

Chapter 10

Issues in Focus

Having examined the international framework for countering terrorism, and New Zealand's corresponding law, the preceding part of this text then looked at the interface of human rights with terrorism and counter-terrorism. This final part of the text, as its title suggests, considers issues in focus. Progressing from democratic and civil rights to those triggered by the criminal process, chapters 12 to 19 examine, within the context of provisions within New Zealand's counter-terrorism law, the freedom of expression, freedom of association, natural justice and the right to a fair hearing, privacy, the privilege against self-incrimination, the freedom from unreasonable search and seizure, the freedom from arbitrary detention and rights triggered upon arrest or detention. Chapter 11 first examines a constitutional issue which impacts upon human rights, rather than the application of substantive rights to counter-terrorism law: the interface between Parliament and the Executive in the making of regulations under the United Nations Act 1946.

The approach taken is primarily a national one, focussing first upon New Zealand's domestic law. The application of international human rights obligations is also had. Where appropriate, and for the sake of identifying lessons for New Zealand, a comparative approach is also taken. This is particularly relevant to the discussion of the incitement to terrorism (chapter 13) and the terrorist designation process (chapter 15).

The United Nations Act 1946 and Executive Law-Making

As regulations made under the United Nations Act 1946, the United Nations Sanctions (Terrorism Suppression and Afghanistan Measures) Regulations 2001 (considered in brief under chapter 5) raise some interesting issues about potential conflicts between UN regulations and civil and political rights. Chapter 11 will accordingly consider the regulations, and the empowering provision under the United Nations Act, and the mechanisms by which a balance can be achieved between security and human rights in the context of the Act and regulations made under it, as well as the maintenance of the separation of powers doctrine.

Freedom of Expression

Turning then to democratic and civil rights, chapters 12 and 13 consider the freedom of expression. In the context of media control under the International Terrorism (Emergency Powers) Act 1987, chapter 12 considers the justifiability of the Prime Minister's emergency powers to prevent the publication or broadcasting of certain matters relevant to an international terrorist emergency. Chapter 13 next examines the difficult question of the prohibition against the incitement to terrorism, drawing a comparison between New Zealand's currently insufficient law and the United Kingdom's legislative action under the Terrorism Act 2006 (UK).

The Designation of Terrorists and Terrorist Entities

Continuing with the theme of democratic rights, chapter 14 looks briefly at the freedom of association and the permissible range of limitations upon it and then explains the regime under New Zealand law by which individuals and entities may be listed as terrorist or associated entities. Chapter 15 picks up on the implications of this designation process, considering whether the right to a fair hearing is properly guaranteed.

Security and the Investigation of Terrorist Offences

The remaining chapters consider the various tools available to enforcement authorities for the suppression of terrorist conduct, or the investigation and prosecution of terrorist offences. Chapter 16 looks first at criminal law reform since September 11 and considers the definition of a "terrorist act" under the Terrorism Suppression Act 2002 which lies at the heart of most terrorist and terrorism-related offences under New Zealand law. Chapter 17 considers the surveillance tools now available to authorities, testing these against New Zealand's obligation to protect those within its territory against unlawful or arbitrary interference with their privacy. Chapter 18 turns to the privilege against self-incrimination and recent law reform providing police with special powers under the Summary Proceedings Act 1957. Finally, chapter 19 looks at the various powers of search and seizure, and those of arrest and detention, under New Zealand's counter-terrorism legislation and makes some observations on the question of the profiling of terrorist suspects.