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# A HISTORY OF VIOLENCE: A CRITICAL OVERVIEW OF AOTEAROA NEW ZEALAND'S APPROACH TO TERRORISM

Lydia Le Gros<sup>1</sup>

On 15 March 2019, Brenton Tarrant fired indiscriminately at congregants as they gathered for prayer at the Linwood Islamic Centre and Al Noor Mosque in Christchurch, New Zealand. The media labelled the event New Zealand's "loss of innocence" and its first experience of terrorism; MPs across the house described the attack as foreign and imported.<sup>1</sup> However, there are various incidents in New Zealand's history prior the Christchurch attacks that arguably also fit the definition of terrorism but have not been officially identified or charged as such. The government's selective use of the terrorism label suggests that in the case of terrorism, phenomenally similar actions may be labelled differently depending on the identity of the perpetrator and the perspective from which the action is described. In order to understand how the government decides whether an act is a case of terrorism or not, this article traces the evolution and social context of New Zealand's counter-terrorism legislation from the early colonial period to the Christchurch attacks. In doing so, this article finds that in New Zealand, terrorism has been routinely framed as the fault of foreigners and cultural outsiders. This suggests that the official definition of terrorism in New Zealand is not constant or objective, but is instead guided by historical conditions which make political sense of the current terrorism reality.

Keywords: New Zealand, Terrorism, Legislation, History, Colonisation

## Introduction

There are two commonly made assumptions in New Zealand's terrorism literature. The first is that New Zealand has little to no experience of this type of political violence.<sup>2</sup> As such, it is argued that New Zealand's approach to counter-terrorism has largely been

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informed by cases of international terrorism and by focusing on overseas terrorist threats.<sup>3</sup> Another assumption made (although critiqued) is that the New Zealand Government is adept at distinguishing between acts that are terrorism and acts that are not. New Zealand's legal definition of terrorism is found in the *Terrorism Suppression Act 2002* and can be described simply as using or threatening violence for the purpose of advancing an ideological, political, or religious cause.<sup>4</sup> The *Counter-terrorism Legislation Bill 2021* also criminalised the planning of such a terrorist act.<sup>5</sup>

However, not all cases that fall under the legal definition of terrorism are called or treated as acts of terrorism.<sup>6</sup> Legally this is possible as the Act itself allows for some discretion. As explained by Mathew Palmer, when adopting terrorism legislation, the New Zealand Government understood the difficulty of the terrorism/freedom fighter distinction.<sup>7</sup> When all avenues of peaceful protest have been exhausted, it can be expected that those opposing the status quo may resort to violence to make their point. As such, it can be difficult to legally differentiate between terrorism and otherwise socially accepted forms of political violence (and 'criminal acts' in general). To account for this difficulty, an expansive definition of terrorism was adopted under which the government can then choose to prosecute.

David Small argues that it is this expansive definition of terrorism that has led to equally far-reaching counter-terrorism policies.<sup>8</sup> Regarding the *Terrorism Suppression Act*, Small identifies three ways in which counter-terrorism legislation infringes on the rights otherwise afforded to New Zealanders. First is the issue of inchoate offences, or criminalising acts which have not yet been committed.<sup>9</sup> If past actions of a group mean it can be classified as potentially terrorist, members can be prosecuted as such, regardless of whether a terrorist act was intended to be committed. Criminalising the planning of terrorist acts may also lead to preventative policing and intruding on the privacy of investigative targets.<sup>10</sup> The second issue relates to the legal principle 'nulla poena sine lege', which stipulates that people should only be prosecuted for their acts, not for who they are or and the people they associate with.<sup>11</sup> New Zealand's terrorism legislation contradicts this principle as it criminalises participating in, funding, and recruiting into terrorism terrorist groups as well as funding terrorists.<sup>12</sup> The third difficulty raised by Small is that of the "political, religious, or ideological dimension of the act."<sup>13</sup> As explained by Nicky Hager, the legal focus on the ideological component of the terrorist act may lead police and intelligence agencies to over-focus on and intrusively monitor political and cultural groups that are pressing for social change, rather than planning a terrorist attack.<sup>14</sup> As pointed out here by Palmer and Small, the definition of terrorism remains elusive in New Zealand's legislation. But if the legislation does not explain what is terrorism and what is not, what does?

Under the *Terrorism Suppression Act*, the responsibility of charging and extending terrorist designations lay with the High Court – with the 2007 Amendment Act, however, this responsibility was conferred to the Prime Minister.<sup>15</sup> The decision of whether to designate an entity as terrorist therefore is a political decision in New Zealand. A recent example of such a political decision includes the New Zealand's Government's different treatment of New Zealanders leaving to fight in Ukraine compared to those leaving to join conflicts in Palestine or Syria. (See Lloyd this volume.) While discouraged by the government, New Zealanders who leave to fight in the Ukraine are not charged, banned from re-entry, or called terrorists; by contrast, those that leave to fight in Syria and Palestine are.<sup>16</sup> The point here is to highlight that in practice, the distinction between what is and is not terrorism in New Zealand is not a clear matter. Two actions that may be phenomenally similar are labelled and treated differently, depending on the identity of the perpetrator and the perspective from which the act in question is described. A similar accusation has been levelled at the New Zealand security services in the wake of the Christchurch attacks. If Brenton Tarrant had not been of European descent, critics argue, his online activity would have been labelled terrorist and treated as a risk to national security.<sup>17</sup>

These examples suggest that New Zealand's definition of terrorism is not applied consistently or objectively. Instead, the selective recognition of what is terrorism and what is not in New Zealand relates to particular standpoints: when one tries to determine what is terrorism, the answer is already shaped by what is already recognised as terrorism. This article seeks to shed light on this issue by providing a brief history and background to New Zealand's counter-terrorism approach and the broader social context in which this approach emerged. This is done by providing an overview of terrorism risks identified by the New Zealand Government, legislation creation in response, and by reviewing relevant academic and grey literature from the early colonial period to the Christchurch terrorist attacks in 2019. While further research is needed, this study finds that since the early colonial period, the New Zealand Government has assumed that certain peoples and parts of the world are prone to religious militancy and terrorism. Therefore, terrorism-related legislation is often oriented towards and disproportionately used against cultural outsiders and foreigners.

This article is divided into four sections. The first section provides a brief overview of the emergence of terrorism as a term and cause for state intervention. The second section looks to the early colonial period and maps the conceptual similarities between early colonial legislation targeting Māori and current approaches to terrorism. This section also considers how the colonial state's portrayal of Māori violence as terrorist was used to justify state terrorism as counter-terrorism. The third section then looks at 20<sup>th</sup> century developments in terrorism legislation, and the government's focus on foreign threats, while the final section addresses New Zealand's response to 9/11 and its focus on Islamic terrorism.

### The evolution of 'terrorism'

Despite its highly contested definition, terrorism has long been considered a unique kind of violence which has played an important role in human history.<sup>18</sup> The word 'terrorism' first emerged during the French Revolution in 1789 to describe a government's targeting of civilians and non-combatants due to their social class or political alignment.<sup>19</sup> It was the killing of individuals for symbolic reasons that made terrorism distinct from other forms of violence or warfare. However, as use of the term spread, the meaning shifted. While targets were still chosen for symbolic reasons, terrorism was increasingly used to refer to the actions of sub-state political groups. In 19<sup>th</sup> century Russia, the terrorist label was used by the ruling party to identify violent revolutionaries, and in wider Europe, terrorism was used to describe the violence of anarchist and left-wing groups whose target was the abstraction of the political system.<sup>20</sup> The historical meaning of terrorism changed again as terrorism was used to describe the provocation of anti-colonialism in the 1940s and 1950s.<sup>21</sup>

Terrorism as a label is used widely in the 21<sup>st</sup> century, but as argued by Joseph McQuade, processes of nineteenth and twentieth century colonialism are still apparent.<sup>22</sup> During the colonial period, terrorism was presented as a dishonourable and duplicitous form of warfare practiced by the "savage" natives – thereby justifying an equally savage colonial counter-terrorism response.<sup>23</sup> Such thinking is exemplified in the work of military historian John Keegan: "while Western soldiers approach fighting their enemy face to face [...] the oriental, by contrast, shrinks from pitched battle [...] preferring ambush, surprise, treachery, and deceit as the best ways to overcome an enemy."<sup>24</sup> Following 9/11, Keegan also argued that jihadist terrorism represents an "oriental way of war" brought about by a rigid Islamic frame of mind.

Richard Jackson also identifies a similar rhetorical vein in the works of United States President George W. Bush, who described terrorism as a war of them against us, with terrorists motivated by a barbaric worldview, culture, or religion.<sup>25</sup> Lisa Stampnitzky similarly argues that by framing al Qaeda's identity and actions as barbaric – and as directly opposed to civilisation, democracy and the West – terrorism was presented to be posing a constant and existential threat to America and the American way of life.<sup>26</sup> As such, the only reasonable way for the terrorist threat to be managed was by elimination and through the act of war.<sup>27</sup> Just as early colonial discourses regarding indigenous savagery and fanaticism were premised on ideas of civilisational advancement and cultural difference, so too do modern commentators advance the "common-sense conclusion" that certain parts or peoples of the world are predisposed to terrorist thinking and tactics.<sup>28</sup>

Given the illegal tactics employed by terrorists, the terrorist label – applied to partisans, agitators, and insurgents – was used to indicate those, who by their nature, were unjust and "unworthy of recognition under the law."<sup>29</sup> Giorgio Agamben refers to this

phenomenon as the state of exception, where the liberal concept of the same law for all is indefinitely suspended.<sup>30</sup> By labelling certain individuals as foes, the sovereign can exclude them from society thereby marking them as *homo sacer*, figures of bare life with no judicial rights or legal entitlements. Put more simply, by entering a state of exception, the state can subject terrorists (or suspected terrorists) to policies and practices that are otherwise illegal as they are no longer considered deserving of full and protected citizenship. Many modern states have sought to resolve the issue posed by a permanent state of exception through the paradigm of modern security. By operating under the Hobbesian principle that the safety of the people is the highest law, the modern state can make its exceptional practices legal by marking these exceptional measures as essential for public safety.<sup>31</sup>

### New Zealand's Colonial Counter-terrorism Prose

While it is not exactly clear when the term 'terrorism' entered general use in New Zealand, it can occasionally be found in 19<sup>th</sup> century newspapers, often when referring to the "intimidation" used by politicians, trade unions, and particularly Māori warriors against the government.<sup>32</sup> In the 19<sup>th</sup> century, New Zealand was converted from a Māori world to one that was dominated by Pākehā.<sup>33</sup> As the Crown sought to maintain sovereignty, Māori rebellion and armed insurgency was seen as posing a significant issue.

The early colonial period witnessed many violent interactions between Māori and Europeans. While some interactions were seen as typical of the time, others were presented as proof of the inexplicable savagery of Māori, and any political motivations for Māori to carry out the attack were overlooked. For example, in 1809, a group of Māori attacked the sailing ship, *Boyd*, killing most of the crew and passengers.<sup>34</sup> While it was reported at the time as an unprovoked attack, the group defended their actions as a retaliation against the ship's captain who had mistreated a local chief, Te Ara.<sup>35</sup> In 1808, local Māori attacked the crew of the *Parramatta* after the ship wrecked off the coast of Northland.<sup>36</sup> The attack was not random but was carried out in retaliation: the ship's crew had attacked three Māori and stolen supplies.

The point here is not to discuss these acts of violence themselves, but rather to highlight the different ways in which Māori and European violence was treated. While newspaper articles explained cases of European violence as anomalous or justified, Māori violence was presented as proof of their inclination to violence, terror and bloodshed.<sup>37</sup> Any explanation or context of the violent act is also omitted from the story. By framing Māori violence as more duplicitous and volatile than European violence, New Zealand entered a state of exception where the rights and freedoms usually afforded to British subjects were denied to Māori in the name of national security.

The legislation that emerged out of the colonial state of exception in New Zealand is exemplified by the *Arms Act 1860*, which sought to monopolise the supply of arms to settlers and to restrict the supply of arms to Māori.<sup>38</sup> According to Craig Innes, the creation and adoption of the Arms Act was motivated by the perceived threat that Māori posed to national security.<sup>39</sup> In a series of speeches, Sir George Grey claimed that the “disarming of a large portion of the native race” would eventuate in the “permanent establishment of peace and tranquillity.”<sup>40</sup> The perceived imminent and exceptional threat posed by Māori allowed the Crown to adopt legislation that contradicted other rights the empire afforded its subjects: for example, the right to own arms for self-defence.<sup>41</sup>

*The Arms Act* was followed by many more pieces of legislation targeting Māori political action. The *Suppression of Rebellion Act 1863* treated all Māori defiance or resistance to the Crown as open acts of rebellion.<sup>42</sup> The *West Coast Settlements Act (North Island) 1880* allowed for the arrest, without warrant, of anyone interfering with land surveys, or anyone engaged in ploughing or fencing of Crown-claimed land.<sup>43</sup> The *Maori Prisoner Trials Act 1879* allowed for the ongoing imprisonment of arrested Māori (similar to indefinite detention) until a date was set for trial.<sup>44</sup> The *Maori Prisoners Act 1880* was then passed to dispense with trials altogether for Māori arrestees.<sup>45</sup> The *Indemnity Act 1882* protected officers of the state who, while in the act of preserving the peace, may have exceeded their legal powers in handling Māori.<sup>46</sup> The legislation listed here again reveals the state of exception created around Māori. In doing so, the New Zealand Government was able to adopt legislation that denied Māori legal rights otherwise afforded to British subjects – such as the right to a fair trial – and were able to contradict their commitment to a liberal rule of law, such as keeping the executive in check and bound by the legislature.

Given the many pieces of legislation addressing Māori violence and protest, it is clear the Crown identified indigenous insurgency as a serious risk in the 19<sup>th</sup> century. However, some argue that the colonial state of exception actually continues.<sup>47</sup> On 25 October 2007, police employed special powers conferred on them by the *Terrorism Suppression Act* to conduct early morning raids in the homes of indigenous, peace and environmental activists (the raids, arrests, and subsequent trials would later become known as Operation 8).<sup>48</sup> By the end of the day, 17 activists were arrested on the suspicion of participating in a weapons training camp and of plotting, among other charges, the assassination of New Zealand and United States political leaders.<sup>49</sup> While the raids did not only target Māori activists, it was the way that police conducted themselves during the raids that made it clear that Māori violence was perceived as posing a more imminent and pressing risk. In comparison to the police raids that were conducted in the urban locations of Christchurch, Auckland, and Wellington, Moana Jackson writes that the operation that took place in and around the rural town of Rūātoki, a predominantly Māori community, was marked by a much more excessive use of police force which targeted the entire community, not only those labelled as suspects.<sup>50</sup> An Independent

Police Conduct Authority (IPCA) Report into the matter found that while the decision of Police to undertake the anti-terrorism operation in Rūātoki was reasonable and justified, the road blocks established by the police at Rūātoki were “unlawful, unjustified and unreasonable,” and there was “no justification for believing there was a general threat posed by the people of Rūātoki.”<sup>51</sup> New Zealand Police accepted the IPCA findings and followed recommendations to “re-engage with Tuhoe” and to “rebuild the relationship” with the Rūātoki community.<sup>52</sup>

Houses were raided, residents were searched and held at gunpoint, and a roadblock was erected where vehicle occupants were identified and photographed.<sup>53</sup> Rūātoki, Moana Jackson argues, therefore became a state of exception, a space where the law was suspended by its own means under the auspices of protecting the state and public from the threat of Māori terrorism.<sup>54</sup> Further, the roadblock was erected along an 1866 confiscation line (the aukati line) which was a historical boundary of seizure inscribed by the Crown to punish Tūhoe, the local Māori iwi, for supposed acts of rebellion against the Crown.<sup>55</sup> Moana Jackson argues that the fact that police erected their roadblock atop the historic aukati line suggests that this boundary has persisted as the limits of the state of exception; in other words, the roadblock acted as a tether between earlier encounters of colonial hostility and the present, emphasising the ongoing perceived threat posed by Māori political autonomy.<sup>56</sup> Even when the terrorism charges were eventually dropped, the terrorism label meant that otherwise normal acts undertaken by the group became proof of their inclination to subversion and insurgency.<sup>57</sup>

The police raids carried out in Rūātoki also brought to the fore another instance of terrorism in New Zealand’s history: state terrorism. Moana Jackson argues that Operation 8 was also an example of how the state uses terror tactics to coerce and induce fear in the Māori population.<sup>58</sup> As explained by Ruth Blakely, state terrorism is the deployment of violence by the state to coerce the public into complying with the wishes of the government.<sup>59</sup> Even if the violence is only directed at a few individuals or groups, the use of terror will instil fear in those who identify with the victim in some way, thereby compelling them to change their behaviour to avoid the same fate. While there are many examples of colonial governments using terror tactics to subdue indigenous populations, a growing body of research also looks at how colonisation, and the political establishment that emerged from it, is itself an overarching and constant form of state terrorism.<sup>60</sup> While there is ample opportunity to discuss this in a New Zealand context, this article will focus solely on incidents which fit Blakely’s definition of state terrorism.

The invasion of the settlement of Parihaka in Western Taranaki is one of the most cited cases of state terrorism in New Zealand. Founded in 1886 by Māori chiefs Te Whiti-o-Rongomai and Tohu Kākahi, Parihaka soon became the centre of a major movement of non-violent resistance to land confiscation and a bastion of Māori political autonomy.<sup>61</sup> After the government began surveying land to sell to Pākehā settlers in 1879, Te Whiti and Tohu led tactics of non-violent resistance against the surveyors.



Parihaka protesters were repeatedly arrested for uprooting survey pegs and for continuing to plough the contested land. Worried that non-violent tactics could eventuate in armed Māori resistance, a militia was sent to invade Parihaka in 1881.<sup>62</sup> Greeted by singing children and unarmed Māori, the militia ransacked and destroyed dwellings, assaulted residents, and the community was forced to disperse. The Parihaka Marae was vandalised on the orders of the Native Affairs Minister to “deprive it of its sacred nature.”<sup>63</sup> Te Whiti and Tohu were arrested on charges of sedition for refusing to verbally acknowledge Crown ownership of the land, and protesters were arrested and sent to prisons and work camps across the South Island.<sup>64</sup>

While there are many more cases that could be considered here, the point to highlight is that in cases in which the state has committed terrorist violence in New Zealand, it is never termed such. Richard Jackson notes that there is a “deep and pervasive silence” on state terrorism within security studies, either due to scholars failing to interrogate the assumption that only non-state actors can be terrorists, or from academics aligning with government perspectives and concerns.<sup>65</sup> Jackson goes on to argue that if terrorism is to exist as a concept, then it should also be used to assess state violence.<sup>66</sup>

### **New Zealand’s History of Violence**

The ‘end of innocence’ reporting following the Christchurch attacks asserted that New Zealand was no longer immune to terrorism; New Zealand’s geographical isolation and international reputation that had kept it safe so far, would do so no longer.<sup>67</sup> However, the history presented above reveals that New Zealand has not been insulated from terrorism, and that the innocence supposedly lost now, was lost long ago. This is also true of the 20<sup>th</sup> and early 21<sup>st</sup> century, where New Zealand witnessed many more acts that fit under the definition of terrorism and continued to act against what it understood to be terrorist threats.

It was in the 1960s that the term ‘terrorism’ first entered New Zealand’s legislative vernacular. The *Crimes Act 1961* was New Zealand’s first attempt to criminalise terrorist acts, including sedition, sabotage, and more general aspects of criminal activity.<sup>68</sup> This was followed by *The New Zealand Security Intelligence Service Act 1969* which gave legal mandate to the New Zealand Security Intelligence Service (NZSIS).<sup>69</sup> The Act was passed following direction from the British government, and the resulting NZSIS was staffed with British “imports” from M15.<sup>70</sup> The adoption of these acts was not a response to domestic threats, but was driven by the desire to stay aligned with the United Kingdom.<sup>71</sup> For example, in the war against communism, it was argued that the “world was only as strong its weakest link” and so the NZSIS made sure it “did its bit” by focusing on Soviet threats, including an investigation into a public servant (falsely) accused of being a Soviet spy.<sup>72</sup> This, however, is not to say that New Zealand did not experience

any acts of domestic terrorism. The 1960s and 1970s witnessed over a dozen bombings carried out against military bases, courts, and government buildings, often in protest of the Vietnam War or Springbok tour.<sup>73</sup>

Following a series of high-profile cases of hijacking and hostage-taking, many countries started adopting specific legislation to deal with the international element of terrorism.<sup>74</sup> New Zealand followed suit by adopting the *Aviation Crimes Act 1972* to deal with air-craft based acts of terror.<sup>75</sup> The Government Communication Security Bureau (GCSB) was also formed in 1977 to intercept the communications of suspect governments, international organisations, and individuals as part of a broader Western security arrangement.<sup>76</sup> In 1975, New Zealand also witnessed its first act of international terrorism, when the spiritual organisation, Ananda Marga, attempted to bomb the Indian High Commission, kidnapping a Police Officer in the process.<sup>77</sup> All four involved in the attack were charged with conspiracy to commit arson, and prominent members (non-New Zealand nationals) were deported to undermine the group's leadership. The deported individuals went on to successfully target the Hilton Hotel in Sydney, Australia, killing three.<sup>78</sup>

In 1976, two fringe members of Hare Krishna accidentally killed themselves when attempting to bomb a meat-works; two men were arrested in separate occasions for planning to shoot protestors during the Springbok tour; and police covered up an attempted assassination of Queen Elizabeth II during the 1981 Royal tour.<sup>79</sup> None of these acts were labelled acts of terrorism by the government or police. In 1982, Neil Roberts, an anarchist protesting the computerisation of police records, walked into the Wanganui Computer Centre and detonated a gelignite bomb, killing himself in the process.<sup>80</sup> Rather than being described as a terrorist attack, Roberts was painted as a "misguided misfit", with a newspaper producing the heading, "Cheerful Punk's Date with Death."<sup>81</sup> In 1984, a suitcase bomb detonated inside the Wellington Trade's Hall, a centre for union and left-wing activity, killing one.<sup>82</sup> The crime remains unsolved and was described as a bombing rather than an act of terrorism. At least four arson attacks were carried out on abortion facilities although none of these were termed terrorist.<sup>83</sup>

New Zealand's most famous case of terrorism occurred in 1985 when French secret agents bombed and sank the Greenpeace protest vessel, *Rainbow Warrior*, killing a crew member.<sup>84</sup> The ship was a stalwart of resistance to French nuclear testing in the South Pacific, and the French agents intended to destroy the ship to prevent its next protest. While the attack was referred to as an act of terrorism and sabotage by the government, no related charges were ever laid.<sup>85</sup> In 1987, following a military coup in Fiji, an Air New Zealand flight was hijacked in Nadi, demanding that New Zealand help reinstate the deposed democratic government.<sup>86</sup> The issue was resolved when the hijacker was felled by the pilot with a bottle of whiskey. In response to these attacks, the New Zealand Government enacted the *International Terrorism (Emergency Powers) Act 1987* which

gave the Prime Minister the ability (with provisions) to declare a state of emergency in the case of international terrorism.<sup>87</sup> For a terrorist attack to be international, it must be carried out with the intention of furthering a political aim outside of New Zealand.

The 1990s and 2000s witnessed more terrorism-related domestic events: eco-terrorism, in the form of threats to contaminate milk products with 1080, and Islamic terrorism in the dissemination of Jihadist propaganda, the planning of attacks, and the radicalisation of New Zealanders by overseas terrorist groups (such as Islamic State).<sup>88</sup> Jarrod Gilbert and Ben Elley also detail instances of far-right violence, which despite not being called terrorism by the government, constitute terrorist acts as per the legislation. Examples include: a white supremacist gang, the Fourth Reich, who carried out racially motivated and homophobic attacks and murders; the firebombing of a marae by noted white supremacist, Kyle Chapman; and the circulation of white supremacist leaflets inciting violence by a white identarian group, Unit 88.<sup>89</sup> Battersby also notes that two men with far-right connections were jailed after vandalising Auckland mosques in the wake of the London terror attacks.<sup>90</sup> (See Wilson this volume.)

While criminal charges were meted out in some of these cases, none were terrorism-specific.<sup>91</sup> The New Zealand Government, instead, continued its focus on threats stemming from overseas with a heavy focus on Immigration. The *Immigration Amendment Act 1978* gave the Minister of Immigration the power to deport any person believed to have been involved in an act of terrorism.<sup>92</sup> The 1999 amendment to the act authorised the Director of Security to create a risk certificate about anyone posing a credible threat when applying for immigration.<sup>93</sup> The risk certificate enables the Minister of Immigration to deny citizenship or deport applicants. In a high-profile case, Algerian refugee Ahmed Zaoui was detained for two years in a New Zealand prison as he challenged a risk certificate which was later found to be based on false accusations gathered from untrustworthy sources.<sup>94</sup>

### **New Zealand in the Post-9/11 Environment**

On 11 September 2001, teams of al Qaeda militants hijacked four commercial flights in order to carry out attacks against the World Trade Center and the Pentagon.<sup>95</sup> New Zealand parliament was the first government in the world to convene following the attacks, where sentiments of sympathy for the victims and condemnation of the attackers echoed across the house.<sup>96</sup> Ministers and members of parliament made passionate statements in support of international efforts against terrorism, and called for New Zealand to prepare in case a copycat attack were to occur at home.<sup>97</sup>

The *Terrorism (Bombings and Financing) Bill* was already before parliament prior to 9/11, and became a convenient opportunity for the New Zealand Government to comply with United Nations Security Council (UNSC) Resolution 1373.<sup>98</sup> The strongly worded resolution (under which the 1980 anti-Springbok tour protests could be con-

sidered terrorist acts) was unanimously adopted by the UNSC following 9/11, and mandated that all UN member states freeze “without delay” assets of terrorists and their supporters, and adopt “additional measures to prevent and suppress, in their territories through all lawful means, the financing and preparation of any acts of terrorism.”<sup>99</sup> As the bill was expanded to include the requirements of Resolution 1373, it was renamed and passed in 2002 as the *Terrorism Suppression Act*. The act expanded the definition of a terrorism act and criminalised support, financially or otherwise, of terrorist organisations.<sup>100</sup> The Act also authorised the Prime Minister to designate groups as terrorist if they have good cause to suspect that the “entity had carried out a terrorist act or was owned by terrorists.”<sup>101</sup>

The *Terrorism Suppression Act 2002* initially attracted praise for how it balanced the protection of individual freedoms with national security; compared to other Western nations, the New Zealand legislation required a much higher standard of harm to be proven.<sup>102</sup> However, the act criminalised as a lowest common denominator any act that poses “a serious risk to the health or safety of the population.”<sup>103</sup> In this way, the *Terrorism Suppression Act* was nearly just as far-reaching as a great deal of legislation adopted overseas.

Given the inherent unpredictability of terrorism, politicians and terrorism experts argue that legislation must be sufficiently broad and flexible to be able to counter any nature of attack. Therefore, counter-terrorism legislation, such as New Zealand’s, often contains a catch-all provision to criminalise all types of attack that have not yet been imagined, as exemplified in the Cheney doctrine of the one percent: “even if there’s just a one percent chance of the unimaginable coming true, act as if it is a certainty.”<sup>104</sup> To prepare for any possible attack, imagination itself becomes a necessary counter-terrorism tool.<sup>105</sup> In order to police imagined threats and to interrupt the unknowable attack, the government must also adopt a logic of pre-emption in which any degree of preventative action becomes a necessary precaution when facing even the slightest possibility of attack.<sup>106</sup> As the target of post-9/11 terrorists was the destruction of Western society as a whole, strategies of negotiation and compromise were rendered ineffective.<sup>107</sup>

Therefore, while the *Terrorism Suppression Act* was a welcome addition, it was clear to Ministers that the Act was insufficient to deal with the full range of threats posed by modern terrorism; more legislation was needed to close all “possible gaps in New Zealand law that could be exploited by terrorists.”<sup>108</sup> Subsequently, the *Counter Terrorism Bill* was introduced in 2003 which broadened criminal penalties and investigative powers, and brought New Zealand into compliance with 12 of the international conventions on terrorism.<sup>109</sup> The Bill was not enacted, but was split into six separate amendment bills.<sup>110</sup>

To address the new terrorist threat facing the West, President Bush declared a War on Terror, not just against those responsible for 9/11 but against all terrorists and all the governments harbouring them.<sup>111</sup> In a now famous public address, Bush proclaimed

that the US would never be safe from terrorism without eliminating the threat, as the aim of Islamic terrorism was the complete destruction of Western society. The war on terror presented al Qaeda as an absolute enemy with a backwards and fanatical worldview which threatened civilisation as a whole.<sup>112</sup> In this war of civilisation and barbarism, of good and evil, President Bush declared there were only two sides: “either you are with us, or you are with the terrorists.”<sup>113</sup> Following President Bush’s declaration of war, Prime Minister Helen Clark announced that New Zealand supported the decision to bring those responsible for 9/11 to justice, and so, in late 2001, following the Taliban’s refusal to hand over bin Laden, New Zealand and other coalition partners joined the US in waging war against the Taliban in Afghanistan.<sup>114</sup> According to Nicky Hager, the participation of the New Zealand Defence Force (NZDF) in US-led missions in Afghanistan and Iraq was motivated by more than a desire to subdue al Qaeda. Following New Zealand declaring itself a nuclear-free zone in the 1980s, military relations between the US and New Zealand cooled when New Zealand refused US nuclear-armed ships to access New Zealand ports.<sup>115</sup> In response, the US cut major military and diplomatic ties with New Zealand, downgraded New Zealand from the status of ally to friend, and excluded New Zealand from military exercises and some but not all intelligence sharing. In order to rebuild military relations with the US, Hager argues that the NZDF was driven to support the US in the war on terror.<sup>116</sup>

Over consecutive governments, the GCSB also aided the US in combatting terrorism by sharing intelligence gathered on persons of interest which could be used for military operations and drone strikes.<sup>117</sup> Despite the clinical language of “targeted” and “precision” strikes, drone deployments have been found to carry a significant death toll of non-combatants, including women and children.<sup>118</sup> The distinction between civilians and combatants is also not always clear; in regions where terrorists are known to operate, being a military-aged male may be considered sufficient grounds to establish guilt of terrorist activity.<sup>119</sup> Although the drone programme contradicted New Zealand’s commitment to liberal democracy and the rule of law, Prime Minister John Key said supporting these missions was “the price of [joining] the club” and that it was only carried out against “very bad people.”<sup>120</sup>

Damien Rogers argues that the threat of al Qaeda and Islamic state framed a great deal of New Zealand’s counter-terrorism legislation introduced during this period.<sup>121</sup> Concerned about the possibility of New Zealanders joining overseas terrorist groups, the *Countering Terrorist Fighters Legislation Bill 2014* was proposed to increase the government’s ability to monitor, and cancel and suspend the passports of foreign terrorist fighters.<sup>122</sup> The *Terrorism Suppression (Control Orders) Bill 2018* also sought to allow security services to monitor and impose requirements on people suspected of engaging in terrorist activity overseas.<sup>123</sup> New Zealand Customs and NZSIS adopted a terrorism watchlist, compiled largely of Middle Eastern and Muslim suspects, to monitor arriving passengers. However, a high-profile case of espionage was missed by

security agencies in which Israeli Mossad agents attempted to fraudulently collect New Zealand passports to use in covert operations.<sup>124</sup> Further, in 2006 the government overruled a District Court's decision to issue an arrest warrant against visiting former Israeli General, Moshe Ya'alon.<sup>125</sup> The court application stated that Ya'alon had admitted to his role in the assassination of a Palestinian political figure and the bombing of a Palestinian community in Gaza. Both these acts could be considered terrorism under the legal definition.

In the post-9/11 era, it is clear that the New Zealand Government is not concerned by all terrorist threats that fit under the legal definition. Instead, the government was particularly concerned with a very particular type of terrorism stemming from particular parts of the world.<sup>126</sup> In the 2015 NZSIS Annual Report, Islamic terrorism is identified as the cause of the Charlie Hebdo attacks in France, the rise of Islamic State in Syria and Iraq, the Martin Place Siege in Australia, and a lone-wolf attack on the Canadian National War Memorial – further, this form of extremism is noted as having once been confined to the Middle East and Africa.<sup>127</sup> The government thus understands an array of attacks to be instigated by a singular phenomenon: Islamic terrorism. In the 2018 NZSIS Annual Report, the last NZSIS report before the 2019 Christchurch terrorist attack, Islamic terrorism is listed as being the dominating threat in the global terrorism environment.<sup>128</sup> As also found by Tim O'Farrell in an analysis of counter-terrorism discourse under the John Key Government, New Zealand security agencies often conflated Islamic terrorism with terrorism at large.<sup>129</sup> While the government never outwardly stated that 21<sup>st</sup> century terrorism is solely and explicitly an Islamic problem, in speeches made by government officials and ministers, the message is clear: in order to prevent another terrorist attack, “greater efforts must be made to build stronger ties and more understanding between the West and the Islamic world.”<sup>130</sup> The specific geopolitical and historical contexts of separate terrorist attacks are not included, instead Islamic ideology is identified as the unifying element among cases of international terrorism.<sup>131</sup> In doing so, Islamic religion, terminology, and Muslim communities were repeatedly implicated in the government's terrorism narrative.<sup>132</sup> Rather than being a response to (publicly known) cases and threats of Islamic terrorism, we can see the New Zealand Government assuming the same language and concerns – that ‘Islamic terrorism’ is an existential threat to the entire Western world – used by the United States in the American-led war on terror.<sup>133</sup>

Alongside its concern with Islamic terrorism, the government also continued to focus on threats stemming from overseas, be it through immigration, refugee resettlement or travellers entering New Zealand.<sup>134</sup> In order to better address this threat following the 9/11 attacks, the power of immigration officials was extended to investigate the validity of asylum-seeking claims and to “better track and identify travellers that may be linked to terrorist networks.”<sup>135</sup> The potential of the internet to radicalise also became a key concern of counter-terrorism agencies – as detailed in the 2016 Defence White Paper,

“the threat posed by [terrorist] groups has been amplified in recent years by their ability to radicalise individuals remotely, for example, through the use of social media.”<sup>136</sup> The Paper goes on to say that “New Zealand will remain vigilant to this threat as well as to attempts by extremist groups to extend their reach globally.”<sup>137</sup> As such, it is clear that in the post-9/11 era, the New Zealand Government was chiefly concerned with terrorist threats entering New Zealand from overseas, be it via the internet or through immigration. By comparison, little context is considered in which terrorism could develop in New Zealanders by New Zealanders. In doing so, New Zealand was further established a place free from terrorism, while terrorism as phenomenon was increasingly associated with Islam and cultural outsiders.

In facing the threat of international terrorism, the government understood New Zealand to have entered a distinctly more threatening environment. Under the National government, the threat level was raised, and given the perceived rising complexity of threats, the Combined Threat Assessment Group was formed and the *Customs and Excise Amendment Act 2008* enacted to allow collaboration across the various security agencies.<sup>138</sup> However, this legislation was found wanting after covert surveillance carried out on citizens (including internet businessman, Kim Dotcom<sup>139</sup>) was found to be unlawful.<sup>140</sup> To address this shortcoming in the legislation, the 2016 report *Intelligence and Security in A Free Society* was compiled to advise the government on balancing the requirement for effective intelligence gathering with upholding democratic norms.<sup>141</sup>

Recommendations from the 2016 report led to the development of a new piece of counter-terrorism legislation titled the *Intelligence and Security Act 2017*. The Act extended information sharing and surveillance capabilities of security agencies, and gave the NZSIS and GCSB direct access to personal information held by public departments on an ongoing basis.<sup>142</sup> Part three of the Act permits security agents to practice deception to mislead the targets of covert operations, including government officials, ministers, and part four grants the NZSIS power to enter any building or vehicle to install surveillance and tracking equipment.<sup>143</sup> The Act also works alongside the Telecommunication (Interception Capability and Security) Act 2013 to compel communications network operators to cooperate with the GCSB. Rogers argues that the 2017 Act reshaped communication networks to place security agencies in a central position from which they can observe, analyse, and have unfettered access to information held on all New Zealanders.<sup>144</sup> In this way, the 2017 Act “transform[ed] the intelligence community into the eyes and ears of an apparatus of control, focusing less on protecting New Zealanders from harms emerging abroad and more on managing the country’s population at home.”<sup>145</sup>

It is here that we see another way in which international discourses on terrorism have shaped New Zealand’s counter-terrorism approach. As explained by Ariana Vedaschi and Kim Lane Scheppele, in order for member states (including New Zealand) to meet their obligations under the UNSC resolutions, “states were not only permitted to but often required to respond to the threat of international terrorism by expanding the scope

of executive power, loosening restraints on surveillance, deploying the military in unconventional ways, engaging in deepening transnational cooperation among security services, and more.”<sup>146</sup> In order to justify these expanded powers to the local population, governments would then use the UNSC “template” to relate their own security position to this new global war on terror.<sup>147</sup> As such, in the post-9/11 era, we can see New Zealand Government shifting its counter-terrorism focus to a “new” cultural outsider, rather than assessing and responding to locally identified threats.

## Conclusion

The overview covered here presents three key findings. First, is the lack of a robust and comprehensive legislative definition of terrorism in New Zealand. Given the difficulty of distinguishing between terrorism and other acts of violence, New Zealand’s terrorism legislation provides the judiciary and executive with the power to decide whether an entity is terrorist or not. In short, this discretion makes the use of the terrorism label by the New Zealand Government a political decision rather than an objective one under a specific definition. Second, as shown by the history covered here, it is clear that there have been many acts in New Zealand’s history which fit under the legal definition of terrorism despite not being charged as such. As such, this research suggests that the New Zealand Government has not pursued all acts of terrorism equally; instead, the New Zealand Government’s selective use of the terrorist designation seems to be more driven by the identity of the perpetrator rather than the nature of the act. In other words, terrorism has been more readily recognised as the fault of cultural outsiders, be it Māori anti-colonial agitators or Islamic Jihadists. It is here that the third key finding emerges: despite the neutral and objective wording of New Zealand’s definition of terrorism, actual assignment and recognition of terrorism appears to be shaped by unquestioned and implicit assumptions about what we think terrorism is. In the case of New Zealand, terrorism is assumed to be the violence wielded by foreigners and cultural outsiders. The research presented here also suggests that this approach to counter-terrorism is not new – it has been the bedrock of New Zealand’s approach to ‘counter-terrorism’ since the early colonial period.

The government’s tendency to focus solely on foreign terrorist threats was also criticised in the Royal Commission of Inquiry’s Report into 15 March 2019. The report found that the New Zealand security services had focused disproportionately on Muslim communities and had undertaken racially biased counterterrorism operations.<sup>148</sup> Not only was this approach problematic and harmful, it had also failed to identify the threat posed by far right extremism and to protect New Zealand from terrorism.<sup>149</sup> While the government has since pledge to divert its counter-terrorism approach, we can still see terrorism being framed in a similar way in the post 9/11 environment. For example, in government commissioned research following the Christchurch attacks, the internet is described as being able to “lift extremists out of New Zealand’s own



domestic, political and social context, and make them angry, aggrieved and mobilised about things that are happening on the other side of the world.<sup>150</sup> Far right terrorism is thus still portrayed as foreign in character, and as only able to radicalise New Zealanders through the mechanisms of the internet. The Christchurch attacks are explained as being performed to and for an online community despite the fact that “on a per-person basis, New Zealand [far-right] extremists have posted almost twice as much as their counterparts in the United Kingdom and Australia.”<sup>151</sup> Further, “far-right Facebook pages in New Zealand have more followers per capita than Australia, Canada, the United States and the United Kingdom.”<sup>152</sup> These figures suggest that there is a sufficient amount of far-right extremist material and ideology being grown at home; despite this, far-right extremist ideology is treated as an international phenomenon entering New Zealand via the internet.

As detailed in the government’s current ‘Countering Terrorism and Violent Extremism Strategy’, the New Zealand Government has also continued to frame the issue of terrorism along religious and ethnic lines. The strategy lists the two key terrorist threats facing New Zealand as “faith motivated – exemplified by those associated with Al-Qaida and the Islamic State in Iraq and the Levant [...] and identity-motivated, particularly adherent to a White Identity Extremism ideology.”<sup>153</sup> As such, the government still identifies inter-faith and inter-civilisation programmes as the best means to address the root cause of terrorism.<sup>154</sup> Despite the government’s promise following Christchurch to widen its counter-terrorism scope, we can still see terrorism framed as a ‘clash of civilisations’, and the product of Islam and the West being unable to co-exist.<sup>155</sup>

This is not all to say that there have not been positive and welcome developments with the Inquiry’s findings; recognition that security agencies had over-focused on Muslim communities, had over-looked the threat of far right terrorism, and still needed to address wounds from the early colonial period was welcomed by affected and associated groups. However from the issues covered briefly here, it does not appear New Zealand is truly diverting its previous counter-terrorism focus. While the groups targeted by counter-terrorism policies are now included in discussions on how to build social cohesion in New Zealand, it appears these groups are still centred in the government’s thinking on managing terrorist risks.

Treating terrorism as the fault of cultural outsiders carries many negative consequences. Namely, it leads to the over-policing and harming of so-called suspect communities. Such an approach breathes life into the idea that there is a fundamental conflict between Islam and the West, perpetuate cycles of violence and instability, and even carried the potential of radicalising targeted communities.<sup>156</sup> It also, as was noted in the Royal Commission’s report, normalises and overlooks the violence of cultural insiders (or at least somehow presents the violence of cultural insiders as ‘less than’ than terrorist).<sup>157</sup> As proven by the Christchurch attacks themselves, the focus on foreign sources of terrorism also led New Zealand security services to overlook a very real terrorist

threat. While the literature on terrorism is far-ranging and diverse – the issue of whether terrorism legislation should be used more consistently or abandoned all together is another issue entirely – it is clear that at the very least, New Zealand should shift its focus on terrorism as a foreign problem and assess potential threats on merits and empirical evidence. The history covered here also suggests that the logic underlying New Zealand’s current approach to terrorism can be traced back to the colonial period. This is a compelling area for future research, and would be a valuable aid in understanding the assumptions, beliefs, and values that underscore how New Zealand addresses the issue of terrorism.

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