

11 July 2024

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Personal details removed for proactive
release

OIA 29455

Personal details removed for proactive release

We refer to your email of 14 June 2024 in which you request the following under the Official Information Act 1982 (OIA):

1. *Any report provided to the Standing Orders Committee during the 53rd Parliament regarding the review of standing order requirements and of parliamentary processes for scrutiny of international treaties by the Foreign Affairs Defence and Trade Committee or other committees;*
2. *Any advice provided to the Foreign Affairs Defence and Trade Committee in the 54th Parliament relating to the recommendation of the Standing Orders Committee's Review of Standing Orders 2023 (pages 59-60) for the committee to review of parliamentary process for scrutiny of international treaties;*
3. *Any advice provided to Minister of Foreign Affairs and Minister for Trade in 2023 and 2024 regarding the parliamentary process for scrutiny of international treaties and any review of that process;*
4. *Any internal discussion within MFAT relating to the Standing Orders Committee's Review of Standing Orders 2023 and the proposal to review of parliamentary process for scrutiny of international treaties, and the implementation of that Standing Orders Committee's recommendation on pages 59-60.*

Question One

This part of your request is refused under section 18(e) of the OIA, as the requested information does not exist.

Question Two

The Ministry of Foreign Affairs and Trade (the Ministry) provided written and oral material to the Foreign Affairs, Defence and Trade Select Committee in April 2024. Accordingly, this part of your request is refused under section 18(d) of the OIA as the information is publicly available. The written material is titled "*Briefing on the international treaty examination process – Ministry of Foreign Affairs and Trade*" and is publicly available on the New Zealand Parliament website: https://www.parliament.nz/en/pb/sc/submissions-and-advice/document/54SCFADT_EVI_cb2aeea0-aff-4221-f9be-08dbff71d8ff_FADT470/ministry-of-foreign-affairs-and-trade.

The oral material was recorded by the Foreign Affairs, Defence and Trade Select Committee and is publicly available at: <https://vimeo.com/showcase/10758106/video/941746411#t=1510s>.

Question Three

There is one document in scope of part three of your request - a submission to the Minister of Foreign Affairs titled "*Briefing to FADTC on the international treaty making process*" and dated 22 March 2024. A copy of this submission is attached.

Question Four

We have interpreted this part of your request to be for information involving substantive discussion relating to the "*Review of Standing Orders 2023 Report of the Standing Orders Committee*" presented to the House of Representatives on 30 August 2023. We have interpreted the timeframe of this part of your request to be for the period 30 August 2023, the date of the Standing Orders Committee Report, to 14 June 2024, the date of your request. Administrative emails that relate to the development of the submission to the Minister of Foreign Affairs, and the briefing to the Foreign Affairs Defence and Trade Committee have been ruled out of scope.

There are four email chains in scope of your request and these are attached. We have withheld some information under the following sections of the OIA:

- 9(2)(a): to protect individuals' privacy; and
- 9(2)(g)(i): to protect the free and frank expression of opinions by departments.

Where the information has been withheld under section 9 of the OIA, we have identified no public interest in releasing the information that would override the reasons for withholding it.

Please note that it is our policy to proactively release our responses to official information requests where possible. Therefore, our response to your request (with your personal information removed) may be published on the Ministry website: www.mfat.govt.nz/en/about-us/contact-us/official-information-act-responses/

If you have any questions about this decision, you can contact us by email at: DM-ESD@mfat.govt.nz. You have the right to seek an investigation and review by the Ombudsman of this decision by contacting www.ombudsman.parliament.nz or freephone 0800 802 602.

Nāku noa, nā



Sarah Corbett
for Secretary of Foreign Affairs and Trade



22 March 2024

Minister of Foreign Affairs

For approval by

5 April 2024

Briefing to FADTC on the international treaty making process

BRIEFING Overview Submission

PURPOSE To update you on the Foreign Affairs Defence and Trade Committee's consideration of the international treaty making process, and MFAT's intended approach to briefing the Committee.

Recommended referrals

Prime Minister
Minister of Trade

For information by
For information by

5 April 2024
5 April 2024

Contact details

NAME	ROLE	DIVISION	WORK PHONE
Carl Reaich	Divisional Manager	Legal Division	s9(2)(a)
Shea-Lee Phillips	Legal Advisor	Legal Division	s9(2)(a)

Minister's Office to complete

Approved

Noted

Referred

Needs amendment

Declined

Withdrawn

Overtaken by events

See Minister's notes

Comments

Key points

- The Foreign Affairs Defence and Trade Committee (FADTC) has requested MFAT, by 8 April, provide it with a written briefing on the international treaty making process. An oral briefing from MFAT is also sought. MFAT will participate in this process as a witness and the information it provides will be publicly released.
- FADTC will subsequently decide whether to instigate an inquiry into how international treaties are made and the Parliamentary procedure for examining them. A formal FADTC inquiry would likely be a resource intensive process. It would include a call for public submissions, and recommendations that could include changes to the range of sources governing New Zealand's treaty practice.
- An alternative to an inquiry would be for any changes to be considered and made during the next triennial Review of Standing Orders by the Standing Orders Select Committee, which takes place in the final year of every Parliamentary term. This would give time for the Government, the Standing Orders Committee and FADTC to consider the treaty making process having regard to developments in the current Parliamentary term.
- FADTC's consideration of this topic follows the Standing Orders Committee issuing its *Review of Standing Orders 2023* report. The report noted the international treaty examination process has been in place for 25 years, with few changes. The report identified a number of issues for possible consideration:
 - The extent of public consultation in the treaty making process;
 - Whether there should be an independent assessment of the National Interest Analysis presented to Parliament alongside the treaty text for treaty examination;
 - Whether there should be legislative direction to government departments on the preparation of National Interest Analysis.
- The Standing Orders Committee recommended that FADTC initiate an inquiry into how treaties are made and the Parliamentary procedure for examining them, and obtain independent advice about formulating the inquiry's terms of reference.
- New Zealand's existing international treaty making process has been in place since 2000 when Parliamentary Treaty Examination (PTE) was introduced to increase Parliamentary involvement with respect to treaties. It enables Parliament (through a Select Committee process) to consider a treaty and make recommendations to the government before New Zealand becomes bound by the treaty.
- In MFAT's view, New Zealand's treaty making process remains fundamentally sound. International treaties are an important way in which New Zealand conducts its international engagement on a wide range of issues of importance to New Zealand. Treaty making is the prerogative of the Executive. New Zealand has a well-established domestic process to provide for the Parliamentary scrutiny of treaties.
- MFAT's proposed written briefing to FADTC is annexed to this submission (**Annex 1**). It provides factual information on the three phases of the treaty making process (negotiation; Cabinet approval and PTE; and implementation and ratification).

Recommendations

It is recommended that you:

- | | | |
|---|--|-----------------|
| 1 | Note that FADTC has requested MFAT brief it on the international treaty making process, which will inform FADTC's decision as to whether to instigate an inquiry into the process. | Yes / No |
| 2 | Note MFAT will provide FADTC with the written briefing at Annex 1 on the international treaty making process which factually describes the process. | Yes / No |
| 3 | <p>Note that if FADTC asks MFAT how the international treaty process can be improved, MFAT's answer will convey:</p> <ul style="list-style-type: none"> • The constitutional basis for the Executive's prerogative for treaty making; • The importance of an efficient, timely and robust treaty making process while noting that this process contains many decision making points (Cabinet mandate for negotiation, National Interest Analysis, and Parliamentary Treaty Examination)¹; • The public interest in the treaty making process; • While recognising the possibility of making incremental improvements to the process, New Zealand's treaty making process remains fundamentally sound, and MFAT is unable to provide advice on options for improvements until they are first agreed by the Executive. | Yes / No |
| 4 | Refer a copy of this submission to the Prime Minister and the Minister of Trade. | Yes / No |

Rt Hon Winston Peters
Minister of Foreign Affairs

Date: / /

¹ Consistent with the Coalition Agreement between New Zealand First and the New Zealand National Party.

Annex 1: Draft MFAT briefing to FADTC

Foreign Affairs, Defence and Trade Select Committee

Briefing on the treaty making process

Overview

International treaties are binding agreements between states. They create formal legal obligations between New Zealand and other countries on a range of important issues including trade, security, human rights, and the environment.

Ratifying an international treaty is the role of the Executive, but prior to ratification New Zealand has a well-established domestic process to provide Parliamentary examination of multilateral treaties and “bilateral treaties of particular significance”.

New Zealand’s existing international treaty making process has been in place since 2000 when Parliamentary Treaty Examination (PTE) was introduced to increase Parliamentary involvement with respect to treaties. It enables Parliament (through a Select Committee process) to consider a treaty and its National Interest Analysis and make recommendations to the government before New Zealand becomes bound by the treaty.

In summary, there are three phases in New Zealand’s international treaty making process:

1. **Negotiation:** Government representatives negotiate treaties within mandates approved by Cabinet. Domestic engagement and consultation with interested parties, the public, and Māori on the treaty during this part of the process is considered and led by the Government representatives that lead the treaty negotiations.
2. **Cabinet approval and Parliamentary Treaty Examination:** Cabinet approves the final text of the treaty and agrees to ratify it subject to the satisfactory completion of PTE (if applicable). The Government is required to table all multilateral treaties and “bilateral treaties of particular significance” in the House of Representatives 15 days before taking any action that would bind New Zealand to the obligations under the treaty, together with a National Interest Analysis. During this process the treaty is considered by Select Committee following which it reports to the House on the treaty.
3. **Implementation and ratification:** If primary legislation is required to implement the treaty in domestic law then this must be passed by Parliament. By invariable practice, New Zealand will not take a binding treaty action until the required implementing legislation is passed, in order to ensure that New Zealand is in a position to comply with its obligations under the treaty. New Zealand will then ratify the treaty.

Each of these phases is set out in a range of publicly available sources: the International Treaty Making Guide available on MFAT’s website, Cabinet Manual (paragraphs 5.78 - 5.82 and 7.127 - 7.137), Cabguide and the Standing Orders (specifically Standing Orders 405-408).

1. Negotiation

- The first step in the international treaty making process is obtaining a negotiating mandate. Following which the responsible Minister and officials will participate in international negotiations with a view to developing and negotiating the draft text of an agreement.
- A negotiating mandate will be required from Cabinet for treaties that will have legislative implications, or where new policy issues arise, or where a treaty is particularly significant.
- During the negotiation phase, the Minister and agency participating in the negotiations will lead any domestic engagement and consultation with interested parties, the public, and Māori on the treaty.
- The domestic consultation and engagement undertaken during treaty negotiations is set out in the National Interest Analysis (NIA). Some examples drawn from NIAs tabled in Parliament are below:
 - EU Free Trade Agreement: written submissions from stakeholders were sought, hui were held with Māori and interested stakeholders in-person across the country and virtually, live negotiation text was shared with partners and stakeholders under confidentiality agreements and an information sharing protocol, public summaries of each negotiation round were made available on the MFAT website, there was a dedicated treaty webpage and a standalone email address created for public comments and questions.
 - Framework Agreement Between the Government of New Zealand and the Government of the United States of America on Cooperation in Aeronautics and the Exploration and Use of Airspace and Outer Space for Peaceful Purposes: negotiations were partly developed in response to requests from researchers and firms identifying issues and barriers and MBIE kept interested groups updated, at a high level, on progress in the negotiation through in-person meetings and presentations.
 - New Zealand – United Kingdom Free Trade Agreement: regular meetings with Treaty partner representative groups, in-depth discussions with sectoral leaders, a number of public hui, targeted communications, web content and online discussions, and a dedicated treaty webpage public comments and submission.
 - Revisions to the Radio Regulations adopted by the Final Acts of the World Radiocommunication Conference 2019: private radio sector industry representatives were involved in New Zealand's preparation for the resolution negotiations. As the Final Acts are consistent with the New Zealand's interests, no concerns were expressed about the Revisions.

2. Cabinet approval and Parliamentary treaty examination

Cabinet approval and Signature

- Any proposal for New Zealand to sign a treaty or to take a binding treaty action must be submitted, with the text of the treaty, to Cabinet for approval. Where the Standing Orders require a treaty to be presented to the House for examination before the binding treaty action is taken, an NIA must also be prepared and submitted to Cabinet.
- Cabinet is asked to approve the final text of the treaty, and to agree to ratify it subject to the satisfactory completion of PTE.

- Treaties can be signed following Cabinet approval. The effect of signature is usually political, but not legal; i.e., it does not make the treaty binding on New Zealand at international law. It is therefore not a binding treaty action.

Parliamentary treaty examination process

- Prior to taking a binding treaty action, all multilateral treaties and bilateral treaties of particular significance must be presented to the House for examination. This is the PTE process. Most treaties go through PTE.
- The Minister of Foreign Affairs has the discretion to determine whether a bilateral treaty qualifies as a "major bilateral treaty of particular significance". This decision is based on the subject matter of the agreement, and there is a list of criteria to help the Minister exercise this discretion. A bilateral treaty may be deemed to be a "major bilateral treaty of particular significance" if:
 - 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 (i.e. it is an original treaty dealing with possibly a one-off 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 remains in force for a specified period, thus binding future governments permanently or for a specified time;
 - the treaty is to be implemented by way of overriding treaty regulations (i.e. regulations that implement a treaty by way of regulations that override 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. In order to facilitate these requests, MFAT makes publicly available on New Zealand Treaties Online a list of ongoing treaty negotiations (see International Treaty List points below).
- These criteria are intended to help the Minister exercise discretion. They do not replace that discretion.
- If a bilateral treaty is determined to not be a major bilateral treaty of particular significance, then it will be granted a bilateral treaty waiver and will not be tabled in the House.
- The PTE process facilitates Parliamentary scrutiny of a treaty and its National Interest Analysis by Select Committee, following which the Select Committee reports back to the House.
- If the select committee report contains recommendations to the government, a response from the government must be presented within 90 days of the report.

National Interest Analyses

- Presenting a treaty to the House requires preparation of an NIA, which sets out, amongst other things, the reasons for New Zealand becoming party to the treaty, the advantages and disadvantages to New Zealand of taking the proposed treaty action, and the means of implementing the treaty.
- The Standing Orders set out the requirements for an NIA including the matters it must address. NIAs are prepared by the Government representatives that led the negotiation.
- The Cabinet Manual requires NIAs to be presented to Cabinet before presentation to the House.
- NIAs are publicly available on the Parliament website.

3. Implementation and ratification

Passage of implementing legislation and ratification

- The government refrains from taking any binding treaty action in relation to a treaty that has been presented to the House until the relevant select committee has reported, or 15 sitting days have elapsed from the date of presentation, whichever is sooner.
- Where legislation is required to enable New Zealand to fulfil treaty obligations, the Government's invariable practice is to pass the implementing measure prior to ratifying or acceding to the treaty.
- Legislation required to implement international agreements may be referred to FADTC as part of the usual passage through the House. This is a separate process to that of PTE and provides an opportunity for Parliamentary scrutiny and public consultation of the legislation. The Treaty's NIA will identify the legislative changes required to comply with the Treaty obligations.
- Following the conclusion of these processes, the binding treaty action, such as ratification, can be undertaken. There are several ways that New Zealand may take a binding treaty action, one of the most common is depositing an Instrument of Ratification, whereby a state declares its intention to be legally bound at international law by a treaty. Following ratification, the treaty will enter into force for New Zealand according to the terms of the treaty.

International Treaties List

- MFAT's New Zealand Treaties Online website has a public record of the international agreements that NZ is currently negotiating, concluding, ratifying or amending, as well as all ratified agreements.
- A hard copy list of all agreements currently being negotiated is annexed to this briefing.

From: HALLUM, Victoria (DS MLG) <Victoria.Hallum@mfat.govt.nz>
Sent: Tuesday, 23 January 2024 6:28 am
To: WILLIAMS, Andrew (LGL) <Andrew.Williams@mfat.govt.nz>; COX, Sam (LGL) <Sam.Cox@mfat.govt.nz>
Cc: REAICH, Carl (LGL) <Carl.Reaich@mfat.govt.nz>
Subject: FW: FADT Committee: request for submission from MFAT

[IN CONFIDENCE]

Hi Andrew/Sam,

I wasn't aware that the this recommendation had been made³ in the *Review of Standing Orders 2023* report . Were you? It would be good to understand what led FADTC to make this decision.

This will require some careful handling. As you know we had a package of potential improvements ready to go ahead a while back but MFA did not decide to proceed with them.

Nga mihi,

Victoria

From: CORBETT, Sarah (ESD) <Sarah-Jane.Corbett@mfat.govt.nz>
Sent: Thursday, 18 January 2024 10:09 AM
To: COX, Sam (LGL) <Sam.Cox@mfat.govt.nz>; WILLIAMS, Andrew (LGL) <Andrew.Williams@mfat.govt.nz>; SINCLAIR, Lauryn (LGL) <Lauryn.Sinclair@mfat.govt.nz>
Cc: REAICH, Carl (LGL) <Carl.Reaich@mfat.govt.nz>; SIMPSON, Anthony (DS MLG) <Anthony.Simpson@mfat.govt.nz>; LGL Treaties <Treaties@mfat.govt.nz>; HALLUM, Victoria (DS MLG) <Victoria.Hallum@mfat.govt.nz>
Subject: RE: FADT Committee: request for submission from MFAT

[UNCLASSIFIED]

Thanks for the update Sam, I will let the Clerk know.

Ngā mihi,
Sarah

Mobile s9(2)(a)

From: COX, Sam (LGL) <Sam.Cox@mfat.govt.nz>
Sent: Thursday, 18 January 2024 9:40 am
To: CORBETT, Sarah (ESD) <Sarah-Jane.Corbett@mfat.govt.nz>; WILLIAMS, Andrew (LGL) <Andrew.Williams@mfat.govt.nz>; SINCLAIR, Lauryn (LGL) <Lauryn.Sinclair@mfat.govt.nz>

Cc: REAICH, Carl (LGL) <Carl.Reaich@mfat.govt.nz>; SIMPSON, Anthony (DS MLG) <Anthony.Simpson@mfat.govt.nz>; LGL Treaties <Treaties@mfat.govt.nz>; HALLUM, Victoria (DS MLG) <Victoria.Hallum@mfat.govt.nz>

Subject: RE: FADT Committee: request for submission from MFAT

[UNCLASSIFIED]

Kia ora Sarah

As part of our provision of briefing to the Committee we would be happy to address the below request as best we can.

However, as we are still in the process of developing our briefing material and key people are still away, we'll need to provide a further update to the Clerk closer to March to confirm what we are able to provide.

Cheers

Sam

From: CORBETT, Sarah (ESD) <Sarah-Jane.Corbett@mfat.govt.nz>

Sent: Tuesday, 16 January 2024 4:35 pm

To: WILLIAMS, Andrew (LGL) <Andrew.Williams@mfat.govt.nz>; SINCLAIR, Lauryn (LGL)

<Lauryn.Sinclair@mfat.govt.nz>; COX, Sam (LGL) <Sam.Cox@mfat.govt.nz>

Cc: REAICH, Carl (LGL) <Carl.Reaich@mfat.govt.nz>; SIMPSON, Anthony (DS MLG)

<Anthony.Simpson@mfat.govt.nz>; LGL Treaties <Treaties@mfat.govt.nz>; HALLUM, Victoria (DS MLG) <Victoria.Hallum@mfat.govt.nz>

Subject: FW: FADT Committee: request for submission from MFAT

[UNCLASSIFIED]

Kia ora Andrew and Lauryn and Sam,

Please see below (additional) request from FADTC. Grateful if you can confirm that the below is doable?

Ngā mihi,
Sarah

Mobile s9(2)(a)

From: Edward Siebert <Edward.Siebert@parliament.govt.nz>

Sent: Tuesday, 16 January 2024 3:46 pm

To: CORBETT, Sarah (ESD) <Sarah-Jane.Corbett@mfat.govt.nz>

Subject: RE: FADT Committee: request for submission from MFAT

Hi Sarah

Further to the request below on a submission from MFAT on the treaty making process, negotiations, etc that I requested on behalf of the committee below, could we also at the same time get an updated international treaty list for the committee? I think one has been periodically provided and would be good to get at the start of the new Parliament.

And as part of that, can we have MFAT speak to what treaties are underway/coming up (especially what stage any significant treaties are at) over the next couple years?

This could all be on the March timelines below.

Edward

From: Edward Siebert

Sent: Monday, 8 January 2024 2:40 PM

To: CORBETT, Sarah (ESD) <Sarah-Jane.Corbett@mfat.govt.nz>

Subject: RE: FADT Committee: request for submission from MFAT

Thank you Sarah!

From: CORBETT, Sarah (ESD) <Sarah-Jane.Corbett@mfat.govt.nz>

Sent: Monday, 8 January 2024 1:59 PM

To: Edward Siebert <Edward.Siebert@parliament.govt.nz>

Subject: RE: FADT Committee: request for submission from MFAT

[UNCLASSIFIED]

Kia ora Edward,

We had a lovely break, I hope that you guys did too!

Thanks for sending this through, I can acknowledge receipt and the due date of 18 March for the written submission. I will also ask the division to pencil in 28 March as a possible hearing date.

Ngā mihi,
Sarah

Mobile s9(2)(a)

From: Edward Siebert <Edward.Siebert@parliament.govt.nz>

Sent: Monday, 8 January 2024 10:32 am

To: CORBETT, Sarah (ESD) <Sarah-Jane.Corbett@mfat.govt.nz>

Cc: Foreign Affairs, Defence and Trade Committee

<ForeignAffairs.DefenceTrade@parliament.govt.nz>

Subject: FADT Committee: request for submission from MFAT

Kia ora Sarah

I hope you guys had a good Christmas and relaxing break!

I am sorry to do this on the first day back, but at its last meeting of 2023 the FADT Committee initiated a briefing on the international treaty making process. This is the start of what is likely to be a long, in-depth piece of work by the committee, and comes following a recommendation in the *Review of Standing Orders 2023* report. I have cut and pasted the relevant parts of that report below for some context.

The committee resolved to ask MFAT for a written, then oral, submission to help it understand the full scope of how a treaty gets made and implemented, from the very start to the very end. The submission should not focus too much on the procedural aspects of what happens to a treaty in the House as that will be covered elsewhere; it is more about all the steps before and after the House sees a treaty.

Would it be possible to have the written submission **by Monday, 18 March**? The written and oral submission (I don't have a suggested date at this stage but possibly Thursday 28 March) would both be public.

Let me know if you have any questions. Thank you!

Edward

Pages 59-60:

International treaties

The international treaty examination process has been in place for 25 years, and has largely remained unchanged during that time. In our view, it is time for a review of how the procedure

is working. An inquiry by the Foreign Affairs, Defence and Trade Committee into international treaty processes, including both how treaties are made and the parliamentary procedure for examining them, would be the best parliamentary mechanism for such a review.

While the making of international treaties is generally regarded as an executive prerogative, it is entirely appropriate for the House to scrutinise how that function is carried out, as well as considering its own procedures for examining treaties. The Government may call for wider public input during the treaty negotiation process, although more usually public engagement is left for the select committee to undertake during the treaty examination process, which takes place after a treaty is made.

National interest analyses (NIAs) are prepared by departmental officials and presented to the House at the same time as the treaties to which they relate. It is up to the Government whether and how departments engage external advice or subject treaties and NIAs to independent assessment. NIAs are required under the Standing Orders, which are not suitable

for setting out detailed steps to be undertaken during what is a Government process—such requirements would be more suitable for legislation. Any inquiry into the international treaty-making

process should consider whether a statutory basis would be appropriate. Alternatively, a non-statutory approach could be to adjust requirements for Cabinet approval during the international treaty process. However, in their current form, NIAs are primarily intended to inform the House, which is a valuable frame through which to view them and their purpose. We recommend to the Foreign Affairs, Defence and Trade Committee that it initiate an inquiry and obtain independent advice about formulating its terms of reference.

We recommend to the Foreign Affairs, Defence and Trade Committee that it conduct an

inquiry into how treaties are made and the parliamentary procedure for examining them.

Edward Siebert

Principal Clerk of Committee

Foreign Affairs, Defence and Trade Committee

4th Floor, TSB Building, Wellington 6160

P s9(2)(a)

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From: WILLIAMS, Andrew (LGL) <Andrew.Williams@mfat.govt.nz>
Sent: Monday, 15 January 2024 10:43 am
To: SINCLAIR, Lauryn (LGL/SAN) <Lauryn.Sinclair@mfat.govt.nz>; CORBETT, Sarah (ESD) <Sarah-Jane.Corbett@mfat.govt.nz>; REAICH, Carl (LGL) <Carl.Reaich@mfat.govt.nz>; LGL Treaties <Treaties@mfat.govt.nz>
Cc: SIMPSON, Anthony (DS MLG) <Anthony.Simpson@mfat.govt.nz>; HALLUM, Victoria (DS MLG) <Victoria.Hallum@mfat.govt.nz>; COX, Sam (LGL) <Sam.Cox@mfat.govt.nz>
Subject: RE: FOR ACTION: FADTC request for submission from MFAT: International Treaty Making Process: DUE ESD 1 March

[IN CONFIDENCE]

Kia ora Lauryn – thanks Carl and a Sarah for drawing this to my attention. I am looping in Sam Cox who is going to take over leadership of the treaty making process.

As Victoria will be aware, we did a lot of work for the former Minister on this, including managing a difficult interagency process, an SPSI paper, and a draft Cabinet paper. s9(2)(g)(i)

While the request from FADTC seems relatively straight-forward, below the surface it does start to pick at some significant constitutional questions and MFAT equities s9(2)(g)(i)

I am also conscious that elements of this issue were included in the NZ First / National Coalition Agreement – “Ensure a 'National Interest Test' is undertaken before New Zealand accepts any agreements from the UN and its agencies that limit national decision-making and reconfirm that New Zealand's domestic law holds primacy over any international agreements.”

All to say I hope we can do something relatively straightforward for 28 March, but we should be conscious of where this might head and some of the broader context. And we have done a significant amount of work on this – not of all it will still be fit for purpose, but the underlying analysis and policy work should be.

Lauryn – as a first step, can you please pull out for Sam all of the key documents on this issue (check with Shea-Lee if you don't have them) including Cabinet paper, submissions, options tables etc? And then pull together a meeting with Sam, Carl and I when I get back from leave?

Thanks
Andrew

From: SINCLAIR, Lauryn (LGL) <Lauryn.Sinclair@mfat.govt.nz>
Sent: Tuesday, 9 January 2024 2:05 pm
To: CORBETT, Sarah (ESD) <Sarah-Jane.Corbett@mfat.govt.nz>; REAICH, Carl (LGL) <Carl.Reaich@mfat.govt.nz>; LGL Treaties <Treaties@mfat.govt.nz>; WILLIAMS, Andrew (LGL)

<Andrew.Williams@mfat.govt.nz>

Cc: SIMPSON, Anthony (DS MLG) <Anthony.Simpson@mfat.govt.nz>; HALLUM, Victoria (DS MLG) <Victoria.Hallum@mfat.govt.nz>

Subject: RE: FOR ACTION: FADTC request for submission from MFAT: International Treaty Making Process: DUE ESD 1 March

[UNCLASSIFIED]

Kia ora Sarah,

Thanks very much for sending this through to us – that is super helpful!

Ngā manaakitanga,

Lauryn Sinclair

Treaty Officer

Legal Division - Rōpū Ture o te Ao

New Zealand Ministry of Foreign Affairs & Trade | Manatū Aorere

E lauryn.sinclair@mfat.govt.nz

M: s9(2)(a)

195 Lambton Quay, Private Bag 18901, Wellington 5045, New Zealand

www.mfat.govt.nz | www.safetravel.govt.nz



From: CORBETT, Sarah (ESD) <Sarah-Jane.Corbett@mfat.govt.nz>

Sent: Tuesday, 9 January 2024 8:37 am

To: REAICH, Carl (LGL) <Carl.Reaich@mfat.govt.nz>; LGL Treaties <Treaties@mfat.govt.nz>; SINCLAIR, Lauryn (LGL) <Lauryn.Sinclair@mfat.govt.nz>; WILLIAMS, Andrew (LGL) <Andrew.Williams@mfat.govt.nz>

Cc: SIMPSON, Anthony (DS MLG) <Anthony.Simpson@mfat.govt.nz>; HALLUM, Victoria (DS MLG) <Victoria.Hallum@mfat.govt.nz>

Subject: RE: FOR ACTION: FADTC request for submission from MFAT: International Treaty Making Process: DUE ESD 1 March

[UNCLASSIFIED]

Sorry – try this one!

Ngā mihi,
Sarah

Mobile s9(2)(a)

From: CORBETT, Sarah (ESD)

Sent: Tuesday, 9 January 2024 8:34 am

To: REAICH, Carl (LGL) <Carl.Reaich@mfat.govt.nz>; LGL Treaties <Treaties@mfat.govt.nz>; SINCLAIR, Lauryn (LGL) <Lauryn.Sinclair@mfat.govt.nz>; WILLIAMS, Andrew (LGL) <Andrew.Williams@mfat.govt.nz>

Cc: SIMPSON, Anthony (DS MLG) <Anthony.Simpson@mfat.govt.nz>; HALLUM, Victoria (DS MLG) <Victoria.Hallum@mfat.govt.nz>

Subject: RE: FOR ACTION: FADTC request for submission from MFAT: International Treaty Making Process: DUE ESD 1 March

FYI – if it is helpful, attached is a document with a short bio on each of the new FADTC members.

Ngā mihi,
Sarah

Mobile s9(2)(a)

From: REAICH, Carl (LGL) <Carl.Reaich@mfat.govt.nz>

Sent: Tuesday, 9 January 2024 8:31 am

To: CORBETT, Sarah (ESD) <Sarah-Jane.Corbett@mfat.govt.nz>; LGL Treaties <Treaties@mfat.govt.nz>; SINCLAIR, Lauryn (LGL) <Lauryn.Sinclair@mfat.govt.nz>; WILLIAMS, Andrew (LGL) <Andrew.Williams@mfat.govt.nz>

Cc: SIMPSON, Anthony (DS MLG) <Anthony.Simpson@mfat.govt.nz>; HALLUM, Victoria (DS MLG) <Victoria.Hallum@mfat.govt.nz>

Subject: RE: FOR ACTION: FADTC request for submission from MFAT: International Treaty Making Process: DUE ESD 1 March

[UNCLASSIFIED]

Thanks Sarah.

Andrew – could you oversee Lauryn's work on this? We should also have a think, closer to the time, as to:

- Whether we might have a chat with Edward about his perspectives on this, and
- Who we might want to have brief FADTC on the treaty making process.

FADTC has some very experienced members (including former Ministers Henare and O'Connor, as well as Golriz Ghahraman), and some new MPs (including the chair, Tim van de Molen, and Laura Trask).

Thanks again
Carl

Chairperson	van de Molen, Tim	National Party	Waikato
Deputy - Chairperson	Henare, Peeni	Labour Party	List
Member	Costley, Tim	National Party	Ōtaki
Member	Ghahraman, Golriz	Green Party	List
Member	Kirkpatrick, Dana	National Party	East Coast
Member	O'Connor, Damien	Labour Party	List
Member	Trask, Laura	ACT Party	List

From: CORBETT, Sarah (ESD) <Sarah-Jane.Corbett@mfat.govt.nz>

Sent: Monday, 8 January 2024 3:56 am

To: LGL Treaties <Treaties@mfat.govt.nz>; SINCLAIR, Lauryn (LGL) <Lauryn.Sinclair@mfat.govt.nz>

Cc: SIMPSON, Anthony (DS MLG) <Anthony.Simpson@mfat.govt.nz>; HALLUM, Victoria (DS MLG) <Victoria.Hallum@mfat.govt.nz>; REAICH, Carl (LGL) <Carl.Reaich@mfat.govt.nz>; ESD <DM-ESD@mfat.govt.nz>

Subject: FOR ACTION: FADTC request for submission from MFAT: International Treaty Making Process: DUE ESD 1 March

[UNCLASSIFIED]

Kia ora Lauryn,

Please see the below request from FADTC in relation to the international treaty making process. As noted, the Clerk has requested a response from MFAT by 18 March.

I have put together a basic template for the response, but please feel free to adjust to fit this particular request:

[MFAT Written Submission on the Treaty Making Process-FADTC Jan24.docx](#)

Grateful if you can please provide a response to **ESD BY COP, 1 March**. This is to allow time for the Minister's office to review, ahead of sending it to the committee.

Note –

- The Clerk has indicated that following on from the written submission, there is likely to be a request for MFAT officials to appear in front of the committee. The tentative date for this is 28 March 2024 – please let me know as soon as possible if there is a reason this date might not work for Legal.
- MFAT's submission will eventually be published on the Parliamentary website – please make sure the contents of the response are UNCLASSIFIED.
- I have made the Minister's office aware of this request from FADTC.

Please let me know if you have any questions.

Ngā mihi,
Sarah

Sarah Corbett

Divisional Manager

Executive Services Division

New Zealand Ministry of Foreign Affairs & Trade | Manatū Aorere

M s9(2)(a) E sarah.corbett@mfat.govt.nz

From: Edward Siebert <Edward.Siebert@parliament.govt.nz>

Sent: Monday, 8 January 2024 10:32 am

To: CORBETT, Sarah (ESD) <Sarah-Jane.Corbett@mfat.govt.nz>

Cc: Foreign Affairs, Defence and Trade Committee
<ForeignAffairs.DefenceTrade@parliament.govt.nz>

Subject: FADT Committee: request for submission from MFAT

Kia ora Sarah

I hope you guys had a good Christmas and relaxing break!

I am sorry to do this on the first day back, but at its last meeting of 2023 the FADT Committee initiated a briefing on the international treaty making process. This is the start of what is likely to be a long, in-depth piece of work by the committee, and comes following a recommendation in the *Review of Standing Orders 2023* report. I have cut and pasted the relevant parts of that report below for some context.

The committee resolved to ask MFAT for a written, then oral, submission to help it understand the full scope of how a treaty gets made and implemented, from the very start to the very end. The submission should not focus too much on the procedural aspects of what happens to a treaty in the House as that will be covered elsewhere; it is more about all the steps before and after the House sees a treaty.

Would it be possible to have the written submission **by Monday, 18 March**? The written and oral submission (I don't have a suggested date at this stage but possibly Thursday 28 March) would both be public.

Let me know if you have any questions. Thank you!

Edward

Pages 59-60:

International treaties

The international treaty examination process has been in place for 25 years, and has largely remained unchanged during that time. In our view, it is time for a review of how the procedure

is working. An inquiry by the Foreign Affairs, Defence and Trade Committee into international treaty processes, including both how treaties are made and the parliamentary procedure for examining them, would be the best parliamentary mechanism for such a review.

While the making of international treaties is generally regarded as an executive prerogative, it is entirely appropriate for the House to scrutinise how that function is carried out, as well as considering its own procedures for examining treaties. The Government may call for wider public input during the treaty negotiation process, although more usually public engagement is left for the select committee to undertake during the treaty examination process, which takes place after a treaty is made.

National interest analyses (NIAs) are prepared by departmental officials and presented to the House at the same time as the treaties to which they relate. It is up to the Government whether and how departments engage external advice or subject treaties and NIAs to independent assessment. NIAs are required under the Standing Orders, which are not suitable

for setting out detailed steps to be undertaken during what is a Government process—such requirements would be more suitable for legislation. Any inquiry into the international treaty-making

process should consider whether a statutory basis would be appropriate. Alternatively, a non-statutory approach could be to adjust requirements for Cabinet approval during the international treaty process. However, in their current form, NIAs are primarily intended to inform the House, which is a valuable frame through which to view them and their purpose. We recommend to the Foreign Affairs, Defence and Trade Committee that it initiate an inquiry and obtain independent advice about formulating its terms of reference.

We recommend to the Foreign Affairs, Defence and Trade Committee that it conduct an inquiry into how treaties are made and the parliamentary procedure for examining them.

Edward Siebert

Principal Clerk of Committee

Foreign Affairs, Defence and Trade Committee

4th Floor, TSB Building, Wellington 6160

Ps9(2)(a)

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From: HALLUM, Victoria (DS MLG) <Victoria.Hallum@mfat.govt.nz>
Sent: Friday, 2 February 2024 6:15 pm
To: REAICH, Carl (LGL) <Carl.Reaich@mfat.govt.nz>
Cc: PHILLIPS, Shea-Lee (AMER) <Shea-Lee.Phillips@mfat.govt.nz>; COX, Sam (LGL) <Sam.Cox@mfat.govt.nz>; WILLIAMS, Andrew (LGL) <Andrew.Williams@mfat.govt.nz>; SIMPSON, Anthony (DS MLG) <Anthony.Simpson@mfat.govt.nz>; DENSTON, Jessica (DS MLG) <Jessica.Denston@mfat.govt.nz>
Subject: RE: FADTC Treaty inquiry

[RESTRICTED]

Thanks for setting this out Carl and Sam,

I am broadly comfortable with your proposed approach – though am less certain about separating the papers to MFA into one on the FADTC process and one on our recommended approach/principles to dealing with questions about possible changes to the treaty making process or the desirability of a formal inquiry (also I am not sure I see in your timeline when the two papers are going ahead).

If you do think we need two papers, can you also think whether the first engagement with MFA's office might be better conducted via an email to the office rather than a formal submission?

I do agree however that we need a formal submission on the underlying issues to make sure that government members of the committee know the relevant Minister's views on the issues. I think that submission needs to clearly set out the rationale for the current system, and the important New Zealand interests behind it, and the problems that would ensue if significant changes were to take place, while also acknowledging that there are a number of useful smaller improvements that could be made, following a FADTC inquiry if that were to take place.

This submission should also be copied to the Minister for Trade and the Prime Minister.

Happy to discuss. I will be at Waitangi on Monday but happy to fit in a call if necessary.

Victoria

From: REAICH, Carl (LGL) <Carl.Reaich@mfat.govt.nz>
Sent: Friday, 2 February 2024 12:33 PM
To: HALLUM, Victoria (DS MLG) <Victoria.Hallum@mfat.govt.nz>
Cc: PHILLIPS, Shea-Lee (LGL) <Shea-Lee.Phillips@mfat.govt.nz>; COX, Sam (LGL) <Sam.Cox@mfat.govt.nz>; WILLIAMS, Andrew (LGL) <Andrew.Williams@mfat.govt.nz>; SIMPSON, Anthony (DS MLG) <Anthony.Simpson@mfat.govt.nz>
Subject: RE: FADTC Treaty inquiry

[RESTRICTED]

Kia ora Victoria

We've had a look at how best to approach the treaty inquiry. Sam has kindly drafted the bulk of this email, which sets out our proposed approach.

Background

The starting point, as you know, is the Review of Standing Orders 2023 which recommended to FADTC that it:

- initiate an inquiry on how treaties are made and the parliamentary procedure for examining them;
- obtain independent advice about formulating its terms of reference.

Following that, FADTC publicly referred to a "briefing" on "the international treaty examination process". There is some ambiguity over the status of this. Normally a briefing gives members the opportunity to inform themselves about topics of interest or concern in the committee's subject area. Briefings can also be used to inform a decision as to whether to initiate a formal inquiry into a matter. Normally, a Ministry would be a witness for a briefing.

However, emails with the Clerk suggest that this may be more like a formal inquiry, with the Clerk even indicating MFAT should participate as a witness. We will work with ESD to clarify the status of what FADTC is undertaking (briefing or formal inquiry), and ask it to confirm whether MFAT's participation is sought as a witness or an adviser.

The current request from FADTC to MFAT is for:

- "Written briefing to help it understand the full scope of how a treaty gets made and implemented, from the very start to the very end. The submission should not focus too much on the procedural aspects of what happens to a treaty in the House as that will be covered elsewhere; it is more about all the steps before and after the House sees a treaty";
- An oral briefing;
- The Treaty list;
- MFAT "speak to what treaties are underway/coming up (especially what stage any significant treaties are at) over the next couple years."

Plan going forward

Our thinking in terms of staffing the process is that I will appear at the FADTC hearing, and oversee our preparations. Shea-Lee will be the responsible policy officer, given her previous

involvement in this. Sam will be the day to day support for Shea-Lee, and Andrew will also be involved (although he'll be overseas for some of Feb with the pandemic treaty processes).

We will now expedite drafting of three documents, to help guide our early engagement with MFA's office:

- First, a draft submission to MFA (and other ministers) which sets out background/context from last year, explains FADTC's upcoming briefing process and what it could lead to (formal inquiry), confirms MFAT's approach to the FADTC briefing, and outlines possible alternatives to an eventual possible formal inquiry.
- Second, the draft written briefing to FADTC. This will respond to the Clerk's request for an explanation of how a "treaty gets made and implemented", but not go much further.
- Third, a paper setting out our approach/principles to dealing with questions about possible changes to the treaty making process or the desirability of a formal inquiry.

Timeline:

LGL develop draft submission to MFA and draft written brief to FADTC	By 9 Feb
Victoria initial review of draft submission to MFA and draft written briefing to FADTC	12-14 Feb
LGL informally engage with MFA's office about forward process and informally provide draft documents	14/15 Feb onwards
Victoria sign out submission to MFA and annexed draft written briefing to FADTC	27 February
Provide signed submission to MFA annexing draft written briefing to FADTC	28 February
Written brief due with FADTC	Monday 18 March
Develop oral remarks and reactive Q+A	18-28 March
Suggested Date for Oral Hearing	Thursday 28 March

We'd welcome any guidance you may have on this proposed approach.

Thanks in anticipation

Carl

From: HALLUM, Victoria (DS MLG) <Victoria.Hallum@mfat.govt.nz>

Sent: Wednesday, 31 January 2024 9:14 am

To: REAICH, Carl (LGL) <Carl.Reaich@mfat.govt.nz>; WILLIAMS, Andrew (LGL) <Andrew.Williams@mfat.govt.nz>

Subject: FADTC Treaty inquiry

[RESTRICTED]

We briefly discussed this at SLT stand up today.

The view is that you should provide advice to MFA, MfT and PM on this, including what approach we think they should take in the inquiry and what improvements to the process might be sensible.

Victoria Hallum

Deputy Secretary

Multilateral and Legal Affairs Group | Te Taukaea

New Zealand Ministry of Foreign Affairs & Trade | Manatū Aorere

M s9(2)(a)

E Victoria.hallum@mfat.govt.nz

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From: HALLUM, Victoria (DS MLG) <Victoria.Hallum@mfat.govt.nz>

Sent: Tuesday, 27 February 2024 10:03 am

To: COX, Sam (LGL) <Sam.Cox@mfat.govt.nz>; PHILLIPS, Shea-Lee (AMER) <Shea-Lee.Phillips@mfat.govt.nz>

Cc: REAICH, Carl (LGL) <Carl.Reaich@mfat.govt.nz>; GLOGOSKI, Robyn (DS MLG Office) <Robyn.Glogoski@mfat.govt.nz>

Subject: Draft submission on request to give evidence to FADTC on international treaty making process

[UNCLASSIFIED]

Hello Sam and Shea-Lee,

I have now had the opportunity to read the draft submission.

I think, and potentially our approach to this issue, needs some reshaping so would like to discuss this with you.

Can you make a time for this? Fortunately time is on our side with the deadline being 8 April.

Robyn is looking at my diary at the moment.

Victoria Hallum

Deputy Secretary

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E Victoria.hallum@mfat.govt.nz