recklessness involves knowledge as awareness of risk, and an unreasonable taking of that risk, as explained below.
49. The use of a "recklessness" standard for criminal offences is very common in New Zealand law. Indeed if the necessary level of intention is not otherwise stated in a penal provision, in most cases the Courts will interpret recklessness as a sufficient but minimum level of fault.⁶ The term was also used in the TSA in relation to participating in terrorist groups, harbouring or concealing a terrorist, and offences involving protection of nuclear material before the amendments made by the 2021 Act to terrorist financing and material support.
50. Given the widespread use of the recklessness standard in New Zealand criminal law it is well-defined by common law and understood by criminal law practitioners and the courts. The definition frequently given is:

A person is reckless if, (a) knowing that there is a risk that an event may result from his conduct or that a circumstance may exist, he takes that risk; and (b) it is unreasonable for him to take it having regard to the degree and nature of the risk which he knows to be present.⁷

51. For the recklessness standard to be met in New Zealand, the following must be established by the prosecution:

⁶ *Cameron v R* [2017] NZSC 89

⁷ *R v Stephenson* [1979] QB 695

- (a) that the defendant was aware that there was a real risk that his or her actions would bring about the prohibited act – in this case the providing of funds or material support would be used for a terrorist act and/or by a terrorist entity; and
 - (b) having regard to that risk the defendant's actions were unreasonable in the circumstances.
- 52. While recklessness is not as high a standard as intention, it is nonetheless a high bar for the prosecution to meet, and is higher than a negligence standard which does not require an awareness of risk. Unwitting participation is not captured, and nor is naivete, the defendant needs to have been aware of a risk and then have elected to run that risk.
- 53. This means that under section 10, the person providing funds/material support must have known or perceived a specific risk that the entity they were providing material support to was a designated terrorist entity, and chose to run the risk. Under s 8, the person providing funds/material support must know or be reckless about whether the funds will be used to carry out a terrorist act, or must know or be reckless about whether the funds will be used by an entity that the person knows carries out terrorist acts. In other words, the person must have perceived a "real possibility" that the funds/material support could be used for a terrorist act. The former terrorist financing offence did not contain the standard of 'recklessness' when considering the person's mental state as to how the funds/material support would be used (although, as set out above, it is possible that a Court might have adopted that standard anyway) and these amendments ensure that it will be the standard, and are more precise as to what is required.
- 54. The prosecution must also prove that providing the support was unreasonable in the circumstances. There are several factors the court will consider when deciding whether the actions were reasonable or not. These include the probability of the risk occurring and the nature and gravity of the harm that it will cause. These are to be balanced against the value and likelihood of achieving the defendant's objectives. As noted above, even if the defendant was reckless in providing the funds or material support this is subject to the lawful authority or reasonable excuse 'defence' outlined earlier in this response and criminal liability may therefore not result.
- 55. A key reason for including the recklessness standard was to ensure that the offence could respond to the terrorism financing threat in New Zealand, where people may perceive a risk of supporting terrorism but not definitively know that the funds or support will be used for these purposes. Or, under section 10, people may perceive the risk that they are supporting a designated terrorist entity and should not be beyond the reach of the law if they do so. The standard of recklessness does not unduly lower the threshold for the offence or capture innocent conduct.

(4) Representation of entities designated under the TSA

- 56. The Joint Communication notes that there appears to be a disjunct between designated terrorist entities by the New Zealand Government and the reality of contemporary terrorist extremist threats.

57. The New Zealand Government acknowledges the rapidly evolving nature of contemporary terrorist and violent extremist ideologies, the rise of de-centralised violent extremist movements, and increasing risk related to individuals carrying out terrorist acts without formal links to terrorist organisations. It is committed to addressing these threats using the full suite of tools available under New Zealand law, including designations where appropriate. The New Zealand Government also intends to review the designations section of the TSA to ensure the legislative tests remain fit for purpose and are able to address contemporary terrorist threats.
58. Before outlining the designation process in New Zealand below, the New Zealand Government makes the following observations:
 - The definition of “terrorist act” (referred above), used in the designation of entities, makes no distinction as to the type of ideological, political, or religious cause being advanced, it is entirely neutral in that regard.
 - Relevant UNSC Resolutions require UN member states to designate specified entities in New Zealand law (i.e. ISIL, Al-Qaida, and Taliban related entities) and New Zealand law provides a mechanism for that process.
 - Finally, the list of entities designated by the Prime Minister includes entities that subscribe to a range of ideologies unrelated to Islamist faith-motivated violent extremism. See for example, the Continuity Irish Republican Army, Ejercito de Liberacion Nacional, Euskadi Ta Askatasuna, The Shining Path, and the Christchurch Mosque attacker.

The New Zealand terrorist designation process

59. New Zealand provides the following information on the process and criteria for designating terrorist entities in New Zealand (as requested at item 4 on page 9 of the Joint Communication).
60. New Zealand implements two separate but parallel designation frameworks: a UN designation framework and a domestic designation framework. The large majority of entities have been designated through the UN framework.
61. A designation, either by way of an entity’s inclusion on the United Nations list or by the Prime Minister under the TSA, is a key tool to suppress terrorism by cutting off funding and other support to entities believed to be engaging in or carrying out terrorism. New Zealand’s support for the international effort to counter and suppress terrorism through designating terrorist entities is a core obligation under the United Nations Charter and United Nations Security Council Resolution 1373 and related resolutions.

United Nations Security Council Resolutions designations

62. As a party to the United Nations Charter, New Zealand is legally obliged to give effect to mandatory resolutions adopted by the United Nations Security Council under Chapter VII of the Charter.

63. The Security Council has adopted a number of mandatory resolutions relating to Osama bin Laden, Al Qaida, the Taliban and the Islamic State of Iraq and Levant (ISIL, also known as Da'esh). In accordance with these resolutions, the Security Council maintains a list of individuals and entities against which New Zealand is required to impose sanctions.
64. Entities listed by the UN 1267 (1999), 1989 (2011), 2253 (2015) and 1988 (2011) Committees (the UN 1267 and 1988 Committees) are automatically designated as terrorist entities in New Zealand under the TSA.

Domestic designation framework

65. In compliance with UNSCR 1373, New Zealand also maintains a domestic designation framework, which allows New Zealand to designate persons and entities independently of any actions taken by the UN. This framework is set out in the TSA.
66. UNSCR 1373 leaves it to Member States to identify entities against which they should act. The TSA empowers the Prime Minister to designate persons or entities where he or she has good cause to suspect (for interim designations) or believes on reasonable grounds (for final designations) that the person or entity has knowingly carried out, or knowingly participated in the carrying out of a terrorist act (as defined in the TSA).⁸ "Carrying out" can include planning or preparing, threatening, or attempting to carry out a terrorist act. A domestic designation can either be "interim" or "final". Interim designations expire within 30 days, while final designations expire after three years (but can be renewed).
67. In New Zealand the Terrorist Designations Working Group (TDWG) is responsible for assessing entities for domestic designation. This group is chaired by the New Zealand Police, and comprises the Department of the Prime Minister and Cabinet, the National Assessments Bureau, New Zealand Defence Force, Crown Law, Ministry of Foreign Affairs and Trade, and the New Zealand Security Intelligence Service.
68. The TDWG manages the process for advancing the designation of non-UN-listed terrorist entities in support of UNSCR 1373, and manages the renewal, expiration and revocation processes of these designations as necessary.
69. The TDWG conducts research into entities proposed for designation, and if they consider the entity meets the criteria for designation as a terrorist entity under the TSA, they will advance a recommendation (statement of case) to the Security and Intelligence Board (SIB) for consideration. If SIB agrees with the recommendation, the Chair of SIB will forward the request to the Prime Minister for consideration.
70. Factors relevant to the consideration of whether an individual or entity should be designated are:

⁸ TSA, sections 20 and 22.

- the need for New Zealand to contribute to the international security environment by preventing activities such as the recruiting, harbouring, participating in or financing of terrorist entities that fall outside the scope of the UN listing process;
- the threat posed by the entity to New Zealand, New Zealanders, or New Zealand interests, including offshore;
- the entity's New Zealand or regional presence, or links with New Zealanders; and
- the nature and scale of the entity's involvement in terrorist acts or support activity.

Safeguards against discrimination in the designation process

71. There are protections to ensure that the designation powers are not used inappropriately. Designation occurs at the highest level of executive government, and the Attorney-General must be consulted. Further, any person can bring a judicial review of a designation (TSA, s 33), an affected entity or third party can request a revocation of a designation, and designations automatically expire after three years (s 35). In addition, the public is notified about designations via the *Gazette* (s 23(e)(i)) and the New Zealand Police website, and the entity should also be notified about their designation if this is practicable (s 23(f)).

(5) Provisions relating to control orders with respect to persons following expiry of their sentences

72. We note the two concerns raised by the Joint Communication regarding the amendments to the Terrorism Suppression (Control Orders) Act 2019 ("the Control Orders Act"). These were that the amendments are inconsistent with:
- a. article 14(7) of the ICCPR, in that the amendments enable a second punishment to be imposed following a final conviction and sentence; and
 - b. article 15(1) of ICCPR, in that the amendments enable a heavier penalty to be imposed than was available at the time at which the offence was committed.

These concerns are addressed below in turn.

Double jeopardy

73. The prohibition on double punishment in article 14(7) of ICCPR is incorporated in New Zealand law through s 26(2) of the Bill of Rights Act. This section provides that "no one who has been finally acquitted or convicted of, or pardoned for, an offence shall be tried or punished for it again". In developing the amendments to the Control Order Act, extensive analysis was undertaken on the consistency of the Control Order Act amendments with s 26(2) of the Bill of Rights Act.
74. In summary, the New Zealand Government considers that the Control Orders Act as amended is consistent with article 14(7) of the ICCPR. Primarily, there are two factors supporting this conclusion:

- a. Article 14(7) prohibits a second trial or punishment for the same offence, which denotes something in the nature of a criminal penalty or penal sanction. Control orders will not necessarily impose a criminal punishment or penalty on a relevant person. Each order would need to be individually assessed to determine whether the specific restrictions it imposes would amount to a criminal penalty. This is because control orders are highly flexible in terms of the specific restrictions that they can authorise, ranging from a simple non-association order to requiring that the relevant person be subject to electronic monitoring at all times and remain at a specified place for up to 12 hours a day.⁹

A control order which only comprises minor restrictions on a person's liberty will not amount to a punishment or penalty, particularly where the restriction is not a power that is unique to the criminal jurisdiction. Notably, control orders are imposed by New Zealand's High Court through a civil law proceeding that is separate to the prior criminal proceeding.

Control orders can only be imposed where a person is proven on the civil standard to pose a real risk of engaging in future terrorism-related activities, and where the specific conditions to be imposed through the order are necessary and appropriate to protect the public from terrorism and/or prevent the engagement in a terrorism related activity.¹⁰ It protects against a future risk to public safety rather than punishing for previous conduct which amounted to an offence. The safeguards in this separate civil process militates against any restrictions imposed on a control order amounting to a criminal penalty.

- b. The High Court may only impose a control order if satisfied that it is consistent with Bill of Rights Act. Therefore, if the Court concludes that the proposed order or a condition of that order would be inconsistent with the prohibition on double jeopardy in s 26(2), the Court may not pass the order or condition in question.

75. As control orders are civil, rather than criminal in nature, the due process requirements enshrined in international law and the Bill of Rights Act, such as the presumption of innocence and a trial by jury do not apply. However, the right to the observance of principles of natural justice by the court considering the control order apply,¹¹ and there is a right to appeal, or apply to vary or discharge a control order.

Retroactive increases of penalties for criminal offending

76. The prohibition in Art 15(1) of the ICCPR on retroactively increasing the penalties that can be imposed for criminal offending is incorporated in New Zealand law through section 26(1) of the New Zealand Bill of Rights Act as set out above, along with section 25(g) of that Act and section 6 of the Sentencing Act 2002. Section 25(g) provides:

everyone who is charged with an offence has, in relation to the determination of the charge, the following minimum rights: ...

⁹ Compare section sections 17(j) and (n) of the Terrorism Suppression (Control Orders) Act 2019.

¹⁰ Section 12(2) of the Terrorism Suppression (Control Orders) Act 2019

¹¹ Bill of Rights Act, s 27.

(g) the right, if convicted of an offence in respect of which the penalty has been varied between the commission of the offence and sentencing, to the benefit of the lesser penalty

Section 6 of the Sentencing Act provides:

An offender has the right, if convicted of an offence in respect of which the penalty has been varied between the commission of the offence and sentencing, to the benefit of the lesser penalty.

77. The New Zealand Government does not consider these rights are engaged by the amendments to the Control Orders Act, as a control order is not a penalty or sentence, for the reasons outlined above. Moreover, ss 6(5)(a) and (b) of the Control Orders Act explicitly require that a person can only be eligible for a control order if they commit, are convicted, and are sentenced for a relevant terrorism-related offence after the commencement date of the Counter-Terrorism Legislation Act 2021. That is, the relevant provisions are wholly prospective in nature.

(6) Surveillance and search regimes

78. The Joint Communication notes that certain warrantless powers under the Search and Surveillance Act 2012 have been extended. This extension is specifically limited to investigation of the new planning or preparation offence under section 6B of the TSA. The New Zealand Government agrees with the Special Rapporteur's observation about the potential for fundamental rights, including freedom of expression, to be undermined by disproportionate use of search and surveillance powers and that this can most keenly impact minority groups.
79. However, as the Joint Communication notes, the amendments do not substantively expand the scope of warrantless powers in New Zealand as those powers already exist in respect of investigation of other serious offences.
80. The New Zealand Government is satisfied that the new powers will be used appropriately by New Zealand Police (the only Government agency who is permitted to exercise these powers in relation to section 6B of the TSA¹²).

Rationale for warrantless powers

81. International experience demonstrates that planning to commit a terrorist act may escalate to actual acts of terrorism in rapid and unpredictable ways. The proposed warrantless powers enable New Zealand Police to urgently investigate where they detect concerning behaviour. This will in turn allow Police to intervene before more serious offences occur.
82. Planning a terrorist attack is a serious offence and ought to be able to be prosecuted where proper evidence exists. These powers allow Police to carry out warrantless

¹² The New Zealand Intelligence and Security agencies exercise powers under Part 4 of the Intelligence and Security Act 2017, which were unaffected by the enactment of the Counter-Terrorism Legislation Act 2021. The warrantless search powers in the Search and Surveillance Act are directed at 'a constable'.

searches only in a very limited range of circumstances, such as where they have reasonable grounds to believe they will find evidence of such offending and if they delay in order to get a warrant, that evidence will be destroyed, concealed, altered or damaged. Such a search ought to be reasonable if properly carried out.

Safeguards

83. Further, safeguards exist in relation to the exercise of warrantless search and surveillance powers in New Zealand such that the powers will not be used disproportionately, and are consistent with fundamental human rights and freedoms. These include:
- A failure to comply with the requirements of a warrantless search may result in any evidence secured being declared inadmissible by a court under New Zealand's Evidence Act 2006 (possibly leading to an acquittal due to lack of evidence) or other Bill of Rights remedies, including damages. These sanctions are a significant check on the use of the powers.
 - Reporting requirements under the Search and Surveillance Act for the use of warrantless powers include provision of a written report as soon as practicable after the exercise of the warrantless power and inclusion of information about the use of such powers in the Police's annual report which is tabled in Parliament and scrutinised through a Select Committee process.
84. Moreover, under New Zealand law there is a general requirement to obtain a warrant. Warrantless powers are limited to emergency or urgent situations, and are the exception to the general requirement. Warrants require independent issuing officers to be satisfied of the statutory requirements before authorising Police to exercise certain powers. For example, if emergency or urgency grounds do not exist to use a surveillance device,¹³ (for a period not exceeding 48 hours without warrant), a warrant will be required to use a surveillance device to investigate offending. In that case, for terrorism offences, a Police officer will apply to a High Court Judge under s 51 of the Search and Surveillance Act.
85. Before issuing the warrant, the Judge must be satisfied that there are reasonable grounds:
- to suspect that the terrorism offence has been committed, is being committed, or will be committed for which Police may obtain a search warrant; and
 - to believe that the proposed use of the surveillance device will obtain information that is evidential material in respect of the suspected terrorism offence.
86. The need for independent judicial authorisation before the surveillance power may be exercised along with the high threshold set out in the legislation ensures that the fundamental principles and rights identified in the Joint Communication are protected to the greatest extent possible.
87. The New Zealand Government therefore considers that the relevant surveillance powers are consistent with its human rights obligations. While the exercise of any warrantless powers, including surveillance, in emergency situations necessarily

¹³ As set out in the Search and Surveillance Act 2012, s 48

lacks the inherent prior safeguard of the warrant process, the justification for the warrantless power includes public safety, public interest in investigation of serious offences and preservation of evidence. It is considered that when coupled with the safeguards referred to above in relation to warrantless searches, the powers are reasonable.

88. Intelligence warrants are provided for by the ISA. This is not the legislation that applied at the time of the Human Rights Committee's sixth periodic report of New Zealand. The ISA contains significant protections. There are two kinds of warrant available under the ISA: Type 1 (where information is being collected about a New Zealand citizen or a permanent resident of New Zealand);¹⁴ and Type 2, for all other kinds of information not caught by Type 1.¹⁵ As will be plain, it is accordingly not a division based solely on citizenship, permanent residents receive the same protection as citizens. A Type 1 warrant is issued jointly by the Minister and a Commissioner of Intelligence Warrants and is subject to review by the Inspector-General of Intelligence and Security, described as a 'triple lock' system to protect New Zealanders from overreach by the intelligence and security agencies. A Type 2 warrant requires only the authorisation of the Minister but is also subject to review by the Inspector-General of Intelligence and Security. The criteria for obtaining both types of warrant are robust.¹⁶

Police training and other protocols for exercise of warrantless search and surveillance

89. The New Zealand Government refers to the Joint Communication's request for information on whether any authority has issued guidance on the implementation of warrantless searches and monitoring by ordinance, and what capacity-building and training measures have been taken in this respect, including with respect to a human-rights centred approach.
90. In addition to the information provided above, the New Zealand Government provides the following information:
- Specific Instructions in the Police Manual provides guidance to Police officers in the use of all powers, including the warrantless search powers set out in the Search and Surveillance Act 2012. The search section of the Police Manual outlines Police's powers under the Act and internal approvals required for the use of warrantless surveillance device powers. It is the primary reference on Police practice and policy relating to searches of places, vehicles and things, and for searching people;
 - Police Instructions are regularly reviewed and updated to make proactive improvements, where the Independent Police Conduct Authority (IPCA) makes specific recommendations, or there is any change to case law regarding Police practice. In addition, any significant case law or IPCA recommendation that relates to Police practice is brought to the attention of Police staff at the time. The courts regularly scrutinise the Police use of the Search and Surveillance Act in criminal cases, including the use of warrantless powers;

¹⁴ S 53 ISA

¹⁵ S 54

¹⁶ Sections 55 to 61 ISA

- Police officers receive extensive training on the use of search powers as a fundamental aspect of policing. The use of specialised surveillance powers is restricted to specialised groups in Police which receive specialist training;
- The general public is regularly surveyed on matters relating to the level of trust and confidence they have in Police, perceptions of safety and Police's service to the community. Public trust and confidence in Police is high in New Zealand;
- Police places a high priority on working in partnership with communities to keep New Zealand safe. Police's 'policing by consent' approach to community policing empowers Police to work in good faith alongside diverse communities. This is a critical aspect of Police interaction within their operational environment, and New Zealand Police's delivery of policing services to the New Zealand public.

These factors demonstrate that New Zealand adopts a human rights centred approach to the exercise of warrantless powers.

General information on how counter-terrorism measures comply with UN Resolutions and international human rights law

91. In response to question 2 in the joint communication, New Zealand provides the following information to demonstrate how domestic counter-terrorism measures comply with UN Security Council Resolutions and international human rights law.
92. New Zealand implements its obligations under UNSCR 1373, UNSC 2178 (and related Security Council resolutions) primarily through the TSA. This creates terrorism-related offences in New Zealand's domestic law, as required by those Resolutions to establish terrorist acts as serious criminal offences and ensure those responsible for terrorism and its financing are brought to justice.
93. The 2021 Act further implements New Zealand's obligations under UNSCR 1373 and UNSCR 2178. The Act introduced a new offence of planning or preparing to carry out a terrorist act, a new offence of providing or receiving terrorist weapons and combat training, and amended the terrorism finance framework to prevent a broader range of material support being provided to terrorism. Through these amendments New Zealand implements its obligations under UNSCR 1373 (and related resolutions) to criminalise the planning and preparation of terrorist acts,¹⁷ to criminalise the provision or collection of funds to be used to carry out terrorist acts, and to prevent and suppress the financing of terrorist acts.¹⁸
94. The 2021 Act also introduces a new offence of travelling to or from New Zealand for terrorist purposes. These new offences implement New Zealand's obligations under UNSCR 2178.¹⁹ Further, the Passports Act 1992 was amended in 2014 to enable the New Zealand Minister of Internal Affairs to refuse to issue or cancel a passport or travel document of an individual who is a danger to New Zealand or any other country because the person intends to carry out or facilitate a terrorist act. This implements New Zealand's obligations under UNSCR 2178 and UNSCR 2396 to prevent the movement of terrorist or terrorist groups by effective border controls

¹⁷ UNSCR 1373, Operative paragraph 2(e).

¹⁸ UNSCR 1373, Operative paragraph 2(a)-(b).

¹⁹ UNSCR 2178, Operative paragraph 6(a),

and controls on issuance of identity papers and travel documents,²⁰ and to prevent and suppress the recruiting and transporting of individuals who travel to another State for the purposes of terrorism.²¹ Further, the TSA and the United Nations Sanctions (ISIL (Da'esh), Al-Qaida, and Taliban) Regulations 2007 contain an asset freeze, travel ban, arms embargo with respect to ISIL and Al-Qaida, and associated groups and entities, as required by UNSCR 2368.

95. As noted by a number of UNSC, Human Rights Council and General Assembly Resolutions,²² measures taken to combat terrorism and counter violent extremism must comply with international human rights, refugee and humanitarian law. New Zealand is strongly committed to ensuring measures it takes to counter terrorism and violent extremism are consistent with international law. The primary way New Zealand achieves this is through the Bill of Rights Act. This incorporates the International Covenant on Civil and Political Rights in New Zealand's domestic law and affirms, protects and promotes many fundamental rights and freedoms in New Zealand. All proposed legislation must undergo a vetting process which alerts Parliament to any inconsistency between a legislative measure and the fundamental human rights and freedoms protected by the Bill of Rights Act. As outlined above, the vetting process for the 2021 Act (and the vetting processes for all other legislation enacted in New Zealand to combat terrorism) have concluded that the measures are consistent with human rights and freedoms.
96. The executive and the judiciary²³ in New Zealand are also bound by the Bill of Rights Act, and must respect fundamental rights and freedoms in interpreting and enforcing counter-terrorism laws. Some examples of the impact of this are:
- fundamental rights to due process must be observed in the investigation and prosecution of terrorism-related offences: a defendant's rights relating to arrest and detention,²⁴ the presumption of innocence,²⁵ the right to a fair trial,²⁶ and other due process protections apply in the same way to those accused of terrorism-related offences as other criminal offences.
 - decisions to designate entities as terrorist entities must be consistent with protected rights and freedoms and may be subject to judicial review on that basis.
 - the conditions of a control order may only prescribe limits on rights and freedoms (such as freedom of expression and association) that can be demonstrably justified in a free and democratic society.²⁷
97. There are effective judicial remedies in New Zealand for breaches of fundamental rights and freedoms by all branches of government, allowing recourse to the courts to challenge any measure taken to counter terrorism or violent extremism that is inconsistent with protected rights and freedoms in the Bill of Rights Act.

²⁰ UNSCR 2178, Operative paragraph 2.

²¹ UNSCR 2178, Operative paragraph 5.

²² Human Rights Council Resolution 35/34 states, and General Assembly resolution 51/210 and 72/123, and 72/180

²³ And any other person or body performing a public function, power or duty: see s 3 of the Bill of Rights Act.

²⁴ For instance, the right not to be arbitrarily arrested or detained (s 22 of the Act), the right to challenge the validity of the arrest or detention (s 23(1)(c)), the right to be brought before a court as soon as possible (s 23(3)), and others.

²⁵ Protected by s 25(c) of the Act.

²⁶ Protected by s 25(a) of the Act.

²⁷ Terrorism Suppression (Control Orders) Act 2019, s 12(3)(b).

98. Further, the Crimes of Torture Act 1989 criminalises acts of torture, and the network of National Prevention Mechanisms in New Zealand (including the Ombudsman and the Independent Police Conduct Authority) ensure inspections of places of detention (which include detention facilities for those accused of terrorism-related offences) and investigation of complaints of torture and other cruel, inhuman, and degrading treatment or punishment. Section 30(2)(b) of the Extradition Act 1999 prevents terrorism suspects from being returned to face trial in another State when there are substantial grounds for believing that the person would be at risk of torture.²⁸ Through these legislative provisions New Zealand complies with its international law obligations in regards to the prohibition of torture and non-refoulement.
99. As noted above, the TSA is neutral as to the religious, political or ideological motivation behind a terrorist act. An act can qualify as a “terrorist act” in New Zealand, and will have the same consequences, regardless of the religious, national or ethnic identity of the individuals or groups concerned. New Zealand’s experience has demonstrated that terrorism is not associated with any religion, nationality, civilisation or ethnic group; and New Zealand considers its application of the TSA and other measures to combat terrorism is not discriminatory. Further, non-legislative measures New Zealand takes to counter terrorism and violent extremism are similarly neutral and non-discriminatory. New Zealand’s National Counter-Terrorism Strategy 2019 has a strong focus on prevention through building resilient and inclusive communities, able to resist extremist ideologies of all types. New Zealand’s leadership (with France) of the Christchurch Call to Action, to eliminate terrorist and violent extremist content online, was ideologically neutral and non-discriminatory in its scope.
100. We hope our response has addressed the concerns raised in your letter dated 19 January 2022.

Yours sincerely

Lucy Duncan
Permanent Representative to the United Nations

²⁸ Human Rights Council Resolution, 35/34, at [27].