United Nations S/2003/860

Security Council

Distr.: General
5 September 2003

Original: English

Letter dated 5 September 2003 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

I write with reference to my letter of 6 June 2003 (S/2003/626).

The Counter-Terrorism Committee has received the attached third report from New Zealand submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex).

I would be grateful if you could arrange for the present letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Inocencio F. **Arias**
Chairman
Security Council Committee established pursuant to
resolution 1373 (2001) concerning counter-terrorism

03-49213 (E) 250903

0349213

Annex

Letter dated 3 September 2003 from the Permanent Representative of New Zealand to the United Nations addressed to the Chairman of the Counter-Terrorism Committee

On behalf of my Government, I have the honour to transmit to the Counter-Terrorism Committee a response to the questions and comments raised by the Committee in your letter of 30 May 2003, regarding the measures taken by New Zealand to implement the provisions of Security Council resolution 1373 (2001) (see enclosure).

My Government remains ready to provide the Committee with any further information that may be required or requested by the Committee.

(*Signed*) Don **MacKay**
Permanent Representative

Enclosure

NEW ZEALAND RESPONSE TO THE QUESTIONS AND COMMENTS OF THE SECURITY COUNCIL COUNTER-TERRORISM COMMITTEE CONTAINED IN THE CHAIRMAN'S LETTER OF 30 MAY 2003

New Zealand is fully committed to combating international terrorism in all its forms and to co-operating with the United Nations, its Member States and particularly with the Counter-Terrorism Committee established by the Security Council pursuant to Resolution 1373 to combat international terrorism.

In December 2001 New Zealand submitted a report to the United Nations Security Council Counter-Terrorism Committee setting out steps New Zealand had taken to implement United Nations Security Council Resolution 1373 (2001). In July 2002 New Zealand presented a supplementary report to the Counter-Terrorism Committee, which provided further information on issues addressed in the first report.

The following information is provided in response to the UN Counter-Terrorism Committee's request for further information resulting from consideration of New Zealand's supplementary report.

Counter-Terrorism Committee question 1.2

The CTC notes from the website www.gplegislation.c.nz (address provided in the supplementary report at page 9) that the Terrorism Suppression Act 2002 commenced on 18 October 2002. Could New Zealand confirm that the Act is now being implemented in New Zealand? Please provide details on the number of designations of terrorist entities that New Zealand has made since the passage of the Terrorism Suppression Act. Please also provide information concerning the length of time required to make a designation under the Terrorism Suppression Act.

The Terrorism Suppression Act 2002 was enacted in October 2002. The legislation provides a statutory mechanism for New Zealand to designate an individual or an organisation as a "terrorist entity". Once the designation is made that entity is subject to a range of sanctions prescribed under the Terrorism Suppression Act. The Act entered into force in October 2002 and has been implemented in New Zealand since that time.

Before the Terrorism Suppression Act was passed, UN Security Council Resolution 1373 (2001) was implemented by regulations made under the United Nations Act 1946 (the United Nations Sanctions (Terrorism and Afghanistan Measures) Regulations 2001). These regulations applied to "specified entities", namely all individuals and entities that were designated for the time being by the 1267 (Afghanistan) Committee. The transitional provisions of the Terrorism Suppression Act provided that all terrorist entities that were "specified entities" for the purposes of the Regulations at the date that the Act came into force were automatically regarded as a terrorist entity that had been designated under section 22 of the Act. This resulted in a total of 219 individuals and organisations being regarded as designated terrorist entities in New Zealand as at 18 October 2002.

As the United Nations subsequently updates its list of terrorist entities, changes made since the Terrorism Suppression Act came into force must now be considered for designation on a case-by-case basis. There is provision for both "interim" and final designations – the procedure, threshold, and duration of the interim and final designations differs. In particular, an interim designation lasts for only 30 days. The Prime Minister, upon application by the Commissioner of Police and after consultation with the Attorney General then issues a final designation. The Prime Minister must have reasonable grounds to believe that the entity in question has knowingly engaged in terrorist acts before any such designation can be issued. In respect of this requirement, the Terrorism Suppression Act provides that information that the United Nations has listed an entity is sufficient grounds, in the absence of contrary evidence, for that entity to be designated.

Since the Terrorism Suppression Act came into force, an additional 32 individuals and organisations have been designated by the Prime Minister as terrorist entities. All the entities designated since the Act took effect in October 2002 appear on the list issued by the United Nations 1267 (1999) Committee.

Designations can be made expeditiously subject to the requirement to prepare relevant documentation for consideration by the Prime Minister. Generally any ongoing additions to the United Nations list are collated on approximately a monthly basis and submitted together for consideration by the Prime Minister. This does not prevent urgent cases being submitted for consideration immediately after they have been listed by the United Nations.

Counter-Terrorism Committee question 1.3

It is stated in the supplementary report (at page 4) that a Terrorism (Counter Terrorism) Bill is being drafted to deal with those parts of the Resolution not dealt with by the Terrorism Suppression Bill. The CTC would appreciate receiving an outline of the salient features of the Bill and its current status.

The Counter Terrorism Bill is currently before Parliament awaiting its second reading. The Bill has recently completed its select committee stage, during which the Foreign Affairs, Defence and Trade Committee heard public submissions on the Bill and recommended some amendments be made. The Bill is expected to be passed, and to come into force, before the end of 2003.

The Bill implements in domestic law the requirements of two international Conventions relating to the Physical Protection of Nuclear Material (1979), and on the Marking of Plastic Explosives for the Purposes of Detection (1991). With the passage of the Bill New Zealand will deposit its instruments of accession to both conventions and will then be fully compliant with all 12 terrorism-related international instruments.

It creates the following new offences designed to deal with terrorist-type activity:

- harbouring or concealing a person knowing that person has carried out, or intends to carry out, terrorist activity;
- causing sickness or disease in animals, intending to cause serious risk to the animal population of New Zealand and major damage to the New Zealand economy, or being reckless as to whether such an outcome occurs;

- contaminating products (food, water, crops) intended for human consumption, intending or being reckless as to whether one of the following results: harm to one or more persons, major economic loss to a person, or major damage to the national economy;
- threatening to do an act that is likely to cause risk to the health or safety of one or more persons, or major property damage, or major economic loss to a person, or major damage to the national economy, or communicating information that is known or believed to be false about one of those outcomes, intending to significantly disrupt the civilian population, or an infrastructure facility, or the administration of government, or commercial interests.

The Bill makes terrorism an aggravating factor for sentencing purposes, and provides that when murder occurs in the course of a "terrorist act" (as defined in section 5 of the Terrorism Suppression Act), there will be a presumption in favour of 17 years' minimum non-parole.

The Bill also gives the New Zealand Customs Service the power to detain property intercepted crossing the border, where there is good cause to suspect that the property is owned or controlled by a designated terrorist entity, or an entity that is eligible for designation under the Terrorism Suppression Act. In the case of already-designated entities, Customs will be able to detain all property intercepted. In the case of entities eligible but not yet designated, the detention power will apply only to cash or cash equivalents (such as precious metals). In both instances, there is a "necessities of life" exception that refers to "cash…necessary to satisfy essential human needs". This is modelled on similar provisions in the Terrorism Suppression Act.

The Bill provides for the following investigative powers that are not terrorism-specific but are deemed necessary to address serious criminal offending in general, including in terrorism:

- the use of tracking devices by Police and Customs officers (subject to safeguards, such as a warrant requirement and reporting obligations);
- a requirement which "may require a specified person to provide information or assistance that is reasonable and necessary to allow the (Police) to access data held in, or accessible from, a computer that is on premises named in the warrant";
- provides that when evidence of a serious criminal offence (such as drug related, serious violent, and terrorist offences) is fortuitously discovered in the course of investigating a different serious offence under an interception warrant (such a warrant allows the interception of oral communications by means of listening devices), evidence of the first offence will be admissible.

The current draft of the Counter Terrorism Bill as proposed to be amended by the select committee can be found on the following website:

www.clerk.parliament.govt.nz/Content/SelectCommitteeReports/27bar2.pdf

Counter-Terrorism Committee question 1.4

The effective implementation of paragraph 1 requires, inter alia, that States have in place or introduce adequate legal and other appropriate measures to register, audit and monitor the collection and use of funds and other economic resources by charities, religious, cultural and other associations with a view to ensuring that they are not diverted to purposes other than their intended purposes in particular to terrorism. It is stated in the supplementary report (at page 5) that the matter is under the consideration by a Working Group on Charities. The CTC would appreciate receiving a progress report in this regard.

In 2001, the New Zealand Treasury appointed a working party to make recommendations to the government on the design of a method of registration, reporting and monitoring of charities. The Working Party released two reports at the start of 2002. In June 2003, the New Zealand Cabinet agreed to the final policy recommendations for the establishment of a new Charities Commission that will be responsible for registering charitable organisations. It is anticipated that the Commission will be operational by mid 2004.

The Charities Commission Bill, when enacted, will create a registry system for charitable organisations. The Commission will assist charitable organisations to achieve compliance with the core regulatory obligations. The Commission will also assist in New Zealand's efforts to comply with FATF Special Recommendation VIII by providing a level of supervision for charitable organisations, making it more difficult for non-profit organisations to be used for channelling money to terrorist organisations.

The Commission will have modest investigatory powers and where its investigations reveal (or there is a complaint) that an organisation has terrorist links, it will refer the case to the Minister of Commerce and to other agencies such as the New Zealand Police and the Inland Revenue Department. The Commission's role will therefore be largely one of coordinating information between responsible agencies. An ongoing function of the Commission will also be to continue to monitor the activities of charities by receiving annual returns.

Counter-Terrorism Committee question 1.5

The CTC would be grateful if it could be provided with a copy of the Interception Capability Bill as soon as it is made available to the public.

As requested, a copy of the Telecommunications (Interception Capability) Bill is attached as Annex A. The Bill was introduced to Parliament earlier in the year and was referred to the Law and Order Select Committee for consideration. The Committee is due to report back to Parliament by November 2003.

Counter-Terrorism Committee question 1.6

The CTC would appreciate having a progress report on New Zealand becoming a party to the Conventions and Protocols against terrorism to which it is yet to be a party.

New Zealand is currently party to ten of the twelve terrorism conventions and protocols, having acceded to the International Convention on the Suppression of

Terrorist Bombings (1997) and ratified the International Convention on the Suppression of the Financing of Terrorism (1999) in November 2002, following the passage of the Terrorism Suppression Act. Earlier this year the Counter Terrorism Bill was introduced to Parliament (please refer to the answer to question 1.3 of this report for more detail on the Bill). Amongst other measures it contains the provisions needed to implement the two terrorism conventions to which New Zealand is not yet party: the Convention on the Physical Protection of Nuclear Material (1979) and the Convention on the Marking of Plastic Explosives for the Purposes of Detection (1991). Once the Bill is passed, New Zealand will be able to deposit its instruments of accession to both Conventions.

Counter-Terrorism Committee question 1.7

The CTC would welcome a progress report on New Zealand's proposed changes to its Customs and Excise Act 1996, Immigration Act 1987, and the Passport Act 1992 as stated in the supplementary report (at page 13).

Amendments have been made to the Immigration Act 1987 pursuant to the Immigration Amendment Act of 2002 in order to implement the United Nations Convention against Transnational Organised Crime and the associated Protocols on Migrant Smuggling and the Trafficking of Persons. The relevant provisions in the amendment act came into force on 18 June 2002.

Section 126 of the 1987 Act, as now amended, provides that people who arrive at other than designated New Zealand Customs ports of entry must now report "forthwith" to an immigration officer (they had previously been given 72 hours in which to report). Where there is good cause to suspect that a person will not or has not reported "forthwith", a police officer may now arrest that person and bring them to an immigration officer.

The Immigration Act has also been amended so that the 72-hour period during which a person arriving in New Zealand may be refused entry, detained or turned around now begins when the person first reports to an immigration officer and not from the time of their arrival. This means that people who evade border control will no longer be able to trigger the right of appeal against removal to the independent Removal Review Authority by evading an immigration officer for 72 hours after arrival.

Through the vehicle of the Transnational Organised Crime Bill in 2002 an amendment was also made to the Immigration Act which provides police and customs officers with the power to board and search a vessel in the contiguous zone where persons on board are believed to be committing an offence against the Immigration Act or of being in New Zealand unlawfully (should they land in New Zealand). At the same time the Customs and Excise Act 1996 was amended extending the power of customs officers to detain vessels suspected of involvement in offence of migrant smuggling under section 98C of the Crimes Act 1961. The ability to direct and detain vessels in those circumstances applies to vessels in the contiguous zone.

The same Transnational Organised Crime Bill also created a new power in the Immigration Act for the New Zealand Police to arrest a person arriving from overseas at other than a Customs port of entry. Section 174 of the Customs and Excise Act 1996 was also amended in 2002 to enable customs officers to arrest

without warrant a person found on a vessel who is suspected of committing an imprisonable offence against the Customs and Excise Act or to be involved in the offence of migrant smuggling under section 98C Crimes Act.

The New Zealand Passports Act 1992 provides for the issue, renewal and cancellation of passports, certificates of identity and emergency travel documents. It also provides a right of appeal in cases where an applicant for any travel document is dissatisfied with a decision made in relation to his or her application, and specifies a range of travel document offences and penalties. For the most part the Act does not prescribe the form or content of travel documents and is silent about operational process.

The United Nations Protocol Against the Smuggling of Migrants by Land, Sea and Air which supplements the United Nations Convention against Transnational Organised Crime, requires signatories to ensure the security and integrity of their travel documents, have particular offences relating to travel document fraud, and take measures necessary to prevent the unlawful creation, issue and use of these documents. In addition, United Nations Security Council Resolution 1373 (2001) requires nations to "prevent the movement of terrorists through measures preventing counterfeiting, forgery or fraudulent use of travel documents". The Passports Amendment Act 2002 enables New Zealand to meet these requirements.

The amendments introduced extra-territorial jurisdiction for a range of Passports Act offences relating to people smuggling and associated criminal activities. Section 31A provides that proceedings may be brought where such offences are alleged, even if they did not occur in New Zealand.

Offences relating to travel documents are set out in sections 29A-32 of the Act. The 2002 amendments created new offences relating to the forgery and falsification of New Zealand travel documents, the distribution and disposal of falsified and forged travel documents, misuse of passport database information and the improper issue of travel documents.

Article 6(2)(b) of the Protocol requires signatories to make it an offence to be an accomplice to travel document offences, but no new offence was necessary for the prosecution of people who assist in the commission of a Passports Act offence. Under section 66 of the New Zealand Crimes Act 1961, anyone who aids or abets any person in the commission of an offence is guilty of the offence. The seriousness of many travel document offences is reflected in new maximum penalties of a term of imprisonment of up to ten years and/or a fine of up to $NZ250,000. These amendments bring the Passports Act penalties in line with those under the Crimes Act (using a forged document carries a maximum penalty of 10 years imprisonment under section 266 of the Crimes Act).

The Act now provides that a sentencing Judge may make an order preventing a person convicted of an offence against the Passports Act from obtaining a New Zealand passport for up to 10 years from the date of conviction. The purpose of this provision is to prevent further abuses of New Zealand passports rather than to prevent a person's departure from New Zealand (to do that would risk breaching the New Zealand Bill of Rights Act 1990). Any person subject to such an order could still travel on another country's passport if he or she were a dual national, or apply for an emergency travel document (which would not be valued on the black market

as it is journey-specific, in any event, and would attract the attention of Customs Officials).

Section 20 of the Act has also been amended to provide for the Minister to recall a certificate of identity in cases where the holder has been issued with a passport. This reduces the likelihood of a person possessing two usable New Zealand travel documents at the same time.

Counter-Terrorism Committee question 1.8

The CTC is aware that New Zealand may have covered some or all the points in the preceding paragraphs in reports or questionnaires submitted to other organisations involved in monitoring international standards. The CTC would appreciate receiving a copy of any such report or questionnaire as part of New Zealand's response to these matters as well as details of any efforts to implement international best practice, codes and standards which are relevant to the implementation of Resolution 1373.

Attached as Annex B is a copy of New Zealand's report to the United Nations Security Council 1267 (1999) Committee under United Nations Security Council Resolution 1455 (2003), submitted in May 2003.

Counter-Terrorism Committee question 2.1

The CTC is eager to facilitate the provision of assistance and advice in connection with the implementation of the Resolution. The Committee would encourage New Zealand to let it know if there are areas in which assistance or advice might be of benefit to New Zealand in its implementation of the Resolution or of any areas in which New Zealand might be in a position to offer assistance or advice to other States on the implementation of the Resolution.

No assistance is required for New Zealand. Please refer to the following reply (question 2.4) for detail on New Zealand's efforts to assist other States in their implementation of UN Security Council Resolution 1373 (2001).

Counter-Terrorism Committee question 2.4

The CTC notes that there is no mention in the reports submitted by New Zealand on areas where it might be able to provide assistance to other States in connection with the implementation of the Resolution.

New Zealand is working (along with other donors) to assist Pacific Island Countries to implement their commitments to support the international counter terrorism effort. This assistance is focussed on developing model counter terrorism legislation for the Pacific region. The model provisions cover obligations in Security Council Resolution 1373, all 12 counter-terrorism conventions and protocols, and the UN Convention against Transnational Crime and its Protocols on Migrant Smuggling and People Trafficking. An Expert Working Group with representatives from a range of Pacific countries and organisations and assisted by a New Zealand and an Australian drafter, is developing the model provisions. Once they are finalised, the New Zealand and Australian drafters will be available to provide in-country drafting assistance, as requested, to enable individual Pacific Island countries to adapt the model provisions to fit their needs and legislative framework.

New Zealand has also recently established a $2 million Pacific Security Fund designed to meet the costs of advisory, training and technical support for Pacific Island countries in responding to security threats. The fund will be used to support security initiatives, including counter terrorism capacity building in the region. This is in addition to ongoing support to the region through NZAID programmes and funding from government agencies budgets. Use of the fund will be determined using whole-of-government coordination in assessing and prioritizing security risks in the Pacific.