



15 April 2021

Minister of Foreign Affairs

For action by

23 April 2021

Escalating Tensions in Ukraine: Proposed Response Toolkit

BRIEFING Overview Submission

PURPOSE To provide an update on ^{s6(a)} Ukraine including its territorial integrity, the possibility of asks from likeminded partners, and the various tools available for an Aotearoa New Zealand response.

Tukunga tūtohua – Recommended referrals

Prime Minister	For information by	23 April 2021
Minister Responsible for the NZSIS and GCSB	For information by	23 April 2021
Minister of Immigration	For information by	23 April 2021
Minister of Defence	For information by	23 April 2021
Associate Minister of Foreign Affairs	For information by	23 April 2021

Taipitopito whakapā – Contact details

NAME	ROLE	DIVISION	WORK PHONE
Pip McLachlan	Divisional Manager	Europe Division	s9(2)(a)
Gareth Pidgeon	Unit Manager	Europe Division	s9(2)(a)

Mā te Tari Minita e whakakī – Minister's Office to complete

- | | | |
|--|---|------------------------------------|
| <input type="checkbox"/> Approved | <input type="checkbox"/> Noted | <input type="checkbox"/> Seen |
| <input type="checkbox"/> Needs amendment | <input type="checkbox"/> Declined | <input type="checkbox"/> Withdrawn |
| <input type="checkbox"/> Overtaken by events | <input type="checkbox"/> See Minister's notes | |

Comments

Escalating Tensions in Ukraine: Proposed Response Toolkit

Pito matua – Key points

- In recent weeks Russia has significantly increased its military presence on the border with Ukraine. Clashes have intensified between Ukrainian government forces and those of the Russian-backed breakaway “republics” of Donetsk and Luhansk in the eastern Donbass region.
- Each side blames the other for the increase in tensions. Ukraine claims Russia is actively trying to destabilise the region, while Russia claims Ukraine is undermining a fragile ceasefire in the Donbass, brokered under the Minsk Accords.
- s6(a)
- On 16 April the US announced a raft of sanctions and other measures against Russia.
- s6(a)
- s6(a) the situation is likely to remain complex s6(a)
As tensions increase, so too does the risk of a catastrophic miscalculation such as the one in 2014, s6(a) flight MH17 in Ukrainian airspace.
- s6(a)
(beyond our support for the Crimean Platform, outlined in an earlier submission of April 9). s6(a) NATO, European partners and the OSCE are proactively engaged and s6(a)
- However, should the escalation continue, it will likely be in New Zealand’s best interests to take action. s6(a)
- Equally, it may well be in our interest to act in concert with our partners (where consistent with our own policy settings) and in support of the rules-based international order. s6(a)
- Options for actions that New Zealand could consider are set out in the **attached annex**. s6(a)
- s6(a)
- Should the situation in Ukraine deteriorate further, and the case for direct New Zealand action becomes more pressing, we will provide further advice on specific response options s6(a)

Escalating Tensions in Ukraine: Proposed Response Toolkit

s6(a)

Rob Taylor
for Secretary of Foreign Affairs and Trade

Released under the
Official Information Act

Escalating Tensions in Ukraine: Proposed Response Toolkit

Tūtohu – Recommendations

It is recommended that you:

- | | | |
|---|---|-----------------|
| 1 | Agree to the toolkit of potential actions allowing New Zealand to respond to various scenarios, should the situation in Ukraine continue to deteriorate. | Yes / No |
| 2 | Note that officials will prepare further advice if New Zealand action becomes necessary, or in the event that New Zealand receives a request to act from likeminded partners. | Yes / No |
| 3 | Refer a copy of this submission to the Prime Minister, Minister Responsible for NZSIS and GCSB, Minister of Immigration, Minister of Defence, and Associate Minister of Foreign Affairs. | Yes / No |

Hon Nanaia Mahuta
Minister of Foreign Affairs

Date: / /

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Escalating Tensions in Ukraine: Proposed Response Toolkit

Pūrongo – Report

1. In recent weeks, Russia has dramatically increased its military presence along Ukraine's eastern border. ^{s6(a)}
 The international eastern reaction has been swift and widespread with countries reaffirming support for Ukraine's sovereignty and territorial integrity, ^{s6(a)}
2. The situation remains dynamic with the Kremlin previously describing Russian actions as "routine military exercises", but now saying it is "taking measures to ensure [Russia's] safety" in case of a "Ukrainian civil war".
3. ^{s6(a)}
 Since 2014, separatists have clashed since Russia's illegal annexation of Crimea in 2014.
4. Since 2014 Russia and Ukraine have been participating in the 'Minsk Accord' peace talks, to halt the war in the Donbass. ^{s6(a)}
5. As tensions and military presence continue to increase, so too does the risk of a catastrophic miscalculation. In 2014, for example, Malaysia Airlines Flight 17 (MH17) was shot down in Ukrainian airspace ^{s6(a)}, killing all passengers and crew. It's believed the separatists mistook the airliner for a Ukrainian military transport plane.

Responses by likeminded partners

6. To date, likeminded members of the international community have expressed concerns about Russia's actions in further destabilising Ukraine. Leaders including President Biden, Prime Ministers Johnson and Trudeau and NATO Secretary General Jens Stoltenberg have called President Zelensky to reaffirm support for Ukraine's sovereignty and territorial integrity. Chancellor Merkel and President Macron are holding talks with Zelensky on 16 April. The G7 has also released a statement calling for Russian de-escalation. President Biden and Chancellor Merkel have spoken directly with President Putin. President Biden has suggested to President Putin that a leaders' summit might be possible (although whether the Kremlin will agree remains to be seen).
7. In addition, the US announced on 15 April a raft of sanctions and other measures in response to what the White House called "Russia's harmful foreign activities", including 2020 election interference, cyber attacks (e.g. the recent SolarWinds cyber attack), and other violations of international law.

Implications for Aotearoa New Zealand

8. As highlighted in the recent submission on the Crimean Platform, New Zealand has long held a position of support for Ukraine ^{s6(a)} something which previous Foreign Ministers have reaffirmed through public statements and other actions.
9. For instance, during the 2014 Ukrainian crisis, then-Minister Murray McCully denounced the illegitimacy of the Crimean referendum; condemned Russia's subsequent illegal annexation of Crimea and destabilisation of Eastern Ukraine; and reaffirmed New Zealand support for Ukrainian sovereignty and territorial integrity. New Zealand also implemented

Escalating Tensions in Ukraine: Proposed Response Toolkit

a number of travel bans on implicated Russian and Ukrainian nationals, and suspended negotiations on a Russia-New Zealand Free Trade Agreement.

10. These actions were underpinned by our support for the rules based international order and reflected the broader principles of New Zealand's foreign policy. Our position remains the same in 2021.
11. s6(a)
12. Equally, we may receive requests to act in support of likeminded partners in their efforts to influence Russian de-escalation. s6(a)

Response toolkit for Aotearoa New Zealand action

13. s6(a)
14. Possible actions available to New Zealand (detailed in the **attached annex**) range from public support for Ukraine and the Crimean Platform, s6(a)
15. Should we ultimately act, we would look to align any possible action with those taken by likeminded partners, where consistent with our own policy settings, and we expect they will be similar, developing tools to respond depending on the severity of the situation.

16. s6(a)

Next Steps

17. Should the Ukrainian situation continue to deteriorate, and the case for direct New Zealand action becomes more pressing, officials will prepare recommendations to operationalise the toolkit, s6(a)

Escalating Tensions in Ukraine: Proposed Response Toolkit

Annex: Toolkit of Potential Actions and Associated Risks

s6(a)

s9(2)(g)(i)

1	s6(a)
2	s6(a)
3	s6(a)
4	s6(a)

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3 May 2021

Minister of Foreign Affairs

For approval by

7 May 2021

Legal Process for Genocide Determinations

BRIEFING Overview Submission

PURPOSE To outline the legal context regarding the crime of genocide, s9(2)(h)

Tukunga tūtohua – Recommended referrals

Prime Minister

For consultation by

7 May 2021

Taipitopito whakapā – Contact details

NAME	ROLE	DIVISION	WORK PHONE
Victoria Hallum	Divisional Manager and International Legal Adviser	Legal Division	s9(2)(a)
Andrew Williams	Unit Manager, General International Law	Legal Division	

Pito matua – Key points

- Genocide constitutes the gravest crime under international law. All states have an obligation to not commit genocide, and to prevent its occurrence.
- International courts and tribunals have determined a number of well-known instances of genocide – such as the atrocities in Rwanda in 1994, the Srebrenica massacre in 1995, and the acts committed by the Khmer Rouge in Cambodia from 1975-79. New Zealand was able to acknowledge those events as instances of genocide by relying on the decisions of the international courts or tribunals, and did not have to make an independent determination.
- In the case of Rwanda, New Zealand (in our capacity as President of the UN Security Council) made a number of statements of concern at the UN in an effort to bring about Security Council action. s9(2)(h)
- New Zealand has not previously made an independent determination of genocide. There is no formal, established process to do so. Any process to make a determination would need to follow a complex assessment of the factual situation against relevant international law. While several legislatures have passed resolutions describing the situation in Xinjiang as genocide, only the United States has made a formal determination by the executive government.
- The International Court of Justice (ICJ) has established that to reach a conclusion of genocide requires “fully conclusive” evidence s9(2)(h)
- s9(2)(h) the ICJ is currently considering the situation in Myanmar in respect of the Rohingya. In that case, the Court has the benefit of the UN-mandated Independent International Fact Finding Mission which has investigated the situation for over two years. The case was filed in the ICJ in late 2019, provisional measures were issued in January 2020, and substantive proceedings are still ongoing. We do not know when the Court will reach a final decision.
- China does not accept the compulsory jurisdiction of the ICJ and has a specific reservation to the Genocide Convention s9(2)(h)
- s9(2)(g)(i), s9(2)(h)
- s9(2)(h)

s6(a), s9(2)(g)(i), s9(2)(h), s9(2)(f)(iv)

Deborah Geels
for Secretary of Foreign Affairs and Trade

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Official Information Act

Tūtohu – Recommendations

It is recommended that you:

- | | | |
|---|---|----------|
| 1 | Agree s9(2)(f)(iv), s9(2)(h) | Yes / No |
| 2 | Agree s6(a), s9(2)(h) | Yes / No |
| 3 | Note s6(a), s9(2)(f)(iv) | Yes / No |
| 4 | Refer a copy of this submission to the Prime Minister. | Yes / No |

Hon Nanaia Mahuta
Minister of Foreign Affairs / Minita Take Aorere

Date: / /

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Pūrongo – Report

The law of genocide

1. Genocide constitutes the gravest crime under international law. The prohibition on genocide is set out in the Genocide Convention. Genocide can be committed by both states and individuals. Genocide is a crime under New Zealand's domestic law. The prohibition against genocide is also a *jus cogens* norm under international law.¹ All states – whether or not they are parties to the Genocide Convention – have an obligation to not commit genocide, and an obligation to prevent genocide from occurring anywhere (i.e. including in other states).
2. The Convention defines genocide as:
 - any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:
 - (a) Killing members of the group;
 - (b) Causing serious bodily or mental harm to members of the group;
 - (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
 - (d) Imposing measures intended to prevent births within the group;
 - (e) Forcibly transferring children of the group to another group.
3. The key feature of the crime of genocide which distinguishes it from other crimes is that it requires a specific intent, in addition to one of the listed genocidal acts – the intent to destroy in whole or in part a national, ethnic, racial or religious group. It is this specific intent that distinguishes genocide from crimes against humanity and other grave human rights abuses.

The role of international courts and tribunals

4. Due to the gravity of the crime of genocide, all states have an interest in the prevention of genocide. The obligation on states not to commit genocide is owed to all states, and is known as an *erga omnes* obligation.
5. Article IX of the Genocide Convention allows state parties the ability to bring proceedings against any other state party for genocide to the International Court of Justice (ICJ).
6. The ICJ has considered the question of genocide in two previous cases - *Bosnia and Herzegovina v. Serbia and Montenegro*, and *Croatia v. Serbia*, with the case of *The Gambia v. Myanmar* currently being considered by the Court (these cases are summarised in an Annex to this paper).
7. China has a reservation to Article IX of the Genocide Convention and it does not accept the jurisdiction of the ICJ for genocide. s9(2)(h)

China is not the only country with a reservation – the US and Singapore have similar reservations.

8. Genocide is also an individual crime within the scope of the Rome Statute of the International Criminal Court (ICC). The ICC has jurisdiction over individuals (not states) and can only have jurisdiction where the crime occurs on the territory of a State Party, by a national of a State Party, or where the matter is referred by the UN Security Council. s9(2)(h), s9(2)(g)(i)

¹ A fundamental principle of international law that is accepted by the international community of states as a norm from which no derogation is permitted.

New Zealand's approach to date

9. s9(2)(g)(i)

10. International courts and tribunals (such as the ICJ, and the ad-hoc International Criminal Tribunals for the former Yugoslavia and Rwanda) have determined a number of well-known instances of genocide – such as the atrocities in Rwanda in 1994, the Srebrenica massacre in 1995, and the acts committed by the Khmer Rouge in Cambodia from 1975-79. New Zealand was able to acknowledge those events as genocide by relying on the decisions of the international courts or tribunals, and did not have to make an independent determination.

11. In the case of Rwanda, New Zealand took a more proactive approach. In that case, New Zealand (in our capacity as President of the UN Security Council) made a number of statements of concern at the UN in an effort to bring about Security Council action. In that case, New Zealand was active in UN Security Council discussions which led to the establishment of an independent commission of experts to investigate grave violations of human rights, including genocide. s6(b)(ii)

12. The ICJ is currently considering the situation in Myanmar in respect of the Rohingya. The case was filed in late 2019 by The Gambia. In January 2020, the ICJ ordered provisional measures (similar to an injunction) which required Myanmar to take measures to prevent genocide and to preserve evidence for the case. The Court is yet to hold substantive hearings on the case and we do not know when a final decision will be issued.

13. In January 2020, New Zealand issued a statement acknowledging the ICJ's imposition of provisional measures against Myanmar, expressing support for the ICJ and its jurisdiction, and reiterating our commitment to the principles of the Genocide Convention.

s9(2)(g)(i), s9(2)
(h)

Independent determinations of genocide

15. New Zealand has not previously made an independent determination of genocide. Rather, it has relied on judicial findings of genocide (in the cases of Srebrenica and Cambodia), s6(b)(ii)

16. Any process to make a determination independently would need to follow a complex assessment of the factual situation against relevant international law.

The approach in other jurisdictions to Xinjiang

17. In relation to Xinjiang, legislatures in several other states (the UK, Canada, and The Netherlands) have passed resolutions acknowledging the situation as genocide. Such legislative resolutions do not bind the executive Governments of the respective states, who have opposed or abstained from such votes.

18. The US is the only executive Government to date to have made such a designation, s6(b)
(i)

19. s6(a)

s9(2)(g)(i), s9(2)(h)

The evidential threshold for genocide

24. The ICJ has established that to reach a conclusion of genocide requires “fully conclusive”
evidence s9(2)(g)(i), s9(2)(h)

25. s9(2)(g)(i), s9(2)(h) the
ICJ is currently considering the situation in Myanmar in respect of the Rohingya. In that
case, the Court has the benefit of the UN-mandated Independent International Fact
Finding Mission which has investigated the situation for over two years. The case was filed
by The Gambia in the ICJ in late 2019, provisional measures were issued in January 2020,
and substantive proceedings are still ongoing. We are not sure when the Court will reach
a final decision.

The next two pages are withheld in full under sections 6(a), 9(2)
(f)(iv), 9(2)(g)(i) and 9(2)(h)

Annex – Genocide under international law

Genocide: definition and legal context

1. The crime of genocide constitutes the gravest crime under international law, and can be committed by both states and individuals. The prohibition on genocide is set out in the Genocide Convention 1948. The prohibition on genocide is also a peremptory (or *jus cogens*) norm at international law,² and so all states – whether or not they are parties to the Genocide Convention – have an obligation not to commit genocide, and to prevent its occurrence.
2. The Convention defines genocide as:
 - any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, such as:
 - (a) Killing members of the group;
 - (b) Causing serious bodily or mental harm to members of the group;
 - (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
 - (d) Imposing measures intended to prevent births within the group;
 - (e) Forcibly transferring children of the group to another group.
3. It is the specific intent to destroy a group that distinguishes genocide from other crimes at international law, such as war crimes or crimes against humanity.
4. Article IX of the Genocide Convention provides States Parties the ability to submit disputes – including about the alleged commission of genocide – to the International Court of Justice (ICJ). Some states are not parties to the Convention, and so this dispute settlement process is not available with respect to non-parties. The ICJ is the only international court with jurisdiction over state responsibility for genocide. It has examined this in two previous cases,³ and one current case (*The Gambia v. Myanmar*).
5. Genocide is also an individual crime within the scope of the Rome Statute of the International Criminal Court (ICC), to which New Zealand is a party. The ICC has jurisdiction over individuals (not states) and will only have jurisdiction where the crime occurs on the territory of a State Party, or by a national of a State Party, or where the UN Security Council refers the situation to the Court.

Previous treatment of genocide by ICJ

6. The ICJ has previously examined state responsibility for the crime of genocide under the Genocide Convention, and required a high evidential threshold. Its genocide-related cases are summarised below.

Bosnia and Herzegovina v. Serbia and Montenegro

7. Bosnia alleged that Serbia had attempted to exterminate the Bosniak (Bosnian Muslim) population during the Bosnian war in the early to mid-1990s following the breakup of the former Yugoslavia. This included the atrocities committed at Srebrenica in July 1995, where the Bosnian Serb army had occupied the UN "safe area" of Srebrenica and exterminated more than 8,000 Bosnian Muslim men.

² A fundamental principle of international law that is accepted by the international community of states as a norm from which no derogation is permitted.

³ *Bosnia and Herzegovina v. Serbia and Montenegro* Judgment of 26 February 2007, and *Croatia v. Serbia*, Judgment of 3 February 2015.

8. Regarding the standard of proof, the Court held that claims against a State involving 'charges of exceptional gravity', such as genocide, must be proved by evidence that is 'fully conclusive', and it must be 'fully convinced' that allegations regarding the crime of genocide have been 'clearly established'.
9. Applying this standard, the Court found that Serbia was neither directly responsible for the Srebrenica genocide, nor that it was complicit in it. However, it did rule that Serbia had committed a breach of the Genocide Convention by failing to prevent the genocide from occurring and for not cooperating with the International Criminal Tribunal for the former Yugoslavia (ICTY) in punishing the perpetrators of the genocide, and for violating its obligation to comply with the provisional measures ordered by the Court.

Croatia v. Serbia

10. After the breakup of the former Yugoslavia, both Croatia and Serbia emerged as independent states. In 1999, Croatia filed a case against Serbia based on events that occurred after Croatia declared its independence in 1991, in a conflict between the Croatian armed forces and forces of the Serbian ethnic minority living in Croatia at the time, together with other paramilitary troops that objected to Croatia's declaration of independence.
11. Croatia claimed that genocide had taken place when Serb forces took control of one third of Croatia's territory, and Serbia based its counterclaim on alleged genocidal events that occurred during 1995.
12. The Court applied the same standard of proof – that is, the claims regarding genocide would need to be proved by evidence that was 'fully conclusive'.
13. Applying that standard, the Court was not able to find conclusive evidence of genocide committed by either Croatia or Serbia in relation to the events in question, including because of the lack of conclusive proof around genocidal intent to destroy the group in question.

The Gambia v. Myanmar

14. In 2019, The Gambia brought a case against Myanmar at the ICJ alleging that Myanmar was in breach of its obligations under the Genocide Convention, in relation to the Rohingya population.
15. The case has not yet proceeded to its substantive stage, and the Court has not yet ruled upon the merits of the claims brought by The Gambia. It has ordered provisional measures which require Myanmar to take measures to prevent genocide and to preserve evidence for the case.
16. However, in its judgment ordering provisional measures in January 2020, the Court had considerable recall to the September 2018 report of the Independent International Fact-Finding Mission, including observing that the Mission had "reasonable grounds to conclude that serious crimes under international law ha[d] been committed that warrant[ed] criminal investigation and prosecution", including the crime of genocide, against the Rohingya in Myanmar.⁴

⁴ United Nations, Report of the Independent International Fact-Finding Mission on Myanmar, UN doc. A/HRC/39/64, 12 September 2018, paras. 83 and 84-87.

ICTY and International Criminal Tribunal for Rwanda

17. The ICTY was an international tribunal that was established in 1993 by the UN Security Council, to try those individuals who were responsible for serious violations of international humanitarian law during the Balkan conflict.
18. Similarly, the International Criminal Tribunal for Rwanda was created in the aftermath of the Rwandan genocide to try perpetrators of that genocide. The standard of proof used by both the ICTY and ICTR was 'proof beyond a reasonable doubt'.

Methods of proof

19. The methods used to establish proof by the ICJ have included a vast array of material, including reports, resolutions and findings by various United Nations organs, documents from other intergovernmental organisations, publications from governments and NGOs, media reports, articles, books, and expert witnesses.
20. The ICJ, in making its assessments, treated as 'highly persuasive' the findings of the International Criminal Tribunal for the former Yugoslavia (in the case of Srebrenica).⁵
21. In the current case regarding Myanmar, the ICJ has had the benefit of examining the findings of the Independent International Fact-Finding Mission on Myanmar, established by the UN Human Rights Council, which has undertaken the collection of evidence of violations of international law.

⁵ The ICTY ruled this event as genocide in the *Krstić* case.

Aide Memoire — Co-sponsorship of Xinjiang side event, New York, 12 May 2021

- s6(a) seeking New Zealand co-sponsorship of the UN member state/civil society high-level virtual event on the situation of Uyghurs and other Turkic Muslim minorities in Xinjiang to be held in New York on 12 May. A copy of the draft concept note is enclosed.
- The event intends to bring together UN officials, civil society representatives, academics, journalists as well as representatives of affected communities in order to exchange information on and raise awareness about the human rights situation in Xinjiang. Participants will discuss how the UN system, member states and civil society can support and advocate for the human rights of ethnic communities in Xinjiang. The full list of speakers is yet to be confirmed.
- Recognising New Zealand has publicly and frequently raised its grave concerns regarding the situation in Xinjiang, officials recommend New Zealand co-sponsor the event. Co-sponsorship is consistent with New Zealand's support for working with the international community and the United Nations in response to the human rights situation in Xinjiang.
s6(a), s9(2)(g)(i)
 - s6(a), s9(2)(g)(i)
- s6(a), s6(b)(i)
- s6(a)

The Process for Considering Requests for Entry of Foreign Warships into New Zealand Internal Waters

New Zealand domestic legislation, and specifically section 9 of the NZ Nuclear Free Zone, Disarmament and Arms Control Act 1987, regulates the entry into New Zealand internal waters¹ of any foreign warship.

Section 9:

In accordance with Section 9, any proposed entry of a foreign warship is subject to the approval of the Prime Minister. In considering whether to approve the entry of a warship the Prime Minister "shall have regard to all relevant information and advice that may be available to the Prime Minister including information and advice on the strategic and security interests of New Zealand." The relevant provision goes on to state that the Prime Minister may only grant approval to such warships "if the Prime Minister is satisfied that the warships will not be carrying any nuclear explosive device upon their entry into the internal waters of New Zealand."

The sending state requests diplomatic clearance for a visit by a formal Third Person Note. The domestic process that is followed after a request to visit has been made involves a submission prepared by MFAT (International Security and Disarmament Division), which is forwarded by the Minister of Foreign Affairs to the Prime Minister. This submission summarises all information considered relevant to the Prime Minister's overall decision of whether a request should be approved. This includes any information and advice concerning the strategic and security interests of New Zealand. It will also include an assessment of whether the relevant vessel is carrying a nuclear explosive device.

A large volume of publicly available information exists on different countries' nuclear strategies and the nuclear weapons status of different types of military assets. This can be drawn on, along with all other relevant information, in making the relevant assessments.

Standard of Assessment. s9(2)(h)

The Prime Minister's decision must be made personally and independently.

s9(2)(h)

¹ Internal waters are the waters to the landward side of territorial waters (which extend to 12 nautical miles), encompassing the likes of ports and estuaries.

s9(2)(h)

Once the Prime Minister has made a decision, MFAT replies to the requesting state by a formal Note advising whether diplomatic clearance for the visit has been granted or not².

The entry of foreign warships into New Zealand ports have been regulated under these provisions of New Zealand legislation for over 30 years and requests from foreign governments for port visits are received and processed throughout the year. This has included warships from a range of nuclear weapons states (e.g. UK, France, China), but only in circumstances where the Prime Minister has been satisfied that such vessels were not carrying nuclear explosive devices.

Section 11:

It should also be noted that, in addition to the decisions that the Prime Minister is mandated to take under Section 9 of the Act, Section 11 stipulates that "Entry into the internal waters of New Zealand by any ship whose propulsion is wholly or partly dependent on nuclear power is prohibited." **Nuclear propulsion is not a question forming part of the Prime Ministers' consideration** under the Act. The entry of such vessels into New Zealand is an absolute prohibition under Section 11.

In practice, any question arising regarding the nuclear-powered status of any warship requesting entry to New Zealand internal waters is addressed as part of the information included in the Section 9 submission to the Prime Minister.

² It should be noted that approval under the Act and diplomatic clearance are not the same thing. However, diplomatic clearance cannot be granted until, and is subject to, the Prime Minister's approval under the Act has been obtained.



URGENT

2 December 2021

Minister of Foreign Affairs

For action by

7 December 2021

Potential US diplomatic boycott of the 2022 Beijing Winter Olympics: proposed response and update on the Games

BRIEFING Decision Submission

PURPOSE To provide a recommended response, should the US announce a diplomatic boycott of the Beijing Winter Olympics.

Tukunga tūtohua – Recommended referrals

Prime Minister	For consultation by	7 December 2021
Minister for Sport and Recreation	For information by	7 December 2021
Associate Minister of Foreign Affairs	For information by	7 December 2021

Taipitopito whakapā – Contact details

NAME	ROLE	DIVISION	MOBILE PHONE
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David Evans	Unit Manager	North Asia Division	s9(2)(a)

Mā te Tari Minita e whakakī – Minister's Office to complete

<input type="checkbox"/> Approved	<input type="checkbox"/> Noted	<input type="checkbox"/> Referred
<input type="checkbox"/> Needs amendment	<input type="checkbox"/> Declined	<input type="checkbox"/> Withdrawn
<input type="checkbox"/> Overtaken by events	<input type="checkbox"/> See Minister's notes	

Pito matua – Key points

- A small number of New Zealand athletes will attend the Beijing Winter Olympics and Paralympics in February 2022. Decisions around attendance by New Zealand athletes are made by the New Zealand Olympic Committee and Paralympic Committee.
- s9(2)(g)(i)
s6(a)

- s6(b)(i)

- In October, the New Zealand Olympic Committee invited the Governor General, the Prime Minister and the Minister of Sport and Recreation to attend the Beijing Games. All three declined due to COVID-19 and scheduling practicalities. s9(2)(g)(i), s6(a)

- Should the US proceed with a diplomatic boycott, the New Zealand Government will likely be approached by media to comment on whether we support or will join a diplomatic boycott. We **recommend** a response (see Annex A) noting that:
 - New Zealand took the decision not to attend at ministerial level some time ago. s9(2)(g)(i) Especially in light of the global COVID situation, we have no plans to do so on this occasion;
 - s9(2)(g)(i)

- s6(a), s9(2)(g)(i)

- s6(a), s9(2)(g)(i)



Mark Sinclair
for Secretary of Foreign Affairs and Trade

Tūtohu – Recommendations

It is recommended that you:

- | | | |
|---|---|-----------------|
| 1 | Note that a small team of New Zealand athletes and a support team will attend the 2022 Beijing Winter Olympic and Paralympic Games (Beijing Games), and that the decision on their participation is taken by the New Zealand Olympic Committee and Paralympic Committee; | Yes / No |
| 2 | s6(b)(i) | Yes / No |
| 3 | s6(b)(i) | Yes / No |
| 4 | s6(b)(i) | Yes / No |
| 5 | Note that the Governor-General, the Prime Minister and the Minister of Sport have already declined invitations to attend the Beijing Games due to COVID and scheduling practicalities; | Yes / No |
| 6 | Note the New Zealand Government may be asked to publicly comment on how closely New Zealand is aligned with the US on its decision to boycott the Games; | Yes / No |
| 7 | s6(a), s9(2)(g)(i) | Yes / No |
| 8 | Agree that New Zealand should maintain its current position on ministerial attendance at the Beijing Games, s9(2)(g)(i) | Yes / No |

Hon Nanaia Mahuta
Minita Take Aorere / Minister of Foreign Affairs

Date: / /

Pūrongo – Report

1. The 2022 Beijing Winter Olympic and Paralympic Games (Beijing Games) are taking place in Beijing in February and March 2022. The New Zealand Olympic Committee is responsible for selecting athletes to compete at the Olympics. A small number of athletes (10-15) and an accompanying support team will represent New Zealand at the Beijing Games. Approximately sixteen New Zealand journalists will also travel to Beijing to cover the Games. New Zealand has sought Olympic accreditation for a small number of Embassy staff, including our Ambassador, to provide consular support to the team should it be needed.

2. On 25 October 2021, Olympic organising authorities distributed a 'Playbook' outlining strict COVID protocols for the Beijing Games. All Games participants will enter a 'closed-loop management system' upon arrival in Beijing. The loop will cover all Games-related areas, including transport, accommodation, competitions, and the opening and closing ceremonies. Once in China, we understand all participants (including media) will be restricted to venues inside the loop. Tickets will be sold exclusively to spectators residing in China. s9(2)(g)(i)

3. s6(a)

4. s6(a)

5. s6(a), s6(b)(f)

6. We understand that the New Zealand Olympic Committee invited the Governor-General, the Prime Minister and the Minister of Sport to attend the Beijing Games, and all three declined due to COVID-19 and scheduling practicalities. s6(a), s9(2)(g)(i)

s6(b)(i)

, officials have confirmed that we will not be sending ministers (or the PM, or the Governor-General) to the Beijing Games.

7. According to usual practice, the New Zealand Olympic Committee has sought accreditation for a small number of Embassy staff, including the Ambassador, to provide consular support to the team should it be needed. At this stage, the Ambassador has yet to receive any invitation from the organisers to official elements of the Beijing Games (such as the opening or closing ceremonies) and therefore no decision on attendance has been required, though COVID protocols might make attendance impracticable. s9(2)(g)(i)

8. Should the US proceed with a diplomatic boycott, the New Zealand Government may be approached to comment publicly on how closely New Zealand is aligned with the US on its decision. Based on the considerations set out below, we recommend a response noting that:

- s6(a), s9(2)(g)(i)

9. s6(a), s9(2)(g)(i)

10. s6(a), s9(2)(g)(i)

11. s6(a), s9(2)(g)(i)

12. s6(a) s9(2)(g)(i) – With the exception of the 1980 Olympics in Moscow (as a result of the Soviet invasion of Afghanistan), New Zealand has not staged a boycott of any Olympic Games. However, while ministers frequently attend Summer Olympics (including the 2008 Beijing Games, as noted above), New Zealand has only sent ministerial representation to one Winter Olympics (Minister Robertson at the 2018 Games in PyeongChang, South Korea). Despite calls by some NGOs for a boycott of the 2014 Winter Olympics in Sochi over concerns regarding Russia's treatment of its LGBTQI+ community, our ministerial absence was not, and was not portrayed as, a 'diplomatic boycott.' New Zealand's Ambassador in Moscow was New Zealand's official representative to those Games.

13. New Zealand has a strong history of participating in the Olympic Games. The Olympic Movement is based on values and ideals that contribute to building a peaceful and better world through sport. Sport is an important expression of national feeling and identity in New Zealand and the Olympics generally enjoys strong support with the New Zealand public.

s6(a), s9(2)(g)(i)

s6(a), s9(2)(g)(i)

14. s6(a), s9(2)(g)(i)

s6(b)(i)

15. s6(a), s9(2)(g)(i)

16. s6(a), s9(2)(g)(i)

. Aotearoa New Zealand has made clear its grave concerns about the human rights situation in China including credible reports of human rights abuses in Xinjiang and the erosion of civil and political freedoms in Hong Kong. New Zealand regularly raises concerns about the human rights situation in China directly with China (including at senior levels, most recently during the Ardern-Xi call on 5 November). We also join partners to amplify our concerns in international settings, most recently joining 42 other countries in a statement on Xinjiang at the UN Third Committee in October 2021. This is consistent with our values-based foreign policy and delivered in a consistent and predictable way. s9(2)(g)(i)

s6(a)

17. s9(2)(g)(i)

Parliamentary Petitions Committee

18. On 15 November 2021 the Parliamentary Petitions Committee referred a petition titled "Stage a diplomatic boycott of the Beijing 2022 Winter Olympics" to the Ministry of Foreign Affairs. The petition calls for a diplomatic boycott in response to the human rights situation in Xinjiang. We will draft a response to this petition, in line with your preferred approach contained in this submission, by the deadline of 10 December 2021.

Other issues

19. As the Beijing Games draw closer, we expect there will be an increased interest from the media, NGOs and civil society regarding other aspects of the Games s6(a), s9(2)(g)(i)

20. s6(a)

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Annex A: Proposed media points

General attendance by athletes and consular support

- New Zealand will be sending a small team of athletes and an accompanying support team to the Beijing Winter Olympics. Matters relating to attendance by athletes are for the New Zealand Olympic Committee.
- The New Zealand Olympic Committee has sought accreditation for a small number of New Zealand Embassy staff to provide consular support to the team, should it be needed, as is standard practice for this kind of event.

Ministerial attendance

- New Zealand took the decision some time ago that we would not attend at ministerial level.
- s6(a), s9(2)(g)(i)
- This has been communicated to China.

s6(a), s9(2)(g)(i)

s9(2)(f)(iv)

s9(2)(g)(i)

s6(a), s9(2)(g)(i)

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