International relations have traditionally been seen as an executive, rather than a legislative, responsibility. Conducting relations with foreign States, making treaties and providing for the defence of New Zealand are quintessential executive functions in respect of which many of the Crown’s legal powers are derived from the Royal prerogative rather than from statutes.

Defence policy became increasingly politicised in the 1980s, with differences emerging over defence relationships, particularly where nuclear weapons were involved. The more diverse views represented in Parliament under the MMP electoral system has raised the public and political profiles of both foreign policy and defence policy. At the same time, the number of statutes passed by the New Zealand Parliament that have an international dimension has continued to grow both absolutely and relatively. It was estimated in 1998 that about 200 of the 600 to 700 New Zealand statutes are affected in one way or another by international law.2 Quite apart from legislation implementing international obligations, the courts have been increasingly influenced in their approach to deciding cases under New Zealand law by the perceived international dimension of law. It is well established that courts seek to interpret statutes in a way that is consistent with customary international law. However, international obligations assumed by the New Zealand Government, though never legislated into New Zealand law, have also come to have an important influence on the way courts interpret legislation. Often such connections are not apparent in the wording of the legislation itself, are expressed in expansive terms, or prove to apply with surprising or unanticipated effects. In these ways, the growing importance of international law and international obligations as components of domestic law has to some extent been hidden from legislators and the public.

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1 Douglas White QC and Graham Ansell Review of the Performance of the Defence Force in Relation to Expected Standards of Behaviour, and in Particular the Leaking and Inappropriate Use of Information by Defence Force Personnel (20 December 2001) at [20].
4 For example: Fisheries Act 1996, s 5(a) (legislation to be interpreted, and all persons acting under it to act, in a manner consistent with New Zealand’s international obligations relating to fishing); Extradition Act 1999, s 11(1) (Act to be construed to give effect to extradition treaties).
5 For example: Sellers v Maritime Safety Inspector [1999] 2 NZLR 44 (CA) at 57 (New Zealand regulations relating to the carrying of emergency equipment on vessels had to be read in the context of the international law of freedom of navigation on the high seas).
In 1998 the House adopted sessional orders (now incorporated into the Standing Orders) providing for some parliamentary scrutiny of treaties before their becoming binding international obligations. These procedures, combined with heightened political interest in foreign and defence policy, have led to international developments playing a greater part in the regular work of the House.

PROCEEDINGS IN THE HOUSE

Special debates on foreign affairs used to be held by the House annually, but ceased in the 1970s. Nevertheless, an international event or commitment may be of such importance as to justify a specific debate or even a special sitting of the House. Parliament was summoned for a special session to debate the outbreak of the first Gulf War in 1991, and subsequently special debates were held on New Zealand’s contribution in both the Afghanistan and the Iraq conflicts. The provision for the House to hold an expedited sitting during an adjournment was utilised in 1999 when the House was recalled to debate the commitment of New Zealand forces to East Timor.

An international commitment entered into by the Government may warrant the Speaker’s accepting an application for an urgent debate. Alternatively, a special debate may be arranged on the initiative of the Government, or after representations from other parties, which will invariably be considered by the Business Committee. This was the case when a Special Debate on Pacific Issues was held to commence the Pacific Parliamentary and Political Leaders Forum in 2013.

Foreign affairs, defence and trade issues can also be debated in the House during other debates of a general nature—the Budget, the Address in Reply and the Wednesday general debate—and during the Estimates and annual review debates when the expenditure and performance of the Ministry of Foreign Affairs and Trade, the Ministry of Defence or the New Zealand Defence Force are under consideration.

An important way of exploring international issues on the floor of the House is by means of a question addressed to a Minister. This will usually be the Minister of Foreign Affairs and Trade or the Minister of Defence, but other Ministers hold portfolios with clear international roles, such as trade negotiations or disarmament and arms control. The expanded inquiry jurisdiction of select committees has given the subject select committees the opportunity, if they wish, to examine international developments of concern to New Zealand. Thus a committee has itself initiated an inquiry into a proposal that was likely to result in New Zealand’s becoming party to a treaty.

FOREIGN AFFAIRS, DEFENCE AND TRADE COMMITTEE

The House has an external affairs committee—the Foreign Affairs, Defence and Trade Committee. This is one of the subject select committees established at the beginning of each Parliament. It considers bills, petitions, treaties and other matters referred to it by the House; conducts such Estimates and annual review work as is allocated to it by the Finance and Expenditure Committee; and has

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8 SO 55.
10 (1997) 564 NZPD 5097–5110 (framework convention on climate change); (2001) 595 NZPD 11996–12017 (assistance offered as part of the response to the terrorist attacks of 11 September).
11 (18 April 2013) 689 NZPD 9554–9588.
within its subject areas of inquiry defence, disarmament and arms control, foreign affairs, customs and trade.\textsuperscript{13}

Despite the high proportion of bills with international law implications, comparatively little legislation is actually referred to the committee. Such bills are generally dealt with by the committees operating in the principal subject areas concerned. The Foreign Affairs, Defence and Trade Committee deals with legislation relating to the departments concerned with foreign affairs, defence, customs and trade, and with other obviously internationally related legislation, such as that concerning diplomatic privileges. However, it tends to have a low legislative workload compared with most of the other subject select committees.

This light legislative workload gives the committee more opportunity to utilise its inquiry powers, and in this area of select committee work it has proved to be a more active committee. Since the reorganisation of the select committees in 1985, the committee has carried out major inquiries into relations with China,\textsuperscript{14} Canada,\textsuperscript{15} and Tonga,\textsuperscript{16} and into overseas development assistance,\textsuperscript{17} the ANZAC ship project,\textsuperscript{18} the sale of educational services in New Zealand,\textsuperscript{19} economic and trade linkages in the Asia-Pacific region,\textsuperscript{20} Parliament’s role in the international treaty-making process,\textsuperscript{21} New Zealand’s place in the world and role in Asia-Pacific security,\textsuperscript{22} defence beyond 2000,\textsuperscript{23} economic and trade relations with Australia,\textsuperscript{24} and New Zealand’s relationships with South Pacific Countries.\textsuperscript{25} At the direction of the House, the committee has also conducted inquiries into disarmament and arms control,\textsuperscript{26} and the manufacture of the defoliant Agent Orange.\textsuperscript{27} In 1998 a most important responsibility was given to the committee—as the House’s overall co-ordinator of the treaty examination process. In this regard, the committee plays a similar role to that performed by the Finance and Expenditure Committee in respect of the Estimates and annual review processes. All treaties presented to the House for examination stand referred to the committee, which then determines the appropriate committee to examine them.

The committee is regularly allocated the votes relating to foreign affairs, defence and trade for Estimates examination, and conducts the annual reviews of

\textsuperscript{13} SOs 188–189.
\textsuperscript{14} Foreign Affairs and Defence Committee Inquiry into the New Zealand—China Relationship (12 February 1987) [1986–1987] AJHR I.5A.
\textsuperscript{15} Foreign Affairs and Defence Committee Inquiry into the New Zealand—Canada Relationship (16 July 1987) [1986–1987] AJHR I.5B.
\textsuperscript{16} Foreign Affairs, Defence and Trade Committee Inquiry into New Zealand’s relationship with the Kingdom of Tonga (8 August 2005) [2002–2005] AJHR I.4C.
\textsuperscript{17} Foreign Affairs and Defence Committee Inquiry into Official Development Assistance (4 September 1990) [1990] AJHR I.5B.
\textsuperscript{18} Foreign Affairs and Defence Committee Inquiry into the policies related to the execution of the ANZAC Ship Project (30 June 1992) [1991–1993] AJHR I.5A.
\textsuperscript{19} Foreign Affairs and Defence Committee Inquiry into the sale of educational services in New Zealand (4 September 1991) [1991–1993] AJHR I.5A.
\textsuperscript{20} Foreign Affairs and Defence Committee Inquiry into New Zealand’s participation in economic and trade linkages in the Asia-Pacific region (23 September 1992) [1991–1993] AJHR I.5C.
\textsuperscript{22} Foreign Affairs, Defence and Trade Committee Inquiry into ‘New Zealand’s Place in the World’ and ‘New Zealand’s role in Asia-Pacific Regional Security’ (18 December 1997) [1996–1999] AJHR I.4B.
\textsuperscript{24} Foreign Affairs, Defence and Trade Committee Inquiry into New Zealand’s economic and trade relationship with Australia (30 April 2002) [1999–2002] AJHR I.4E.
\textsuperscript{25} Foreign Affairs, Defence and Trade Committee Inquiry into New Zealand’s relationships with South Pacific countries (10 December 2010) [2008–2011] AJHR I.4A.
\textsuperscript{26} Foreign Affairs and Defence Committee Inquiry into disarmament and arms control (15 October 1985) [1984–1985] AJHR I.19.
\textsuperscript{27} Foreign Affairs and Defence Committee Inquiry into the manufacture of Agent Orange by Iven Watkins-Dow in New Zealand during the period of the Vietnam War (22 May 1990) [1990] AJHR I.5A.
the departments concerned. It also has referred to it any petitions falling within
the foreign affairs, trade and defence areas. As an aspect of its inquiry work, the
committee sometimes meets with visiting politicians and officials from overseas,
and holds debriefing sessions with members of Parliament on their return to New
Zealand from attending international conferences or participating in observer
missions. The committee also receives briefings on matters of current interest
from officials of the Ministry of Foreign Affairs and Trade and from non-
governmental organisations.

TREATIES
As part of the royal prerogative the Crown possesses the legal power to enter into
treaties with foreign States on behalf of New Zealand. New Zealand’s achievement
of independent statehood with a capacity to enter into treaties in its own right
occurred over an extended period, but the signing of the Treaty of Versailles on
28 June 1919 has been taken as significant. From that date New Zealand began to
enter into treaties in its own right consistently, and it was treated as a separate party
in respect of treaties previously entered into on its behalf by the United Kingdom.
Appropriately, the pen used by the Prime Minister, William Massey, to sign the
Treaty of Versailles is mounted in a display case in Parliament House.

The power of treaty-making as one of the prerogatives or inherent legal powers
of the Crown does not derive from parliamentary enactment, although it cannot
be exercised in a way forbidden by or inconsistent with legislation. Nor does a
treaty entered into by the Crown need to be ratified or endorsed by the House of
Representatives, unlike the requirement in a number of other political systems.
A treaty is effective as a binding international obligation once it has been fully
accepted by the Crown and has entered into force for New Zealand in accordance
with its terms. (The precise means by which acceptance is signified differs
depending upon the terms of the treaty.) However, long-standing legal doctrine
inherited by New Zealand has held that a treaty, while binding at an international
level in New Zealand’s relations with other States, is not in itself a source of law
that can confer legal powers or duties on persons within New Zealand. Thus the
Crown cannot change New Zealand law by the expedient of entering into a treaty.
Only the New Zealand Parliament, in enacting legislation, can do that. Therefore,
if the implementation of a treaty has implications for New Zealand law, it will
be necessary for the Government to ask Parliament to change the law to make it
consistent with the treaty obligations; otherwise it will be impossible to fulfil those
obligations domestically.

In fact, New Zealand’s treaty-making practice is to ensure that domestic law
is compatible with a treaty’s obligations before New Zealand becomes bound by
it. (Indeed, it has been asserted that there is a constitutional convention to this
effect, though whether this is so remains uncertain.) In many cases, no question
of incompatibility between the treaty’s provisions and New Zealand law will arise,
because the treaty will not have legal effect within New Zealand—it may be designed

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28 Foreign Affairs, Defence and Trade Committee Report on 1996/2051 petition of Right Honourable
Helen Clark and 65 others (9 September 1999) [1996–1999] AJHR I.24 at 190.
29 Ministry of Foreign Affairs and Trade New Zealand consolidated treaty list Part One (multilateral
30 See, for example: Yuen Kwok-Fung v Hong Kong Special Administrative Region of the People’s
Republic of China (2001) 3 NZLR 463 (CA) at [18] per Keith J (Extradition Act 1999, s 11(2) “is in
effect a direction to the executive that in negotiating extradition treaties it is to ensure that the listed
protections are incorporated”).
31 Legislation to require parliamentary ratification of treaties has been rejected: International Treaties
32 Climate Change Response Bill (212–2) (commentary, 14 October 2002) at 2 and 6 ([2002–2005]
AJHR I.22A at 121 and 125); International Treaties Bill (67–1) (report, 25 November 2002) at 2–3
to operate solely at an international level. In other cases, the treaty’s obligations may already be consistent with New Zealand law and no further action is needed to ensure their compatibility. In yet others, the Government may have legal powers to itself make New Zealand law compatible with the treaty, for example, by using regulation-making power it already possesses or by changing its own policies and practices. But, finally, in some cases it may only be possible to assume the obligations in a treaty if primary legislation is passed to make this possible.

While it may be possible to implement a treaty by various means—using existing laws or non-legislative means, for example—it may, nevertheless, be preferable to enact new legislation for the purpose if the policy impact of the treaty is significant, or to ensure transparency and improve the co-ordination of functions. However, in general, legislation will only be resorted to when no viable alternative method is available to implement a treaty’s policy objectives.

Taking treaty action

The number of treaties entered into by New Zealand each year varies, but is substantial. From 2010 to 2015, for example, New Zealand entered into an average of 20 treaties each year—15 of a multilateral nature (that is, involving a number of other countries) and 83 bilateral (with one other party) or plurilateral (with more than two but not many) treaties. All treaties that have become binding on New Zealand are presented to the House and published as parliamentary papers.

Individual treaties vary greatly in their significance. Exceptionally, legislation may prescribe what provisions a treaty or a certain type of treaty must contain; however, this is rare. While consultation with interested parties in New Zealand is part of the process of considering whether to enter into a treaty and on what terms, there is generally little opportunity for general public participation in the treaty-making process, although interested non-governmental organisations are sometimes invited to participate in negotiations or to join New Zealand Government delegations. However, the Government has occasionally invited public input, by means of public advertisement before negotiations on a treaty have begun. The Government also maintains an international treaties list of the multilateral and bilateral treaties under negotiation. The list describes the treaties and indicates where further information about them can be obtained.

As part of the parliamentary process for the examination of treaties before binding treaty action (the final assumption of the treaty’s obligations) is taken, the Ministry of Foreign Affairs and Trade will brief the Foreign Affairs, Defence and Trade Committee and other committees on treaty negotiations.

Presentation of treaties to the House

On 16 February 1998 the Government agreed, in a paper presented to the House, that it would present certain multilateral treaties to the House on a trial basis for limited examination before the treaties were finally ratified or agreed to. This assurance to the House was recognised in a sessional order adopted by the House on 28 May 1998. Since 8 September 1999 this practice has been recognised in

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33 Climate Change Response Bill (212–1) (explanatory note, 20 May 2002).
35 Figures obtained from New Zealand Treaties Online <www.treaties.mfat.govt.nz>.
36 Extraterritorial Act 1999, ss 100–101 (provisions that must be contained in extraterritorial treaties).
37 See, for example: Ministry of Foreign Affairs and Trade “Call for public submissions on the proposed EU FTA” (16 December 2015) <www.mfat.govt.nz> (proposed free trade agreement negotiations between New Zealand and the European Union).
38 See New Zealand Treaties Online <www.treaties.mfat.govt.nz>.
the Standing Orders.\textsuperscript{41} It was expressly reaffirmed by a Government statement on 28 February 2000\textsuperscript{42} and is now recorded in the Cabinet’s own treaty-making procedures.\textsuperscript{43}

**Multilateral treaties**

The treaties the Government has agreed to present for examination include those that are to become binding on ratification, accession, acceptance or approval.\textsuperscript{44} These are generally treaties to which there are a number of other parties—multilateral treaties. It is expected that such treaties will be presented to the House after they have been signed by the Government (but before they become fully binding), although there is nothing to prevent a treaty from being presented before the Government has signed it. Multilateral treaties that the Government wishes to withdraw from or to denounce are also to be presented for examination.\textsuperscript{45} These, while rare, can be significant in their own right;\textsuperscript{46} and, in any case, the act of withdrawing from a treaty is itself a treaty action requiring Cabinet approval.

While, in principle, multilateral treaties are to be presented for parliamentary examination before they become binding, it is recognised that in some circumstances a treaty must be entered into immediately in the national interest without the opportunity for prior parliamentary examination. Where this arises, and an urgent multilateral treaty has become binding, the treaty is still to be presented to the House,\textsuperscript{47} in this case as soon as possible after the binding treaty action has been taken.\textsuperscript{48} The obligation to present treaties does not apply to reports that the Government is obliged to make to international organisations to comply with its existing treaty obligations.\textsuperscript{49}

Outside the strict terms of the Government’s assurance as embodied in the Standing Order, the Government may present other treaties for examination. Thus, the Foreign Affairs, Defence and Trade Committee commented favourably in 2003 when the first status of forces agreement (with the Solomon Islands) was presented for examination. The major interest in the deployment justified its presentation, even though it did not fall strictly within the terms of the Standing Order.\textsuperscript{50}

**Bilateral treaties**

Most treaties that the Government enters into are not multilateral; they are agreements with one other State—that is, bilateral treaties. Double taxation agreements are the most common form of bilateral treaty. If a bilateral treaty is subject to a process of ratification or post-signature acceptance, it will be presented to the House under the Standing Orders for examination;\textsuperscript{51} however, most bilateral treaties are not subject to such process.

In the case of bilateral treaties, the undertaking from the Government to the House is that any major bilateral treaty of particular significance (as determined by the Minister of Foreign Affairs and Trade) will be presented.\textsuperscript{52} The Government

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\textsuperscript{41} SO 397(1).
\textsuperscript{43} Cabinet Office Cabinet Manual 2008 at [7.112].
\textsuperscript{44} SO 397(1)(a).
\textsuperscript{45} SO 397(1)(c).
\textsuperscript{47} SO 397(1)(b).
\textsuperscript{48} Cabinet Office Cabinet Manual 2008 at [7.114].
\textsuperscript{49} Reply to question 8292 (1998) (34 NZPD Supp 2072).
\textsuperscript{51} SO 397(1)(a).
\textsuperscript{52} SO 397(1)(d).
thus retains a large measure of discretion as to whether or not to present bilateral treaties for examination. In fact, most bilateral treaties entered into are not presented to the House for examination, although the proportion presented is increasing.

The Minister of Foreign Affairs and Trade has set down criteria for determining which bilateral treaties should be submitted to the parliamentary examination process, as follows.53

- The subject matter of the treaty is likely to be of major interest to the public.
- The treaty deals with an important subject upon which there is no ready precedent (that is, it is an original treaty, possibly dealing with a unique situation).
- The treaty deals with an important subject and departs substantively from previous models relating to the same subject.
- The treaty represents a major development in the bilateral relationship.
- The treaty has significant financial implications for the Government.
- The treaty cannot be terminated, or will remain in force for a specific period.
- The treaty is to be implemented by way of overriding treaty regulations (that is, regulations that implement a treaty by overriding primary legislation).
- The treaty is a major treaty that New Zealand seeks to terminate.
- The Foreign Affairs, Defence and Trade Committee indicates its interest in examining the treaty.

Progress on bilateral treaty negotiations is included in the International Treaties List and in briefings given to the Foreign Affairs, Defence and Trade Committee. In the course of the 50th Parliament (2011–2014), one major bilateral treaty was presented for examination.54 Under its general inquiry power, a select committee with appropriate terms of reference can initiate its own examination of a bilateral treaty.

Amendments of treaties

Where the treaty being presented makes textual amendments to an existing treaty, the Government has been asked by the Foreign Affairs, Defence and Trade Committee to present a consolidated version of the treaty, incorporating the amendments, so that the amending treaty can be read intelligibly.55

National interest analyses

A critical accompaniment to the treaty as it is presented to the House is a national interest analysis in respect of it. This is to be presented to the House at the same time as the treaty.56

Each national interest analysis must contain the following matters in respect of the treaty to which it relates:57

- the reasons for New Zealand becoming party to the treaty
- the advantages and disadvantages to New Zealand of the treaty entering into force for New Zealand
- the obligations that would be imposed on New Zealand by the treaty, and the position in respect of reservations to the treaty

54 Foreign Affairs, Defence and Trade Committee International treaty examination of the agreement between New Zealand and the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu on Economic Cooperation (6 September 2013) [2011–2014] AJHR I.22B.
56 SO 397(2).
57 SO 398(1).
○ the economic, social, cultural and environmental effects of the treaty entering into force for New Zealand, and of the treaty not entering into force for New Zealand (this does not require a full elaboration of all future domestic policy implementation)\(^{58}\)

○ the costs to New Zealand of compliance with the treaty

○ the possibility of any subsequent protocols (or other amendments) to the treaty, and of their likely effects

○ the measures that could, or should, be adopted to implement the treaty, and the intentions of the Government in relation to such measures, including legislation

○ a statement setting out the consultations that have been undertaken or are proposed with the community and interested parties in respect of the treaty

○ whether the treaty provides for withdrawal or denunciation.

The Regulations Review Committee has urged the Government to include in the national interest analysis any material relating to the treaty that is to be incorporated into implementing legislation by reference rather than set out in its text, and to comment on how this is to be done,\(^ {59}\) and for the national interest analysis to set out the justification for implementing a treaty by regulation.\(^ {60}\) There is no requirement for the national interest analysis to give the recommendations of the various Government departments involved in devising policy towards the treaty, for example, by disclosing arguments that they have advanced against New Zealand entering into the treaty.\(^ {61}\) However, there is nothing to stop the Government supplying more information than the national interest analysis requires.\(^ {62}\)

In the case of a multilateral treaty already entered into on the grounds of urgency, the national interest analysis must also explain the reasons why urgent action preventing prior parliamentary examination was taken.\(^ {63}\) Where the Government proposes to withdraw from or denounce a treaty, it is recognised that the Government’s national interest analysis must be adapted, departing from the criteria set out above, since they are directed to eliciting reasons why a treaty should or should not be entered into in the first place, rather than why one should be abandoned. In these circumstances, the national interest analysis is required to address these matters only to the full extent that they are applicable.\(^ {64}\)

Given the importance of the national interest analysis to parliamentary examination of the treaty, the committee that examines the treaty is required to append the national interest analysis to its report so that it is readily and permanently available on the public record.\(^ {65}\)

The national interest analysis must fairly expose the case for and the case against entering into the treaty. (It would thus be expected that any contrary views expressed by Government departments will be reflected in it, even if the departments are not identified.) The more information that can be put into it, the better parliamentarians and the public will understand the implications of the


62 Ibid.

63 SO 398(2).

64 SO 398(2).

65 SO 400(3).
proposed treaty. There have been criticisms that the case against entering a treaty has not always been adequately covered in the national interest analysis and that potential objections to a treaty are not revealed. As long as the national interest analysis makes the statements about the treaty set out in the Standing Order it will have complied with the Standing Order. It is then a matter for judgement as to whether it actually provides a justification for the treaty action in question.

The Ministry of Foreign Affairs and Trade is responsible, on behalf of the Government, for presenting the treaty and the national interest analysis to the House.

Select committee examination

On presentation to the House, the treaty and the accompanying national interest analysis stand referred to the Foreign Affairs, Defence and Trade Committee. The committee is central to the treaty examination process, and decides to which committee a treaty should be referred. It considers the subject area of any treaty referred to it and, if it falls primarily within its own terms of reference, retains the treaty for examination. If, on the other hand, it is primarily within the terms of reference of another committee, it refers the treaty to the other committee for examination. In this way all subject select committees are expected to share in the work of treaty examination. In recognition of the fact that time can be of the essence for treaty examination, the chairperson of the Foreign Affairs, Defence and Trade Committee is, by Standing Order, given the power to take this referral decision for the committee if it is not due to meet within seven days of a treaty being referred to it. In this case, if the treaty is clearly within the terms of reference of another committee, the chairperson may refer it to that committee for examination.

The Standing Orders do not impose any time limit on treaty examinations. In the case of an urgent treaty, binding treaty action has, by definition, already been taken, so the committee’s examination is retrospective in any case. But for most treaties the examination is, intentionally, prospective, giving the House an opportunity, if it wishes, to express a view on the appropriateness of the Crown entering into the treaty before it does so. In these circumstances the time that a committee has to carry out its examination before the treaty is ratified or otherwise accepted is obviously of critical importance.

Originally, when the Government agreed to present treaties for examination, it conceded that it would not proceed to take binding treaty action (except for urgent treaties) for at least 35 days (45 days over the Christmas break) after presentation of the treaty to the House. As a result of a select committee recommendation in 1999, this concession has now been extended to 15 sitting days. Committees have complained of insufficient time to conduct a proper examination. Partly for this reason, most treaty examinations are carried out by committees on the basis of the national interest analysis, supplemented by briefings from departmental officials and material from committee advisers.

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67 Ibid.
68 Cabinet Office Cabinet Manual 2008 at [7.113].
69 SO 397(3).
70 SO 399(1).
71 SO 399(2).
Only exceptionally does a select committee’s examination extend further. A committee has consulted the Regulations Review Committee on the proposed use of regulations under a treaty it was examining.\textsuperscript{75} When two important bilateral treaties were presented to the 46th Parliament, public submissions were called for and oral evidence heard on each, though with a short deadline for submissions.\textsuperscript{76} In the case of another treaty on which the select committee invited public input, the committee received 35 submissions and heard 20 of them orally.\textsuperscript{77} A committee has heard from a witness who approached the committee asking to be heard.\textsuperscript{78} But the opening up of parliamentary treaty examinations to anything resembling the procedures for hearing evidence on bills is still uncommon.

The fact that the Government’s assurance it will not take binding treaty action in respect of a treaty lasts at most for 15 sitting days does not mean that the Government will actually be insistent on ratifying the treaty immediately the 15 sitting days expire. It may not be ready to do so for its own reasons. Indeed, from a parliamentary point of view, one way of looking at the 15-sitting-day period is not as a maximum time within which committees have to report, but as the minimum time the Government must allow to elapse before it can take steps to implement the treaty, for example, by introducing legislation to make New Zealand law compatible with the treaty obligation that the Government wishes to assume. (See pp 693–694 for the development of this convention.)

Treaties are generally presented to the House some time after they have been signed by the Government. Signing a treaty signifies an intention to ratify it and accept it as binding in the future. Although the Government may decide later not to ratify it, this would be unusual. Whether a treaty examination carried out by a committee alters the Government’s intentions regarding ratification is a matter for the consideration of the Government. Committees may seek the Government’s agreement to keeping a treaty open for prospective committee examination for longer than 15 sitting days by asking the Government to defer taking binding action on the treaty, although there is no necessity for a Government to agree to do so. It is also open to a committee to continue with its examination of the treaty even after the Government has ratified or otherwise accepted it and it has become binding.

**Report and consideration**

Committees to which treaties are referred are required to report to the House on them (although not within any particular timeframe),\textsuperscript{79} and to consider whether to draw the attention of the House to the treaty on any of the grounds set out in the national interest analysis or for any other reason.\textsuperscript{80} Committees are not required to state whether they agree with the proposal to enter into the treaty, although it is open to them to express their opinions on this if they wish to. In one case, a committee explicitly recommended against the Government entering into a bilateral


\textsuperscript{79} SO 400(1).

\textsuperscript{80} SO 400(2).
agreement. A committee has also scrutinised the process followed when entering into the treaty for compliance with the Cabinet Manual procedures on treaties.

Most committee reports on treaties, though not all, are quite brief and formal. The national interest analysis must be appended to the report. A report on a treaty examination is set down for consideration as a Member’s order of the day. It remains on the Order Paper for 15 sitting days or, if it contains recommendations addressed to the Government (only a few do), for 15 sitting days from the date that the Government’s response is received. In practice, such reports are not reached for debate, since Members’ orders of the day for Members’ bills take precedence over them. However, the Government has initiated a debate on one treaty report by lodging its own notice of motion asking the House to take note of the report. Committees may also write to the Business Committee requesting that debates on their treaty reports be held.

LEGISLATING FOR TREATY OBLIGATIONS

Where a treaty will require legislation before it can be accepted as binding, treaty examination becomes the first step in an integrated process leading to legislative implementation of the treaty’s obligations and then final acceptance of the treaty by the Government. Each step in the process informs or authorises the next step.

Allowing time for treaty examination

Treaty examination is conceptually different from the legislative implementation of a treaty’s provisions. Rather than considering only the domestic law implications of a treaty, the House, in treaty examination through its committees, requires the proposal to enter into the treaty to be justified as a matter of principle. The committee’s conclusions on this (or the House’s, if it chooses to express them) should, if possible, be available to the Government before it presents legislation to implement the treaty’s obligations. For this purpose, such legislation is not as a matter of practice introduced until at least 15 sitting days after the treaty has been presented to the House for examination. (However, preparatory work on the legislation within Government, such as obtaining a legislative priority and drafting the bill, may proceed within this period.)

While it is highly desirable for the select committee to have completed its examination of the treaty and reported to the House so that this can inform the Government’s legislative proposals, the Government is free to introduce legislation when the 15 sitting days have expired.

Form of legislation

Where legislative action is necessary to implement treaty obligations, there is no standard form it must take. In some cases, legislation may be introduced to give direct effect to a treaty, with the text of the treaty included in a schedule to the Act. In such a case, the treaty text itself becomes directly part of New Zealand’s statute law. Where this method is adopted, it is accepted that no amendment to the schedule containing the treaty can be made by the House. But the clauses of the bill giving effect to the treaty are open to amendment, even if the effect of such an

83 SO 400(3).
84 SO 74(4).
85 SO 72(1).
amendment would be to withhold legislative effect from the treaty or from part of it. (See Chapter 26 for inadmissible amendments.)

In other cases, wording taken from the treaty is used in the legislation, perhaps with some slight drafting changes so that it fits conveniently into the body of New Zealand law. But the fact that the wording was drawn from the treaty may not always be readily apparent upon reading the legislation. In yet other cases, the wording in the legislation that is relied upon to implement a treaty obligation may not be drawn from the treaty at all and may bear little textual resemblance to it. This is often the case where New Zealand law is judged to be already compatible with a treaty obligation that the Government is proposing to enter into. Another legislative approach is to implement a treaty’s obligations through delegated legislative powers that the Government already has or that are to be conferred on it. Legislative implementation of the same treaty may utilise more than one of these approaches.88

Regulations overriding statutes

The incorporation of treaty obligations by means of delegated legislation raises special problems of parliamentary scrutiny. These issues have been the subject of study by the Regulations Review Committee and response by the Government.89

In a number of instances (10 were specified by the committee) legislation permits treaties to be implemented by regulations that override or abrogate provisions of New Zealand law. This is an example of a type of Henry VIII clause, and is contrary to the general principle that subordinate legislation should not override primary legislation.90 (See Chapter 28 for Henry VIII clauses.) Some of such regulation-making provisions are limited to overriding provisions of the same Act in which they are contained, others allow other specified Acts to be overridden, while some allow both the Act in which they are contained and any other Act to be overridden.91

The committee considered that any power for regulations to override a statute in order to implement a treaty obligation should be confined to the overriding of the Act in which the power is contained. The power should be clearly defined, and identify precisely the provisions in the Act that can be overridden.92 In all cases, overriding regulation-making power should only be granted by Parliament for technical matters or to deal with emergency situations. The committee instanced double taxation agreements and reciprocal child support agreements as technical agreements where overriding might be appropriate, and responding to United Nations obligations as emergency situations that would justify this power.93 While in general the Government has accepted the committee’s views of the principles to be applied, it has not accepted that in every case it will be possible to identify all the legislative provisions that are to be overridden or to confine the overriding to the Act in which the power is contained.94

90 Ibid, at 18 and 29.
91 See, for example: Child Support Act 1991, s 215(1)(a) (permitting regulations to override the provisions of any Act in order to implement a reciprocal agreement with Australia).
93 Ibid, at 18 and 29.
CONVENTION OF PRIOR PARLIAMENTARY EXAMINATION OF TREATIES

A constitutional convention has emerged that the Government will not (except in an emergency) take binding treaty action until the minimum period for parliamentary scrutiny of the treaty (15 sitting days from its presentation to the House) has expired. This is a narrower convention than the practice of first enacting legislation to make New Zealand law consistent with a treaty it is proposed to ratify.

A constitutional convention is not like an Act of Parliament. Indeed, it is not enforceable as law at all. A constitutional convention is an important political practice that develops over time and is accepted as binding on those who are parties to the practice. There may be dispute over whether a practice has developed into a convention and, since conventions are inherently imprecise, disagreement as to what the practice consists of and how it is to be applied in the circumstances that obtain. It has been said that constitutional conventions possess a number of characteristics: they facilitate constitutional development without formal changes in the law; they co-ordinate the practices of government and provide means for cooperation between the organs of government (for example, between the executive and legislature); and they act as a restraining and modifying influence on the exercise of legal power. The most important conventions promote responsible government by ensuring that public affairs are conducted in accordance with the people’s wishes as expressed through their representatives in Parliament.

A political practice of parliamentary examination of multilateral treaties (except in emergencies) prior to their becoming binding commenced in 1998. This is recognised in the Government’s responses to select committee recommendations for such a practice, in Standing Orders changes implementing it and in a State practice (supported by the Government’s own internal arrangements, which select committees themselves are now monitoring) of complying with it since then. In particular, parliamentary examination of a proposed treaty is subject to a quite different procedure and a different timeframe from parliamentary enactment of any legislation to implement that treaty’s obligations. The latter is part of the House’s general legislative procedures; the former is part of its scrutiny function.

A treaty is not of itself a source of law; legislation is. The Government’s own practices recognise this distinction between treaty and legislation by requiring any legislation needed to bring domestic law into compliance with a treaty not to be introduced until after the treaty has been presented or the time for a select committee to report on it (15 sitting days) has expired. Once the 15 sitting days have expired, the Government (if New Zealand law is compatible with the treaty’s obligations) may take binding treaty action, whether or not the committee has actually reported back within that time and regardless of whether the House has debated its report. The convention inhibiting the Government in exercising the treaty power applies only during the minimum examination period.

These arrangements have been settled practice since 1998, have been endorsed by successive Governments and were made a permanent part of its procedures by the House in 1999 (although the minimum time to be observed has been altered...
and there has been continuing concern about its adequacy. Parliamentary scrutiny of treaties operates on a constitutional, rather than a legal, basis. There has been no change to the law of treaty-making, which remains essentially part of the royal prerogative. The 1998 reforms represent a compact between the executive and legislative branches of government, and acknowledged concern at the previous lack of parliamentary involvement in the treaty-making process. All parliamentarians now have the opportunity within the House’s own procedures to contribute to consideration of any treaty that a Government is considering entering into in New Zealand’s name.

In these circumstances, it can be argued that these executive and legislative practices, that allow parliamentarians a limited time to examine a proposed multilateral treaty before the Government proceeds to ratify or otherwise accept it as binding, amount to a constitutional convention.

INTER-PARLIAMENTARY RELATIONS
Inter-Parliamentary Relations Strategy

Relations between countries are no longer the exclusive domain of Governments. Parliamentarians have become more engaged internationally and “parliamentary diplomacy” has become a well-established practice. Globalisation has increased the number of issues that require global solutions rather than domestic action alone. In order to ensure that international political decisions benefit from as much democratic legitimacy as possible, parliamentarians are increasingly involved in informing and implementing international solutions.

Parliamentary diplomacy includes activities such as promotion of the national interest by peaceful means, dialogue to increase understanding between countries, promoting best parliamentary practice, and generally taking an active part in the international parliamentary community. Importantly, it also includes technical assistance, and activities to strengthen parliaments and build their capacity such as those undertaken by the New Zealand Parliament in the Pacific.

Speakers, because of their positions, can open doors in other countries that many diplomats cannot. Members’ active participation in inter-parliamentary organisations improves their knowledge and increases their insight as legislators, which in turn improves parliamentary scrutiny of Government policy. Parliamentary delegations can also bring pluralism to diplomacy, bringing together the varied political voices that characterise a healthy democracy. Personal contact between members from different States also fosters mutual understanding. Members of such organisations can bring a moral dimension to global politics that transcends a more traditional national-interest approach.

In 2015, the Speaker proposed five strategic objectives for inter-parliamentary relations:

- advancing New Zealand’s collective interests internationally through Speaker-led diplomacy
- active participation by Parliament in inter-parliamentary organisations
- bilateral visits to contribute to collective national interest and promote parliamentary democracy
- building parliamentary capability through increasing members’ knowledge of parliamentary business, the workings of representative parliamentary democracy, and of global issues

101 Rt Hon Lockwood Smith, Speaker 21st conference of Speakers and presiding officers of the Commonwealth Port of Spain, Trinidad and Tobago 7 to 12 January 2012 (28 June 2012) [2011–2014] AJHR J.2A at 7.
103 Ibid, at 10–19.
promoting good governance and strengthening parliamentary democracy in the Pacific.

**Inter-parliamentary relations programme**

The Speaker, after consulting with the Minister of Foreign Affairs, endorses an annual inter-parliamentary relations programme, largely funded through a three-yearly appropriation in Vote Office of the Clerk and administered by the inter-parliamentary relations secretariat in the Office of the Clerk. It is through these annual programmes that the five strategic objectives for inter-parliamentary relations are pursued. The programme is multi-faceted, covering reciprocal Speaker-led delegations, participation in inter-parliamentary organisations, bilateral exchanges of members and committees, and parliamentary strengthening initiatives, as set out in the following section.

Members participating in annual inter-parliamentary relations programmes are regarded as present on a sitting day. The programme covers both incoming and outgoing parliamentary delegations. Members participating in CPA and IPU activities (see below) are expected to report back at meetings of the New Zealand branch of the CPA and the New Zealand group of the IPU respectively on their experiences. Following a suggestion by the select committee examining the relevant Estimates that information obtained by parliamentary delegations be more widely disseminated, parliamentary delegations now prepare formal reports to the House on their visits and may be invited to brief the Foreign Affairs, Defence and Trade Committee. Their reports, along with an annual activities report, are presented to the House by the Speaker and published as parliamentary papers.

The Visits and Ceremonials Office of the Department of Internal Affairs (VCO) helps provide hospitality and facilitation for incoming parliamentary delegations, invited as guests of Parliament as part of the inter-parliamentary programme. Itineraries are arranged by the Office of the Clerk in consultation with the Speaker, the Ministry of Foreign Affairs and Trade, and the VCO. The international standing of the New Zealand Parliament means that it also receives many self-invited delegations of members and officials from overseas parliaments.

**Participation in inter-parliamentary organisations**

Members participate in three inter-parliamentary organisations—the Commonwealth Parliamentary Association (CPA), the Inter-Parliamentary Union (IPU) and the Asia Pacific Parliamentary Forum. For each Parliament, permanent delegates for both the Commonwealth Parliamentary Association branch and Inter-Parliamentary Union group are selected from the two largest parties represented in the House. These members lead the New Zealand delegations to the association’s annual conference and the union’s assemblies for the duration of the Parliament, providing continuity and stability for New Zealand’s engagement with the respective organisations. The Asia Pacific Parliamentary Forum has no permanent delegate.

**Commonwealth Parliamentary Association**

The Commonwealth Parliamentary Association (founded in 1911 as the Empire Parliamentary Association) is a body with branches in most of the legislatures at both federal and state levels in the Commonwealth. Members of Parliament (and former members as associate members) are entitled to join the New Zealand branch. The Speaker is the ex officio President of the branch and the Prime Minister and

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104 SO 37(1)(d).
106 See, for example, Rt Hon David Carter, Speaker Reports of the official Inter–Parliamentary Relations Programme 1 January–31 July 2014 (31 July 2014) [2011–2014] AJHR J.2P.
107 Office of the Clerk of the House of Representatives, annual report (23 October 2015) NZPP A.8 at 21 and 34.
the Leader of the Opposition its Vice-Presidents. The Clerk of the House acts as honorary secretary/treasurer. The association aims to promote understanding and cooperation among its members, and the study of and respect for parliamentary institutions throughout the Commonwealth. It promotes conferences, seminars and publications towards these aims. Branches are organised on a regional basis, New Zealand being part of the Pacific Region. Many of the association’s activities are regional; the Pacific Region collaborates with the Australian Region in organising regular conferences and seminars. In 2004 the Office of the Clerk assumed responsibility for providing a regional secretariat for the Pacific Region.

The New Zealand branch was host of the association’s annual conferences in 1950, 1965, 1979 and 1998, and has also staged other conferences and seminars on its behalf. New Zealand also provides a permanent member representing the Pacific Region to the association’s Executive Committee.

**Inter-Parliamentary Union**

Members are also entitled to join the New Zealand group of the Inter-Parliamentary Union. The IPU was founded in 1889. It is an organisation consisting of groups formed by national legislatures. Its official languages are English and French. As in the CPA, the Speaker is the ex officio President of the New Zealand group and the Prime Minister and the Leader of the Opposition its Vice-Presidents. The union aims to secure and maintain the establishment and development of democratic institutions and international peace and cooperation. It promotes annual and ad hoc conferences and seminars. It also publishes information on parliamentary and other subjects. Through resolutions and reports, the union expresses its views and the positions of the world parliamentary community on issues of international interest, and makes recommendations for parliamentary action, working for peace and cooperation among peoples and for the firm establishment of representative democracy. The union supports the efforts of, and works in close cooperation with, the United Nations, providing a parliamentary dimension to its work.

**Asia Pacific Parliamentary Forum**

The Asia Pacific Parliamentary Forum seeks to provide opportunities for national parliamentarians of the Asia-Pacific region to raise and discuss regional matters of common concern and interest in a global context, and to encourage and promote regional cooperation at all levels. To a great extent, the forum acts as the parliamentary branch of Asia-Pacific Economic Cooperation (APEC), and even though it maintains an independent agenda, it keeps close ties with other regional integration institutions such as the Association of Southeast Asian Nations, the South Pacific Forum, the Pacific Economic Cooperation Council, and the Pacific Basin Economic Council.

The forum expresses its views on these issues and on the positions of the parliamentarians of the Asia-Pacific region through resolutions and a joint communiqué signed by all the heads of delegation at the conclusion of its annual meeting.

**Speaker-led diplomacy**

Speaker-led diplomacy is the highest level of inter-parliamentary relations, and it can make an important contribution to advancing New Zealand’s interests, fostering understanding and promoting international cooperation between members of Parliament and between countries and Parliaments. Through the Inter-Parliamentary Relations Strategy, the New Zealand Parliament intends to make more use of the position and profile of the Speaker by increasing the Speaker’s engagement abroad, and with visiting Speakers and other dignitaries.
The principal regular initiatives involving the Speaker are an annual reciprocal Speaker-led delegation and the Conference of Speakers and Presiding Officers of the Commonwealth (CSPOC). Speakers’ delegations are an opportunity for the Speaker and a group of members to promote New Zealand and its Parliament, by visiting other parliaments and by hosting visiting Speakers and their delegations in New Zealand. The conference brings together the Speakers and Presiding Officers of the national parliaments of the independent sovereign States of the Commonwealth. It was created in 1969 as an initiative of the Speaker of the House of Commons of Canada, the Honourable Lucien Lamoureux. Since its inception, Canada has provided the conference with a secretariat.

The conference is an independent group and has no formal affiliation with the Commonwealth Parliamentary Association, the Commonwealth Secretariat or the Commonwealth Heads of Government. It operates on a two-year cycle, holding a conference of the full membership every two years, usually early in January, and a meeting of the Standing Committee at the same time in the intervening year. The New Zealand Parliament has been an active participant, and hosted the conference in 1984 and 2014.

Bilateral exchanges of members and committees

**Joint committee exchanges with Australia**

The House of Representatives has an established parliamentary exchange programme with the two Houses of the Commonwealth Parliament of Australia. In 1989 joint meetings were established between parliamentary committees from the two countries. The aim is to hold two such meetings each year, one in each country. The meetings are working sessions on subjects chosen in advance from matters under examination by the committees or the legislatures. The arrangements for the meetings are formalised between the Speaker and the presiding officers of the Australian Parliament. The visiting legislature decides which of its subject committees will participate.

The first joint meeting was held in Wellington on 19 April 1989 between the Foreign Affairs and Defence Committee and a subcommittee of the Joint (House and Senate) Committee on Foreign Affairs, Defence and Trade. The Foreign Affairs and Defence Committee used this joint meeting to help gather information for an inquiry into overseas development assistance. The exchange is not limited to foreign affairs committees. Each year, the Speaker writes to the subject select committees and invites each of them to make a submission if they wish to participate in the programme. The Speaker considers the bids they have made, and selects the committee to participate that year on the basis of the items of common interest it wishes to discuss.

The participating New Zealand committee must be authorised by the House to meet in Australia, as committees may only meet within New Zealand. Having been authorised to meet, the committee may adopt such practices and procedures as it sees fit for the joint meeting.

The procedures generally follow the rules of the committee in whose country the meeting is held. The host committee’s chairperson presides and the visiting committee’s chairperson acts as deputy chairperson. Votes are not taken. While the opening formalities of the meetings are held in public, subsequent sessions are held in private, subject to the right of any other member of the Houses of either Parliament to attend them. No transcript of the meetings is made, but a

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110 Foreign Affairs and Defence Committee Inquiry into Official Development Assistance (4 September 1990) [1990] AJHR I.5B at [2.6].

111 SO 192(2).

112 SO 192(3).
formal record of it is agreed by both committees. Subject to the agreement of the joint meeting, both the chairperson and the deputy chairperson may make public statements about the meetings before the committees report back to their respective Houses.\textsuperscript{113}

Committees of the New Zealand Parliament are expected to make a report to the House on their joint meetings.

\textbf{Friendship groups}

Members may establish friendship groups that engage on a country, regional or issues basis with counterparts in Parliaments around the world.\textsuperscript{114} While these are informal, self-regulating groups in New Zealand, they can play an important role in some Parliaments, undertaking significant visits to build bilateral inter-parliamentary relations. The New Zealand friendship groups frequently host these visiting groups. Members have formed 32 friendship groups in the 51st Parliament.

\textbf{Political exchanges}

Regular exchanges are held with Australia and the United States for young members. These are important professional development opportunities for members and participation is highly valued. The New Zealand Parliament provides reciprocal exchanges for members from Australia and the USA. Members also have the opportunity to attend Commonwealth Parliamentary Association and Inter-Parliamentary Union professional development seminars.

\textbf{Parliamentary strengthening activities in the Pacific Region}

The New Zealand Parliament supports capacity-building in parliaments throughout the Pacific region. The Office of the Clerk's inter-parliamentary relations secretariat works closely with the Commonwealth Parliamentary Association and the Inter-Parliamentary Union, the Australian Federal and State Parliaments, the New Zealand Ministry of Foreign Affairs and Trade, and other international partner agencies in the region to determine areas of need, and to implement and support study programmes and workshops for members and officials of Pacific parliaments.

The New Zealand Parliament hosted the inaugural Pacific Parliamentary and Political Leaders Forum in 2013. At this event more than 70 Pacific parliamentarians and political leaders gathered to discuss various issues of particular importance to the Pacific, including environmental issues and climate change, the global economic outlook and its implications for the region, the importance of parliament and sound governance for business development and job creation, gender equality and the gender balance of parliaments, problems of isolation and the delivery of services to remote communities, the media, health, and the importance of parliament to local communities. It is hoped that this initiative will become a regular event, not necessarily hosted as a matter of course by the New Zealand Parliament.

Members also have the opportunity to take part in the Pacific Mission, an annual event led by the Minister of Foreign Affairs, reflecting New Zealand’s commitment to development in the Pacific region. The Pacific Mission gives a cross-party delegation of members of Parliament access to a wide range of people and sectors at work in the Pacific, giving them insight into the issues facing countries in the region and highlighting areas where assistance from New Zealand might be beneficial.

\textsuperscript{113} Foreign Affairs and Defence Committee Report on the meeting with the Subcommittee on the South Pacific of the Joint Committee on Foreign Affairs, Defence and Trade of the Parliament of the Commonwealth of Australia (13 July 1989) | [1987–1990] AJHR.LS.A at 8.