



PARLIAMENTARY SERVICE
Te Ratonga Whara Pāremata

New Zealand Sovereignty: 1857, 1907, 1947, or 1987?

August 2007

Parliamentary Research Paper

1947

(Wilson, J., 2007: 2, 8)

SUMMARY

- ▶ This research paper provides a brief overview of some of the key dates in New Zealand's path to independence with particular emphasis on New Zealand's progression to gaining complete and formal sovereignty over its external affairs.
- ▶ The year 2007 marks the centenary of New Zealand's transition from colony to Dominion, and also marks 60 years since New Zealand passed the Statute of Westminster Adoption Act 1947.
- ▶ In 1857 responsible government was consolidated and more than nominal independence from Britain achieved when the British Parliament passed the New Zealand Constitution Amendment Act. This gave the New Zealand Parliament authority to amend all but a few entrenched sections of the New Zealand Constitution Act 1852.
- ▶ Although the change in the designation of New Zealand – from the “Colony of New Zealand” to the “Dominion of New Zealand” – took effect on 26 September, 1907, complete autonomy in New Zealand's foreign affairs was not obtained.
- ▶ The Governor-General continued to: be appointed by Britain; act as both representative of the British Government as well as the sole official representative of New Zealand views to the Imperial government; be the only person to hold the official coding ciphers; exercise sole discretion over which material and despatches were to be passed to the New Zealand government.
- ▶ New Zealand acquired the right to conduct its own international trade negotiations independently of Britain in 1923. It exercised this right for the first time in 1928, when it signed a trade treaty with Japan.
- ▶ Before the Statute of Westminster Act 1931 – and arguably until the New Zealand Parliament passed the Statute of Westminster Adoption Act in 1947 – the New Zealand Parliament was not a sovereign parliament, it did not have the capacity to make all law, (such as legislating extra-territorially), and there were some laws that it could not unmake.
- ▶ Full New Zealand sovereignty can be dated to 1947 – both in terms of gaining formal legal control over the conduct of its foreign policy and the attainment of

3rd

constitutional and plenary powers by its legislature.

- ▶ In passing the Constitution Act 1986 (effective 1 January 1987), New Zealand “unilaterally revoked all residual United Kingdom legislative power.” New Zealand, as of 1987, is a free-standing constitutional monarchy whose parliament has unlimited sovereign power.

Introduction

It is an ironic commentary on the conservatism of New Zealand in constitutional matters, that this failure [to adopt the Statute of Westminster in 1931] in due course placed our country in a position where, the future having arrived, her lack of sovereign powers might quite well have imperilled not only a deeper imperial unity than the one of form, but even the empire itself.¹

The historical development of New Zealand's foreign affairs is “the history of a colony becoming independent.”² When the British Parliament passed the New Zealand Constitution Act in 1852, New Zealand embarked on a journey of independence from Britain in exercising sovereignty – legislative, judicial, and executive authority – over its domestic affairs. However, ‘imperial interests’, (including foreign relations, external trade, the constitution and ‘native affairs’), were beyond the powers of the New Zealand Parliament. New Zealand did not obtain ‘Dominion status’ until 1907, but this also did not mean full sovereign independence because “the status of the dominions in international affairs is not necessarily identical with dominion status.”³

In fact New Zealand did not achieve full independence – in the sense of complete autonomy or sovereign power over its own constitutional arrangements and its foreign affairs – until 1947. The year 2007, while it marks the centenary of New Zealand's transition from colony to Dominion, also marks 60 years since New Zealand passed the Statute of Westminster Adoption Act 1947 and gained legal and formal independence from Britain in the exercise of its external affairs.

This research paper provides a brief overview of some of the key dates in New Zealand's path to independence. A particular focus is New Zealand's progression to gaining complete and formal sovereignty over its external affairs. This is not to suggest that New Zealand had no foreign policy or international ambitions until 1947, but simply that until this time New Zealand had not acquired the right to exercise an independent foreign policy.

Sovereignty

The Peace of Westphalia in 1648 helped to establish the notion of a sovereign nation state – one that exercised supreme authority within a territory.⁴ In Weber's influential definition, a state

¹ J. C. Beaglehole, 'Preface', in J. C. Beaglehole, (ed.), *New Zealand and the Statute of Westminster: Five Lectures*, Victoria University College, Wellington, 1944, xii.

² Steve Hoadley, *The New Zealand Foreign Affairs Handbook*, Oxford University Press, Auckland, 1992, p. 13.

³ J. C. Beaglehole, 'Preface', in J. C. Beaglehole, (ed.), *New Zealand and the Statute of Westminster: Five Lectures*, Victoria University College, Wellington, 1944, xvii.

⁴ Robert Jackson, 'Sovereignty in World Politics: A Glance at the Conceptual and Historical Landscape', *Political Studies*, Vol. 67(3), Special Issue, 1999, pp. 431-456.

was sovereign because its supreme authority – in the sense of ultimate – derived from its monopoly on the legitimate use of physical force within a given territory.⁵

The two norms of the Peace of Westphalia – the principle of territorial integrity and the exclusion (non-interference) of external actors – can be seen in Article 2(4) of the Charter of the United Nations which prohibits attacks on political independence and territorial integrity. In international law, sovereignty is the legitimate exercise of power by a state. De jure sovereignty is the legal right to do so; de facto sovereignty is the ability in fact to do so.

Article 1 of the Montevideo Convention on Rights and Duties of States 1933 lists four qualifications a state should possess to be a person of international law – that is, an entity with the ability to conduct international affairs and represent itself in international organisations. These qualifications are: a permanent population; a defined territory; government; capacity to enter into relations with the other states.⁶

The capacity to enter into relations with other states – otherwise known as 'international relations', 'foreign affairs', 'foreign policy', or 'external relations' – describes the governmental approach to a nation's relationships with the rest of the world. As the sum of official external relations conducted by a country, it encompasses defence, trade, diplomatic representation, treaty making, overseas aid, migration, and membership in international organisations, among others.

New Zealand only gained full capacity to enter into relations with other states in 1947 when it passed the Statute of Westminster Adoption Act. This occurred 16 years after the British Parliament passed the Statute of Westminster Act in 1931 that recognised New Zealand's autonomy. If judged by the Montevideo Convention criteria, New Zealand did not achieve full de jure statehood until 1947. In this sense, 1947 can be said to mark the date of New Zealand's legal independence.

Nevertheless, the path to this independence began in the preceding century as New Zealand exercised increasing levels of sovereign authority.

In 1852, twelve years after the signing of the Treaty of Waitangi, the United Kingdom Parliament passed the New Zealand Constitution Act (NZCA), which provided for six elected provincial councils, a General Assembly consisting of a Governor (the monarch's representative), a Legislative Council, and a House of Representatives. Representative government can be marked from the 24 May 1854 when the first Parliament met in Auckland (the capital since 1840), following New Zealand's first general election in 1853.

Apart from the broad parameters set by the NZCA, however, the relations between the Governor, his Executive Council, and the General Assembly remained unclear. Members of the Executive Council were not elected but permanent appointees; the Governor controlled the Legislative Council, and was in turn answerable to the Imperial (British) Colonial Office.⁷ Responsible government therefore – in terms of the Executive Council being appointed from among elected members of the House of Representatives, the Governor acting only on the advice of the Executive Council, and that the Executive Council had the confidence of the House – was not attained at the time of the formation of the first parliament.

⁵ Richard Falk, 'Sovereignty', in Joel Krieger, (ed.), *The Oxford Companion to Politics of the World*, 2nd ed. Oxford University Press, New York, 2001, p.789.

⁶ The Montevideo Convention on the Rights and Duties of States was a treaty signed at Montevideo, Uruguay on December 26, 1933, at the Seventh International Conference of American States. Text available at: <http://www.yale.edu/lawweb/avalon/intdip/interam/intam03.htm>

⁷ Philip A. Joseph, *Constitutional and Administrative Law in New Zealand*, Brookers Ltd., Wellington, 2001, p. 101.

First Independent Steps

The first step in achieving more than nominal independence from Britain was taken on 7 May 1856, when the first responsible ministry, under Henry Sewell, was formed following the dissolution of Parliament and fresh elections in 1855. Because both the first and second ministries lasted only a few weeks, confidence of the House could not be demonstrated. Responsible government was thus not consolidated until 1857, the year in which a further degree of autonomy was achieved when the British Parliament passed the New Zealand Constitution Amendment Act.

This gave the New Zealand Parliament authority to amend all but a few entrenched sections of the 1852 NZCA. It also enabled responsibility for native affairs to be gradually transferred from the British to the Colonial Government, which was essentially achieved by 1870.

Nevertheless, the Governor of New Zealand retained the prerogative of pardon, and until the Royal Instructions of 1892 revoked his powers, could act independently without consulting the Executive Council. Moreover, responsibility for international trade, defence, and foreign affairs remained under the control of Britain. For example, under section 61 of the NZCA 1852, New Zealand could not impose any duties on its imports or exports that would contravene a United Kingdom trade treaty, and had no authority to negotiate or enter into any international trade agreements.⁸

A small measure of participation in international relations was achieved in 1871 when Isaac Featherston was appointed to London as 'Agent-General', to act as "the eyes, the ears and voice of the New Zealand Government in Great Britain".⁹ In reality, the Agent-General had little real authority since the Governor of New Zealand remained the only official channel for government-to-government communications and would do so until 1939. In 1887, for example, the third Agent General, Sir Francis Dillon Bell, wished to visit Paris to persuade France to reduce its tariff on New Zealand frozen meat. Although Bell's knowledge of French allowed him to play a more significant role than was usually permitted of colonial representatives, the British insisted that their own ambassador should conduct the negotiations.¹⁰

In the 19th century, New Zealand also had little influence in such fundamental aspects of statehood as defining or acquiring its own territory. Despite New Zealand passing the Confederation and Annexation Act 1883 giving it the power to annex any unappropriated Pacific Islands (whose occupation by any foreign power would be detrimental to the interests of Australasia), permission was still needed from Britain before New Zealand could annex its first territory – the Kermadec Islands – in 1887. The Cook Islands were made a British protectorate in 1888, and transferred to New Zealand in 1901. Niue and Tokelau became New Zealand protectorates in 1905 and 1926 respectively. In 1923 the Ross Dependency of Antarctica was claimed by Britain in the first instance before being placed under the jurisdiction of the Governor-General.¹¹

⁸ Philip A. Joseph, *Constitutional and Administrative Law in New Zealand*, Brookers Ltd., Wellington, 2001, p. 106.

⁹ W. David McIntyre, 'Imperialism and Nationalism', in Geoffrey W. Rice (ed.), *The Oxford History of New Zealand*, 2nd ed., Oxford University Press, Auckland, 1992, p. 341.

¹⁰ William Pember Reeves was the last person to hold the post of Agent-General (from 1896 to 1905), and would later be appointed New Zealand's first High Commissioner in London in 1906.

¹¹ W. David McIntyre, 'Imperialism and Nationalism', in Geoffrey W. Rice (ed.), *The Oxford History of New Zealand*, 2nd ed., Oxford University Press, Auckland, 1992, p. 342.

A Seventh Australian State?

More independence was asserted in 1901 when the colony of New Zealand refused to join Australia as its seventh state. In 1890 the representatives of seven British colonies (New South Wales, Victoria, South Australia, Tasmania, Queensland, Western Australia and New Zealand) had met for the Australasian Federation Conference in Melbourne, agreeing in principle to establish a federation. However, a Royal Commission on Federation, established in 1900 to inquire into the issue, concluded that there were few benefits for New Zealand in joining the Commonwealth of Australia, and advised: "New Zealand should not sacrifice her independence as a separate colony, but that she should maintain it under the Political Constitution she at present enjoys."¹²

1907

Following the 1907 Imperial Conference, the New Zealand House of Representatives passed a motion respectfully requesting that His Majesty the King "take such steps as he may consider necessary" to change the designation of New Zealand from the "Colony of New Zealand" to the "Dominion of New Zealand".¹³ This change in status took effect on 26 September, 1907. Prime Minister Joseph Ward declared that the designation of Dominion would "raise the status of New Zealand" and "have no other effect than that of doing the country good".¹⁴ A number of South Island Māori also welcomed the new designation:

To the solid supporting pillar of the huge fish of New Zealand. Greetings to you. We have assembled here to celebrate the day upon which the Dominion of New Zealand was anointed (proclaimed). We congratulate you upon the day on which the Dominion was baptised, and the name "Colony of New Zealand" caused to cease. Kia ora to you under the protecting power of our exalted sovereign King Edward the Seventh.¹⁵

The constitutional scholar, A. V. Dicey, came to use Dominion status as shorthand for colonial independence.¹⁶ It is certainly true that this change in status provided for "internal self-government and a considerable measure of freedom in their foreign relations," but complete autonomy in New Zealand's foreign affairs was not obtained.¹⁷ Although the designation 'Governor' now changed to Governor-General, he continued to be appointed by Britain and to act in a dual capacity – a representative of the British Government as well as the sole official representative of New Zealand views to the Imperial government. Imperial (external) affairs still remained the preserve of the British.¹⁸

Further and more meaningful enhancements to national sovereignty followed the end of World War One. The External Affairs Act 1919 established a department responsible for New Zealand's Pacific territories, including New Zealand's League of Nations mandate territory, Western Samoa. James Allen was appointed as the first Minister of External Affairs in 1919. New Zealand received recognition as a 'State' when it signed the Versailles Peace Treaty and joined the League of Nations in 1920.

¹² Report of the Royal Commission on Federation, AJHR, 1901, A-4, p. xxiv.

¹³ New Zealand Parliament 1907, Parliamentary Debates (Hansard), vol. 139, p. 371.

¹⁴ New Zealand Parliament 1907, Parliamentary Debates (Hansard), vol. 139, p. 389.

¹⁵ Roore Pukekohatu, "Dominion" of New Zealand, AJHR, Vol. 1, 1907, A.7.

¹⁶ Cited in W. David McIntyre, *When, if Ever, did New Zealand Become Independent?*, The Jim Gardner Lecture, 2002, Canterbury History Foundation, 2002, p. 6.

¹⁷ Peter Marshall, 'The Balfour Formula and the Evolution of the Commonwealth', *The Round Table*, Vol. 361, 2001, p. 542. (my italics).

¹⁸ The Governor-General would continue to be appointed on the recommendation of Britain until 1924. See K. J. Scott, *The New Zealand Constitution*, Oxford University Press, Oxford, 1962, p. 73.

According to New Zealand's first Secretary of External Affairs, Sir Alister McIntosh, New Zealand "became a sovereign state when we signed the treaty of Versailles" (however he acknowledged that this may not have been so in strict legal terms).¹⁹

Trade Treaty

At the 1923 Imperial Conference New Zealand finally acquired the right to conduct its own international trade negotiations independently of Britain. It exercised this right for the first time in 1928, when it signed a trade treaty with Japan. Prior to this New Zealand had simply acceded to commercial treaties made by Britain.²⁰

Yet there appeared division as to the significance or desirability of these developments. Sir J. Sinclair declared in 1923:

It goes without saying that, as before the signing of the [Versailles] treaty, so since, if the Mother-country were at war the dominions would be at war. But by acquiring a voice upon foreign policy the dominions are under a responsibility that they were not under before. Is this voice, about which so much has been written and spoken, a real voice? ... I submit that it is inadequate – that it does not cover the ground; that the machinery for its exercise is defective.²¹

The Attorney-General, Sir Francis Bell, concurred with Sinclair's assessment, but described how New Zealand viewed the claim, then fashionable in other dominions, that they should be 'consulted' before imperial foreign policy was determined.

There is one Government of the Empire in its relation to foreign affairs, and that is the Government of England... The matter that concerns us is how far it is of any benefit to anyone that we should be consulted; and, if we were consulted, is there any man in New Zealand who thinks that we are really fit to judge? By "we" I mean Government. I am quite sure the Opposition would say that we are unfit. I am a member of the Government myself, and I have no sense of fitness to advise the Imperial Government in matters of foreign policy.²²

Local doubts notwithstanding, an Imperial Affairs Section had been established within the Prime Minister's Department by 1926. This dealt with a range of matters concerning international affairs including defence policy, treaties, the League of Nations, trade, and migration.

The Balfour Declaration

A significant step toward New Zealand gaining a fuller measure of sovereignty over its foreign affairs was the Balfour Declaration of 1926. In its Report to the Imperial Conference of 1926, the Inter-Imperial Relations Committee, chaired by Lord Balfour, declared that Great Britain and the self-governing Dominions were

autonomous Communities within the British Empire, equal in status, in no way subordinate one to another in any aspect of their domestic and external affairs...²³

¹⁹ Cited in W. David McIntyre, *When, if Ever, did New Zealand Become Independent?*, The Jim Gardner Lecture, 2002, Canterbury History Foundation, 2002, p. 4.

²⁰ Steve Hoadley, *The New Zealand Foreign Affairs Handbook*, Oxford University Press, Auckland, 1992, p. 17.

²¹ New Zealand Parliament 1923, Parliamentary Debates (Hansard), vol. 199, p. 23.

²² New Zealand Parliament 1923, Parliamentary Debates (Hansard), vol. 199, p. 33-4.

²³ See 'Appendix' in Peter Marshall, 'The Balfour Formula and the Evolution of the Commonwealth', *The Round Table*, Vol. 361, 2001, p. 550.

Even here, however, when it came to operational control over foreign affairs, the Balfour Declaration was more circumspect.

But the principles of equality and similarity, appropriate to *status*, do not universally extend to function. Here we require something more than immutable dogmas. For example, to deal with questions of diplomacy and defence, we require also flexible machinery – machinery which can, from time to time, be adapted to the changing circumstances of the world.²⁴

De Facto, Not De Jure, Independence

Nevertheless, de facto, if not de jure, independence in foreign affairs began to be asserted with the first Labour Government of 1935 – a year that marked “a real turning point in the history of New Zealand’s external relations.”²⁵ In the League of Nations New Zealand began to disagree with Britain on issues concerning collective security and appeasement, guided by a nascent belief that the structures of world organisation were the best guarantee of the freedom of small nations and world order.

Yet, the Balfour Declaration of New Zealand’s sovereignty – expressed as autonomy and equality of status – did not “as a matter of law exist in respect of legislation”.²⁶ Indeed, it required the Statute of Westminster, passed in the British Parliament in December 1931, to give legal effect to the Balfour Declaration’s recognition of the change in status of the Dominions.

Statute Of Westminster

Although it remains a matter for ongoing constitutional and legal debate, the weight of evidence suggests the Statute of Westminster did more than simply give legal form to New Zealand’s sovereign status. A number of legislative difficulties – both constitutional and in the international fields – were resolved by the Statute.

Before the Statute was passed by the British Parliament – and arguably until the New Zealand Parliament passed the Statute of Westminster Adoption Act in 1947 – the New Zealand Parliament was not a sovereign parliament. It did not have the capacity to make all law, and there were some laws that it could not unmake.²⁷

In the arena of foreign affairs, New Zealand could not legislate extra-territorially, and was constrained by sections of two British acts, the Merchant Shipping Act 1894 and the Colonial Courts of Admiralty Act 1890. A number of examples of the very real legislative difficulties these constraints came to present for New Zealand can be cited – primarily as a consequence of the Second World War. New Zealand attempted to implement a number of wartime regulations but soon found: an inability to legislate for Western Samoa, even though it was a New Zealand mandated territory; an inability to provide for effective convoys of British or Australian ships

²⁴ See ‘Appendix’ in Peter Marshall, ‘The Balfour Formula and the Evolution of the Commonwealth’, *The Round Table*, Vol. 361, 2001, p. 551.

²⁵ R. Cunninghame, ‘The Development of New Zealand’s Foreign Policy and Political Alignments’, in T. C. Larkin (ed.), *New Zealand’s External Relations*, New Zealand Institute of Public Administration, Oxford University Press, London, 1962, p. 18.

²⁶ R. O. McGechan, ‘Legislative Inability’, in J. C. Beaglehole, (ed.), *New Zealand and the Statute of Westminster: Five Lectures*, Victoria University College, Wellington, 1944, p. 76.

²⁷ R. O. McGechan, ‘Legislative Inability’, in J. C. Beaglehole, (ed.), *New Zealand and the Statute of Westminster: Five Lectures*, Victoria University College, Wellington, 1944, p. 78.

across the Tasman, uncertainty about New Zealand powers to deal with offences committed by persons on New Zealand registered ships on the high seas.²⁸

The Statute of Westminster Act 1931 sought to remove these very difficulties – such as Section 3 of the Act, that “declared and enacted” that Dominions had full power to make laws having extraterritorial effect. However, to give legal force to the Statute in the Dominions required enabling legislation to be passed in their legislative assemblies. Canada, South Africa, and the Irish Free State did so in 1931. New Zealand, on the other hand, did not enact the provisions of the Statute of Westminster – as the Statute of Westminster Adoption Act – until 1947.

A number of reasons can be suggested for the delay of 16 years. These include concerns about New Zealand's relationship with Britain, a lack of practical difficulties until wartime emergencies presented them, and New Zealand's desire to abolish its upper house.

An “Unnecessary Legal Complication”

First, New Zealand viewed the Statute of Westminster as an “unnecessary legal complication that it perceived would weaken imperial relations.”²⁹ Indeed, New Zealand, (as did Australia), insisted that a provision be inserted into the statute specifying that the sections ending British sovereignty over the Dominions would not extend to New Zealand (or Australia) until adopted by the New Zealand Parliament.

Secondly, one obvious reason is that the legislative difficulties outlined above did not present themselves until wartime necessity made them apparent. As war approached, New Zealand began to recognise the significance of the Statute of Westminster for the conduct of its foreign affairs. In 1938, Peter Fraser noted:

What does matter is that this country has to make up its own mind on international problems as a sovereign country – because under the Statute of Westminster ours is a sovereign country – and though we work in the closest cooperation with the British Government, that does not mean to say that we must be prepared to swallow everything the British Government cares to put forward.³⁰

A further sign of growing confidence in international matters came with New Zealand's declaration of war in 1939:

Behind the sure shield of Britain we have enjoyed and cherished freedom and self-government. Both with gratitude for the past, and with confidence in the future, we range ourselves without fear beside Britain. Where she goes, we go. Where she stands, we stand. We are only a small and young nation, but we are one and all a band of brothers, and we march forward with a union of hearts and wills to a common destiny.³¹

Perhaps the clearest sign of the need for operational independence came with a change in the role and status of the Governor-General in foreign affairs and communications. Prior to 1939, the coding staff had been maintained at Government House, and the Governor-General had been the only person to hold the official ciphers. The Governor-General had also been able to exercise discretion over which material and despatches were to be passed to the New Zealand government, or when instructed to do so by Britain. On the outbreak of war, however, the cable

²⁸ For a fuller account, see R. O. McGechan, 'Legislative Inability', in J. C. Beaglehole, (ed.), *New Zealand and the Statute of Westminster: Five Lectures*, Victoria University College, Wellington, 1944, pp. 79-97.

²⁹ Harshan Kumarasingham, 'The "New Commonwealth" 1947 – 49: A New Zealand Perspective on India Joining the Commonwealth', *The Round Table*, Vol. 95(385), July 2006, pp. 441 – 454.

³⁰ New Zealand Parliament 1938, *Parliamentary Debates (Hansard)*, Vol. 251, p. 133.

³¹ Rt. Hon Michael Savage, NZ Prime Minister, 5 September 1939, *NZ Official Yearbook*, 1985, p.31

coding staff were transferred to the Prime Minister's Department, and the Governor-General's access to correspondence was limited to those in his name only.³² With the appointment of the first British High Commissioner to Wellington in 1939, the Governor-General also relinquished his position as the British Government's representative in New Zealand.

Australia's decision to adopt the Statute of Westminster also appears to have influenced New Zealand's recognition of the need to do so. Australia adopted the Statute in 1942, but backdated its operation to the day it declared war (3 September 1939) on the grounds that declarations of war are acts of sovereign states.³³

Wartime Necessities

As the war progressed, and as New Zealand asserted operational independence in foreign affairs, it became clear that the existing administrative structure for foreign affairs was inadequate. Consequently, in 1943 the Department of External Affairs – which from 1919 had administered New Zealand's territories in the South Pacific – was renamed the Department of Island Affairs. The External Affairs Act 1943 created a 'new' Department of External Affairs responsible for the functions that had previously been carried out by the Imperial Affairs Section of the Prime Minister's Office.³⁴

The war period also saw the rapid expansion of New Zealand's diplomatic service with the appointment of Walter Nash to the first foreign (non-Commonwealth) mission – established in Washington in 1941. (Consulate Generals had been established in Sydney and Melbourne in 1905, Los Angeles in 1935, and New York in 1939). Other diplomatic posts were established in Ottawa (1942), Canberra (1943), and Moscow (1944). New Zealand's first trade post in Asia was established in Tokyo in 1947.

New Zealand became a charter member of the United Nations, formally established at San Francisco in 1945 – an organisation in which member countries accepted the sovereign equality of other members. Later, it was stated that: "From New Zealand's point of view, the whole conference was something like a climax in the development of her international status."³⁵

One final development prompted the New Zealand Parliament to recognise the need for adopting the Statute of Westminster Act, 1931. In 1947, then Leader of the Opposition, Sidney Holland, introduced a Private Member's Bill to abolish New Zealand's upper house, the Legislative Council. It soon became apparent that the New Zealand Parliament could not legally proceed with such a constitutional amendment, since a bicameral parliament was entrenched under section 32 of the New Zealand Constitution Amendment Act 1857 (UK). Moreover, simply adopting the Statute of Westminster Act 1931, while necessary, was insufficient, since section 8 of that Act prohibited New Zealand from any power to repeal or alter its Constitution Act.³⁶

³² Sir Alister McIntosh, 'Origins of the Department of External Affairs and the Formation of an Independent Foreign Policy', in *New Zealand in World Affairs: Volume I*, New Zealand Institute of International Affairs, Price Milburn, Wellington, 1977, p. 14.

³³ W. David McIntyre, *When, if Ever, did New Zealand Become Independent?*, The Jim Gardner Lecture, 2002, Canterbury History Foundation, 2002, p. 21.

³⁴ In 1969 the Department was again renamed when it became the Ministry of Foreign Affairs. In 1988 it became the Ministry of External Relations and Trade, and in 1993 the Ministry of Foreign Affairs and Trade (MFAT).

³⁵ F.L.W. Wood, *The Official History of New Zealand in the Second World War*, Political and

External Affairs, Historical Publications Branch, Wellington, 1958, p. 380. Available at: <http://www.nzetc.org/tm/scholarly/tei-WH2Poli-c26.htm>

³⁶ Philip A. Joseph, *Constitutional and Administrative Law in New Zealand*, Brookers Ltd., Wellington, 2001, p. 445-446.

New Zealand Day?

Thus to abolish the Legislative Council required New Zealand to pass both the Statute of Westminster Adoption Act 1947, and the New Zealand Constitution Amendment (Request and Consent) Act 1947. These received the Royal assent on 25 November 1947. This day was later proposed as a possible New Zealand Day to replace Waitangi Day.

1947

Full New Zealand sovereignty can therefore be dated to 1947 – both in terms of gaining formal legal control over the conduct of its foreign policy and the attainment of constitutional and plenary powers by its legislature.

Two Footnotes

Two final footnotes signal the end of New Zealand's journey to sovereign independence.

In 1976 David Lange, acting as a lawyer for a defendant, successfully argued that New Zealand, for the purposes of the Fugitive Offenders Act 1881 (UK) under which his client was charged, was not "part of Her Majesty's dominions" or a "British possession". While noting the significance of the Statute of Westminster Adoption Act 1947, Wilson J unequivocally stated that the last bonds of dependence on the United Kingdom were severed with the passing of the New Zealand Constitution Amendment Act 1973, by which New Zealand established itself in law as an independent sovereign state. In his summation, Wilson J reluctantly concluded that

a statute that is still technically part of the law of New Zealand is now ineffective to confer that jurisdiction for which it was originally designed...[and] still subsists like an unburied corpse which I have been compelled to refuse to convert into a zombie.³⁷

The judgment is significant because it drew attention to the residual power of the United Kingdom Parliament to legislate for New Zealand – a significance apparently not lost on Mr Lange when he saw the need to pass the Constitution Act 1986 during his tenure as Prime Minister of New Zealand.

1987

In passing the Constitution Act 1986 (effective 1 January 1987), New Zealand "unilaterally revoked all residual United Kingdom legislative power".³⁸ The Constitution Act 1986 states that the New Zealand Constitution Act 1852 of the Parliament of the United Kingdom shall cease to have effect as part of the law of New Zealand. It also repealed the Statute of Westminster Adoption Act 1947, the New Zealand Constitution Amendment (Request and Consent) Act 1947, the New Zealand Constitution Amendment Act 1970, and the New Zealand Constitution Amendment Act 1973.

³⁷ *Re Ashman and Best* [1985] 2 NZLR 224 at 232 (SC) Wilson J.

³⁸ Philip A. Joseph, *Constitutional and Administrative Law in New Zealand*, Brookers Ltd., Wellington, 2001, p. 459.

In effect, the Constitution Act 1986 declares the power of the United Kingdom Parliament to legislate for New Zealand to be at an end. New Zealand, as of 1987, is a free-standing constitutional monarchy whose Parliament has unlimited sovereign power.³⁹

John Wilson,

Research Analyst

Parliamentary Library

For more information, contact John at

(04) 471 9358

Email: John.Wilson@parliament.govt.nz

Copyright: © NZ Parliamentary Library, 2006

Except for educational purposes permitted under the Copyright Act 1994, no part of this document may be reproduced or transmitted in any form or by any means, including information storage and retrieval systems, other than by Members of Parliament in the course of their official duties, without the consent of the Parliamentary Librarian, Parliament Buildings, Wellington, New Zealand.

This document may also be available through commercial online services and may be viewed and reproduced in accordance with the conditions applicable to those services.

³⁹ F. M. Brookfield, 'A New Zealand Republic?', *Legislative Studies*, Vol. 8(2), Autumn 1994, p. 9.