

# FACTORS INFLUENCING THE CONTENT OF ACTS THAT IMPLEMENT NEW ZEALAND'S INTERNATIONAL OBLIGATIONS

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## I. INTRODUCTION

This article considers several factors that influence the inclusion of certain provisions in Acts that implement New Zealand's international obligations. Part II sets the stage by outlining the process by which New Zealand implements its international obligations. Part III delves into aspects of the select committee component of this process, particularly its international treaties examination and legislative scrutiny functions. Part IV sets out a selection of legislative provisions usually found in implementing Acts and the reasons for their inclusion. Part V concludes that the makers and users of legislation that implements New Zealand's international obligations are well-served by the select committee process that is in place and the standardised drafting techniques that are used.

## II. OUTLINE OF PROCESS OF IMPLEMENTING INTERNATIONAL OBLIGATIONS

In constitutional terms, the process of implementing New Zealand's international obligations has three stages. The Executive negotiates and enters into international agreements. Parliament incorporates some of these agreements into domestic law. The Judiciary uses these agreements to resolve certain disputes arising in New Zealand.

In legislative terms, the process consists of five steps, which have as their overall objective the alignment of New Zealand's law with its international obligations. The process begins when Cabinet approves the settled text of an international agreement and allows New Zealand to

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sign the agreement.<sup>1</sup> At this stage, the signing is simply an expression of New Zealand's intention to execute, be bound by, and implement the agreement as settled.<sup>2</sup>

The second step is to present the agreement to the House of Representatives for its consideration. This is a mandatory step for any multilateral agreement and any significant bilateral agreement.<sup>3</sup> In practice, this appears to include any bilateral agreement that requires legislation to be fully effective. The presented agreement must be accompanied by a National Interest Analysis (NIA)<sup>4</sup> that Cabinet has approved<sup>5</sup> and that complies with the content requirements of the House.<sup>6</sup> The department or agency that has administrative responsibility for the area that the agreement covers is usually the department or agency that has prepared the NIA.<sup>7</sup> Once presented to the House, both the agreement and the NIA are referred to the Foreign Affairs, Defence and Trade Committee (FADTC).<sup>8</sup> FADTC may delve into the agreement or refer the agreement to another select committee if the agreement concerns a subject that is within the terms of reference of that select committee.<sup>9</sup> A select committee must report to the House on any agreement referred to it.<sup>10</sup> The select committee must include the NIA as an appendix to its report<sup>11</sup> and may draw the attention of the House to any matter arising out its consideration of the agreement, the NIA, any public submissions, and any advice from officials.<sup>12</sup>

As a matter of policy, Cabinet refrains from authorising any binding action in relation to an agreement presented to the House until the select committee has reported, or 15 sitting days have elapsed from the date of presentation, whichever is sooner.<sup>13</sup> The select committee may indicate that it needs more time to consider the agreement, in which case Cabinet may choose to defer becoming a party to the agreement.<sup>14</sup> Cabinet also refrains from approving the introduction of the bill to implement the agreement until

1 Ministry of Foreign Affairs and Trade *International Treaty Making: Guidance for government agencies on practice and procedures for concluding international treaties and arrangements* (September 2012) at 9.

2 See Mark Gobbi "Enhancing Public Participation in the Treaty-Making Process: An Assessment of New Zealand's Constitutional Response" (1998) 6 *Tulane Journal of International Law* 57 at 84-85.

3 Standing Orders of the House of Representatives (2014), SO 397(1).

4 Standing Orders, above n 3, SO 397(2).

5 MFAT, above n 1, at 9.

6 Standing Orders, above n 3, SO 398.

7 MFAT, above n 1, at 9.

8 Standing Orders, above n 3, SO 397(3).

9 Standing Orders, above n 3, SO 399(1).

10 Standing Orders, above n 3, SO 400(1).

11 Standing Orders, above n 3, SO 400(3).

12 Standing Orders, above n 3, SO 400(2).

13 Cabinet Manual (2008), [7.119].

14 At [7.119].

after the time for the select committee to report has expired.<sup>15</sup> However, the Executive may, on a conditional basis, prepare the implementing bill for introduction.<sup>16</sup>

The third step is to draft, introduce and enact the implementing bill. The main drafting points are discussed in Part IV. Once the bill is drafted and Cabinet has approved its introduction, the bill is introduced, read for the first time, and referred to the appropriate select committee for consideration (usually, but not always, the select committee that examined the agreement).<sup>17</sup> This practice helps to ensure that those who are considering the bill are familiar with the agreement to be implemented.

The fourth step is to become a party to the agreement. The Executive generally does this after Parliament has enacted the implementing bill but before the Act comes into force.<sup>18</sup> This practice avoids the risk of placing New Zealand in breach of its international obligations simply because Parliament is yet to enact the necessary legislation.

The final step is to bring the implementing Act into force. The Governor-General does this after the agreement comes into force by issuing a commencement order made under the implementing Act.<sup>19</sup>

15 At [7.122].

16 At [7.122].

17 For example, the Foreign Affairs, Defence and Trade Committee (FADTC) carried out the international treaty examination of the Kyoto Protocol to the United Nations Convention on Climate Change (1997) and subsequently dealt with the bill that became the Climate Change Response Act 2002, which implemented a portion of the Protocol. However, other select committees dealt with subsequent amendment Acts that completed and fine-tuned the implementation of the Protocol. The Commerce Committee dealt with the bill that became the Climate Change Response Amendment Act 2006, the Emissions Trading Scheme Review Committee dealt with the bill that became the Climate Change Response (Emissions Trading Forestry Sector) Amendment Act 2009, and the Finance and Expenditure Committee dealt with the bills that became the Climate Change Response (Emissions Trading) Amendment Act 2008 and the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009.

18 The New Zealand Bill of Rights Act 1990 has the appearance of being a notable exception. The Act, which came into force in 1990, confirms New Zealand's commitment to the International Covenant on Civil and Political Rights (1966). The Covenant came into force in 1976 and became binding on New Zealand when it ratified the Covenant in 1978. During the lead up to the enactment of the Act, however, the government of the day formed the view that, allowing for certain exceptions specified in reservations that New Zealand made to the Covenant, New Zealand law and administrative practices conformed to the Covenant. See *A Bill of Rights for New Zealand: A White Paper* (1985) at 30. But see, *Simpson v Attorney-General (Baigent's Case)* [1994] 3 NZLR 667 at 676, 691, 702, 718 (concluding that the remedies provided for in the Covenant, but not incorporated into New Zealand law, are available to the courts).

19 For further discussions of various aspects of New Zealand's treaty-making process, see Campbell McLachlan *Foreign Relations Law* (Cambridge University Press, Cambridge, 2014) 126-129, 149-162, and 167-171; Mai Chen *Public Law Toolbox* (2nd ed, LexisNexis, Wellington, 2014) 1023-1074; Philip Joseph *Constitutional and Administrative Law in New Zealand* (4th ed, Thomson Reuters, Wellington, 2014) 348-349; Treasa Dunworth "The Influence of International Law in New Zealand: Some Reflections" in Caroline Morris, Jonathan Boston, and Petra Butler (eds) *Reconstituting the Constitution* (Springer, Heidelberg, 2011) 319; Alex Conte *An Introduction to International Law* (LexisNexis, Wellington, 2006) 41-80; David

### III. SELECT COMMITTEE COMPONENT OF PROCESS

As discussed in Part II, select committees contribute to the process of implementing New Zealand's international obligations when examining international agreements or when examining legislation that implements those agreements. The work of the former produces reports that inform the work of the latter.<sup>20</sup> The work of the latter has influenced the drafting conventions that the Parliamentary Counsel Office (PCO) follows when drafting implementing bills. This Part focuses on several examples of this work after exploring aspects of the international treaty examination reports produced to date.<sup>21</sup>

#### *A. Aspects of International Treaty Examination Reports*

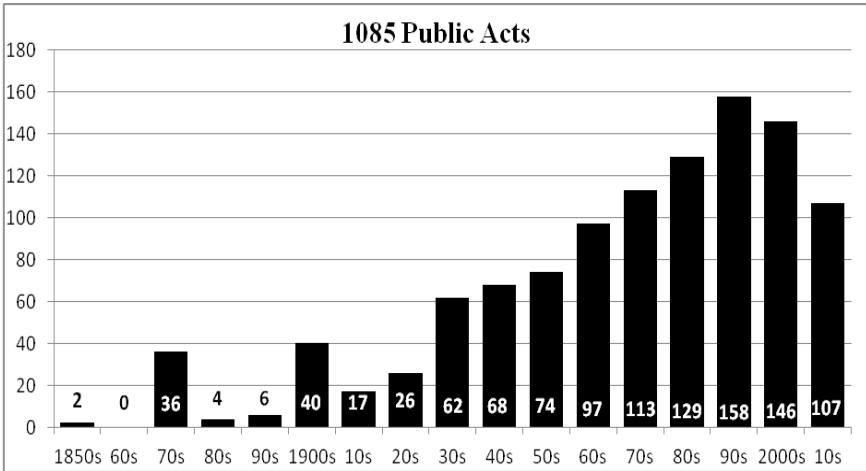
In most cases, a treaty examination report concerns an international agreement that imposes obligations on New Zealand and requires legislation to be fully effective. Acts that implement New Zealand's international obligations are public Acts. New Zealand has 1085 public Acts (as of 29 January 2015). The decade-by-decade distribution of these Acts, focusing on their initial enactment date, is as follows:<sup>22</sup>

McGee *Parliamentary Practice in New Zealand* (3rd ed, Dunmore Publishing, Wellington, 2005) 587-598; Alan Bracegirdle "Domestic Procedures for International Treaty Actions: The courts and unincorporated treaties in New Zealand (2005) 20(1) Australian Parliamentary Review 54; Treasa Dunworth "Public International Law" (2004) New Zealand Law Review 411; Alan Bracegirdle "Domestic Procedures for International Treaty Actions: Description of New Zealand Procedures (2003) Public Law Review 28; Mark Gobbi "Making Sense of Ambiguity: Some Reflections on the Use of Treaties to Interpret Legislation in New Zealand" (2002) 23(1) Statute Law Review 47; Treasa Dunworth "Public International Law" (2002) New Zealand Law Review 255; Foreign Affairs, Defence and Trade Committee, Report on the International Treaties Bill, No. 67-1 (25 November 2002) (including appended interim reports); Rodney Harris "International Issues – The Interaction between International Law-Making and Domestic Implementation" Address to the Fourth New Zealand Public Law Forum (Wellington 16-17 April 2002); Mai Chen "A Constitutional Revolution? The Role of New Zealand Parliament in Treaty-Making" (2001) 19 New Zealand Universities Law Review 448; Mark Gobbi "Drafting Techniques for Implementing Treaties in New Zealand" (2000) 21(2) Statute Law Review 71; Geoffrey Palmer "Human Rights and the New Zealand Government's Treaty Obligations" (1999) 29 Victoria University of Wellington Law Review 57, 61-62; "The Role of the New Zealand Parliament in Treaty Making" in Appendix C of the Joint Standing Committee on Treaties (The Parliaments of the Commonwealth of Australia), Report 24 (August 1999) at 87-96; Gobbi, above n 2; Law Commission *The Treaty Making Process: Reform and the Role of Parliament* Report 45 (NZLC R45) 5-18 (1997); Mark Gobbi and Mauro Barsi "New Zealand's Treaty-Making Process: Understanding the Pressures and Proposal for Reform (Draft No 3)" (Ministry of Justice, Wellington, 1997).

20 Apart from having the benefit of an international treaty examination report, particularly its accompanying NIA, the work that a select committee undertakes to examine an implementing bill is the same as for any other bill. For a discussion of select committees and their work, see David McGee above n 19, at 87-95 and 100-101; see also John Burrows and Ross Carter *Statute Law in New Zealand* (4th ed, LexisNexis, Wellington, 2009) at 87-95 and 100-101.

21 These reports are listed in the Appendix.

22 The y-axis indicates the number of extant Acts and the x-axis indicates the decade in which they were enacted. The data used to generate the chart is as follows (decade followed by number of public Acts): 1850s, 2; 1860s, 0; 1870s, 36; 1880s, 4; 1890s, 6; 1900s, 40; 1910s,

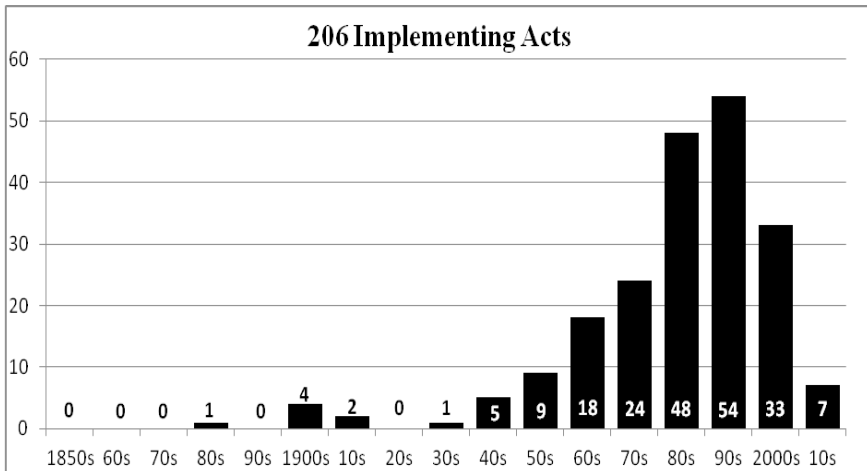


Around 206 public Acts, or 18.99%, implement international obligations.<sup>23</sup> Parliament enacted 102 of these Acts during the 1980s and the 1990s. Of the extant 1980s Acts, 37.21% implement international obligations. Of the extant 1990s Acts, 34.18% do so. Of the extant 2000s Acts, the figure is 22.60%. The percentages for these decades are likely to grow as implementing Acts, given the international agreements that underpin them, appear to be less susceptible to repeal or replacement. The decade-by-decade distribution of the 206 Acts is as follows:<sup>24</sup>

17; 1920s, 26; 1930s, 62; 1940s, 68; 1950s, 74; 1960s, 97; 1970s, 113; 1980s, 129; 1990s, 158; 2000s, 146; 2010s, 107. It was derived from the public Acts found on <www.legislation.govt.nz>.

23 The percentage was 18.5% eight years ago (as at the end of 30 June 2006). Mark Gobbi “In Search of International Standards and Obligations Relevant to New Zealand Acts” (2007) 4 *New Zealand Yearbook of International Law* 349 at 358. The percentage would be significantly higher if certain types of Acts were grouped together and treated as a single Act and if the count only included Acts enacted after 1949.

24 The y-axis indicates the number of implementing Acts and the x-axis indicates the decade in which they were enacted. The data used to generate the chart is as follows (decade followed by number of implementing Acts): 1850s, 0; 1860s, 0; 1870s, 0; 1880s, 1; 1890s, 0; 1900s, 4; 1910s, 2; 1920s, 0; 1930s, 1; 1940s, 5; 1950s, 9; 1960s, 18; 1970s, 24; 1980s, 48; 1990s, 54; 2000s, 33; 2010s, 7. It was derived from an updated version of the master list of Acts known to have implications for New Zealand’s international obligations set out in Mark Gobbi “In Search of International Standards and Obligations Relevant to New Zealand Acts” (2007) 4 *New Zealand Yearbook of International Law* 349 at 366-393, which is updated periodically in subsequent volumes of the Yearbook.



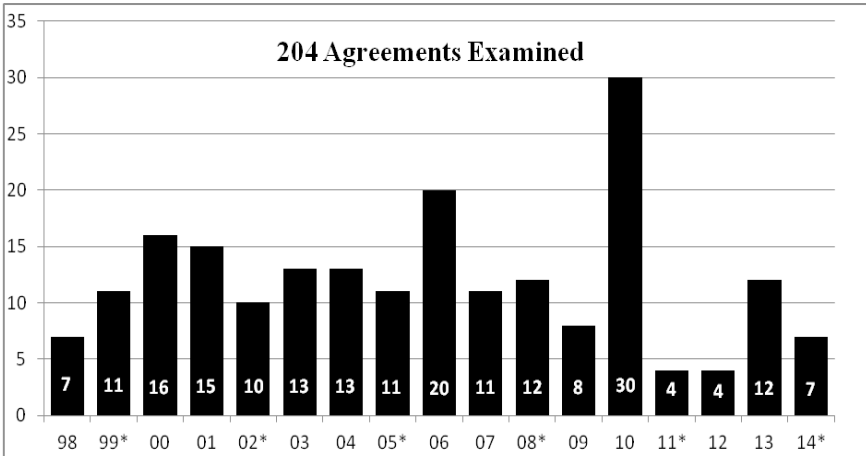
The purpose of the international treaty examination is to assess whether the advantages of an agreement outweigh its disadvantages. The terms of the agreement are settled and beyond the reach of the examining select committee; the implementing bill, which is yet to be introduced, is not before the examining committee. The examining select committee is aided in its work by the NIA that accompanies the agreement, any submissions that it may receive, and any replies to queries it may raise with officials, particularly those who were involved in preparing the NIA or who were involved in the negotiations that led to the agreement.

As a general rule, NIAs cover the following matters: the nature and timing of the proposed treaty action; the reasons for becoming a party to the agreement; the advantages and disadvantages of entering into the agreement and of not entering into it; the obligations that would be imposed; the measures required to implement the agreement;<sup>25</sup> the economic, social, cultural, and environmental costs and effects of entering into the agreement; the costs to New Zealand of compliance with the agreement; the consultation undertaken, or to be undertaken, with interested parties and communities; whether the agreement may be modified in the future (and, if so, the likely effect of those modifications); whether New Zealand can withdraw from the agreement.<sup>26</sup>

25 If legislation is required, the department or agency preparing the NIA must include a disclosure statement in the NIA that describes the nature and the extent of the analysis undertaken, including any significant constraints, caveats, or uncertainties, and an assessment of the effect of the proposed changes (for example, transaction costs, impairment of property rights, displacement of common law principles). See MFAT, above n 1, at 35-36.

26 See Standing Orders, above n 3, SO 398. For a fuller discussion of these requirements, see MFAT, above n 1, at 25-35.

In the 17-year period from 1 February 1998 to 31 December 2014, select committees have examined 204 international agreements and presented 195 international treaty examination reports.<sup>27</sup> Around 12 agreements are examined each year.<sup>28</sup> The year-by-year distribution of the agreements covered in these reports is as follows:<sup>29</sup>



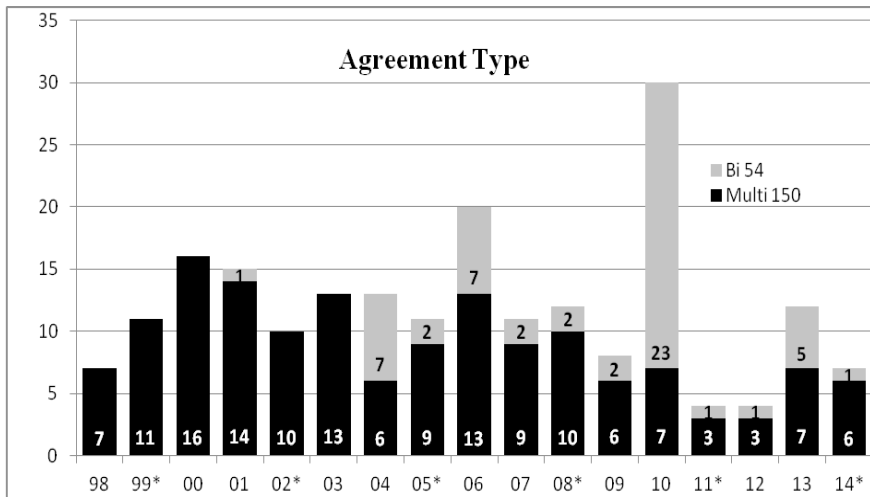
The 204 agreements consisted of 150 multilateral agreements and 54 bilateral agreements. As the international treaty examination reports listed in the Appendix show, the 150 multilateral treaties covered a variety of

27 The House has actually published 195 reports, but two of them are combined reports, covering 5 and 6 international agreements, respectively. See International Treaty Examination of the Agreement between the Government of New Zealand and the Government of the Republic of the Marshall Islands on the Exchange of Information with respect to Taxes; the Agreement between the Government of New Zealand and the Government of the Republic of the Marshall Islands for the Allocation of Taxing Rights with respect to Certain Income of Individuals and to Establish a Mutual Agreement Procedure in respect of Transfer Pricing Adjustments; the Agreement between the Government of New Zealand and the Government of Samoa on the Exchange of Information with respect to Taxes; the Agreement between the Government of New Zealand and the Government of Samoa for the Allocation of Taxing Rights with respect to Certain Income of Individuals and to Establish a Mutual Agreement Procedure in respect of Transfer Pricing Adjustments; and the Agreement between the Government of New Zealand and the Government of the Republic of Vanuatu on the Exchange of Information with respect to Taxes; Foreign Affairs, Defence and Trade Committee (presented 22 October 2010) [covers five similar agreements]; International Treaty Examination of the Taxation Agreements with the Republic of South Africa, the United Arab Emirates, the Republic of Chile, the United Kingdom of Great Britain and Northern Ireland, the Republic of the Philippines, and the Kingdom of the Netherlands; Finance and Expenditure Committee (presented 27 February 2004) [covers six similar agreements].

28 While the mean is 12, the median is 11 and the mode is 11. If the high of 2010 and the lows of 2011 and 2012 are excluded the mean, median, and mode remain the same.

29 The y-axis indicates the number of agreements and the x-axis indicates the year in which their respective treaty examination reports were presented to the House (the years marked with \* are election years). The data used to generate the chart was derived from the list of international treaty examination reports set out in the Annex.

subjects, ranging from the management of high seas fisheries resources to the safety of United Nations personnel. The subject matter breakdown of the 54 bilateral agreements is as follows: 42 dealt with taxation, six concerned various aspects of New Zealand's relationship with Australia (social security, joint food standards, therapeutic products, closer economic relations, exclusive economic zone boundaries, and Trans-Tasman court proceedings), three concerned aspects of New Zealand's relationship with China (consular relations, mutual legal assistance in criminal matters, and closer economic relations), one concerned New Zealand's relationship with Malaysia, one concerned New Zealand's relationship with the Cook Islands, and one concerned an agreement with the United States to enhance cooperation in preventing and combating crime. The year-by-year distribution of these multilateral and bilateral agreements is as follows:<sup>30</sup>

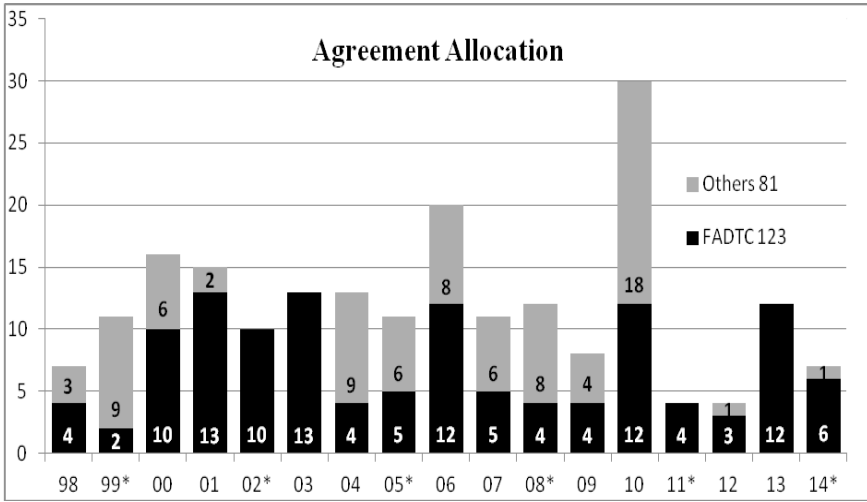


Of the 204 agreements, FADTC examined 123 and referred the remaining 81 to other select committees for examination. The year-by-year distribution of this allocation is as follows:<sup>31</sup>

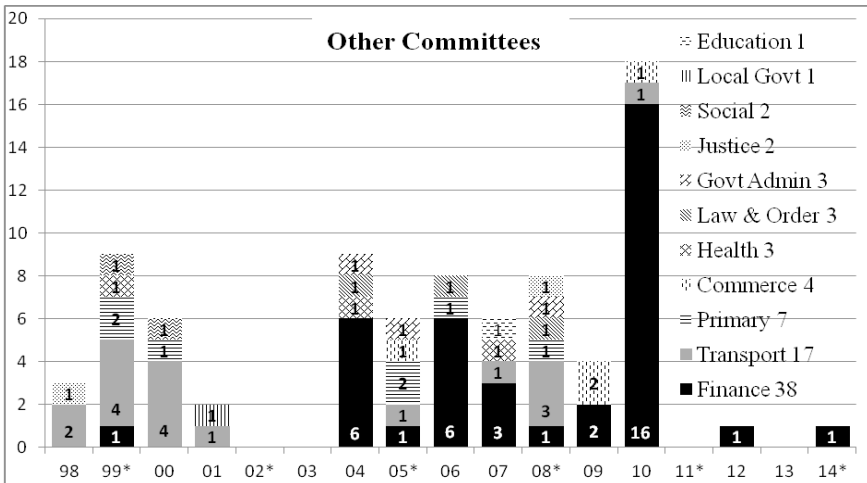
30 The y-axis indicates the number of agreements and the x-axis indicates the year in which their respective treaty examination reports were presented to the House; the black portion of the bars represents multilateral agreements and the grey portion of the bars represents bilateral agreements (the years marked with \* are election years). The data used to generate the chart was derived from the list of international treaty examination reports set out in the Annex.

31 The y-axis indicates the number of agreements and the x-axis indicates the year in which their respective treaty examination reports were presented to the House; the black portion of the bars represents the agreements examined by FADTC and the grey portion of the bars represents the agreements examined by other select committees (the years marked with \* are election years). The data used to generate the chart was derived from the list of international treaty examination reports set out in the Annex.



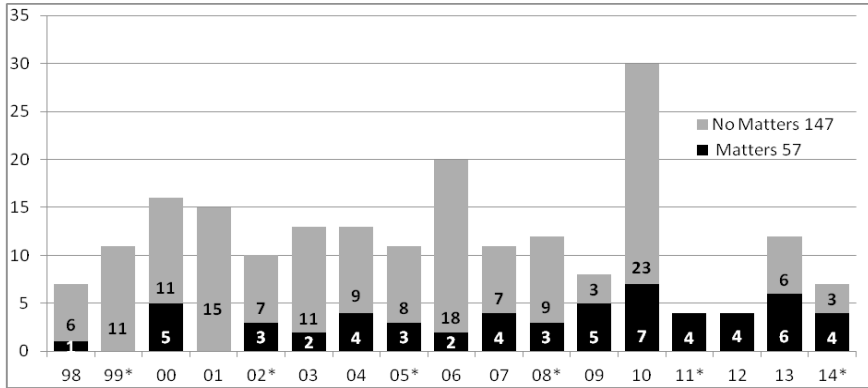


Of the 81 agreements referred to other select committees, the select committee breakdown, on a year-by-year basis, is as follows:<sup>32</sup>

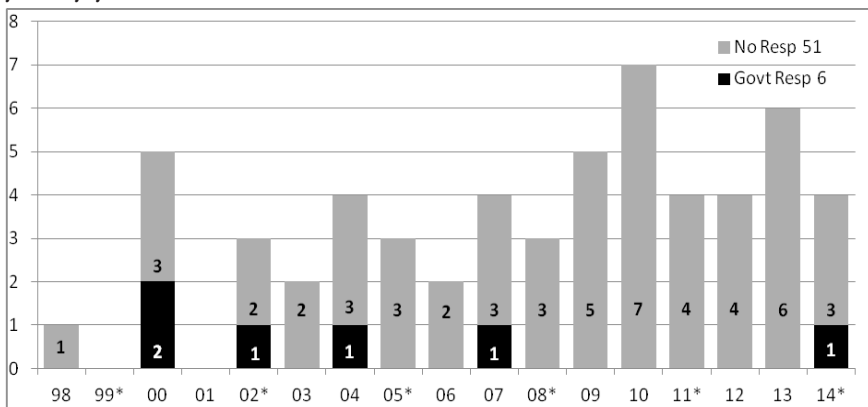


32 The y-axis indicates the number of agreements referred to select committees other than FADTC and the x-axis indicates the year in which their respective treaty examination reports were presented to the House; the variously shaded portions of the bars represents the various select committees other than FADTC (the years marked with \* are election years). The data used to generate the chart was derived from the list of international treaty examination reports set out in the Annex.

Fifty-seven of the 204 agreements have prompted the examining select committees to draw matters to the attention of the House in their reports (23%). These reports are summarised in the Annex. The year-by-year breakdown of the examination results for all of the agreements examined is as follows:<sup>33</sup>



The reports in relation to six of the 57 agreements that prompted select committees to draw matters to the attention of the House have warranted a Government response. The responses are summarised in the Appendix. The year-by-year breakdown is as follows:<sup>34</sup>



33 The y-axis indicates the number of agreements and the x-axis indicates the year in which their respective treaty examination reports were presented to the House; the black portion of the bars represents the agreements that prompted select committees to draw matters to the attention of the House and the grey portion of the bars represents the agreements that did not (the years marked with \* are election years). The data used to generate the chart was derived from the list of international treaty examination reports set out in the Annex.

34 The y-axis indicates the number of agreements that prompted select committees to draw matters to the attention of the House and the x-axis indicates the year in which their respective treaty examination reports were presented to the House; the black portion of the bars represents the agreements that prompted a Government response and the grey portion of the bars represents the agreements that did not (the years marked with \* are election years). The data used to generate the chart was derived from the list of international treaty examination reports set out in the Annex.

As yet, no select committee has recommended that the Executive abandon its plans to enter into a particular international agreement. However, the Health Committee came close in 2004, when it recommended that New Zealand not enter into the Agreement between the Government of New Zealand and the Government of Australia for the Establishment of a Joint Scheme for the Regulation of Therapeutic Products unless the required implementing legislation resolved a host of constitutional, procedural, and substantive issues that the Health Committee raised.<sup>35</sup> This report generated a Government response in which the government of the day addressed each issue that the Health Committee raised, and noted the points that it would take into account when developing the required implementing legislation. The resulting legislation, the Therapeutic Products and Medicines Bill 2006, was discharged on 20 November 2014 ahead of its second reading.<sup>36</sup>

From a drafting perspective, the value of the international treaty examination process does not rest on its potential to arrest the Executive's plans to enter into international agreements. Rather, its value rests on the informational nature of the requirement to set out in NIAs the measures needed to implement agreements. This generally provides an overview of the legislative changes that appear to be necessary.<sup>37</sup> As this overview is usually prepared by the department or agency that will provide the PCO with the relevant drafting instructions, the overview has the benefit of giving the PCO advance notice of the work that is likely to be involved, which informs its resource allocation decisions. It also has the benefit of focusing the attention of the department or agency on the necessary legislative detail well ahead of providing formal written instructions to the PCO, which goes some way toward ensuring their completeness.

35 A summary of the relevant international treaty report and the Government response is set out in the Appendix (third entry under the 2004 heading).

36 See Progress of Legislation, Schedule of Bills (as at 12 December 2014) at 32.

37 See eg, International Treaty Examination of the Exchange of Letters Constituting an Agreement to Amend Article 3 (Rules of Origin) of the Australia New Zealand Closer Economic Relations Trade Agreement (ANZCERTA) and of the Agreement to Amend the Product Specific Rules in Annex G of the ANZCERTA; Foreign Affairs, Defence and Trade Committee (presented 29 July 2010) at 10 (advising that an Order in Council needs to be made under s 65 of the Customs and Excise Act 1996 to implement the Agreement); International Treaty Examination of the Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children; Foreign Affairs, Defence and Trade Committee (presented 29 July 2010) at 17-20 (discussing the legislative changes required); International Treaty Examination of the Protocol of 2005 to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation and the Protocol of 2005 to the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf; Foreign Affairs, Defence and Trade Committee (presented 27 July 2009) at 9-11 (same).

### *B. Several Examples of Influential Committee Work*

Committee work outside the international treaty examination process also has a significant bearing on the drafting of bills that implement international obligations. This section looks at several examples.

#### 1. Changes Relevant to a Specific Implementing Bill: Climate Change Response Act 2002

In theory, the House has, owing to the aim of giving effect to an international agreement, less scope to alter an implementing bill than an ordinary bill. This is especially the case if the bill proposes to give the agreement the force of law, but this is rarely done.<sup>38</sup> In most cases, implementing bills give effect to the relevant agreements by translating their generally stated obligations into specific, locally adapted, provisions that are enforceable in New Zealand. In practice, this approach leaves the House with considerable leeway to rework the relevant implementing bill, as the legislative history of the Climate Change Response Act 2002 illustrates.<sup>39</sup>

38 Of the 206 public Acts that implement international obligations, 16 (or 7.77%) give the relevant agreements the force of law. Sections 91C, 91O, and 105 of the Civil Aviation Act 1990 gives, to varying degrees, the force of law to the Convention on International Interests in Mobile Equipment (2001), the Convention for the Unification of Certain Rules For International Carriage by Air (1999), the Convention (Supplementary to the Warsaw Convention) for the Unification of Certain Rules Relating to International Carriage by Air Performed by a Person Other Than the Contracting Carrier (1961), and the Warsaw Convention (1929 as amended 1955 and 1975). Sections 84A and 209 of the Maritime Transport Act 1994 give the force of law to Convention on the Limitation of Liability for Maritime Claims (1976 as amended 1996) and the International Convention for the Unification of Certain Rules of Law relating to Bills of Lading (1924 as amended 1968 and 1979). Sections 8 and 9 of the International Finance Agreements Act 1961 give the force of law to aspects of the Articles of Agreement of the International Monetary Fund (1944), the Articles of Agreement of the International Bank for Reconstruction and Development (1944), and the Convention Establishing the Multilateral Investment Guarantee Agency (1985). Section 4 of the Adoption (Intercountry) Act 1997 gives, subject to the provisions of the Act, the force of law to the Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (1993). Section 6 of the International Crimes and International Criminal Court Act 2000 gives the force of law to aspects of the Rome Statute of the International Criminal Court (1998). Section 4 of the Sale of Goods (United Nations Convention) Act 1994 gives the force of law to the United Nations Convention on Contracts for the International Sale of Goods (1980). Section 403 of the Food Act 2014 gives the force of law to certain food standards developed under the Australia–New Zealand Joint Food Standards Agreement (1995). Section 4 of the Consular Privileges and Immunities Act 1971 gives the force of law to aspects of the Vienna Convention on Consular Relations (1963). Section 5 of the Diplomatic Privileges and Immunities Act 1968 gives the force of law to aspects of the Vienna Convention on Consular Relations (1961). Section 3A of the Arbitration (International Investment Disputes) Act 1979 gives the force of law to aspects of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (1965).

39 For example, compare the introduction and the Royal assent versions of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009, compare the introduction version of the Climate Change (Emissions Trading and Renewable Preference) Bill with the Royal assent version of the Climate Change Response (Emissions Trading) Amendment Act 2008, and compare the Climate Change Response Act 2002 as it stood immediately before it was amended by the Climate Change Response (Moderated Emissions Trading) Amendment

*(a) Climate Change Response Bill 2002*

On 20 May 2002, the government of the day introduced the Climate Change Response Bill, which the House referred to FADTC after its first reading on 28 May 2002. The closing date for submissions was 28 June 2002. FADTC received 27 submissions from interested groups and individuals. It considered the Bill in the light of the submissions and advice from the New Zealand Climate Change Project (a unit based in the Department of Prime Minister and Cabinet), the Ministry of Foreign Affairs and Trade, the Ministry for the Environment, the Ministry of Economic Development, and the Treasury.<sup>40</sup>

To enable New Zealand to meet its obligations under the Kyoto Protocol to the United Nations Framework Convention on Climate Change (1997), the Climate Change Response Bill proposed creating a system to manage New Zealand's holdings of units,<sup>41</sup> to facilitate the trading of emissions units internationally, and to collect and record information relating to emissions. The Bill consisted of 50 clauses, and FADTC, in its report of 14 October 2002, made amendments to clauses 4, 14, 16, 17, 30, 34, 38 to 43, 45 and 48 to 50 and added new clauses 38A, 40A and 46A.<sup>42</sup> The most significant changes concerned the clauses dealing with the power to enter to collect information (clauses 38, 38A and 40A), the power of entry for inspection (clauses 39 and 40A), the process for obtaining search warrants (clause 40), and the power to make regulations (clauses 48 and 50), especially for prescribing matters in respect of the carry-over of units, the exchange of data between New Zealand and overseas registries, the registration of transactions, the manner and form in which records must be kept, and agencies whose employees may act as inspectors. Parliament enacted the amended Bill on 18 November 2002.

Act 2009 with the 2002 Act as it stood immediately afterward. The discussion in the text excludes the comparatively small, but significant, changes made by the Climate Change Response (Unit Restriction) Amendment Act 2014 (ending an unintended opportunity to engage in arbitrage in respect of the price of New Zealand units and the price of certain Kyoto units), which was introduced as part of the Budget Measures (Miscellaneous Fiscal Matters) Bill, and the Climate Change Response Amendment Act 2011 (transferring responsibility for various aspects of the emissions trading scheme to the Environmental Protection Agency), which was introduced as part of the Environmental Protection Authority Bill.

40 Report of the Foreign Affairs, Defence and Trade Committee, Climate Change Response Bill (2002) at 17.

41 At the time, units meant all the unit types specified in the Kyoto Protocol (namely, assigned amount units, certified emission reduction units, emission reduction units, and removal units). See clause 4(1) of the Climate Change Response Bill 2002. Units now mean a Kyoto unit, a New Zealand unit, or an approved overseas unit. A Kyoto unit means all of the unit types specified in, or in accordance with, the Protocol (namely, assigned amount units, certified emission reduction units, emission reduction units, long-term certified emission reduction units, removal units, and temporary certified emission reduction units). A New Zealand unit means a unit issued by the Registrar and designated as a New Zealand unit. An approved overseas unit means a unit, other than a Kyoto unit, issued by an overseas registry and prescribed as a unit that may be transferred to accounts in the Registry. See s 4(1) of the Climate Change Act 2002 (as subsequently amended).

42 See generally Report of the Foreign Affairs, Defence and Trade Committee, Climate Change Response Bill (2002).

*(b) Climate Change Response Amendment Bill 2005*

On 3 May 2005, the government of the day introduced the Climate Change Response Amendment Bill, which the House referred to the Commerce Committee after its first reading on 10 May 2005. The closing date for submissions was 13 June 2005. The Committee received 17 submissions from interested groups and individuals. It considered the Bill in the light of the submissions and advice from the Ministry for the Environment, the Ministry of Economic Development, and the Ministry of Agriculture and Forestry.<sup>43</sup>

As introduced, the Climate Change Response Amendment Bill proposed extensive changes to Part 2 of the Climate Change Response Act 2002, which set out the institutional arrangements for managing and trading units. The amendments affected ss 4, 7, 10, 13, 14, 16, 18, 20, 21, 23 to 29, 32, 33, 35 and 50 of the Climate Change Response Act 2002, and proposed inserting new ss 8A, 18A to 18E, 21A, 21B, 30A to 30D and 48A.<sup>44</sup> The Commerce Committee, in its report of 28 July 2005, altered the amendments to ss 7, 18B and 30A. The amending Bill also proposed inserting a new Part 3B into the Forests Act 1949 that would set up a mechanism allowing landowners to access the value of carbon sequestration on land through the establishment of forest sink covenants. The Commerce Committee made several small changes to these provisions. Parliament enacted the amending Bill on 13 November 2006.

*(c) Climate Change Response (Emissions Trading) Amendment Bill 2008*

On 4 December 2007, the government of the day introduced the Climate Change (Emissions Trading and Renewable Preference) Bill, which the House referred to the Finance and Expenditure Committee after its first reading on 11 December 2007. The closing date for submissions was 29 February 2008. The Committee received 259 submissions representing a wide range of the sectors and interests that would be affected by the introduction of emissions trading in New Zealand. It considered the Bill in the light of the submissions and advice from the Emissions Trading Group,<sup>45</sup> the Parliamentary Commissioner for the Environment and the Regulations Review Committee.<sup>46</sup>

43 Report of the Commerce Committee, Climate Change Response Amendment Bill (2005) at 4.

44 See generally Report of the Commerce Committee, Climate Change Response Amendment Bill (2005).

45 The Emissions Trading Group is a dedicated cross-government team charged with the policy design work for an economy wide emissions trading scheme that is composed of representatives from the departments with a direct stake in emissions-related policy work, that is, the Ministry for the Environment, the Treasury, and the Ministries of Economic Development, Transport, and Agriculture and Forestry. John Whitehead, Secretary to the Treasury "An Emissions Trading Scheme for New Zealand" (Speech to the Journalist Trading Organisation Training Forum on Sustainability, 8 August 2007).

46 Report of the Finance and Expenditure Committee, Climate Change (Emissions Trading and Renewable Preferences) Bill (2008) at 67; see also Interim Report of the Finance and Expenditure Committee, Climate Change (Emissions Trading and Renewable Preferences) Bill (2008).

As introduced, Part 1 of the Climate Change (Emissions Trading and Renewable Preference) Bill proposed to introduce a greenhouse gas emissions trading scheme in New Zealand to meet its obligations under the Kyoto Protocol and the United Nations Framework Convention on Climate Change (1992). Give or take a few provisions, Part 1 proposed adding around 170 new sections to the Climate Change Response Act 2002, virtually quadrupling the number of its sections (raising the number from around 50 to around 225).<sup>47</sup> The Finance and Expenditure Committee, in its report of 11 June 2008, amended or replaced most of these new provisions. On 10 September 2008, the House heavily amended Part 1 at the Committee of the Whole stage and repackaged it as a stand-alone amendment Act entitled the Climate Change Response (Emissions Trading) Amendment Bill.<sup>48</sup> Parliament enacted this amending Bill on 25 September 2008 shortly before the House rose for the 8 November 2008 general election. The election brought about a change of government. About a month after the election, the new government set up a special select committee to review the emissions trading scheme that the previous government had just put in place.<sup>49</sup>

*(d) Climate Change Response (Emissions Trading Forestry Sector) Amendment Bill 2009*

On 18 June 2009, the government of the day introduced the Climate Change Response (Emissions Trading Forestry Sector) Amendment Bill, which the House referred to the Emissions Trading Scheme Review Committee after its first reading on 23 June 2009. The Committee considered the Bill in the light of advice from the Ministry for the Environment and the Ministry of Agriculture and Forestry.<sup>50</sup>

As introduced, the Climate Change Response (Emissions Trading Forestry Sector) Amendment Bill proposed amendments to the Climate Change Response Act 2002 that would delay reporting requirements for foresters and allow applications for exemptions for certain landholdings. The Emissions Trading Scheme Review Committee, in its report of 26 June 2009, amended the Bill to provide that 1 July 2010 would be the final possible date that could be set as a deadline for exemption applications.<sup>51</sup> Parliament enacted this amending Bill on 30 June 2009.

47 See generally Report of the Finance and Expenditure Committee, Climate Change (Emissions Trading and Renewable Preferences) Bill (2008).

48 See Supplementary Order Paper Nos 231, 232, 233 and 238 (1 September 2008), and 239 (2 September 2008).

49 See New Zealand Emissions Trading Scheme (NZ ETS) Review 2011 – Terms of Reference (11 December 2008).

50 Report of the Emissions Trading Scheme Review Committee, Climate Change Response (Emissions Trading Forestry Sector) Amendment Bill (2009) at 3.

51 See generally Report of the Emissions Trading Scheme Review Committee, Climate Change Response (Emissions Trading Forestry Sector) Amendment Bill (2009).

(e) *Climate Change Response (Moderated Emissions Trading) Amendment Bill 2009*

On 24 September 2009, the government of the day introduced the Climate Change Response (Moderated Emissions Trading) Amendment Bill, which the House referred to the Finance and Expenditure Committee after its first reading on the same day. The closing date for submissions was 13 October 2009. The Committee received 379 submissions from interested groups and individuals. It considered the Bill in the light of the submissions and advice from the Emissions Trading Group and an independent specialist adviser.<sup>52</sup>

As introduced, the Climate Change Response (Moderated Emissions Trading) Amendment Bill proposed to replace the emissions trading scheme found in the Climate Change Response Act 2002 with a significantly changed scheme. Owing to the volume of submissions, a report back deadline of 16 November 2009, and its evenly divided membership, the Finance and Expenditure Committee was unable to make any changes to the Bill.<sup>53</sup> On 24 November 2009, the House essentially rewrote the Bill at the Committee of the Whole stage,<sup>54</sup> largely as a result of addressing points raised during the select committee stage.<sup>55</sup> Parliament enacted this amending Bill on 7 December 2009.

## 2. Changes Relevant to All Implementing Bills: Regulations Amending Acts

Work on a particular issue can have implications for all implementing bills. An example is the Regulations Review Committee's inquiry into regulation-making powers in implementing Acts that authorise the making of regulations that would, in effect, allow the provisions of an international agreement to override the provisions of an enactment.<sup>56</sup>

Among other things, the Committee recommended a change to the House's Standing Orders that would require NIAs to draw attention to those agreements to be implemented by means of overriding regulations and to supply justification for this approach.<sup>57</sup> The current version of the Standing

52 Report of the Finance and Expenditure Committee, *Climate Change Response (Moderated Emissions Trading) Amendment Bill* (16 November 2009) at 27.

53 See generally Report of the Finance and Expenditure Committee, *Climate Change Response (Moderated Emissions Trading) Amendment Bill* (2009).

54 See Supplementary Order Paper No 98 (24 November 2009).

55 See Nick Smith (Minister for Climate Change Issues), Second Reading Speech on the *Climate Change Response (Moderated Emissions Trading) Amendment Bill* (24 November 2009) in *Hansard* vol 659 at 7901.

56 Report of the Regulations Review Committee, *Inquiry into Regulation-Making Powers that Authorise International Treaties to Override any Provisions of New Zealand Enactments*, I. 16H (2002); see also Report of the Regulations Review Committee, *Inquiry into the Resource Management (Transitional) Regulations 1994 and the Principles that Should Apply to the Use of Empowering Provisions Allowing Regulations to Override Primary Legislation during a Transitional Period*, I. 16c (1995); Mark Gobbi, Briar Gordon and Fiona Lincoln "Managing Emergency Management: A Look at New Zealand's Legislative Approaches" (paper presented at the 6th Australasian Drafting Conference, Adelaide, 3-5 August 2011) (discussing empowering provisions allowing regulations to override primary legislation in cases of emergency).

57 See Report of the Regulations Review Committee (2002), above n 56, at 28.



Orders does not expressly reflect this recommendation. However, in its response to the Committee's report, the government of the day expressed its support for this recommendation and undertook to "ensure that the guidance to the public service concerning the preparation of National Interest Analyses is updated to reflect this recommendation".<sup>58</sup> The relevant guide states that "if the measures required include implementation by way of an overriding regulation, this section must refer to that explicitly and provide justification for it (this is a mandatory Cabinet requirement)."<sup>59</sup>

The Committee also recommended "that regulation-making powers authorising international treaties to override the provisions of any New Zealand enactment should be used only in exceptional circumstances, in accordance with the principle that Acts should only be amended by other Acts."<sup>60</sup> Specifically, the Committee recommend that regulation-making powers of this nature be limited to agreements of a technical nature or agreements invoking emergency measures.<sup>61</sup> The government of the day agreed with these recommendations.<sup>62</sup> This appears to have had a chilling effect on the enactment of regulation-making powers of this kind.

### 3. Changes Relevant to All Bills: Bill of Rights Vets

Work on a specific implementing bill can have implications for all bills. An example is FADTC's work on the Climate Change Response Bill 2002.

While considering the Bill, FADTC received some submissions that argued that several provisions in the Bill breached s 21 of the New Zealand Bill of Rights Act 1990 (which provides that everyone has the right to be secure against unreasonable search or seizure), even though the Bill had been vetted and found to be consistent with the Act before its introduction. FADTC asked for a copy of, or a briefing on, this vet, but the Attorney-General declined on the grounds of legal professional privilege, which left FADTC without the means to determine whether or not the vet was sufficient to meet the concerns raised in the submissions.

In its 14 October 2002 report on the Bill, FADTC stated "we believe that the arrangements to assure Parliament about proposed legislation's compliance with the Bill of Rights Act should be reviewed".<sup>63</sup> Subsequently, the Attorney-General decided that all vets from 1 January 2003 would be made publicly available on the Ministry of Justice website.<sup>64</sup>

58 Government Response to Report of the Regulations Review Committee on Inquiry into Regulation-Making Powers that Authorise International Treaties to Override any Provisions of New Zealand Enactments, A.5 (2002) at 11.

59 MFAT, above n 1, at 31.

60 Report of the Regulations Review Committee (2002), above n 56, at 17.

61 At 20.

62 Government Response, above n 58, at 4.

63 Report of the Foreign Affairs, Defence and Trade Committee, Climate Change Response Bill (2002) at 15.

64 The Attorney-General retains legal professional privilege in respect of all pre-1 January 2003 vets, apart from those published as section 7 reports.

#### IV. SELECTION OF LEGISLATIVE PROVISIONS USUALLY FOUND IN IMPLEMENTING ACTS

The PCO uses a variety of techniques to implement international agreements. They have in common the goal of producing Acts that identify the relevant international obligations and that make these obligations more accessible. Expressly linking an Act with the agreement that it implements also serves to remind those who are called on to amend the Act in the future that it involves an agreement and that any proposed amendments should be consistent with the agreement. This Part delves into some of the methods and provisions that the PCO uses to meet these aims.<sup>65</sup>

##### *A. Methods to Implement International Agreements*

The PCO uses one or more of the following methods to draft a given implementing bill: the formula method, the subordination method, or the wording method. The choice depends on the nature of the agreement and the obligations it imposes.

##### 1. Formula Method

If an agreement amounts to a self-contained body of law that does not require any operational machinery to support it, the formula method is used. The formula method sets out the full or partial text of a treaty in a schedule and uses a formula to proclaim it to have the force of law in New Zealand. The agreement is left to speak for itself. This method is not used very often, because the provisions of most agreements tend to be expressed in general terms and require translation into a more specific form to have effect in New Zealand.

The formula is generally accompanied by a provision that puts the application of the agreement's provisions beyond doubt by expressly stating that the agreement's provisions displace any other relevant provision in New Zealand law.

An example is found in Part 12 of the Civil Aviation Act 1990,<sup>66</sup> which was added to the 1990 Act by the Civil Aviation (Cape Town Convention and Other Matters) Amendment Act 2010:<sup>67</sup>

##### **105 Cape Town Convention and Aircraft Protocol to have force of law**

The provisions of the Cape Town Convention and the Aircraft Protocol, subject to any declaration that New Zealand has made under the Convention or the Protocol, have the force of law in New Zealand.

65 This Part updates the work set out in Mark Gobbi "Drafting Techniques for Implementing Treaties in New Zealand" (2000) 21(2) Statute Law Review 71.

66 For another example, see ss 4 and 5 of the Sale of Goods (United Nations Convention) Act 1994.

67 The definitions of the terms "Cape Town Convention" and "Aircraft Protocol" provide the formal name of the respective agreements and an indicator that each is set out in a schedule to the Civil Aviation Act 1990.

**106 Cape Town Convention and Aircraft Protocol to have effect in place of New Zealand law in certain circumstances**

The provisions of the Cape Town Convention and the Aircraft Protocol, subject to any declaration that New Zealand has made under the Convention or the Protocol, have effect in place of any other New Zealand law to the extent that the Convention or the Protocol applies to a matter to which the other law applies.

If the displacement carves out an exception to an existing statutory regime, a flag may be inserted into the legislation that is affected to alert its users to the exception. An example is found in the Personal Property Securities Act 1999:

**23A Act subject to application of Cape Town Convention and Aircraft Protocol**

(1) This Act is subject to section 106 of the Civil Aviation Act 1990 (which provides for the primacy of the provisions of the Cape Town Convention and the Aircraft Protocol) and the rest of Part 12 of the Civil Aviation Act 1990 (which implements the Cape Town Convention and the Aircraft Protocol).

(2) In this section,—

**Aircraft Protocol** has the same meaning as in section 104(1) of the Civil Aviation Act 1990

**Cape Town Convention** has the same meaning as in section 104(1) of the Civil Aviation Act 1990.

2. Subordination Method

If Parliament wishes to delegate technical or urgent matters to the Executive, the subordination method is used. The subordination method involves drafting a provision in an Act that authorises the making of regulations or rules to give effect to particular agreements. This method is used occasionally, but is generally restricted to agreements that provide for ongoing technical changes that justify the delegation of law-making power from Parliament to the Executive.

This method takes a variety of forms. An example of the technical kind, one that expressly anticipates future treaty action, is found in the Maritime Transport Act 1994:

**2 Interpretation**

(1) In this Act, unless the context otherwise requires,— ...

**conventions**, in relation to this Part and Parts 2 to 15, means such conventions as may be declared for the purposes of any such Part by Order in Council pursuant to subsection (2); and includes the amendments to such conventions, being amendments to which New Zealand is a party that are declared in the same manner ...

(2) The Governor-General may from time to time, by Order in Council, declare—

(a) that any specified international convention relating to maritime transport, to which New Zealand is a party, shall be a convention for the purposes of this Part and Parts 2 to 15, or such of them (or their provisions) as may be specified in the order:

(b) that any specified amendment to any such convention shall form part of that convention for any such purposes.<sup>68</sup>

68 For an example of an order made under s 2(2) of the Maritime Transport Act 1994, see the Maritime Transport Act (Conventions) Order 1994. The order designates the following conventions as conventions for the purposes of the Act: Convention Concerning the

**36 Maritime rules relating to other matters**

- (1) The Minister may from time to time make maritime rules for all or any of the following purposes: ...
- (b) the implementation of technical standards, codes of practice, performance standards, and other requirements of the conventions: ...
  - (u) prescribing or providing for such matters as may be necessary—
    - (i) to enable New Zealand to become a party to any international convention, protocol, or agreement relating to maritime transport: ...<sup>69</sup>

**222 Interpretation ...**

- (4) The Governor-General may from time to time, by Order in Council, declare—
- (a) that any specified international convention, protocol, or agreement relating to the protection of the marine environment from pollution, to which New Zealand is a party, shall be a marine protection convention for the purposes of this Part and Parts 19 to 27, or such of them (or their provisions) as may be specified in the order:
  - (b) that any specified amendment to, or revision of, any such instrument shall form part of that instrument for any such purposes.<sup>70</sup>

Compulsory Medical Examination of Children and Young Persons Employed at Sea (1921), Convention Concerning Seamen's Articles of Agreement (1926), Convention Concerning the Minimum Requirement of Professional Capacity for Masters and Officers on Board Merchant Ships (1936), Convention Concerning the Certification of Ships' Cooks (1946), Convention Concerning the Certification of Able Seamen (1946), Convention Concerning Crew Accommodation on Board Ship (Revised) (1949), Convention on Facilitation of International Maritime Traffic (1965 with the amendments referred to in the 1991 International Maritime Organisation (IMO) edition), International Convention on Load Lines (1966, 1981 IMO edition with the amendments referred to in the 1981 IMO Supplement and as amended by resolutions A. 513(13) and A. 514(13) of 1983 and the Protocol of 1988), International Convention on Tonnage Measurement of Ships (1969, (1983 IMO edition), Convention Concerning Crew Accommodation on Board Ship (Supplementary Provisions) (1970), International Convention for Safe Containers (1972 with the amendments referred to in the 1992 IMO edition), Convention on the International Regulations for Preventing Collisions at Sea, 1972 (with the amendments referred to in the 1990 second IMO edition as amended by resolution A. 736(18) of 1993), International Convention for the Safety of Life at Sea (1974 with the amendments referred to in the IMO 1992 consolidation and as amended by resolutions MSC. 24(60), MSC. 26(60), and MSC. 27(61) of 1992), International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (1978 with the amendments referred to in the 1993 IMO edition), Constitution and Convention of the International Telecommunication Union and Optional Protocol on the Compulsory Settlement of Disputes (1992).

- 69 For an example of a convention-related maritime rule made under s 36 of the Maritime Transport Act 1994, see Maritime Rules: Part 40B – Design, Construction and Equipment – SOLAS Ships (2000 as amended 2004); see also Maritime Rules: Part 24D – Carriage of Cargoes – Convention Containers (2005).
- 70 For an example of an order made under s 222(4) of the Maritime Transport Act 1994, see the Maritime Transport (Marine Protection Conventions) Order 1999. The order designates the following conventions as marine protection conventions for the purposes of the implementation provisions of the Act: the International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties (1969); the International Convention for the Prevention of Pollution from Ships (1973); the International Convention on Civil Liability for Oil Pollution Damage (1992); the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage (1992); and the United Nations Convention on the Law of the Sea (1982).

An example of the urgent kind, one that is a special case, is found in the United Nations Act 1946. The Act allows the making of regulations to enable New Zealand to fulfil its obligations under art 41 of the Charter of the United Nations, that is, to give effect to Security Council decisions to employ certain non-military sanctions. These regulations prevail over any conflicting legislation. The relevant empowering provision is as follows:

**2 Power to make regulations to enable effect to be given to Article 41**

- (1) If, under Article 41 of the Charter of the United Nations, the Security Council of the United Nations calls upon Her Majesty's Government in New Zealand to apply any measures to give effect to any decision of that Council, the Governor-General may from time to time, by Order in Council, make all such regulations as appear to him to be necessary or expedient for enabling those measures to be effectively applied.
- (2) No regulation made under this Act shall be deemed to be invalid because it deals with any matter already provided for by any Act, or because of any repugnancy to any Act.
- (3) All regulations made under this Act shall be laid before Parliament as soon as may be after they are made.<sup>71</sup>

**3. Wording Method**

If an agreement requires operational machinery to support it or its terms require some form of translation to be effective, the wording method is used. Essentially, the wording of the agreement is reflected in the Act's provisions. Sometimes the wording is repeated verbatim and sometimes it is translated to accommodate local conditions, which is usually the case when specific operational provisions are required to give effect to general treaty provisions. Sometimes all or most of the provisions of treaties are implemented in this way, and sometimes only a few select provisions are implemented in this way. As most treaties tend to be expressed in general language, mainly to achieve agreement, the wording method is used often.

The Maritime Security Act 2004, which implements the International Code for the Security of Ships and of Port Facilities (2002), makes use of the wording method. For example, Part A of the Code contains the following provision:

**5 Declaration of Security**

- 5.1 Contracting Governments shall determine when a Declaration of Security is required by assessing the risk the ship/port interface or ship to ship activity poses to people, property or the environment.

This provision is reflected in the 2004 Act as follows:

**12 When declaration of security required**

The chief executive may require a declaration of security if he or she is satisfied that the ship-port interface or ship-to-ship activity poses a risk to persons, property, or the environment.

Compare: Code, Part A s 5

71 For an example of a regulation made under s 2 of the United Nations Act 1946, see United Nations Sanctions (Yemen) Regulations 2014 (giving effect to UN Security Council resolution 2140 (2014)).

The New Zealand Bill of Rights Act 1990, which affirms New Zealand's commitment to the International Covenant on Civil and Political Rights (ICCPR),<sup>72</sup> is another example. The 1990 Act is based on the Canadian Charter of Rights and Freedoms,<sup>73</sup> which also used the wording method to implement the ICCPR. Unlike the Maritime Security Act 1994, the operative provisions of the New Zealand Bill of Rights Act 1990 do not refer to the relevant provisions of the agreement. The 1990 Act simply sets out the rights and freedoms that the ICCPR sets out, albeit using different words and form. For example, the ICCPR contains the following provision:

**Art 19**

1. Everyone shall have the right to hold opinions without interference.
2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.
3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
  - (a) For respect of the rights or reputations of others;
  - (b) For the protection of national security or of public order (*ordre public*), or of public health or morals.

This provision is reflected in the New Zealand Bill of Rights Act 1990 as follows:

**5 Justified limitations**

Subject to section 4 of this Bill of Rights, the rights and freedoms contained in this Bill of Rights may be subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

**13 Freedom of thought, conscience, and religion**

Everyone has the right to freedom of thought, conscience, religion, and belief, including the right to adopt and to hold opinions without interference.

**14 Freedom of expression**

Everyone has the right to freedom of expression, including the freedom to seek, receive, and impart information and opinions of any kind in any form.

4. Hybrids

In some cases, more than one method may be used. For example, the International Crimes and International Criminal Court Act 2000, which implements the Rome Statute of the International Criminal Court (1998), uses the formula method and the wording method.<sup>74</sup> The force of law provision in the 2000 Act is as follows:

72 See Long Title to the New Zealand Bill of Rights Act 1990.

73 See generally, *A Bill of Rights for New Zealand: A White Paper*, A.6 (1985).

74 For another example, see the Adoption (Intercountry) Act 1997 (which uses a formula to give the Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (1993) the force of law in New Zealand but uses the wording method to create the specific mechanisms necessary for the administration of the law embodied in the agreement);

## **6 Statute to have force of law**

- (1) The provisions of the Statute specified in subsection (2) have the force of law in New Zealand in relation to the following matters:
  - (a) the making of requests by the ICC to New Zealand for assistance and the method of dealing with those requests;
  - (b) the conduct of an investigation by the Prosecutor or the ICC;
  - (c) the bringing and determination of proceedings before the ICC;
  - (d) the enforcement in New Zealand of sentences of imprisonment or other measures imposed by the ICC, and any related matters;
  - (e) the making of requests by New Zealand to the ICC for assistance and the method of dealing with those requests.
- (2) Subsection (1) applies in relation to the following provisions of the Statute:
  - (a) Part 2 (which relates to jurisdiction, admissibility, and applicable law);
  - (b) Part 3 (which relates to general principles of criminal law);
  - (c) articles 51 and 52 of the Statute (which relate respectively to the Rules of Procedure and Evidence, and Regulations of the Court);
  - (d) Part 5 (which relates to the investigation and prosecution of crimes within the jurisdiction of the ICC);
  - (e) Part 6 (which relates to the conduct of trials);
  - (f) Part 7 (which relates to penalties);
  - (g) Part 8 (which relates to appeals and revision of acquittals, convictions, or sentences);
  - (h) Part 9 (which relates to international co-operation and judicial assistance);
  - (i) Part 10 (which relates to the enforcement of sentences and other measures imposed by the ICC).

The following section, along with the corresponding articles in the Rome Statute, illustrates the use of the wording method in the 2000 Act:

### **26 Urgent requests**

- (1) In urgent cases a request for assistance (including a request for provisional arrest) may be—
  - (a) made using any medium capable of delivering a written record;
  - (b) transmitted through the International Criminal Police Organisation or any other appropriate regional organisation, instead of through an authorised channel.
- (2) If a request is made or transmitted in the first instance in the manner specified in subsection (1), it must be followed as soon as practicable by a formal request transmitted in the manner specified in section 25.  
Compare: Statute, articles 87(1)(b), 91(1), 92(1), 96(1)

#### **Art 87(1)(b)**

When appropriate, without prejudice to the provisions of subparagraph (a), requests may also be transmitted through the International Criminal Police Organization or any appropriate regional organization.

#### **Art 91(1)**

A request for arrest and surrender shall be made in writing. In urgent cases, a request may be made by any medium capable of delivering a written record, provided that the request shall be confirmed through the channel provided for in article 87, paragraph 1(a).

see also New Zealand's intellectual property Acts (which use the wording method to set out the relevant treaty rights and protections but use the subordination method to trigger the application of those provisions).

**Art 92(1)**

In urgent cases, the Court may request the provisional arrest of the person sought, pending presentation of the request for surrender and the documents supporting the request as specified in article 91.

**Art 96(1)**

A request for other forms of assistance referred to in article 93 shall be made in writing. In urgent cases, a request may be made by any medium capable of delivering a written record, provided that the request shall be confirmed through the channel provided for in article 87, paragraph 1(a).

*B. Provisions Usually Found in Implementing Acts*

This section sets out a selection of provisions that are usually found in Acts that implement international obligations. In doing so, it draws on examples from the Acts discussed in the previous section.

## 1. Title

All modern Acts have title clauses. The PCO generally uses title clauses in implementing Acts to provide some indication that they are implementing Acts.

Less obvious references can be found among implementing Acts enacted in the early 2000s. For example, the Act that implements the International Code for the Security of Ships and of Port Facilities (2002) is entitled the Maritime Security Act 2004. The Act that implements the Rome Statute of the International Criminal Court is entitled the International Crimes and International Criminal Court Act 2000. Similarly, more direct references can be found among earlier implementing Acts. For example, the Act implementing the United Nations Convention on the Law of the Sea (1982) is entitled the United Nations Convention on the Law of the Sea Act 1996.

The preferred approach is to provide a blatant indication. For example, the Act that implements the Convention on International Interests in Mobile Equipment done at Cape Town (2001) and the Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Aircraft Equipment (2001) is entitled the Civil Aviation (Cape Town Convention and Other Matters) Amendment Act 2010. The relevant provision reads as follows:

**1 Title**

This Act is the Civil Aviation (Cape Town Convention and Other Matters) Amendment Act 2010.

## 2. Commencement

As noted in Part II, the Executive follows the convention of becoming a party to an international agreement after Parliament has enacted the implementing bill but before the Act comes into force. Once the Executive has entered into the agreement, it then issues an Order in Council that triggers the application of the implementing Act. The empowering provision



for this order is generally set out in the implementing Act in the form of a commencement clause.<sup>75</sup> An example of the elemental form is found in the Cluster Munitions Prohibition Act 2009:

**2 Commencement**

This Act comes into force on a date appointed by the Governor-General by Order in Council.

A typical variant, one that distinguishes provisions that implement the agreement from those that do not, is found in the Civil Aviation (Cape Town Convention and Other Matters) Amendment Act 2010:

**2 Commencement**

- (1) Sections 12 to 14 come into force on a date appointed by the Governor-General by Order in Council.
- (2) The rest of this Act comes into force on 1 August 2010.

A more flexible form of this variant is found in the International Crimes and International Criminal Court Act 2000:

**2 Commencement**

- (1) Sections 6 and 7, sections 14 to 23, Parts 3 to 10, sections 178 to 180, sections 182 to 184, sections 186 and 187, and the Schedule come into force on a date appointed by the Governor-General by Order in Council, and 1 or more Orders in Council may be made appointing different dates for different provisions.
- (2) The rest of this Act comes into force on 1 October 2000.

**3. Purpose**

Before 1 January 2000, the Long Title of an Act often carried information that explained the purpose of the Act. In the case of an implementing Act, the Long Title could be used to signal that the Act implements a particular international agreement. The Long Title of the Anti-Personnel Mines Prohibition Act 1998 is an example:

An Act to implement in the law of New Zealand the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction.

As of 1 January 2000, a change in the format of legislation abolished the use of Long Titles. However, the explanatory information often previously found in the Long Title of an Act now usually appears in a purpose clause, which is an element of the new format.<sup>76</sup> The purpose clause in an implementing Act usually indicates that the purpose of the Act is to give effect to a particular international agreement. An example is found in the Maritime Securities Act 2004:

75 For a discussion of commencement clauses, see Mark Gobbi "When to Begin: A Study of New Zealand Commencement Clauses with Regard to those Used in the United Kingdom, Australia, and the United Kingdom" (2010) 31(3) Statute Law Review 153.

76 Purpose clauses are standard elements of new principal Acts, but they are not usually used in amending Acts, largely to avoid conflicts with the purpose clauses in the principal Acts being amended. See eg, the Civil Aviation (Cape Town Convention and Other Matters) Amendment Act 2010 (which does not have a purpose clause).

### 3 Purpose

The purpose of this Act is to—

- (a) enable New Zealand to meet its obligations under the Convention arising from amendments to the Annex to the Convention; and
- (b) enhance ship and port security; and
- (c) prevent international terrorism.

Another example is found in the International Crimes and International Criminal Court Act 2000:

### 3 Purpose

The purpose of this Act is—

- (a) to make further provision in New Zealand law for the punishment of certain international crimes, namely, genocide, crimes against humanity, and war crimes; and
- (b) to enable New Zealand to co-operate with the International Criminal Court established by the Rome Statute in the performance of its functions.

## 4. Interpretation

Many of the Acts that implement international agreements have interpretation provisions that define the agreements being implemented. If the international agreement is set out in a schedule of the Act or of another Act, the relevant provision usually contains a pointer locating the agreement. Some of these Acts also have provisions that give particular terms the meaning that they have in the agreement being implemented. These types of provisions are usually found in the interpretation section at the start of the Act, but they can also be found in the interpretation section of a particular part or subpart of the Act.

An example is found in Part 12 of the Civil Aviation Act 1990, which was added by the Civil Aviation (Cape Town Convention and Other Matters) Amendment Act 2010:

#### 104 Interpretation

- (1) In this Part, unless the context otherwise requires,—

**Aircraft Protocol** means the Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Aircraft Equipment done at Cape Town on 16 November 2001 (a copy of the English text of which is set out in Schedule 8)

**Cape Town Convention** means the Convention on International Interests in Mobile Equipment done at Cape Town on 16 November 2001 (a copy of the English text of which is set out in Schedule 7) ...

- (2) In this Part, any term defined in the Cape Town Convention or the Aircraft Protocol and used in this Part has the same meaning as in the Cape Town Convention or the Aircraft Protocol.

Another example is found in the Maritime Security Act 2004:

#### 5 Interpretation

In this Act, unless the context otherwise requires,— ...

**Code** means the International Code for the Security of Ships and of Port Facilities, consisting of Part A (the provisions of which are mandatory) and Part B (the provisions of which are recommendatory), as adopted, on 12 December 2002, by resolution 2 of the Conference of Contracting Governments to the Convention, and as may be amended by the International Maritime Organization, provided that—

- (a) amendments to Part A of the Code are adopted, are brought into force, and take effect in accordance with article VIII of the Convention concerning the amendment procedures applicable under the Annex of the Convention other than Chapter I of that Annex; and
- (b) amendments to Part B of the Code are adopted by the Maritime Safety Committee of the International Maritime Organization in accordance with its Rules of Procedure ...

**Convention** means the International Convention for the Safety of Life at Sea, done at London on 1 November 1974; and includes—

- (a) the Annex and Appendix to that Convention; and
- (b) all amendments of that Convention; and
- (c) all protocols to that Convention ...

**security incident** means any suspicious act or circumstance threatening the security of a—

- (a) ship; or
- (b) port facility; or
- (c) ship-port interface; or
- (d) ship-to-ship activity ...

**ship** means every description of self-propelled boat or craft used in navigation, and includes—

- (a) a hovercraft or other thing deriving full or partial support in the atmosphere from the reaction of air against the surface of the water over which it operates;
- (b) a submarine or other submersible;
- (c) a high-speed craft;
- (d) a mobile offshore drilling unit ...

With respect to the terms “security incident” and “ship”, the following definitions in the Convention are relevant:

**Chapter XI-2, regulation 1 (definitions) ...**

- 1.13 Security incident means any suspicious act or circumstance threatening the security of a ship, including a mobile offshore drilling unit and a high speed craft, or of a port facility or of any ship/port interface or any ship to ship activity. ...
- 2 The term “ship”, when used in regulations 3 to 13, includes mobile offshore drilling units and high-speed craft. ...

The incorporation-by-reference approach taken in the first example has the advantage of sidestepping difficulties that might arise on account of subtle differences between the expression of a given term in the implementing Act and in the agreement. The restatement approach taken in the second example has the advantage of obviating the need to refer to the agreement when reading the implementing Act. It also avoids the inference that an aspect of the agreement is being given the force of law when the wording method or the subordination method is used.

5. Schedule

The text of an international agreement is often set out in a schedule of the Act or regulations that implement the agreement. This approach is required if the agreement is given the force of law (that is, if the formula method is used). This approach is generally followed if the wording method or subordination method is used, as it enables ready access to the primary source of the international obligations, which is especially important to those

who are responsible for ascertaining the meaning of a particular provision in an implementing Act or regulation. An example is found in the International Crimes and International Criminal Court Act 2000:<sup>77</sup>

#### 4 Interpretation

- (1) In this Act, unless the context otherwise requires,— ...  
 Statute means the Rome Statute of the ICC dated 17 July 1998, a copy of the English text of which is set out in the Schedule ...

If the treaty text is already set out in an Act or regulation, it need not be set out again. It is sufficient to cross-reference to it in the interpretation section of the new Act. An example is found in the Antarctica (Environmental Protection) Act 1994:

#### 7 Interpretation

- (1) In this Act, unless the context otherwise requires,— ...  
**Antarctic Treaty** means the Antarctic Treaty signed at Washington on 1 December 1959, a copy of the English text of which is set out in the First Schedule to the Antarctica Act 1960 ...

The approach is not followed if setting out the agreement in a schedule presents practical difficulties. An example is the Convention for the Safety of Life at Sea (1974, as amended repeatedly since), which is not appended to any Act. The Convention is enormous and growing. Large tracts of it are highly technical, and the obligations it imposes are given effect across a host of Acts, regulations, and rules. Another example is the Second Optional Protocol to the International Covenant on Civil and Political Rights aiming at the abolition of the death penalty (1989), which is also not appended to any Act. The implementing Act, the Abolition of the Death Penalty Act 1989, which became largely an empty husk upon its enactment, amended the following Acts (in the following ways):

Crimes Act 1961 (removed the death penalty for treason)

Armed Forces Discipline Act 1971 (removed the death penalty for treachery)

Fugitive Offenders Act 1881 (created the power to decline extradition to face the death penalty)

Extradition Act 1965 (created the power to decline extradition to face the death penalty)

The PCO carefully balances these practical difficulties against the public interest in having the agreement available with the Act that implements the agreement. The advent of New Zealand Treaties Online has the potential to weaken the rationale for setting out the text of treaties in schedules of implementing legislation.

77 For another example, see s 104(1) of the Civil Aviation (Cape Town Convention and Other Matters) Amendment Act 2010, which is set out in the text above.

## 6. Future-proofing

Some international agreements are amendable. An illustrative provision is found in the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction:

### **Art 13: Amendments**

1. At any time after the entry into force of this Convention any State Party may propose amendments to this Convention. Any proposal for an amendment shall be communicated to the Depositary, who shall circulate it to all States Parties and shall seek their views on whether an Amendment Conference should be convened to consider the proposal. If a majority of the States Parties notify the Depositary no later than 30 days after its circulation that they support further consideration of the proposal, the Depositary shall convene an Amendment Conference to which all States Parties shall be invited.
2. States not parties to this Convention, as well as the United Nations, other relevant international organizations or institutions, regional organizations, the International Committee of the Red Cross and relevant non-governmental organizations may be invited to attend each Amendment Conference as observers in accordance with the agreed Rules of Procedure.
3. The Amendment Conference shall be held immediately following a Meeting of the States Parties or a Review Conference unless a majority of the States Parties request that it be held earlier.
4. Any amendment to this Convention shall be adopted by a majority of two thirds of the States Parties present and voting at the Amendment Conference. The Depositary shall communicate any amendment so adopted to the States Parties.
5. An amendment to this Convention shall enter into force for all States Parties to this Convention which have accepted it, upon the deposit with the Depositary of instruments of acceptance by a majority of States Parties. Thereafter it shall enter into force for any remaining State Party on the date of deposit of its instrument of acceptance.

If an implementing Act sets out an amendable agreement in a schedule, the schedule would need to be amended each time the agreement was amended and New Zealand agreed to be bound by the change. Before 2000, Parliament would occasionally enact implementing Acts with provisions that would allow the Executive to make regulations to update the agreement, which obviated the need to seek the enactment of amending legislation. An example is found in the Anti-Personnel Mines Prohibition Act 1998:<sup>78</sup>

### **2 Interpretation**

- (1) In this Act, unless the context otherwise requires,— ...

**Convention** means the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction, done at Oslo on 18 September 1997 (a copy of the English text of which is set out in the Schedule); and includes any amendments to the Convention made in accordance with Article 13 of the Convention that are, or will become, binding on New Zealand from time to time ...

### **26 Regulations ...**

- (2) The Governor-General may, by Order in Council,—

78 For other examples, see art 9(3) of the Vienna Convention for the Protection of the Ozone Layer (1985) and ss 2(1) and 20 of the Ozone Layer Protection Act 1996.

- (a) amend the Schedule by making such amendments to the text of the Convention set out in that schedule as are required to bring that text up to date;
- (b) revoke the Schedule, and substitute a new schedule setting out in an up-to date form the text of the Convention.

The use of this mechanism appears to have fallen out of favour with the enactment of the International Crimes and International Criminal Court Act 2000, which implements the Rome Statute of the International Criminal Court (1998). Article 121 of the Rome Statute provides a means for making amendments to the Statute. The government of the day introduced the 2000 Act with an updating mechanism like the one found in the Anti-Personnel Mines Prohibition Act 1998.<sup>79</sup> However, the Committee of the Whole removed the updating provisions.<sup>80</sup> Given the nature of the charges that could be brought against New Zealanders under the Rome Statute, the House appears to have taken the view that all amendments to the 2000 Act should be referred to Parliament for its consideration.

The Regulations Review Committee's 2002 inquiry into empowering provisions in implementing Acts that allow the making of regulations that override the provisions of Acts may also have contributed to the new-found reluctance to use updating provisions. Although not in its terms of reference, the Committee's report drew attention to implementing Acts with updating provisions.<sup>81</sup>

A contributing factor may have been the upsurge of interest in providing Parliament with a greater role in the treaty-making process.<sup>82</sup> Delegating legislative power to the Executive to implement international obligations is, on its face, inconsistent with the suggestion that Parliament should play a greater role.

A more prosaic reason for the development may be the infrequent use of the extant updating provisions. As the wording method is used in most implementing Acts, a substantive amendment to an international agreement

79 See clauses 4(1) and 179(f) of the International Crimes and International Criminal Courts Bill, 34-1.

80 See clauses 4(1) and 179 of the International Crimes and International Criminal Courts Bill, 34-3. During its consideration of the Bill, FADTC had received advice from the Regulations Review Committee suggesting that the updating provisions be amended to avoid the possible interpretation that amendments to the Rome Statute would be automatically incorporated into New Zealand law by virtue of the word "Statute", in the case of the definition of Statute in clause 4(1), and to limit their application to non-substantive amendments, in the case of clause 179(f). FADTC adopted the former suggestion but not the latter. See Report of the Foreign Affairs, Defence and Trade Committee, International Crimes and International Criminal Court Bill (2000) at 11-12.

81 See Report of the Regulations Review Committee (2002), above n 56, at 10-11 and 39.

82 See Foreign Affairs, Defence and Trade Committee, Inquiry into Parliament's Role in the International Treaty Process, I.4A (1997); Government Response to the Report of the Foreign Affairs, Defence and Trade Committee on the Inquiry into Parliament's Role in the International Treaty Process, A.5 (1997); Law Commission *The Treaty Making Process: Reform and the Role of Parliament* R45 (1997); see also Foreign Affairs, Defence and Trade Committee, Review of the International Treaty Examination Process, I.4E (1999); Foreign Affairs, Defence and Trade Committee, Report on the International Treaties Bill, No. 67-1 (2002) (including appended interim reports).

is likely to require a substantive amendment to the implementing Act, not just an updating of the agreement appended to the Act. If recourse to Parliament is likely, the rationale for updating provisions disappears.

## 7. Powers

Some implementing Acts have provisions that indicate that certain conferred functions, powers, or duties should be exercised with regard to the agreements that they implement. An example is found in the Cluster Munitions Prohibition Act 2009:<sup>83</sup>

### **4 Obligations to which persons exercising power or discretion must have regard**

A person who is exercising a power or discretion under this Act must have regard to New Zealand's obligations under the Convention.

Another example is found in the Immigration Act 2009:

### **165 Immigration officer must have regard to certain matters when dealing with claimants, refugees, or protected persons**

An immigration officer must have regard to Part 5 and Schedule 1 (being the text of the Refugee Convention) when carrying out his or her functions under this Act in relation to a claimant, a refugee, or a protected person.

## 8. Proving

Some implementing Acts provide a mechanism to prove matters pertaining to the agreements that they implement. The aim of these kinds of provisions is to reduce evidential burdens. An example is found in the Arbitration Act 1996:

### **15 Certificates concerning parties to the Conventions**

A certificate purporting to be signed by the Secretary of Foreign Affairs and Trade, or a Deputy Secretary of Foreign Affairs and Trade, that, at the time specified in the certificate, any country had signed and ratified or had denounced, or had taken any other treaty action under, the Protocol on Arbitration Clauses (1923) or the Convention on the Execution of Foreign Arbitral Awards (1927) in respect of the territory specified in the certificate is presumptive evidence of the facts stated.

An older, more comprehensive, example is found in the Crimes (Internationally Protected Persons, United Nations and Associated Personnel, and Hostages) Act 1980:

### **15 Evidence**

For any purpose in connection with this Act, a certificate, given by the Secretary of Foreign Affairs and Trade, certifying—

- (a) any fact relevant to the question of whether a person was or was not, at any material time, a person protected by a convention; or
- (b) any fact relevant to the question of whether an operation was or was not, at any material time, a United Nations operation of a kind described in section 6A; or
- (ba) that any country is or is not, or was or was not at any material time, a party to the 1973 Convention, the 1979 Convention, or the 1994 Convention; or

83 For other examples along these lines, see s 3(d) of the Children's Commissioners Act 2003; s 5(2) of the Anti-Personnel Mines Prohibition Act 1998; s 4(2) of the Chemical Weapons (Prohibition) Act 1996.

- (c) that the Government of any country is or is not, or was or was not at any material time, responsible for the international relations of any territory,— shall be sufficient evidence of that fact.

## 10. Notes

Although they are not provisions, explanatory notes and compare notes can be used in implementing legislation to promote awareness that the legislation proposes to implement, or has implemented, an international agreement. Explanatory notes to implementing bills generally contain statements that indicate that they are implementing international agreements. An example is found in the Civil Aviation (Cape Town Convention and Other Matters) Amendment Act 2010 (as introduced):<sup>84</sup>

### **General policy statement**

This Bill amends domestic legislation, including the Civil Aviation Act 1990, the Personal Property Securities Act 1999 (the PPSA), as well as some company, insolvency, and statutory management legislation to enable New Zealand to accede to the Convention on International Interests in Mobile Equipment (the Cape Town Convention) and to the associated Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Aircraft Equipment (the Aircraft Protocol). ...

### **Clause by clause analysis ...**

*Clause 2* relates to commencement. *Clauses 12 to 14*, which implement the Cape Town Convention and the Aircraft Protocol, come into force on a date to be appointed by the Governor-General by Order in Council. The rest of the clauses come into force on 1 August 2010. ...

### **Regulatory impact statement**

The regulatory impact of implementing the Cape Town Convention and the Aircraft Protocol is discussed in the National Interest Analysis for the Cape Town Convention and the Aircraft Protocol.

For a copy of this National Interest Analysis, see the Ministry of Transport Internet site at <http://www.transport.govt.nz/ourwork/air/capetownconventionandaircraftprotocol/> or the Treasury Internet site at <http://www.treasury.govt.nz/publications/informationreleases/ris>.

Some implementing Acts have compare notes that indicate they are based on particular provisions of international agreements. An example is found in the International Crimes and International Criminal Court Act 2000:<sup>85</sup>

### **60 Other challenges to admissibility**

- (1) If the ICC is considering an admissibility challenge under Article 18 or Article 19 of the Statute, other than a challenge of the kind referred to in section 57 or section 59, the Minister may postpone the execution of a request under this Part pending a determination by the ICC.
- (2) If the ICC determines that the case is inadmissible, surrender must be refused.

84 When a bill is introduced in the House of Representatives, it is generally prefaced with an explanatory note that sets out the policy underlying the bill (referred to as a general policy statement), a summary of its provisions (referred to as a clause by clause analysis), a URL reference to an online regulatory impact statement, and a URL reference to an online disclosure statement.

85 For another example, see s 12 of the Maritime Security Act 2004, which is set out in the text above.



- (3) If the ICC determines that the case is admissible, and there is no other ground for refusing or postponing the request, the request must continue to be dealt with under this Part.

Compare: Statute art 95

Compare notes are especially helpful in alerting those who have responsibility for amending an implementing Act as they link provisions of the Act with the relevant provisions of the agreement. They also save time by eliminating the research work that would otherwise be required to ascertain the precise links.

Despite these advantages, compare notes are not used often in implementing Acts. One reason for this may be the uncertain status of compare notes in the wake of the enactment of s 5 of the Interpretation Act 1999, which provides that indications in an enactment may be used to ascertain the meaning of an enactment. Compare notes are employed as reminders as to the source material drawn upon to fashion new provisions. Given s 5, however, they may, in the context of implementing Acts, arguably support suggestions that specified source material should inform the reading of particular provisions. As the judiciary has taken the view that all enactments should be interpreted in a way that is consistent with New Zealand's international obligations,<sup>86</sup> the interpretative risks posed by the presence of compare notes in implementing Acts appears to be inconsequential. Their absence in implementing Acts simply makes more arduous the process of determining the meaning of particular provisions in these Acts. Litigants would have to bear the cost of establishing the linkages. Once the linkages are established, litigants would still face the challenge of convincing the judiciary that the words of the legislative provision are ambiguous in some respect and that the ambiguity can be resolved by reference to a specific provision in the relevant international agreement.

## V. CONCLUSIONS

New Zealand is a party to the Vienna Convention on the Law of Treaties (1969). Article 26 of the Convention provides that "every treaty in force is binding upon the parties to it and must be performed by them in good faith". Article 27 provides that "a party may not invoke the provisions of its internal law as justification for its failure to perform a treaty".

Essentially, if New Zealand enters into an international agreement, it is obliged under international law to comply with it. If legislation is inconsistent with a binding international obligation, New Zealand could be in breach of the relevant agreement. A breach, if not remedied in a timely fashion,

86 See eg *New Zealand Air Line Pilots' Association Inc v Attorney-General* [1997] 3 NZLR 269 at 289 (stating "[we] begin with the presumption of statutory interpretation that so far as its wording allows legislation should be read in a way which is consistent with New Zealand's international obligations"); see also Mark Gobbi "Making Sense of Ambiguity: Some Reflections on the Use of Treaties to Interpret Legislation in New Zealand" (2002) 23(1) *Statute Law Review* 47 at 50.

could result in sanctions, which, depending on the agreement, may range from concerted international action against New Zealand to a denial of the agreement's benefits. In addition, the negative reputational effects may jeopardise relations with other states.

In the context of a growing array of international obligations, New Zealand has taken several steps to avoid these difficulties. The House and the Executive have adopted procedures that allow the House to examine all significant international agreements and to enact the necessary implementing legislation before the Executive enters into those agreements.<sup>87</sup> The Executive has adopted procedures to ensure that proposed legislation complies with New Zealand's international obligations.<sup>88</sup> Acts and regulations that implement New Zealand's international obligations contain an array of standard provisions that serve to identify the relevant obligations and that make them more accessible.<sup>89</sup> The courts have taken the view that legislation should be interpreted in a way that is consistent with New Zealand's international obligations.

These developments have also raised awareness of the role that international law has in shaping New Zealand law. The implications of proposed treaty actions are set out in NIAs prepared by the Executive, examined by the House, and published in reports that are available to one and all. Those with responsibility for producing implementing legislation have had the benefit of these reports since 1998 and of the supporting resources that have emerged since then.<sup>90</sup>

Taken as a whole, these developments have made the treaty-making process more public. This, in turn, has served to strengthen New Zealand's democratic traditions, especially in an era when its treaty actions so deeply influence New Zealand law. While more could always be done to improve resources, levels of participation, and access to the relevant rules, the makers and users of legislation that implements New Zealand's international obligations are well-served by the processes and resources that are now in place, especially in comparison to the way these matters stood in the early 1990s. Chief among these are the scrutiny that select committees bring to international agreements and their respective implementing bills, and the standardised drafting techniques that are used. The former contributes to the legitimacy of New Zealand law and the latter contributes to the accessibility of New Zealand law.

87 See Part II above.

88 See Cabinet Manual, above n 13, [7.60]-[7.62].

89 See Part IV above.

90 See eg Mark Gobbi "In Search of International Standards and Obligations relevant to New Zealand Regulations" (2007-2008) 5 *New Zealand Yearbook of International Law* 327 (setting out the regulations known to have implications for New Zealand's international obligations and the relevant international agreements); Mark Gobbi "In Search of International Standards and Obligations Relevant to New Zealand Acts" (2007) 4 *New Zealand Yearbook of International Law* 349 (setting out the Acts known to have implications for New Zealand's international obligations and the relevant international agreements). See also *New Zealand Treaties Online* launched in June 2014, at <[www.treaties.mfat.govt.nz](http://www.treaties.mfat.govt.nz)>.

ANNEX  
INTERNATIONAL TREATY EXAMINATION REPORTS

The following is a list of the international treaty examination reports that the select committees of the House of Representatives have presented to date (31 December 2014). The House began using the process that gave rise to these reports on 1 February 1998.<sup>91</sup> They are arranged in chronological order. The reports that have drawn matters to the attention of the House, and any Government responses to those reports, are summarised. The numbers in the brackets in the year headings indicate the number of agreements examined in that year, the number that were multilateral, and the number that were bilateral. For example, **2011** [4: 3, 1] means that in 2011 the select committees examined four agreements, of which three were multilateral and one was bilateral.

**1998** [7: 7, 0]

International Treaty Examination of the Convention on the Safety of United Nations and Associated Personnel; Foreign Affairs, Defence and Trade Committee (presented 14 August 1998)

International Treaty Examination of the Convention on the Suppression of Unlawful Acts against the Safety of Maritime Navigation (and the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms); Foreign Affairs, Defence and Trade Committee (presented 21 August 1998)

International Treaty Examination of the Convention on the Suppression of Unlawful Acts of Violence at Airport Serving International Civil Aviation; Foreign Affairs, Defence and Trade Committee (presented 21 August 1998)

International Treaty Examination of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988; Justice and Law Reform Committee (presented 3 September 1998):

The Committee determined that New Zealand could withdraw from the Convention if need be, that New Zealand could liberalise its laws with respect to cannabis without breaching its obligations under the Convention, and that the establishment of joint teams (comprising officers from New Zealand and other jurisdictions) would increase its access to intelligence data and would not undermine its sovereignty. It also noted that New Zealand had enacted the legislation needed to implement the Convention well before the treaty examination process was established, eg the Proceeds of Crimes Act 1991, the Mutual Assistance in Criminal Matters Act 1992, and various amendments to the Crimes Act 1961

91 See Mark Gobbi "Enhancing Public Participation in the Treaty-Making Process: An Assessment of New Zealand's Constitutional Response" (1998) 6 *Tulane Journal of International Law* 57 at 107.

(money laundering offence) and the Drugs Act 1975 (offences relating to precursor substances, extending extra-territorial jurisdiction to certain drug-related offences).

International Treaty Examination of the Montreal Protocols 1, 2, and 4, to amend the Convention for Unification of Certain Rules relating to International Carriage by Air signed at Warsaw on 12 October 1929 as amended by the Protocol done at the Hague on 28 September 1955; Transport and Environment Committee (presented 5 November 1998)

International Treaty Examination of the Montreal Amendment to the 1987 Montreal Protocol on Substances that Deplete the Ozone Layer, adopted at the Ninth Meeting of the Parties in September 1997; Transport and Environment Committee (presented 14 December 1998)

International Treaty Examination of the Fifth Protocol to the General Agreement on Trade in Services; Foreign Affairs, Defence and Trade Committee (presented 17 December 1998)

**1999** [11: 11, 0]

International Treaty Examination into the International Plant Protection Convention; Primary Production Committee (presented 10 February 1999)

International Treaty Examination of the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and their Destruction; Foreign Affairs, Defence and Trade Committee (presented 18 February 1999)

International Treaty Examination into the Protocol relating to an Amendment to the Convention on International Civil Aviation, Article 3*bis*; Transport and Environment Committee (presented 18 March 1999)

International Treaty Examination of the Convention Abolishing the Requirements of Legalisation for Foreign Public Documents; Foreign Affairs, Defence and Trade (presented 29 April 1999)

International Treaty Examination into the Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, 1995; Primary Production Committee (presented 3 June 1999)

International Treaty Examination of the 1996 Protocol to the Convention on the Prevention of Marine Pollution by Dumping Wastes and Other Matters, 1972 (London Convention); Transport and Environment Committee (presented 30 June 1999)

International Treaty Examination of the Amendments to Article 7, Article 74, Article 24 and Article 25 of the Constitution of the World Health Organisation; Health Committee (presented 8 September 1999)

International Treaty Examination into Amendment to Article 43(2) of the Convention on the Rights of the Child; Social Services Committee (presented 9 September 1999)

International Treaty Examination into the Convention on Combatting Bribery of Foreign Public Officials in International Business Transactions; Finance and Expenditure Committee (presented 9 September 1999)

International Treaty Examination of the Convention on the Conservation of Migratory Species of Wild Animals; Transport and Environment Committee (presented 13 September 1999)

International Treaty Examination of Protocols relating to the Convention on Civil Aviation; Transport and Environment Committee (presented 13 September 1999)

**2000** [16: 16, 0]

International Treaty Examination of Amendment to the Convention of the International Maritime Organisation (adopted on 7 November 1991 by resolution A 724 (17) of the Assembly of the Organisation), and the Amendments to Articles 16, 17, and 19 of the Convention on the International Maritime Organisation (adopted on 4 November 1993 by resolution A 735 (18) of the Assembly of the Organisation); Foreign Affairs, Defence and Trade Committee (presented 11 February 2000)

International Treaty Examination of the Amendments to the Treaty on Fisheries between the Government of Certain Pacific Island States and the Government of the United States; Primary Production Committee (presented 31 March 2000)

International Treaty Examination of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) Optional Protocol; Foreign Affairs, Defence and Trade Committee (presented 5 May 2000)

International Treaty Examination of the Statute of Rome of the International Criminal Court; Foreign Affairs, Defence and Trade Committee (5 May 2000):

First, the Statute only applies to nationals of parties to the Statute, which means that those accused of committing crimes as defined by the Statute may be able to evade the Court's jurisdiction until ratification is widespread. Second, the definition of "nationality" in the Statute may allow those with dual or multiple nationality to escape the Court's jurisdiction, although this may be offset by jurisdiction established on the basis of the place of the crime. Third, ratifying the Statute would require creating domestic offences that would be extra-territorial in application, which would be an unusual, although not unprecedented, step.

International Treaty Examination of the Convention for the Unification of Certain Rules for International Carriage by Air (Montreal Convention 1999); Transport and Industrial Relations (presented 25 May 2000):

The Committee noted that the Treaty has implications for the Cook Islands, Niue and Tokelau (which are not articulated in the report nor the attached National Interest Analysis).

International Treaty Examination of the 1988 Protocol relating to the International Convention for Safety of Life at Sea and the 1988 Protocol relating to the International Convention on Load Lines; Transport and Industrial Relations Committee (presented 25 May 2000)

International Treaty Examination of the Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour; Social Services Committee (presented 31 May 2000)

International Treaty Examination of the Amendments to the International Maritime Satellite Organisation Convention and Operation Agreement; Transport and Industrial Relations Committee (presented 1 June 2000):

The Committee recommended that the Government assure itself that Global Maritime Distress and Safety Service will not be a victim of the corporatisation of the International Maritime Satellite Organisation for as long as the Safety Service remains essential to its users in the New Zealand and Pacific region.

The Government responded, indicating that it had assured itself that the Safety Service will be maintained under the new structure.

International Treaty Examination of the International Convention on Salvage 1989, Foreign Affairs; Defence and Trade (presented 16 June 2000)

International Treaty Examination of the Protocol of Amendment to the International Convention on the Simplification and Harmonization of Customs Procedures; Foreign Affairs, Defence, and Trade Committee (presented 16 June 2000)

International Treaty Examination of the 1907 Hague Convention for the Pacific Settlement of International Disputes; Foreign Affairs, Defence and Trade Committee (presented 30 June 2000):

The Committee noted that a Convention drafted in 1907 may not be adequate to cope with the types of international conflict occurring nearly a hundred years later. If New Zealand becomes a party to the Convention, the Government should encourage the Permanent Court of Arbitration (PCA) to review and revise its instruments, where possible, to make the PCA more pertinent to modern conflict and dispute.

The Government responded, indicating that after ratifying the Convention, and through New Zealand's participation in the PCA Administrative Council, the Government proposed to explore with others, including the PCA Secretariat, the effectiveness of the PCA's instruments and machinery in contemporary dispute settlement, with a view, where possible and appropriate, to making the PCA more pertinent to modern conflict and dispute.

International Treaty Examination of the Protocol of Amendment to the United Nations Convention to Combat Desertification in those Countries Experiencing Drought and/or Desertification, particularly in Africa (CCD); Foreign Affairs, Defence and Trade Committee (presented 4 August 2000)

International Treaty Examination of the Convention to Ban the Importation into Forum Island Countries (FICs) of Hazardous and Radioactive Wastes and to Control the Transboundary Movement of Hazardous Wastes within the South Pacific Region, 1995 (the Waigani Convention); Transport and Industrial Relations Committee (presented 21 September 2000)

International Treaty Examination of the Closer Economic Partnership Agreement with Singapore; Foreign Affairs, Defence and Trade Committee (presented 19 October 2000) [bilateral agreement; public submissions; minority of Committee opposed New Zealand's entry into the Agreement (Greens)]:

First, the public submissions expressed arguments for and against the Agreement (which the report summarises). Second, the public submissions suggested improvements to the procedure for examining treaties (longer period for public submissions, more substantive analysis in the National Interest Analysis, consultation during the treaty negotiation stage, and changing the Standing Orders to catch more bilateral agreements).

International Treaty Examination of the Convention for the Suppression of Terrorist Bombing; Foreign Affairs, Defence and Trade Committee (presented 1 December 2000)

International Treaty Examination of the Convention for the Suppression of the Financing of Terrorism; Foreign Affairs, Defence and Trade Committee (presented 1 December 2000)

**2001** [15: 15, 0]

International Treaty Examination of the Amendment to the Montreal Protocol on Substances that Deplete the Ozone Layer; Local Government and Environment Committee (presented 25 January 2001)

International Treaty Examination of the Hague Conference on Private International Law; Foreign Affairs, Defence and Trade Committee (presented 15 June 2001)

International Treaty Examination of the Labour Statistics Convention; Foreign Affairs, Defence and Trade Committee (presented 29 June 2001)

International Treaty Examination of the Agreement on Social Security between the Government of New Zealand and the Government of Australia; Foreign Affairs, Defence and Trade Committee (presented 3 August 2001)

International Treaty Examination of the ILO Convention 63 Concerning Statistics of Wages and Hours of Work, 1938; Foreign Affairs, Defence and Trade Committee (presented 3 August 2001)

International Treaty Examination of the Amendments to the Acts of the Universal Postal Union (UPU) comprising the UPU Constitution and the UPU Convention (adopted by the UPU Assembly on 15 September 1999 at its Beijing Congress); Foreign Affairs, Defence and Trade Committee (presented 17 August 2001)

International Treaty Examination of the Agreement Concerning the Adoption of the Uniform Technical Prescriptions for Wheeled Vehicles, Equipment, and Parts which can be Fitted and /or be used on Wheeled Vehicles and Conditions for Reciprocal Recognition of Approvals Granted on the Basis of these Prescriptions, done at Geneva on 20 March 1958 and most recently on 16 October 1995 (“the 1958 Agreement”); Foreign Affairs, Defence and Trade Committee (presented 17 August 2001) [combined with following report]

International Treaty Examination of the Agreement Concerning the Establishment of Global Technical Regulations for Wheeled Vehicles, Equipment, and Parts which can be Fitted and/or used on Wheeled Vehicles, done at Geneva on 25 June 1998 (“the 1998 Agreement”); Foreign Affairs, Defence and Trade Committee (presented 17 August 2001) [combined with preceding report]

International Treaty Examination of the Agreement on the Conservation of Albatrosses and Petrels; Foreign Affairs, Defence and Trade Committee (10 September 2001)

International Treaty Examination of the Pacific Agreement on Closer Economic Relations (PACER); Foreign Affairs, Defence and Trade Committee (presented 5 October 2001)

International Treaty Examination of the United Nations Convention on the Rights of the Child Optional Protocol on the Involvement of Children in Armed Conflict; Foreign Affairs, Defence and Trade Committee (presented 18 October 2001)

International Treaty Examination of the Agreement Establishing the Pacific Islands Secretariat; Foreign Affairs, Defence and Trade (presented 19 October 2001)



International Treaty Examination of the Final Acts of the International Telecommunications Union Plenipotentiary Conference (1998); Foreign Affairs, Defence and Trade Committee (presented 16 November 2001)

International Treaty Examination of the Multilateral Agreement on the Liberalization of International Air Transportation and the Protocol to the Multilateral Agreement on the Liberalization of International Air Transportation; Transport and Industrial Relations Committee (presented 10 December 2001)

International Treaty Examination of the Amendments to the Agreement Relating to the International Telecommunications Satellite Organisation; Foreign Affairs, Defence and Trade Committee (presented 14 December 2001)

**2002** [10: 10, 0]

International Treaty Examination of the Stockholm Convention on Persistent Organic Pollutants; Foreign Affairs, Defence and Trade Committee (presented 22 February 2002)

International Treaty Examination of the Rotterdam Convention on Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade; Foreign Affairs, Defence and Trade Committee (presented 22 February 2002)

International Treaty Examination of the Convention on Marking of Plastic Explosives for the Purpose of Identification; Foreign Affairs, Defence and Trade Committee (presented 22 February 2002)

International Treaty Examination of the Optional Protocol to the United Nations Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography; Foreign Affairs, Defence and Trade Committee (presented 22 February 2002)

International Treaty Examination of the Convention on the Physical Protection of Nuclear Material; Foreign Affairs, Defence and Trade Committee (presented 22 February 2002)

International Treaty Examination of the United Nations Convention Against Transnational Organised Crime; the Protocol to Prevent, Suppress and Punish Trafficking of Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organised Crime; and the Protocol Against the Smuggling of Migrants by Land, Sea, and Air, Supplementing the United Nations Convention Against Transnational Organised Crime; Foreign Affairs, Defence and Trade Committee (presented 22 February 2002):

The Committee noted an apparent conundrum of an overlap of offences in the Immigration Act 1987 and the proposed changes to the Crimes Act 1961, which the Government should address in the anticipated Transnational Organised Crime Bill.

The Government responded, indicating that it had taken the Committee's recommendation into account in the drafting of the offences in the Transnational Organised Crime Bill.

International Treaty Examination of the Amendments to the Agreement between the Government of Australia and the Government of New Zealand Establishing a System for the Development of Joint Food Standards; Foreign Affairs, Defence and Trade Committee (5 May 2002) [bilateral agreement; public submissions; minority of Committee opposed several of the proposed amendments (Greens)]:

First, several public submissions expressed concerns about the amendments to the Agreement, which the report countered. Second, the majority of the Committee made the following recommendations:

- (a) the Minister of Health should remain the lead minister who has responsibility for food safety; and
- (b) the Minister of Health should ensure that the three New Zealand nominees for the board are selected in a way that preserves a balance of expertise on the board; and
- (c) the Government should take steps to promote greater awareness of the Agreement, the effects of the amendments, and the relationship between Australia and New Zealand regarding the setting of joint food standards as provided for in the Agreement and the amendments to it, and advise the Committee of the progress made in this regard.

International Treaty Examination of the Kyoto Protocol to the United Nations Framework Convention on Climate Change; Foreign Affairs, Defence and Trade Committee (presented 16 May 2002) [public submissions; minority of Committee opposed New Zealand's early entry into the Protocol (National)]:<sup>92</sup>

First, the public submissions expressed arguments for and against the Protocol (which the report summarises). Second, the majority of the Committee supported early ratification of the Protocol.

International Treaty Examination of the 1989 International Convention Against the Recruitment, Use, Financing and Training of Mercenaries; Foreign Affairs, Defence and Trade Committee (presented 17 May 2002)

92 This Committee also considered the Climate Change Response Bill, which implemented the Protocol. It produced the report that led to the systematic online publication of BORA vets. See Part III.B.3.

International Treaty Examination of the Agreement on the Privileges and Immunities of the International Court; Foreign Affairs, Defence and Trade Committee (presented 31 October 2002)

**2003** [13: 13, 0]

International Treaty Examination of the International Labour Organisation Convention 98 Concerning the Application of the Principles of the Right to Organise and to Bargain Collectively; Foreign Affairs, Defence and Trade Committee (presented 28 March 2003):

The Labour, Progressive and Green members of the Committee supported ratification of the Convention because existing New Zealand law, policy and practice are consistent with it. The Employment Contracts Act 2000 has an objective to promote observance in New Zealand of the principles underlining the Convention. The National, United Future and New Zealand First members do not support ratification of the Convention because it would reinforce the principles of the Employment Contract Act 2000, which gives unions a monopoly with respect to collective bargaining and constrains the rights and freedoms of individual workers.

International Treaty Examination of the Amendments to the Annex to the International Convention for the Safety of Life at Sea 1974; Foreign Affairs, Defence and Trade Committee (presented 16 May 2003)

International Treaty Examination of the Agreement between the Government of New Zealand and the Government of the French Republic Concerning the Delimitation of the Maritime Boundaries between Wallis and Futuna and Tokelau; Foreign Affairs, Defence and Trade Committee (presented 13 June 2003)

International Treaty Examination of the Optional Protocol to the Vienna Convention on Consular Relations, Concerning Acquisition of Nationality, 1963; Foreign Affairs, Defence and Trade Committee (presented 13 June 2003)

International Treaty Examination of the Optional Protocol to the Vienna Convention on Diplomatic Relations, Concerning Acquisition of Nationality, 1961; Foreign Affairs, Defence and Trade Committee (presented 13 June 2003)

International Treaty Examination of the Convention Establishing an International Organisation of Legal Metrology; Foreign Affairs, Defence and Trade Committee (presented 25 July 2003)

International Treaty Examination of the Removal of Reservations on Paid Parental Leave to the Convention on the Elimination of All Forms of Discrimination Against Women; Foreign Affairs, Defence and Trade Committee (presented 4 August 2003)

International Treaty Examination of the Removal of Reservations on Paid Parental Leave to the International Covenant on Economic, Social and Cultural Rights; Foreign Affairs, Defence and Trade Committee (presented 4 August 2003)

International Treaty Examination of the Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean; Foreign Affairs, Defence and Trade Committee (presented 15 August 2003)

International Treaty Examination of the Agreement between Solomon Islands, Australia, New Zealand, Fiji, Papua New Guinea, Samoa, and Tonga Concerning the Operations and Status of the Police and Armed Forces and Other Personnel Deployed to Solomon Islands to Assist in the Restoration of Law and Order and Security; Foreign Affairs, Defence and Trade Committee (presented 29 August 2003)

International Treaty Examination of the Agreement Establishing the International Organisation of Vine and Wine; Foreign Affairs, Defence and Trade Committee (presented 7 November 2003)

International Treaty Examination of the Termination of the Agreement for the Creation in Paris of an International Wine Office; Foreign Affairs, Defence and Trade Committee (presented 7 November 2003)

International Treaty Examination of the World Health Organization Framework Convention on Tobacco Control; Foreign Affairs, Defence and Trade Committee (presented 11 December 2003) [1 submission]:

The Committee noted that it received a submission that ratification of the Convention could be problematic with respect to the trans-Tasman mutual recognition agreement should Australia not ratify the Convention (or fail to ratify it) by the time its packaging and labelling requirements take effect in New Zealand. The Committee answered the submission by noting that the Trans-Tasman Mutual Recognition Act 1997 contains provisions that can be used to exclude Australian tobacco products that do not comply with the packaging and labelling requirements of the Convention.

#### **2004** [13: 6, 7]

International Treaty Examination of the Taxation Agreements with the Republic of South Africa, the United Arab Emirates, the Republic of Chile, the United Kingdom of Great Britain and Northern Ireland, the Republic of the Philippines, and the Kingdom of the Netherlands; Finance and Expenditure Committee (presented 27 February 2004) [covers six similar agreements]

International Treaty Examination of the 1961 Convention on the Reduction of Statelessness; Foreign Affairs, Defence and Trade Committee (presented 8 March 2004):

The Committee noted that New Zealand's citizenship laws already comply with most of the provisions of the Convention. Only two minor amendments to the Citizenship Act 1977 are required to enable New Zealand to comply with all of the provisions. The first amendment would prevent the withdrawal of citizenship procured by mistake if statelessness would result. The second amendment would allow a person, who would otherwise be stateless, to acquire citizenship if at least one parent is a New Zealander by descent.

International Treaty Examination of the Agreement between the Government of New Zealand and the Government of Australia for the Establishment of a Joint Scheme for the Regulation of Therapeutic Products; Health Committee (presented 18 June 2004) [16 submissions, 7 heard]:

The Committee recommended that New Zealand not enter into the Agreement unless the required implementing legislation resolved a host of constitutional, procedural and substantive issues that the Committee raised.

The Government responded by addressing each issue individually. It reached the conclusion that the Agreement dealt with most of the Committee's concerns, particularly when considered in the context of New Zealand's constitutional and administrative arrangements. The Government undertook to take into account the following recommendations when developing the implementing legislation:

- (a) giving equal recourse to New Zealanders and Australians under the proposed complaints system; and
- (b) providing that the Official Information Act 1982, the Privacy Act 1993, the Protected Disclosures Act 2000, the Public Audit Act 2001 and other relevant accountability legislation apply to the proposed agency in no less a manner than they do in New Zealand; and
- (c) providing for automatic disallowance of rules and orders as well as disallowance by resolution of the House of Representatives.

International Treaty Examination of the UNESCO Convention on the Means of Prohibiting and Preventing Illicit Import, Export and Transfer of Ownership of Cultural Property (1970) and Organisation for the Unification of International Law Convention on Stolen or Illegally Exported Cultural Objects (1995); Government Administration Committee (presented 27 August 2004):<sup>93</sup>

93 The report also records a number of other issues that the Committee raised but concluded were adequately addressed by the answers it received from the relevant departmental advisers.

The Committee stated that art 4 of the UNIDROIT Convention, which requires claimants of cultural objects to pay compensation to innocent purchasers for the loss of their property, may discourage potential claimants from seeking the return of the cultural object on the grounds that their efforts will ultimately go unrewarded.

International Treaty Examination of the Protocol Against the Illicit Manufacturing of and Trafficking in Firearms, their Parts, Components and Ammunition (2002), supplementing the United Nations Convention against Transnational Organised Crime (2000); Law and Order Committee (presented 2 September 2004):

The Committee split evenly. The four Labour members supported accession to the Protocol, particularly as it complemented work undertaken with respect to the Pacific (in 2003 the Pacific Forum Leaders endorsed the Draft Weapons Control Bill as a model for weapons control legislation). The two National, one New Zealand First and one United Future members opposed it on the grounds that it was unnecessary and would result in significant compliance costs. The Committee was unable to reach agreement on whether or not New Zealand should enter into the Protocol.

International Treaty Examination of the Amendment of the Agreement Establishing the European Bank of Reconstruction and Development (1990); Foreign Affairs, Defence and Trade Committee (presented 28 October 2004)

International Treaty Examination of the Treaty between the Government of New Zealand and the Government of Australia establishing certain Exclusive Economic Zone boundaries and continental shelf boundaries (2004); Foreign Affairs, Defence and Trade Committee (presented 28 October 2004)

International Treaty Examination of the Cartagena Protocol on Biosafety (2000); Foreign Affairs, Defence and Trade Committee (presented 12 November 2004)

## **2005** [11: 9, 2]

Agreement on Consular Relations between New Zealand and the People's Republic of China (2003); Foreign Affairs, Defence and Trade Committee (presented 4 February 2005)

International Treaty Examination of the Mutual Acceptance Agreement on Oenological Practices (2001); Primary Production Committee (presented 11 February 2005)

Special Report on National Interest Analysis for the Cartagena Protocol on Biosafety (1992); Foreign Affairs, Defence and Trade Committee (presented 7 March 2005):

After the Primary Production Committee had produced its report on the Protocol (no matters drawn to the attention of the House), it and the Foreign Affairs, Defence and Trade Committee became aware of Cabinet

policy papers that showed that Cabinet had received mixed advice from the seven departments tendering advice on the Protocol. Two departments recommended ratification, four departments recommended deferring ratification and one recommended not ratifying the Protocol. The Foreign Affairs, Defence and Trade Committee drew this matter to the attention of the House, stating that the mixed advice should have been included in the national interest analysis presented to the House with the Protocol, as greater attention would have been paid to the Protocol had this been known. It undertook to ask the Standing Orders Committee to consider what changes, if any, should be made to the Standing Orders relating to the treaty-making process to address this issue. It did not comment on the adequacy of the initial report on the Protocol.

International Treaty Examination of the New Zealand/Thailand Closer Economic Partnership Agreement (2004); Foreign Affairs, Defence and Trade Committee (presented 29 April 2005) [7 submissions, 1 heard (5 in support)]:

The majority of the Committee (Labour, United Future, and Progressive) endorsed the Agreement, but noted the concern that the Agreement does not include services (a concern that was lessened by a binding commitment in the Agreement to enter into negotiations on trade in services within three years of the Agreement entering into force). The minority view was expressed in three separate opinions. National supported the Agreement, but pointed out the following concerns: a clause reserving the right to accord more favourable treatment to Māori, a date for phasing out tariffs that is later than the date favoured by APEC, the non-inclusion of services, and an exception for aspects of support for creative arts of national value. New Zealand First indicated that the Agreement might have serious consequences for the New Zealand workforce, particularly in relation to the clothing, carpet, textile products, whiteware, plasterboard, steel and textile industries. The Greens opposed the Agreement on the grounds that it favours primary production and would undermine efforts to diversify the New Zealand economy, and that its investment provisions appear to give foreign companies more rights than New Zealand investors. Both New Zealand First and the Greens noted that New Zealand signed the Agreement before the Committee had finished its deliberations.

International Treaty Examination of the Accession to the Treaty of Amity and Cooperation in South East Asia (1976); Foreign Affairs, Defence and Trade Committee (presented 10 June 2005):

The Committee noted that accession to the treaty allows New Zealand to further consolidate its position in Southeast Asia, but would not compromise New Zealand's ability to speak out on human rights issues or to pursue New Zealand's rights and obligations under international treaties.

International Treaty Examination of the Agreement to promote compliance with international conservation and management measures by fishing vessels on the high seas (1995); Primary Production Committee (presented 10 June 2005)

International Treaty Examination of the Final Acts of the Plenipotentiary Conference (Marrakesh, 2002) and the Final Acts of the World Radiocommunications Conference (Geneva, 2003), amending the Constitution and the Convention of the International Telecommunications Union (1992), as amended by the Plenipotentiary Conference (Kyoto, 1994) and by the Plenipotentiary Conference (Minneapolis, 1998); Commerce Committee (presented 10 June 2005)

International Treaty Examination of the amendment to provide for cargo-only accession to the Multilateral Agreement on the Liberalisation of International Air Transportation (2001); Transport and Industrial Relations Committee (13 June 2005)

International Treaty Examination of the Agreement between New Zealand and the Republic of Poland for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income; Finance and Expenditure Committee (presented 27 July 2005)

International Treaty Examination of the International Convention against Doping in Sports; Government Administration Committee (presented 9 December 2005)

International Treaty Examination of the Optional Protocol to the Convention against Torture for other Cruel, Inhuman or Degrading Treatment or Punishment; Foreign Affairs, Defence and Trade Committee (presented 9 December 2005)

## **2006** [20: 13, 7]

International Treaty Examination of the Trans-Pacific Strategic Economic Partnership Agreement; Foreign Affairs, Defence and Trade Committee (presented 13 February 2006) [3 submissions, 3 heard]:

The Committee noted that one submission supported the Agreement, but voiced concerns about process and substance, and that two submissions opposed the Agreement. The areas of concern included the exclusion of creative industries, the limitation of future policy options regarding global trade and investment liberalisation, the negative list approach regarding national treatment, market access, and most favoured nation obligations, and the worsening of balance of trade with Singapore since entering into similar agreement with Singapore (New Zealand–Singapore Closer Economic Partnership Agreement (2001)). The majority of the Committee came to the view that these concerns were adequately addressed. The Green member recommended that New Zealand not enter to the Agreement.



International Treaty Examination of the Agreement between the Kingdom of Spain and the Government of New Zealand for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income; Finance and Expenditure Committee (presented 23 February 2006)

International Treaty Examination of the Protocol Amending the Agreement between the Government of New Zealand and the Government of Australia for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income; Finance and Expenditure Committee (presented 23 February 2006)

International Treaty Examination of the Third Protocol to the Agreement between the Government of the Republic of Singapore and the Government of New Zealand for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Income on Taxes; Finance and Expenditure Committee (presented 23 February 2006)

International Treaty Examination of the Amendments to the Statute of the Hague Conference on Private International Law; Foreign Affairs, Defence and Trade Committee (presented 24 March 2006):

The Committee noted that monitoring regional economic integration organisations may be necessary to prevent potential abuse by non-member states. It also noted that future amendments should be monitored as member states opposing such an amendment could be bound by it if it is supported by a substantial majority of member states.

International Treaty Examination of the New Zealand–People's Republic of China Treaty on Mutual Legal Assistance in Criminal Matters; Law and Order Committee (presented 18 May 2006)

International Treaty Examination of the International Convention for the Suppression of Acts of Nuclear Terrorism; Foreign Affairs, Defence and Trade Committee (presented 21 July 2006)

International Treaty Examination of the Amendment to the Convention on the Physical Protection of Nuclear Material; Foreign Affairs, Defence and Trade Committee (presented 21 July 2006)

International Treaty Examination of the Constitution of the International Organisation for Migration; Foreign Affairs, Defence and Trade Committee (presented 24 August 2006)

International Treaty Examination of the amendments to the Treaty on Fisheries between the Governments of certain Pacific Island States and the Government of the United States of America 1987, and the amendments to the Agreement among Pacific Island States concerning the implementation and administration of the Treaty on Fisheries between the Governments of certain Pacific Island States and the United States of America 1992; Primary Production Committee (presented 14 September 2006)

International Treaty Examination of the Exchange of Letters constituting an agreement to amend Article 3 of the Australia/New Zealand Closer Economic Relationship Trade Agreement; Foreign Affairs and Trade Committee (presented 27 October 2006)

International Treaty Examination of the Agreement between New Zealand and the Republic of Austria with respect to Taxes on Income and Capital; Finance and Expenditure Committee (presented 9 November 2006)

International Treaty Examination of the Convention establishing the Multilateral Investment Guarantee Agency; Finance and Expenditure Committee (presented 9 November 2006)

International Treaty Examination of the Singapore Treaty on the Law of Trademarks; Foreign Affairs, Defence and Trade Committee (presented 16 November 2006)

International Treaty Examination of the Accession to the Nice Agreement concerning the international classification of goods and services for the purposes of the registration of Marks; Foreign Affairs, Defence and Trade Committee (presented 16 November 2006)

International Treaty Examination of the Protocol relating to the Madrid Agreement concerning the International Registration of Marks; Foreign Affairs, Defence and Trade Committee (presented 16 November 2006)

International Treaty Examination on the Agreement establishing the Pacific Island Forum; Foreign Affairs, Defence and Trade (presented 16 November 2006)

International Treaty Examination of the Optional Protocol to the Convention on the Safety of United Nations and Associated Personnel; Foreign Affairs, Defence and Trade Committee (presented 16 November 2006)

International Treaty Examination of the Agreement between the Government of New Zealand and the Government of the United Mexican States for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income; Finance and Expenditure Committee (presented 6 December 2006)

## **2007** [11: 9, 2]

International Treaty Examination of the World Wine Trade Group Agreement on Requirements for Wine Labelling; Finance and Expenditure Committee (presented 16 March 2007)

International Treaty Examination of the Protocol additional to the Geneva Conventions of 12 August 1949, and relating to the Adoption of an Additional Distinctive Emblem; Foreign Affairs, Defence and Trade (presented 10 April 2007)

International Treaty Examination of Removal of Reservation to Convention on the Elimination of All Forms of Discrimination against Women; Foreign Affairs, Defence and Trade Committee (presented 17 May 2007)

International Treaty Examination of the International Labour Organisation Convention concerning Occupational Safety and Health and the Working Environment (No 155); Transport and Industrial Relations Committee (presented 18 May 2007)

International Treaty Examination of the Protocol on Explosive Remnants of War to the 1980 Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons which may be deemed to be Excessively Injurious or to have Indiscriminate Effects; Foreign Affairs, Defence and Trade (presented 25 May 2007):

The Committee acknowledged and expressed support for New Zealand's commitment to strengthening humanitarian law through the Protocol to the 1980 Convention.

International Treaty Examination of Amendment to the 1980 Convention on the Prohibition or Restrictions on the Use of Certain Conventional Weapons which may be deemed to be Excessively Injurious or to have Indiscriminate Effects; Foreign Affairs, Defence and Trade Committee (presented 25 May 2007):

The Committee acknowledged and expressed support for New Zealand's commitment to strengthening humanitarian law through the amendment to the 1980 Convention.

International Treaty Examination of the International Health Regulations 2005; Health Committee (presented 11 June 2007):

The Committee expressed concern that Cabinet had agreed that New Zealand would be bound in full by the International Health Regulations 2005 from 15 December 2006, which, in effect, denied the House of Representatives an opportunity to consider the Regulations in accordance with the established treaty examination process (as set out in Standing Orders 387 to 390 (as they then stood)). It recommended that the Ministry of Foreign Affairs and Trade:

- (a) remind all departments of the requirement to comply with Standing Order 387 without exception regardless of the process used to ratify, accede to, accept, or approve treaties (whether they be new treaties or revisions of existing treaties), including tacit acceptance; and
- (b) establish a procedure to ensure that all departments are aware of and understand Standing Orders 387 to 390.

The Government responded by accepting that the late tabling of the Regulations appeared to be inconsistent with the established treaty examination process.<sup>94</sup> However, it reached the view that this unfortunate event was the result of unusual circumstances rather than a departmental failure to comply with Standing Orders 387 to 390. The Government also took the view that Standing Order 387 was intended to apply only to positive treaty actions and not to treaty actions subject to tacit acceptance, as to conclude otherwise would require submitting a large number of minor and technical treaty amendments to the House for examination, which would create a significant administrative burden for the relevant select committees and departments without contributing substantially to the underlying purpose of the treaty examination process. Nevertheless, the Government took the view that treaties subject to tacit acceptance should be submitted to the treaty examination process if the treaty action involves a matter that is neither minor nor technical in nature. The Government concluded that the Ministry of Foreign Affairs and Trade:

- (a) should not remind departments to apply Standing Order 387 to all treaty actions because Standing Order 387 does not apply to all treaty actions; and
- (b) has an effective procedure in place to ensure that departments are aware of and understand Standing Orders 387 to 390.

International Treaty Examination of the United Nations Educational, Scientific and Cultural Organisation Convention on the Protection and Promotion of the Diversity of Cultural Expressions; Foreign Affairs, Defence and Trade Committee (presented 10 August 2007)

International Treaty Examination of the Convention on the Recognition of Qualification Concerning Higher Education in the European Region (1997); Education and Science Committee (presented 11 October 2007):

The Committee stated that it believed that acceding to this Convention would align New Zealand qualifications with those of other signatories and ensure that these qualifications are better recognised and understood, which it considered to be very positive for New Zealand.

International Treaty Examination of the Protocol between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of New Zealand to Amend the Convention for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and on Capital Gains; Finance and Expenditure Committee (presented 12 December 2007)

94 Government Response to Report of the Health Committee on International Treaty Examination of the International Health Regulations 2005, Appendix to the Journal of the House of Representatives, J1 (2007).

International Treaty Examination of the Agreement between the Czech Republic and New Zealand for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income; Finance and Expenditure Committee (presented 12 December 2007)

**2008** [12: 10, 2]

International Treaty Examination on Annex VI to the Protocol on Environmental Protection to the Antarctic Treaty on Liability Arising from Environmental Emergencies; Foreign Affairs, Defence and Trade Committee (presented 22 February 2008)

International Treaty Examination of the Convention for the Protection of Cultural Property in the Event of Armed Conflict (UNESCO, The Hague, 1954) and the First (1954) and Second (1999) Protocols to the Convention for the Protection of Cultural Property in the Event of Armed Conflict 1954; Government Administration Committee (presented 21 May 2008)

International Treaty Examination of the Agreement between the Government of New Zealand and the Government of the Kingdom of the Netherlands in respect of the Netherlands Antilles for the Exchange of Information with respect to Taxes; Finance and Expenditure Committee (presented 20 June 2008)

Disability (United Nations Convention on the Rights of Persons with Disabilities) Bill (232-1) and International Treaty Examination on the Rights of Persons with Disabilities; Justice and Electoral Committee (presented 7 August 2008):

The Committee supported passage of the Bill and ratification of the Convention as soon as practicable. It noted that New Zealand does not intend to become a party to the Optional Protocol to the Convention, a position that it plans to re-evaluate once the United Nations has had an opportunity to consider the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, which covers similar ground.

International Treaty Examination of the Protocol of 1996 to Amend the Convention on the Limitation of Liability for Maritime Claims (1976); Transport and Industrial Relations Committee (presented 29 August 2008)

International Treaty Examination of the Protocol Relating to Intervention on the High Seas in Cases of Pollution by Substances other than Oil (1973); Transport and Industrial Relations Committee (presented 29 August 2008)

International Treaty Examination of the International Convention on Civil Liability for Bunker Oil Pollution Damage (2001); Transport and Industrial Relations Committee (presented 29 August 2008)

International Treaty Examination of the Protocol Amending the Agreement on Trade Related Aspects of Intellectual Property Rights (2005); Foreign Affairs, Defence and Trade Committee (presented 1 September 2008)

International Treaty Examination of the International Tropical Timber Agreement (2006); Foreign Affairs, Defence and Trade Committee (presented 1 September 2008) [two submissions; two heard]:

The Committee chose to draw the attention of the House of Representatives to the importance of the Agreement (which is a successor agreement to the International Tropical Timber Agreement (1994)), and to express its support for New Zealand becoming party to the Agreement, as doing so would continue its influential and beneficial role as a member of the International Tropical Timber Organisation.

International Treaty Examination of the International Convention for the Control and Management of Ships' Ballast Water and Sediments (2004); Primary Production Committee (presented 3 September 2008)

International Treaty Examination of the Agreement between the Government of Australia and the Government of New Zealand on Trans-Tasman Court Proceedings and Regulatory Enforcement (2008); Law and Order Committee (presented 4 September 2008):

While pleased that the Agreement will allow more trans-Tasman cooperation in court proceedings and regulatory enforcement, the Committee indicated that a similar agreement needs to be established to cover fines and compensation for victims. Concerned by the possibility that people may move to Australia to avoid paying fines or compensation to victims from infringements or crimes committed in New Zealand, the Committee expressed its support for the establishment of a trans-Tasman working group to investigate this matter.

International Treaty Examination of the Amendments to the Convention Establishing a Customs Co-Operation Council (1950); Foreign Affairs, Defence and Trade Committee (presented 30 September 2008)

## **2009** [8: 6, 2]

International Treaty Examination of the Revised Constitution of the Asia-Pacific Telecommunity (2002); Commerce Committee (presented 16 March 2009)

International Treaty Examination of the Final Acts of the Plenipotentiary Conference, Antalya 2006 (International Telecommunications Union) and the Final Acts of the World Radiocommunication Conference, Geneva (2007); Commerce Committee (presented 16 March 2009)

International Treaty Examination of the Agreement Establishing the ASEAN-Australia-New Zealand Free Trade Area (2009); the Exchange of Letters constituting an Agreement between the Government of New Zealand and the Government of Australia on the Application of the Agreement Establishing the ASEAN-Australia-New Zealand Free Trade Area to the Australia-New Zealand Closer Economic Relations Trade Agreement and associated instruments

(2009); the Memorandum of Agreement on Environmental Cooperation between the Government of New Zealand and the Government of the Republic of the Philippines (2008); and the Memorandum of Agreement on Labour Cooperation between the Government of New Zealand and the Government of the Republic of the Philippines (2008); Foreign Affairs, Defence and Trade Committee (presented 8 April 2009) [eight submissions; one heard]:

The Committee, owing to different views among its members regarding the costs of creating an ASEAN-Australia-New Zealand Free Trade Area, chose to draw the various costs and benefits to the attention of the House of Representatives, with the costs set out separately under the heading "Green Party minority view".

International Treaty Examination of the Protocol Amending the Convention between New Zealand and the United States of America for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income (2009); Finance and Expenditure Committee (presented 30 April 2009):

The Committee, noting that the Inland Revenue Department was unable to quantify the Protocol's economic benefits and some of its cost components, encouraged the Government to monitor closely its impact on New Zealand businesses. To assist with future treaty examinations, it recommended that departments should attempt to assess the costs and benefits of treaties in quantitative as well as qualitative terms and, if a quantitative assessment is difficult, to set out the methodology and basis for estimates.

International Treaty Examination of the Diplomatic Conference for the Adoption of a Convention on Cluster Munitions (2008); Foreign Affairs, Defence and Trade Committee (presented 15 May 2009)

International Treaty Examination of the Protocol of 2005 to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation and the Protocol of 2005 to the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf; Foreign Affairs, Defence and Trade Committee (presented 27 July 2009) [one submission]:

The Committee chose to draw the attention of the House of Representatives to its decision to unanimously support continuing movement towards ratification of the protocols.

International Treaty Examination of the Convention between New Zealand and Australia for the Avoidance of Double Taxation with Respect to Taxes on Income and Fringe Benefits and the Prevention of Fiscal Evasion; Finance and Expenditure Committee (presented 10 December 2009):

The Committee noted that the Convention will replace the earlier agreement on double taxation with Australia and outlined its purpose.

International Treaty Examination of the New Zealand–Malaysia Free Trade Agreement (including annexes volumes 1 and 2), the New Zealand–Malaysia Agreement on Environmental Cooperation, the New Zealand–Malaysia Agreement on Labour Cooperation, and the Exchange of Letters constituting an Agreement between the Government of New Zealand and the Government of Malaysia on the treatment of Alcoholic Beverages in the New Zealand–Malaysia Free Trade Agreement; Foreign Affairs, Defence and Trade Committee (presented 17 December 2009):

The Committee canvassed the benefits of the Agreement under the headings of tariffs, education, and environmental and labour cooperation. The Committee concluded that entering into the Agreement would be in New Zealand's national interest on the grounds that it would benefit New Zealand's economic performance.

**2010** [30: 7, 23]

International Treaty Examination of the Agreement between the Government of New Zealand and the Government of the United States of America on Science and Technology Cooperation Contributing to Domestic and External Security Capabilities; Foreign Affairs, Defence and Trade Committee (presented 25 March 2010):

The Committee canvassed the advantages and disadvantages of the Agreement, and formed the view that the Agreement would contribute to New Zealand's broader political and security relationship with the United States. However, a minority expressed the view that the Agreement would increase the amount of classified research done in New Zealand and would allow the United States to unreasonably restrain the transfer of intellectual property that researchers generate in New Zealand to a third party.

International Treaty Examination of the Agreement between the Government of New Zealand and the Government of the Republic of Singapore for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income; Finance and Expenditure Committee (presented 1 April 2010)

International Treaty Examination of the Exchange of Letters Constituting an Amendment to the Agreement between the Government of New Zealand and the Government of Australia Concerning a Joint Food Standards System; Foreign Affairs, Defence and Trade Committee (presented 29 April 2010):

The Committee noted that it sought and received advice from the New Zealand Food Safety Authority with respect to expiry date and best-used-by date labelling. All packaged products with a shelf life of less than two years are required to be date-marked. All food that should be consumed before a certain date is required to have a use-by date. A best-before date is required in all other cases. The Committee also asked for clarification



regarding the application of “cultural grounds” in the Agreement and received advice that the inclusion of cultural grounds had been a factor in determining not to include mutton birds when the Joint Food Standards Code was established.

International Treaty Examination of the Agreement between the Government of New Zealand and the Government of the Turks and Caicos Islands on the Exchange of Information with Respect to Taxes; Finance and Expenditure Committee (presented 4 May 2010)

International Treaty Examination of the Agreement between the Government of New Zealand and the Government of Anguilla on the Exchange of Information with Respect to Taxes; Finance and Expenditure Committee (presented 4 May 2010)

International Treaty Examination of the Agreement between the Government of New Zealand and the Government of Gibraltar on the Exchange of Information with Respect to Taxes; Finance and Expenditure Committee (presented 4 May 2010)

International Treaty Examination of the Agreement between the Government of New Zealand and the Government of the British Virgin Islands for the Exchange of Information relating to Taxes and of the Agreement between the Government of New Zealand and the Government of the British Virgin Islands for the Allocation of Taxing Rights with Respect to Certain Income of Individuals; Finance and Expenditure Committee (presented 4 May 2010)

International Treaty Examination of the Agreement between the Government of New Zealand and the Government of the Cayman Islands on the Exchange of Information with Respect to Taxes and of the Agreement between the Government of New Zealand and the Government of the Cayman Islands for the Allocation of Taxing Rights with Respect to Certain Income of Individuals and to Establish a Mutual Agreement Procedure in Respect of Transfer Pricing Adjustments; Finance and Expenditure Committee (presented 4 May 2010)

International Treaty Examination of the Agreement between the Government of New Zealand and the Government of the Commonwealth of Dominica on the Exchange of Information with Respect to Taxes and Tax Matters; Finance and Expenditure Committee (presented 4 May 2010)

International Treaty Examination of the Agreement between the Government of New Zealand and the Government of the Commonwealth of the Bahamas on the Exchange of Information with Respect to Taxes; Finance and Expenditure Committee (presented 4 May 2010)

International Treaty Examination of the Agreement between the Government of New Zealand and the Government of the Cook Islands on the Exchange of Information with Respect to Taxes and of the Agreement between the

Government of New Zealand and the Government of the Cook Islands on the Allocation of Taxing Rights with Respect to Certain Income of Individuals and to Establish a Mutual Agreement Procedure in Respect of Transfer Pricing Adjustments; Finance and Expenditure Committee (presented 4 May 2010)

International Treaty Examination of the Agreement between the Government of New Zealand and the Government of the Federation of St Christopher and Nevis on the Exchange of Information with Respect to Taxes and of the Agreement between the Government of New Zealand and the Government of the Federation of St Christopher and Nevis for the Allocation of Taxing Rights with Respect to Certain Income of Individuals and to Establish a Mutual Agreement Procedure in Respect of Transfer Pricing Adjustments; Finance and Expenditure Committee (presented 4 May 2010)

International Treaty Examination of the Agreement between the Government of New Zealand and the Government of the Isle of Man on the Exchange of Information with Respect to Taxes and of the Agreement between the Government of New Zealand and the Government of the Isle of Man for the Allocation of Taxing Rights with Respect to Certain Income of Individuals and to Establish a Mutual Agreement Procedure in Respect of Transfer Pricing Adjustments; Finance and Expenditure Committee (presented 4 May 2010)

International Treaty Examination of the Agreement between the Government of New Zealand and the States of Guernsey for the Exchange of Information with Respect to Taxes and the Allocation of Taxing Rights with Respect to Certain Income of Individuals; Finance and Expenditure Committee (presented 4 May 2010)

International Treaty Examination of the Agreement between the Government of New Zealand and the Government of Jersey for the Exchange of Information with Respect to Taxes and of the Agreement between the Government of New Zealand and the Government of Jersey for the Allocation of Taxing Rights with Respect to Certain Income of Individuals and to Establish a Mutual Agreement Procedure in Respect of Transfer Pricing Adjustments; Finance and Expenditure Committee (presented 4 May 2010)

International Treaty Examination of the Agreement between the Government of New Zealand and the Government of St. Vincent and the Grenadines on the Exchange of Information with Respect to Taxes; Finance and Expenditure Committee (presented 4 May 2010)

International Treaty Examination of the New Zealand-Hong Kong, China Closer Economic Partnership Agreement, of the Memorandum of Understanding on Labour Cooperation between New Zealand and Hong Kong, China, of the New Zealand-Hong Kong, China Environment Cooperation Agreement, and of the Exchange of Letters on the Conclusion of an Investment Protocol to the New Zealand-Hong Kong, China Closer Economic Partnership Agreement; Foreign Affairs, Defence and Trade Committee (presented 6 May 2010):

The Committee canvassed the advantages and disadvantages of the Agreement, and concluded that it enhances New Zealand's economic integration into the Asian region. A minority opposed the Agreement on the grounds that it would further endanger New Zealand manufacturing, allow Hong Kong firms to take over critical parts of the New Zealand economy, including dairy farms, and require New Zealand to pass on to Hong Kong concessions New Zealand might make in agreements with other nations, even when passing on those concessions would not be advantageous to New Zealand.

International Treaty Examination of the Convention on International Interests in Mobile Equipment and of the Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Aircraft Equipment; Transport and Industrial Relations Committee (presented 20 May 2010)

International Treaty Examination of the Second Protocol amending the Convention between the Government of New Zealand and the Government of Belgium for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and the Protocol, signed at Brussels on 15 September 1981; Finance and Expenditure Committee (presented 28 May 2010)

International Treaty Examination of the Exchange of Letters Constituting an Agreement to Amend Article 3 (Rules of Origin) of the Australia New Zealand Closer Economic Relations Trade Agreement (ANZCERTA) and of the Agreement to Amend the Product Specific Rules in Annex G of the ANZCERTA; Foreign Affairs, Defence and Trade Committee (presented 29 July 2010) [one submission; one heard]:

The Committee, after setting out the requisite background and discussing the relevant rules of origin (including their relationship to the Pacific Island countries and exporters), concluded that the rules of origins (as revised) would enhance trade and economic growth opportunities for New Zealand businesses in the trans-Tasman market.

International Treaty Examination of the Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children; Foreign Affairs, Defence and Trade Committee (presented 29 July 2010) [two submissions]:

The Committee outlined the purpose of the Convention and concluded that the Government should accede to the Convention at its earliest convenience. The Committee also described the reservation that New Zealand proposed to make to the Convention under art 55 of the Convention to preserve the jurisdiction of its authorities to take measures to protect a child's property, particularly Māori land or other collectively held property.

International Treaty Examination of the Agreement between the Government of New Zealand and the Government of the Republic of Turkey for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income; Finance and Expenditure Committee (presented 20 August 2010)

International Treaty Examination of the Agreement between the Government of New Zealand and the Government of the Cook Islands concerning the Delimitation of the Maritime Boundaries between Tokelau and the Cook Islands; Foreign Affairs, Defence and Trade Committee (presented 15 October 2010)

International Treaty Examination of the Agreement between the Government of New Zealand and the Government of the Republic of the Marshall Islands on the Exchange of Information with respect to Taxes; the Agreement between the Government of New Zealand and the Government of the Republic of the Marshall Islands for the Allocation of Taxing Rights with respect to Certain Income of Individuals and to Establish a Mutual Agreement Procedure in respect of Transfer Pricing Adjustments; the Agreement between the Government of New Zealand and the Government of Samoa on the Exchange of Information with respect to Taxes; the Agreement between the Government of New Zealand and the Government of Samoa for the Allocation of Taxing Rights with respect to Certain Income of Individuals and to Establish a Mutual Agreement Procedure in respect of Transfer Pricing Adjustments; and the Agreement between the Government of New Zealand and the Government of the Republic of Vanuatu on the Exchange of Information with respect to Taxes; Foreign Affairs, Defence and Trade Committee (presented 22 October 2010) [covers five similar agreements]:

The Committee noted that tax information exchange agreements are special-purpose bilateral treaties that allow countries to exchange information to assist each other in the enforcement of tax laws on request. Since 2004, New Zealand and Australia have made concerted efforts to conclude a number of tax information exchange agreements with other Pacific jurisdictions. These agreements between New Zealand and the Marshall Islands, Samoa and Vanuatu reflect the results of this effort. The tax information exchange agreements are reciprocal, in that they allow each party to the agreements to request information from the other. They do not impose any compliance costs on taxpayers, and will not have any significant fiscal implications for New Zealand. The Committee recommended that the Executive proceed with its proposed treaty action.

International Treaty Examination of the Third Protocol Amending the Treaty of Amity and Cooperation in Southeast Asia; Foreign Affairs, Defence and Trade Committee (presented 26 November 2010):

The Committee recommended that the Government adopt the treaty as amended by the Third Protocol.

International Treaty Examination of the Statute of the International Renewable Energy Agency (IRENA); Commerce Committee (presented 26 November 2010)

**2011** [4: 3, 1]

International Treaty Examination of the Convention on the Conservation and Management of High Seas Fishery Resources in the South Pacific Ocean; Foreign Affairs, Defence and Trade Committee (presented 18 March 2011):

The Committee recommended that the Fisheries Act 1996 be amended to reflect international best practice in relation to the United Nations Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Seas of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks and the Food and Agriculture Organisation's Code of Conduct, which requires a precautionary, eco-systems approach to the management of fish stocks. The Committee also recommended that New Zealand do more to assist Pacific Island countries in managing their exclusive economic zones and protecting their fishery resources.

International Treaty Examination of the Protocol on Investment to the New Zealand – Australia Closer Economic Relations Trade Agreement; Foreign Affairs, Defence and Trade Committee (presented 8 April 2011):

The Committee recommended that the schedule of reservations be expanded to clarify which sectors of the New Zealand economy are open for investment. The majority of the Committee supported the expeditious passage of the legislation to bring into force the provisions of the Protocol. The minority did not support raising the threshold for screening Australian investments in New Zealand from \$100 million to \$477 million.

International Treaty Examination of the Protocol of Amendments to the Convention on the International Hydrographic Organization; Foreign Affairs, Defence and Trade Committee (presented 12 August 2011):

The Committee noted that when New Zealand signed the Convention in 1970, its signature did not extend to Tokelau, the Cook Islands or Niue, which means they would not be included in New Zealand's approval of the Protocol. The Committee considered this an anomaly in the case of Tokelau, as it is part of New Zealand.

International Treaty Examination of the Agreement between the Government of Hong Kong and the Government of New Zealand for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income; Foreign Affairs, Defence and Trade Committee (presented 12 August 2011):

The Committee noted that the Agreement is expected to foster growth in economic activity between New Zealand and Hong Kong.

**2012** [5: 3, 2]

International Treaty Examination of the United Nations Convention Against Corruption; Foreign Affairs, Defence and Trade Committee (presented 11 May 2012):

Although the Committee stated that it had no matters to bring the attention of the House, it noted that the Convention “raises some substantive matters that will require thorough consideration before the Government could consider ratification.” A letter from the Ministry of Justice to the Committee that was attached to the report indicated that certain legislative changes were required, particularly in relation to art 52 of the Convention (prevention and detection of transfers of proceeds of crime), which concerns enhanced scrutiny of persons entrusted with prominent public functions.

International treaty examination of the Convention between New Zealand and Canada for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income; Finance and Expenditure Committee (presented 3 August 2012):

The Committee noted that the Convention replaces an existing agreement with Canada to reflect international developments and changes in policy. The main change was the reduction of withholding tax rates on dividends, interest, and royalties in line with New Zealand’s wider strategy on treaty withholding tax rates. Labour members of the Committee noted that overseas investors do not receive the full range of government services paid for out of taxes but because they do receive some benefits they should pay some tax, albeit at lower rates.

International Treaty Examinations of the Amendment of the Agreement Establishing the European Bank for Reconstruction and Development to Enable the Bank to Operate in Countries of the Southern and Eastern Mediterranean, and the Amendment of the Agreement Establishing the European Bank for Reconstruction and Development to Allow the Use of Special Funds in Recipient Countries and Potential Recipient Countries; Foreign Affairs, Defence and Trade Committee (presented 14 September 2012):

The Committee noted that New Zealand ratified the Agreement in 1991 and that the Bank has the current goal of facilitating the transition toward open market economies and to encourage private-sector investment in Central and Eastern Europe. The amendments allow the Bank to operate in North Africa and the Middle East. Complying with the amendments, which is costless, reaffirms New Zealand’s commitment to the economic reform and development of these regions.

International treaty examination of the United Nations Industrial Development Organization (UNIDO); Foreign Affairs, Defence and Trade Committee (presented 30 November 2012):

The Committee noted that the Government proposed to withdraw from UNIDO. The majority of the Committee supported the proposal because the role of UNIDO in the international aid system is marginal and its relevance to New Zealand's aid priorities has declined. A minority of the Committee opposed the proposal because the decision to withdraw from UNIDO was counterproductive in strategic terms, casts doubt on New Zealand's international standing, and was based on poor methodology.

**2013** [12: 7, 5]

International treaty examination of the Agreement between the Government of New Zealand and the Government of the Independent State of Papua New Guinea for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income; Foreign Affairs, Defence and Trade Committee (presented 15 February 2013)

International treaty examination of the Third Protocol to the Agreement between the Government of New Zealand and the Government of Malaysia for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income; Foreign Affairs, Defence and Trade Committee (presented 15 February 2013)

International treaty examination of the Agreement between the Government of New Zealand and the Government of Niue on the Exchange of Information with Respect to Taxes; Foreign Affairs, Defence and Trade Committee (presented 22 February 2013):

The Committee noted that Niue is seeking to improve its international standing by concluding exchange of information agreements with other countries to demonstrate that it is no longer a tax haven. As New Zealand is Niue's largest economic partner, Niue approached New Zealand first. The agreement will have minimal benefits for New Zealand as New Zealand is unlikely to need to request much tax information from Niue. Safeguards are in place to discourage any mishandling of information supplied by New Zealand to Niue.

International treaty examination of the International Monetary Fund 2008 Voice and Participation Reforms and of the International Monetary Fund 2010 Quota and Governance Reforms; Foreign Affairs, Defence and Trade Committee (presented 15 March 2013)

International treaty examination of the Protocol to Amend the Convention signed at Paris on the 22nd of November 1928 Relating to International Exhibitions; Foreign Affairs, Defence and Trade Committee (presented 15 March 2013)

International treaty examination of the Convention between Japan and New Zealand for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income; Foreign Affairs, Defence and Trade Committee (presented 28 March 2013):

The Committee noted that the Convention replaces an existing agreement with an updated version. It aims to reduce tax barriers for New Zealand businesses with operations in Japan and for Japanese businesses with operations in New Zealand. Its main benefit is to provide investment certainty: for example, a Japanese investor could determine the tax implications of investing in New Zealand by referring to the text of the agreement instead of the relevant New Zealand and Japanese legislation.

International treaty examination of the Protocol to the 2007 World Wine Trade Group agreement on requirements for wine labelling; Concerning alcohol tolerance, vintage, variety, and wine regions, Brussels, 22 March 2013; Foreign Affairs, Defence and Trade Committee (presented 13 June 2013):

The Committee noted that ratification of the Protocol would not affect New Zealand's ability to place alcohol health warnings on wine bottles.

International treaty examination of the Multilateral Convention on Mutual Administrative Assistance in Tax Matters, Amended by the 2010 Protocol; Foreign Affairs, Defence and Trade Committee (presented 9 August 2013)

International treaty examination of the Agreement between New Zealand and the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu on Economic Cooperation; Foreign Affairs, Defence and Trade Committee (presented 6 September 2013) [11 submissions; eight heard]:

A majority of the Committee expressed support for the Agreement. A minority opposed the Agreement on the grounds that free-trade agreements of this kind are based on a flawed premise and that the Agreement is the product of an unusual arrangement (the negotiating partner was not a sovereign state, the New Zealand negotiator was not a public official, and the Agreement was not signed by a New Zealand public official).

International treaty examination of the Agreement between the Government of New Zealand and the Government of the Socialist Republic of Viet Nam for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income; Foreign Affairs, Defence and Trade Committee (presented 25 October 2013):

While in support of the Agreement, the Committee noted that it contained an unusual clause, one that provides that a Vietnamese resident studying in New Zealand with a job related to the course of study is not liable for income tax in respect of that job if the time spent working does not exceed 183 days in a 12-month period.

International treaty examination of the Headquarters Agreement between the South Pacific Regional Fisheries Management Organisation and the Government of New Zealand; Foreign Affairs, Defence and Trade Committee (presented 21 November 2013)



International treaty examination of the Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing; Foreign Affairs, Defence and Trade Committee (presented 13 December 2013):

While in support of the Agreement, the Committee noted that it would not apply to Singapore, Fiji, Malaysia, Indonesia and Tahiti as these countries are not parties to the Agreement.

**2014** [7: 6, 1]

International treaty examination of the Agreement between the Government of New Zealand and the Government of the United States of America on Enhancing Cooperation in Preventing and Combating Crime; Foreign Affairs, Defence and Trade Committee (presented 31 January 2014):

The Committee concluded that the security and administrative precautions regarding the Agreement need to be sufficient to ensure that information in a database cannot be used improperly. It recommended that Parliament should be advised on a six-monthly basis about the number of requests and individuals affected via a report from the responsible Minister. With the adoption of that recommendation, the Committee would support the Agreement.

The Government agreed to inform Parliament once a year of the number of times information is shared under the Agreement. The figure is to appear in the annual report of the New Zealand Police.

International treaty examination of the Minamata Convention on Mercury; Foreign Affairs, Defence and Trade Committee (presented 14 March 2014) [14 submissions, five heard]:

The Committee noted that all of the submissions it received supported New Zealand's decision to sign the Convention. It also noted that the Convention may have implications for mining, the dairy industry and the use of dental amalgam.

International treaty examination of the Arms Trade Treaty; Foreign Affairs, Defence and Trade Committee (presented 3 July 2014):

The Committee noted that the Executive should execute the Treaty ahead of passing any necessary implementing legislation (with respect to arms brokering) so that it may attend the first meeting of nations that have done so.

International treaty examination of the Instrument amending the Constitution and Convention of the International Telecommunication Union, Final Acts of the Plenipotentiary Conference (Guadalajara, 2010); Foreign Affairs, Defence and Trade Committee (presented 28 July 2014)

International treaty examination of the International Telecommunication Union, Provisional Final Acts World Radiocommunication Conference (WRC-12), Geneva, 23 January - 17 February 2012; Foreign Affairs, Defence and Trade Committee (presented 28 July 2014)

International treaty examination of the UNESCO Asia-Pacific Regional Convention on the Recognition of Qualifications in Higher Education; Foreign Affairs, Defence and Trade Committee (presented 28 July 2014):

While in support of the Convention, the Committee noted that unless intending migrants are better informed of the requirements set by professional bodies in New Zealand, they may continue to get a false impression of their employment prospects in New Zealand.

International treaty examination of the Second Protocol to the Convention Between New Zealand and Canada for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income; Finance and Expenditure Committee (presented 27 November 2014)