



NEW ZEALAND COUNCIL OF TRADE UNIONS

Submission

of the

New Zealand Council of Trade
Unions

on the

Counter-Terrorism Bill

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INTRODUCTION

1. The New Zealand Council of Trade Unions (CTU) is the internationally recognised central trade union centre in New Zealand. It represents 34 affiliated unions with a membership of more than 300,000.

2. The CTU is affiliated to the International Confederation of Free Trade Unions (ICFTU) which is the international trade union centre for 221 affiliated national union centres in 148 countries representing 158 million trade union members. A resolution of the ICFTU Executive Board meeting in Brussels on the 23rd November 2001 included the following statements:
 - i. The threat of terrorism is real. It threatens not only the lives of people, but also the values of democracy and open societies. People and those values must both be secure. The terrorist threat must not be used to justify measures that would erode essential democratic freedoms and processes.*
 - ii.*
 - iii. The ICFTU opposes measures that, in the name of fighting terrorism, would have the effect of eroding fundamental human rights and civil liberties. It is the strength and vigour of democratic societies that will overcome the terrorist threat.*
 - iv. The struggle against terrorism is part of a larger fight for global social justice. Trade Unions must mobilise to fight fear with hope, dislodge oppression with freedom, replace degradation with dignity, and move from poverty to fairness. Liberty, democracy, equality, tolerance and justice for all people and for all peoples are among the most effective weapons against those who seek to destroy open societies and enslave the human spirit.*

3. The CTU supports the sentiments expressed as being appropriate to take account of in relation to this Bill.

4. The last CTU Biennial Conference on the 15th October 2001 and the CTU National Affiliates' Council at a meeting on the 29th November

2001, representing all affiliated unions on behalf of 300,000 union members also resolved:

- i. and finally in respect of the current global situation, we condemn and deplore terrorism, express our deepest sympathy for those affected by the tragic events of 11 September in the USA including many union members who lost their lives. We note further the devastating effect on workers of war, and urge that the United Nations should be the primary body to consider how the world as a whole reacts to recent terrorist attacks, (including measures against Afghanistan) alongside the significant increase in the flow of refugees. We observe that the dominance of multinational enterprises, linked on many occasions to aggressive US foreign policy, in the context of a global economy, creates the conditions of instability among the peoples of the world. The conditions that will create peace and sustainable development require a recognition of the need for all people to receive a fair share of the world's resources and opportunities for social and economic progress.

ii. Addendum added by National Affiliates Council 29 November 2001

- iii. *Noting the above, and the resolutions of the Executive Board of the International Confederation of Free Trade Unions dated 23 November 2001 and the ICFTU-APRO Executive Board calling on the United Nations to take a prime role in the fight against terrorism, the CTU calls on the Government to promote a United Nations led solution beyond military action and to ensure that its commitment of New Zealand forces in Afghanistan is only made in accordance with the constitution and resolutions of the United Nations relevant to this matter, to promote an international intergovernmental meeting to determine guidelines and coordinate responses to refugees from Afghanistan, to contribute humanitarian aid and assistance where necessary, and to play a leadership role in promoting permanent solutions to the political and social conditions which have created the political instability*
- iv. *And further the CTU opposes measures which, in the name of fighting terrorism, would have the effect of eroding fundamental human rights and civil liberties, including trade union rights.*

5. The CTU strongly believes that the real solution to the conditions which gave rise to the September 11 tragedy lie in the economic and social inequality which have been brought into sharp focus by the anti-globalisation rallies around the world in recent years. But this assertion that world peace is dependent upon a fairer distribution of wealth is not new; it was acknowledged by world leaders at the end of the second world war in the Declaration of Philadelphia which was drafted (in part by our own Walter Nash) by the Western nations at the end of WW2. In reflecting on the appalling devastation of the war, and its origins in the economic, social and political instability of the inter-war years, they concluded that there could be

- a. No peace without social and political stability
- b. No social and political stability without fairer wealth distribution
- c. No fairer wealth distribution unless the inequality in the employer employee relationship is addressed.

6. Their solution was the promotion of international labour standards negotiated on a tri-partite basis at the International Labour Organisation as human rights under international law. Although more than 170 countries are members of the ILO, and have committed themselves under the 1998 Declaration of Fundamental Principles and Rights at Work to implement the rights to organise in unions, to collective bargaining, to equal pay and freedom from discrimination, and to eliminate forced and child labour, these principles are not observed in many countries. The continued resistance of many countries to these principles of fairness, and the failure of the WTO Ministerial meeting at Doha to accept any responsibility to address these issues in the context of trade, raises serious questions about the commitment to implement the principles in practice. The CTU, along with the union movement internationally, will continue to campaign for a fairer international trading system, including the observance in law and

practice of minimum international labour standards, and views the provisions in this Bill, along with similar laws being implemented in other countries, as a potential means for Governments to suppress democratic rights associated with such campaigning and protesting.

7. The Counter-Terrorism Bill is said to be complementary to the Terrorism Suppression Act 2002, the rationale for which was stated to be a need to comply with obligations under article 41 of the Charter of the United Nations, and in particular a need to comply with Security Council Resolution 1373.¹ Resolution 1373 was passed in the evening of 28 September 2001, at a Security Council meeting which commenced at 10:50 p.m. and adjourned at 10:53 p.m.
8. The resolution called upon member states to apply certain measures to counter “terrorism”, pursuant to Article 41. That article provides:
 - i. Article 41
 - ii. The Security Council may decide what measures not involving the use of armed force are to be employed to give effect to its decisions, and it may call upon the members of the United Nations to apply such measures. These may include complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations”:
9. The CTU, in our submission presented to this committee on 11 December 2001, expressed concern that the then proposed Terrorist Suppression Act would substantially depart from previous practice in significantly dismantling important civil liberties and broadening the concept of “terrorism” to include activities that are widely considered to be legitimate in a free and democratic society. Further, it would expose people not designated as terrorists, but who have dealings with people

¹ Attached

or groups who are so designated, or who might conceivably fall within that broad definition, to criminal liability and lengthy terms of imprisonment. A number of the CTU's principal concerns were addressed in the final form of the Act.

10. The "designation" of "terrorists" or "terrorist organisations" by a Prime Minister is fraught with difficulties. Because the process of "designation" involves ascertainment of guilt without trial, the 2002 Act represents a substantial departure from long established and internationally recognised standards of human rights.

11. The definition of "terrorist act" in the 2002 Act is very wide. It includes many acts which may be legitimate and should not be called "terrorist" at all. The definition also catches other acts which are merely unlawful and are not "terrorism" at all. The legal history of New Zealand shows how readily police, and the courts, are prepared to determine that legitimate action is un-peaceful. For example, the following could be deemed "terrorist acts" under the 2002 Act:

a. Demonstrations which are not peaceful and which cause major economic loss. These may include demonstrations associated with industrial disputes but also the 1981 Springbok Tour demonstrations, the mass demonstrations which preceded the collapse of Eastern Europe, and the mass anti-globalisation demonstrations which accompany World Trade Organisation meetings and G5 and APEC meetings throughout the world.

b. Some actions by trade union and worker organisations both legal and illegal in the interests of workers and their communities.

c. International resistance movements such as the revolutionary movements which opposed apartheid, decolonisation

movements in East Timor and Bougainville and outlawed groups which fight other forms of oppression around the world.

- d. Threatening to cause disruption by mass civil disobedience (such as in New Zealand during the Springbok Tour or anti-Vietnam war demonstrations).
- e. Protesting non peacefully against nuclear warships at ports.

12. The CTU is concerned that the Counter-Terrorism Bill, if passed into law, will unjustifiably erode civil rights and worsen the problem. The CTU has particular concerns about the matters discussed in the following two sections of this submission.

General application of the measures

13. The CTU is concerned that, although the measures are described as counter-“terrorism” measures, the bill in fact makes broad and general changes to the criminal law. The bill, in fact, is not limited to counter-“terrorism”:

- a. the rules for admissibility of evidence gathered by electronic interception are relaxed for all offences, not just “terrorist” offences.
- b. New rules requiring suspects and employees to assist police who wish to gain access to evidence on a computer are introduced generally, not just in respect of “terrorist” offences.
- c. Electronic tracking devices are legitimized for use in respect of all offences, not just “terrorist” offences.

14. The CTU submits that such general changes, which so clearly impact adversely on civil liberties and privacy have no place in a “counter-terrorism” measure. If these measures are considered to be necessary

to combat terrorism, then the CTU submits that the Bill be amended so that the powers are limited to such situations.

New Crimes Act Offences

15. A number of concerning new offences are contained in the bill, punishable by heavy prison sentences. Of particular concern is the new section 307A which introduces a new offence for any person, with the intent of causing significant disruption to commercial interests or government interests, to “threaten to do an act to cause harm to persons or property” or to “communicat[e] information about harm to persons or property”. In the absence of a “lawful justification or reasonable excuse” any such communication is punishable by a long prison term. Again, this new crime has no connection to “terrorism”, or at least has a scope well beyond “terrorism”.

16. The nature of “commercial interests” and “government interests” are not defined and are open ended. This makes it impossible for a person or group, such as a union, to identify in advance whether an action might fall within the scope of this offence.

17. The CTU submits that there are very significant dangers in including in a counter-terrorism measure provisions which limit the ability of citizens to communicate about disruption to “commercial interests” or “government interests”. Such changes are reminiscent of the amendments proposed in 1995 to the New Zealand Security Intelligence Service Act 1969 which proposed concepts of “international well-being” and “economic well-being”. Those objections were implicitly recognised when that Act was amended in 1999 to limit the scope of activities covered by that phrase and to limit its application to activities and intentions that foreign or foreign influenced.

18. There has been no explanation why Section 307A (1)(b) is considered to be needed. It proposes a new offence to “communicate” information about “harm” to persons or property. The wording appears to require the “harm” to have been caused already, so it is clearly not intended to prevent such actions from occurring. Nor does it require the person engaged in communication to have been connected in any way with the actions that caused the “harm”.
19. Section 307A(a), relating to “threats” seeks to criminalise actions before those actions have been performed. Such offences should be introduced with utmost caution. Again there is no evidence to justify the introduction of this measure.
20. In relation to both offences under 307A(1), there is no indication of why existing criminal provisions are considered inadequate.
21. The CTU notes the exclusionary clause (proposed s307A(2) purporting to protect protest, advocacy, dissent, strikes and lockouts, or other industrial action from the scope of the new offence. The CTU is not reassured by this provision particularly as the exclusion is limited in that protest, advocacy, dissent, strikes and lockouts “by [themselves]” are not a sufficient basis for inferring that an offence punishable by seven years in prison has been committed, but may apparently constitute an ingredient of the offence..

Summary

22. The CTU remains concerned by aspects of the 2002 Act, particularly the definition of “terrorist act” in that Act.
23. The introduction of generalised changes about the admissibility of evidence, bugging and tracking devices and searches of computers is not appropriate in a counter-“terrorist” measure.

24. The new offence imposing heavy prison sentences for communicating about disrupting commercial or government interests should be removed from the Bill..

Conclusion

25. The Bill goes well beyond what is necessary to meet the requirements of United Nations resolutions. It is true that other countries (and in particular the United States) have passed legislation which is more oppressive but that should not, in itself, provide a reason for the New Zealand Parliament to follow suit.

APPENDIX

Security Council SC/7158

4385th Meeting (Night) 28 September 2001

SECURITY COUNCIL UNANIMOUSLY ADOPTS WIDE-RANGING ANTI-TERRORISM

RESOLUTION;

CALLS FOR SUPPRESSING FINANCING, IMPROVING INTERNATIONAL COOPERATION

Resolution 1373 (2001) Also Creates Committee to Monitor Implementation

Reaffirming its unequivocal condemnation of the terrorist acts that took place in New York, Washington, D.C., and Pennsylvania on 11 September, the Security Council this evening unanimously adopted a wide-ranging, comprehensive resolution with steps and strategies to combat international terrorism.

By resolution 1373 (2001) the Council also established a Committee of the Council to monitor the resolution's implementation and called on all States to report on actions they had taken to that end no later than 90 days from today.

Under terms of the text, the Council decided that all States should prevent and suppress the financing of terrorism, as well as criminalize the wilful provision or collection of funds for such acts. The funds, financial assets and economic resources of those who commit or attempt to commit terrorist acts or

participate in or facilitate the commission of terrorist acts and of persons and entities acting on behalf of terrorists should also be frozen without delay.

The Council also decided that States should prohibit their nationals or persons or entities in their territories from making funds, financial assets, economic resources, financial or other related services available to persons who commit or attempt to commit, facilitate or participate in the commission of terrorist acts. States should also refrain from providing any form of support to entities or persons involved in terrorist acts; take the necessary steps to prevent the commission of terrorist acts; deny safe haven to those who finance, plan, support, commit terrorist acts and provide safe havens as well.

By other terms, the Council decided that all States should prevent those who finance, plan, facilitate or commit terrorist acts from using their respective territories for those purposes against other countries and their citizens. States should also ensure that anyone who has participated in the financing, planning, preparation or perpetration of terrorist acts or in supporting terrorist acts is brought to justice. They should also ensure that terrorist acts are established as serious criminal offences in domestic laws and regulations and that the seriousness of such acts is duly reflected in sentences served.

By further terms, the Council decided that States should afford one another the greatest measure of assistance for criminal investigations or criminal proceedings relating to the financing or support of terrorist acts. States should

also prevent the movement of terrorists or their groups by effective border controls as well.

Also by the text, the Council called on all States to intensify and accelerate the exchange of information regarding terrorist actions or movements; forged or falsified documents; traffic in arms and sensitive material; use of communications and technologies by terrorist groups; and the threat posed by the possession of weapons of mass destruction.

States were also called on to exchange information and cooperate to prevent and suppress terrorist acts and to take action against the perpetrators of such acts. States should become parties to, and fully implement as soon as possible, the relevant international conventions and protocols to combat terrorism.

By the text, before granting refugee status, all States should take appropriate measures to ensure that the asylum seekers had not planned, facilitated or participated in terrorist acts. Further, States should ensure that refugee status was not abused by the perpetrators, organizers or facilitators of terrorist acts, and that claims of political motivation were not recognized as grounds for refusing requests for the extradition of alleged terrorists.

The Council noted with concern the close connection between international terrorism and transnational organized crime, illicit drugs, money laundering and illegal movement of nuclear, chemical, biological and other deadly materials. In that regard, it emphasized the need to enhance the coordination of national, subregional, regional and international efforts to strengthen a global response to that threat to international security.

Reaffirming the need to combat by all means, in accordance with the Charter, threats to international peace and security caused by terrorist acts, the Council expressed its determination to take all necessary steps to fully implement the current resolution.

The meeting, which began at 10:50 p.m., adjourned at 10:53 p.m.

Resolution

The full text of resolution 1373 (2001) reads as follows:

“The Security Council,

“Reaffirming its resolutions 1269 (1999) of 19 October 1999 and 1368 (2001) of 12 September 2001,

“Reaffirming also its unequivocal condemnation of the terrorist attacks which took place in New York, Washington, D.C., and Pennsylvania on 11 September 2001, and expressing its determination to prevent all such acts,

“Reaffirming further that such acts, like any act of international terrorism, constitute a threat to international peace and security,

“Reaffirming the inherent right of individual or collective self-defence as recognized by the Charter of the United Nations as reiterated in resolution 1368 (2001),

“Reaffirming the need to combat by all means, in accordance with the Charter of the United Nations, threats to international peace and security caused by terrorist acts,

“Deeply concerned by the increase, in various regions of the world, of acts of terrorism motivated by intolerance or extremism,

“Calling on States to work together urgently to prevent and suppress terrorist acts, including through increased cooperation and full implementation of the relevant international conventions relating to terrorism,

“*Recognizing* the need for States to complement international cooperation by taking additional measures to prevent and suppress, in their territories through all lawful means, the financing and preparation of any acts of terrorism,

“*Reaffirming* the principle established by the General Assembly in its declaration of October 1970 (resolution 2625 (XXV)) and reiterated by the Security Council in its resolution 1189 (1998) of 13 August 1998, namely that every State has the duty to refrain from organizing, instigating, assisting or participating in terrorist acts in another State or acquiescing in organized activities within its territory directed towards the commission of such acts,

“*Acting* under Chapter VII of the Charter of the United Nations,

“1. *Decides* that all States shall:

“(a) Prevent and suppress the financing of terrorist acts;

“(b) Criminalize the wilful provision or collection, by any means, directly or indirectly, of funds by their nationals or in their territories with the intention that the funds should be used, or in the knowledge that they are to be used, in order to carry out terrorist acts;

“(c) Freeze without delay funds and other financial assets or economic resources of persons who commit, or attempt to commit, terrorist acts or participate in or facilitate the commission of terrorist acts; of entities owned or controlled directly or indirectly by such persons; and of persons and entities acting on behalf of, or at the direction of such persons and entities, including funds derived or generated from property owned or controlled directly or indirectly by such persons and associated persons and entities;

“(d) Prohibit their nationals or any persons and entities within their territories from making any funds, financial assets or economic resources or financial or other related services available, directly or indirectly, for the benefit of persons who commit or attempt to commit or facilitate or participate in the commission of terrorist acts, of entities owned or controlled, directly or indirectly, by such persons and of persons and entities acting on behalf of or at the direction of such persons;

“2. *Decides also* that all States shall:

“(a) Refrain from providing any form of support, active or passive, to entities or persons involved in terrorist acts, including by suppressing recruitment of members of terrorist groups and eliminating the supply of weapons to terrorists;

“(b) Take the necessary steps to prevent the commission of terrorist acts, including by provision of early warning to other States by exchange of information;

“(c) Deny safe haven to those who finance, plan, support, or commit terrorist acts, or provide safe havens;

“(d) Prevent those who finance, plan, facilitate or commit terrorist acts from using their respective territories for those purposes against other States or their citizens;

“(e) Ensure that any person who participates in the financing, planning, preparation or perpetration of terrorist acts or in supporting terrorist acts is brought to justice and ensure that, in addition to any other measures against them, such terrorist acts are established as serious criminal offences in domestic laws and regulations and that the punishment duly reflects the seriousness of such terrorist acts;

“(f) Afford one another the greatest measure of assistance in connection with criminal investigations or criminal proceedings relating to the financing or support of terrorist acts, including assistance in obtaining evidence in their possession necessary for the proceedings;

“(g) Prevent the movement of terrorists or terrorist groups by effective border controls and controls on issuance of identity papers and travel documents, and through measures for preventing counterfeiting, forgery or fraudulent use of identity papers and travel documents;

“3. *Calls upon* all States to:

“(a) Find ways of intensifying and accelerating the exchange of operational information, especially regarding actions or movements of terrorist persons or networks; forged or falsified travel documents; traffic in arms, explosives or sensitive materials; use of communications technologies by terrorist groups; and the threat posed by the possession of weapons of mass destruction by terrorist groups;

“(b) Exchange information in accordance with international and domestic law and cooperate on administrative and judicial matters to prevent the commission of terrorist acts;

“(c) Cooperate, particularly through bilateral and multilateral arrangements and agreements, to prevent and suppress terrorist attacks and take action against perpetrators of such acts;

“(d) Become parties as soon as possible to the relevant international conventions and protocols relating to terrorism, including the International Convention for the Suppression of the Financing of Terrorism of 9 December 1999;

“(e) Increase cooperation and fully implement the relevant international conventions and protocols relating to terrorism and Security Council resolutions 1269 (1999) and 1368 (2001);

“(f) Take appropriate measures in conformity with the relevant provisions of national and international law, including international standards of human rights, before granting refugee status, for the purpose of ensuring that the asylum seeker has not planned, facilitated or participated in the commission of terrorist acts;

“(g) Ensure, in conformity with international law, that refugee status is not abused by the perpetrators, organizers or facilitators of terrorist acts, and that claims of political motivation are not recognized as grounds for refusing requests for the extradition of alleged terrorists;

“4. *Notes* with concern the close connection between international terrorism and transnational organized crime, illicit drugs, money-laundering, illegal arms-trafficking, and illegal movement of nuclear, chemical, biological and other potentially deadly materials, and in this regard *emphasizes* the need to enhance coordination of efforts on national, subregional, regional and international levels in order to strengthen a global response to this serious challenge and threat to international security;

“5. *Declares* that acts, methods, and practices of terrorism are contrary to the purposes and principles of the United Nations and that knowingly financing, planning and inciting terrorist acts are also contrary to the purposes and principles of the United Nations;

“6. *Decides* to establish, in accordance with rule 28 of its provisional rules of procedure, a Committee of the Security Council, consisting of all the members of the Council, to monitor implementation of this resolution, with the assistance of appropriate expertise, and *calls upon* all States to report to the Committee, no later than 90 days from the date of adoption of this resolution and thereafter according to a timetable to be proposed by the Committee, on the steps they have taken to implement this resolution;

“7. *Directs* the Committee to delineate its tasks, submit a work programme within 30 days of the adoption of this resolution, and to consider the support it requires, in consultation with the Secretary-General;

“8. *Expresses* its determination to take all necessary steps in order to ensure the full implementation of this resolution, in accordance with its responsibilities under the Charter;

“9. *Decides* to remain seized of this matter.”

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