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Why Poland is a threat to the European Union

Stuart McMillan warns that the Polish Law and Justice Party’s policies may have serious consequences.

The vote by United Kingdom citizens to leave the European Union indisputably caused a crisis within the European Union, but it may be Poland, a country that very much wants to remain in the European Union, that will bring about the deeper crisis.

The European Union has taken legal action against Poland over the Polish government’s attempts to undermine the independence of judges. Brussels is also acting against Poland’s requirement that female judges retire two years earlier than male judges. The European Union’s concerns are wider than the justice issue, but the legal action is one way of seeking to halt the progress towards a non-democratic rule. The Law and Justice Party, known as PiS, an abbreviation of its Polish name, is also presenting political and ideological challenges to the European Union.

There is a surprising aspect to these developments because Poland, having rid itself of communism and powerful Soviet influence largely through defiance led by Lech Wałęsa in the Gdansk Shipyard, was an enthusiastic joiner of the European Union in 2004. A number of other former communist countries joined at the same time, none more eagerly than Poland. With EU funding, its economy thrived and it played an increasing and influential role in the European Union. It was an exemplar for a post-communist country.

PiS, a populist, nationalistic and Eurosceptic party, came to power in 2015 and reformed the Constitutional Tribunal, a body that rules on the legality of elections. It also sought to change the National Council of the Judiciary, a body responsible for maintaining the independence of the judiciary, and sought to dismiss and replace judges of the Supreme Court and to replace judges of lower courts.

Month deadline

At the time of writing (the beginning of August) the European Union has given Poland a month to respond to the EU legal case.

In a surprising move, the president, Andrzej Duda, had vetoed the moves over the National Council of the Judiciary and the dismissal of Supreme Court judges, but he allowed the replacement of lower court judges. Duda had hitherto been a compliant member of PiS as well as being close to the PiS leader, Jarosław Kaczyński. He may have been influenced by pleas from human rights activists; he may have been concerned for the stability of the country after huge public protests against the proposed legal changes; or he may have decided that the position of the presidency required him to do what he considered in the interests for the country rather than simply to endorse the will of the elected government.

Whatever his motivation, there are widespread suspicions that the government will find some way around the vetoes, possibly by adjusting some of the legislation’s conditions, thereby making it acceptable to the president or possibly by over-ruling the president, though it would need more votes than it can at present command to do that. One way or another, the government remains determined to change the legal structure.

Poland has also refused to admit Middle Eastern and North African migrants and refugees. The European Union has asked every member to take an allocation to share the burden. Poland’s allocation...
was 7000. Hungary has also refused to take the allocation the EU Commission made to it.

In other moves alarming the European Union, the Polish government has imposed restrictions on civil servants, started milling a primeval forest which the European Union believes is worth preserving because it is Europe's last and clamped down on the media. It has done so heavily in the case of state broadcasting, and is considering ways of controlling other media, some of which are foreign-owned. A Deutsche Welle report sees government influence in the way the state broadcaster, TVP, covers any Islamic attack in the world:

At first, a correspondent reports in a neutral fashion about the victims, the destruction, and the search for the perpetrators. But what always follows is a background report about the wave of refugees in Europe, the brave Hungarians who are defending their borders against the flood, and how German Chancellor Angela Merkel is to blame for having told refugees they were welcome. Lastly, the finger points at the European Commission for threatening Warsaw with legal action if it persists in its refusal to take in refugees — and the potential terrorists hiding amongst them.1

Before Poland and the other nine applicants joined the European Union in 2004 they had to convince the European Union about their democratic credentials. The European Union now sees Poland, as well as Hungary, departing from democratic practices by failing to separate judicial processes from politics and in other ways as well.

**Illiberal state**

The prime minister of Hungary, Viktor Orbán, has also embraced policies considered by the European Commission to be a departure from democracy. Bloomberg reported him as articulating a view that was a direct challenge to Brussels: 'I don't think that our European Union membership precludes us from building an illiberal new state based on national foundations'.

That comment has sparked a discussion about whether one can have an ‘illiberal democracy’ or whether that is a contradiction in terms. Because both Hungary and Poland preserve various aspects of democratic states, one writer thought the correct term should be ‘damaged democracy’.

Although PiS appears to be retaining its popularity, there were widespread public protests against the proposed changes to the legal system. There were also protests against the logging of the Białowieża primeval forest. Some protesters chained themselves to trees and some mothers breastfed their babies sitting on felled logs. PiS remained unmoved by all protests and questioned the loyalty to Poland of some of those who took part.

Kaczyński, once prime minister of Poland, now holds no official position except as a member of Parliament. Nevertheless, he is PiS's most powerful politician and an influential advocate of PiS policies. Before PiS won the 2015 election Kaczyński said that he wanted to create 'Budapest in Warsaw', meaning that he wanted Poland to emulate the authoritarian role of Orbán. Since winning the election PiS has moved steadily in the same direction as Hungary.

PiS wants Poland’s judges to weigh Christian values in their deliberations. According to the 2014 statistical yearbook, 85.8 per cent of Poles are Roman Catholic. The Roman Catholic Church has played a huge role in Poland’s history, contributing to a sense of Polish identity. PiS also considers that some of the judges remain influenced by communist values. While it has voiced these concerns, suspicions abound that the real reason it wants to change the legal structure is to consolidate its hold on power and ensure that the next parliamentary election, probably in 2019, goes PiS's way.

**Polish response**

In a preliminary statement to the European Union's charges the Polish Foreign Ministry has said that 'social policy and judicial organisation belong to the powers of the member states'. This indicates that Poland will probably argue that everything it is doing is legal and that it is not simply ignoring or defying EU laws.

The European Union has every intention of restraining the PiS. It left Hungary's straying from democratic principles too long to be effective and is determined not to make the same mistake with Poland. Yet it has only limited options if it wants to discipline Poland. It has threatened to impose Article 7 of the EU Treaty, which would limit Poland's voting rights. However, it would require unanimity from the other member states to take this action and Hungary has already said that it will not support such a move.

The European Union could also limit the funds it makes available to Poland, which is the biggest recipient of EU funding. The European Union's generous funding is one reason why Poland very much wants to remain a member. That threat has been labelled as blackmail by the PiS and the label has been echoed in parts of the Polish public.

Britain would be wary of offending Poland and Hungary because it needs all the friends it can get while it negotiates the conditions for Brexit.

Geographic and strategic problems make the European Union hesitate to alienate Poland, which has borders with Ukraine and the Russian enclave of Kaliningrad. Poland has insisted on being highly influential in EU policies toward Ukraine. Poland is central to Europe’s and the North Atlantic Treaty Organisation’s dealings with Russia. The United States recently sent 4000 troops to Poland to shore up its defences.

Before the G20 meeting President Trump visited Poland. He praised it for being one of the few countries that contributes 2 per cent of its GDP towards defence. He praised PiS leaders. He mentioned democracy once, but certainly showed no inclination to criticise Poland for some of its recent moves.

The British sent the Duke and Duchess of Cambridge and their family to Poland — a safe-enough move because there was no chance that they would get involved in any discussions about Poland’s politics. Probably that visit was intended to help United Kingdom–Polish relations as Britain negotiates leaving the European Union.

**Serious challenge**

The European Union would be repudiating the values it has embraced if it did not attempt to hold Poland to account. It sees itself

*Donald Trump is greeted by Andrzej Duda and Agata Kornhauser-Duda*
Mailout problems

Unfortunately there were problems with the mailout of the May/June issue (vol 42, no 3). About 160 subscribers were inadvertently left off the mailing list. We sent out their copies with the most recent issue. If you have not received a copy of the May/June issue, and believe you should have, please contact the NZIIA (nziia@vuw.ac.nz).

The New Zealand Institute of International Affairs is a non-partisan, non-profitmaking organisation, which aims to promote increased understanding of international affairs, especially as they affect New Zealand. Each branch arranges its own programme of meetings and seminars on international affairs each year, often addressed by prominent overseas visitors. The annual branch subscription entitles members to attend these events, as well as to receive current issues of the NZIR. Additionally, other NZIIA publications may be obtained at favourable rates. Subscriptions vary according to branch. To join, contact the appropriate branch below:

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Norms strengthens non-liberal forms of government. It is probably going too far as Paul Mason wrote in the Guardian: ‘Let’s be brutal: democracy is dying. And the most startling thing is how few ordinary people are worried about it.’ Nevertheless, that point is not something to ignore.

NOTES
Seeking opportunities in a turbulent world

Bill English reviews his government’s approach to international affairs.

We hear a lot at the moment that we live in turbulent times, but we should not immediately jump to the conclusion that the world is any more turbulent at the moment than it has been in the past. The endless repetition and rapid transmission of events in the world does not necessarily mean much greater instability or much greater threat than there has been. When you are at the end of the world, as New Zealand is, we are the place where all the waves eventually wash up. But we cannot control any of that environment and, in my view, a bit of naïve Kiwi optimism can take us a long way.

I have always thought it is relatively pointless analysis to say everything is horrendously complicated and going very badly. Cicero said it, Cato said it, Saint Augustine said it; everyone has said it: it does not tell you what you should do. Part of our job, of course, is to work out what to actually do. Nothing has really changed about New Zealand’s basic adherence to the institutions of our international framework. But there is no doubt that global authority is much more contested, and I have seen this just in my recent trip through the Pacific.

Not everyone takes notice of what New Zealand does. I turned up in one country that will remain unnamed. We were driving down the street and I saw a lovely big billboard welcoming the Rt Hon Prime Minister of New Zealand, John Key. That was before lunch. But by after lunch, no doubt, the Ministry of Foreign Affairs had discovered it was an old one left over from John Key’s last trip. When we came back they had changed it.

Much of the discussion has been about the relative influence of a range of countries in the Pacific, whether it is New Zealand, Australia, China, the United States — or Russia to some extent. And there is certainly a sense of flux about who is looking to have the most interest in the Pacific and plenty of discussion about the effectiveness of their interventions, because, as that discussion matures, I think people start to understand that the size of your aid budget does not mean that you understand the Pacific the best. Of course, regardless of the volatility in the rest of the world, the Pacific still remains our primary focus and the part of the globe where we can exercise our influence as part of our contribution to global stability. And we are very much tied to the Pacific Islands states.

One of the common themes I adhered to on my trips around four or five of these countries in recent weeks was simply to acknowledge their contribution to New Zealand. While we accept their gratitude for the very good aid projects and other support we are providing, they have supplied us with tens of thousands of people who are in our businesses, in our workplaces, changing our culture, growing our families and supporting our communities. That is as close a link as you can possibly have, next to our links to Australia.

Of course, with Australia we are finding a bit of uncertainty. We cannot make the assumptions that we always made about Australia. The sense of the special relationship gets a bit eroded at the edges, but I do not think it is really called into question in the way the media sometimes portrays it. We are, for instance, from 1 July starting a process with Australia whereby tens of thousands of New Zealanders will have a new opportunity for a path to citizenship. That may not be covered in the media, but it was an arrangement made between Prime Ministers Key and Turnbull a year or so ago. So in our near-neighbourhood, the connections and relationships are close and remarkably stable. I do not think they are going to change, regardless of what happens in the rest of the world.

Long list

Now there is a long list of what is going wrong in the rest of the world, whether it is the war in Syria, failing states in North Africa, the conflict in the Ukraine, the now very frequent and focused discussion about North Korea, violent extremism (which is starting to look increasingly random in its nature) or the new threat that we all have to adjust to — cyber intrusions, cyber warfare and espionage, which has become part of running anything from a small business through to a government.

In that context, New Zealand likes to focus on those areas where it can make progress. I have mentioned the Pacific and Australia. The other one is trade. The vein of commentary that says the whole world is turning protectionist may be true. There is some evidence for it. But it is no reason to hold New Zealand back in our goals, which are to have 90 per cent of our export trade covered by free trade agreements by 2030, as was announced just two or three months ago. This again is where I think some naïve Kiwi optimism has been helpful. Because while there is rhetoric about growing protectionism, we are now moving into the serious stages of a trade agreement with the European Union and the upgrade of the Chinese free trade agreement, and we have some good prospects on the horizon around the Pacific Alliance. We were also very close with the Gulf states before the Qatar crisis blew up. So in a world where

We live in turbulent times, but this is nothing new in the history of international affairs. Although the international environment is beyond New Zealand’s control, an optimistic approach will serve it well. New Zealand likes to focus on those areas where it can make progress, such as the Pacific Islands and Australia. Trade is another such area. Our goal is to have 90 per cent of our export trade covered by free trade agreements by 2030. In a world where protectionism is apparently growing, we are making more progress than we have made for some time. Hopes for the TPP are not dead.
protectionism is apparently growing, we are making more progress than we have made for some time, on a wider portfolio of agreements than has been possible to entertain in the past.

And that is before you get to TPP–11. The progress there is certainly the product of naïve Kiwi optimism. When the United States left the agreement, ignoring our strategic arguments for the role that they could play in leadership in the Asia–Pacific region, New Zealand decided we would try to make what we could of the remaining eleven countries getting together, even though public statements were made as recently as earlier this year that the TPP was dead. Due to some excellent work by Todd McClay, who has been on the road virtually full-time since then, there is now a realistic prospect — though no guarantee — that the remaining eleven countries will come to some agreement at the end of the year.

And what we are seeing among those countries is something of the same dynamic we are seeing in Europe. And that is that, as the United States has pulled back from its interest in trade, and as Britain has headed down the Brexit route, the groupings of remaining countries have if anything strengthened in their resolve and commitment. It was very clear to me in Europe in January that European Union President Juncker wanted to show the British that the European Union could execute a free trade agreement with a nice friendly easy country like New Zealand (well, if you take out the agricultural bit). And it is much the same with the TPP where, with the withdrawal of the United States, countries like Japan are now in the incredible position of showing leadership on open trade.

Positive response

I can recall being in Japan as a finance minister the first time the government made a public statement about being interested in the TPP and it was greeted not just with disbelief but laughed at. This year, when I visited Prime Minister Shinzo Abe a couple of months ago, he was quite clear and definite that Japan, as the next biggest economy involved after the United States, wanted to see the TPP happen. So we do not want to get caught up too much in the rhetoric of volatility and negativity that says some of these things simply cannot happen. I also take the view, partly I suppose because of my experience as a minister of finance, that, while politics is more volatile, economies are not. And that should be a reason for optimism.

It is certainly a much better economic outlook than it was back in 2009–10 when at the time politics looked quite predictable and stable. But in the long run, economics drives political change as much as politics drives economics, and we are principal beneficiaries of greater economic stability. The fact is that the European Union, for instance, has muddled its way through an economic crisis, probably more successfully than anyone expected just five or six years ago. They still have some problems, such as the Italian banking system. They still have not worked out how to do EU fiscal management and how to fit that in with their central banking, which is done transnationally. But, nevertheless, they are more stable.

And even in the United States, its economy is growing, it has got quite low unemployment at around 5 or 6 per cent and it is creating some of the dynamism that is pulling along the Asia–Pacific region, including ourselves. That is to be welcomed, but that is not the impression gained from watching the BBC or CNN. And I have to say that coming in, somewhat fresh, to the world of foreign affairs, the impact of economics is not talked about at all, which I have to say I find a bit odd. Because it matters a lot to what decisions countries make and it is pretty obvious that often their foreign policy and economic interests overlap. So for New Zealand, which is currently enjoying one of the better economic performances in the OECD, it helps our credibility when we are talking about foreign affairs issues; they simply take more notice because we are doing a bit better than we were.

Relationship key

Another key to the success of New Zealand and to our on-going relevance in making our way in the world is the relationships we have set up. I must say that coming into this role behind John Key does set the bar rather high. By that I mean the quality of the personal relationships that he has enjoyed with leaders around the world of much larger countries, not that he always found it easy. Occasionally he would come home and complain he was the only one who did not have a jet and how his colleagues were horrified to find that he as a world leader had to travel on commercial aircraft. But I assured him it was character building and kept him in touch with normal people.

But there is no doubt that he and before him Helen Clark have built personally, as just two prime ministers in seventeen years, a set of relationships which we have benefited from and have to follow up on. Earlier this year I was able to have quite a long discussion with Angela Merkel, who is a fascinating character. Over lunch she reminded you of your favourite auntie with nice stories that made people happy. And then at the end of lunch she said ‘I have to go and put my face on’, which I thought referred to make up, but actually it was a different Angela Merkel who walked out to the media conference. It was the no nonsense, very direct: she took one question and basically told them off and walked away. A mix of characteristics and capacities that has helped Germany become the leader of Europe and shows some promise if she can walk alongside Emmanuel Macron as he brings France back to the table of showing some leadership.

Then, of course, there are our relationships in the United Kingdom — ones which we tend to take for granted. Our previous prime minister had a great relationship with David Cameron and I had the opportunity to meet Theresa May. I had the chance a couple of months ago to write a piece about her for Time, and enjoyed the opportunity to do so — because officials do not let you write things. And press people certainly do not let you write anything. So this brief moment of freedom of expression meant I had to cram all my creativity into 250 words, which ended up saying she looked as if she was likely to succeed in the task she had set. I do not know if that is necessarily how people would look at it now, although I did have a discussion with her the other night and pointed out to her that whatever commentary there was, as far as we could see, being six seats ahead was a win. In New Zealand we would think that was a brilliant victory. And she did laugh as we discussed that.

Changing diplomacy

A growing aspect of how New Zealand relates to the rest of the world is some of our newer forms of diplomacy. We should not limit ourselves in the projection of influence to the traditional diplomatic channels and its traditional language. It has a vital purpose but a limited purpose. And it connects with some limited aspects of how other countries work.

I want to comment on three initiatives in particular. One is sports diplomacy. I noticed on my trip around the Pacific that there was a great deal of attention to our investments. But the ones that were greeted with what I would think of as happiness were those focused on sport and health. Outside of the Pacific, I have found
myself in discussions with countries as diverse as China and Indonesia talking about the benefits of exporting New Zealand rugby expertise, reaching different communities. It is something we take seriously in the Pacific and should take seriously more broadly as a way of projecting influence, because it is a big part of our brand.

Another opportunity is working closely with similar economies in size and focus, and the initiative run primarily by the chief government scientist around the small advanced economies, called the Small Advanced Economies Initiative, as you find these things work in foreign affairs: New Zealand, Ireland, Finland, Denmark, Israel, Singapore, Switzerland — a grouping of economies that are defined by their size and the particular challenges that go with that. Each of them, of course, thinks that they have got some unique challenges and that is true. That grouping is starting to turn into quite an effective multinational policy focused discussion. It only really started a few years ago and has started to pick up some speed. I am particularly pleased to see it playing a role in reviving our relevance to Singapore. After the end of our defence relationship, given their preoccupations, it has not been that easy to maintain relevance. But when we get together and talk about the way our science and research systems work, or the way our public service reforms work, we are starting to rebuild a depth of relationship that adds to the dimensions of the diplomatic relationship.

**Social investment**

We should always be aware and alert to the relevant currencies and new currencies of these relationships. So as I got around Europe earlier this year, I found that the topic that most engaged the leaders I spoke with — the European Union president, German chancellor and British prime minister — was social investment. It immediately got their attention, because what New Zealand is talking about in the way it thinks about government analysis of the needs of its people and how to adapt services to have a more focused longer term impact and change lives is an attractive notion to any government, and it is fresh.

As a result of those discussions, the European Union is sending nine fully qualified econometricians to New Zealand, very shortly, to look at our world leading integrated data infrastructure — more econometricians than I think New Zealand could possibly apply to all of its economic analysis, let alone one small part. And there is nothing like a bunch of determined technical Germans to get to the bottom of it. They will find problems we did not know we had. So, again, I think our system needs to be flexible to these different ways of projecting influence to other countries.

I must compliment the Ministry of Foreign Affairs and Trade on the way in which they have adapted over the last decade or so to a much broader focus that includes business as part of its diplomacy. So these other aspects I am talking about are simply a few more to be added to the list. Of course, all of that has to be underpinned by our fundamental security and defence relationships. Before I took on this job, I was not quite as aware of how close the Five Eyes relationships actually are. I think that even if the politicians are changing, as they regularly do — more regularly in Australia than most places — there are permanent on-going relationships around our security and defence forces that provide a binding glue that keeps things on track, even if the politicians are disagreeing.

In that context, I am pleased that even through a period of fiscal austerity as we have had in New Zealand, we have committed to long-term plans for, and an overhaul of, our defence forces and security agencies in ways that I now realise are vital to the credibility of our contribution. This is not just about amounts of money — I think that is a very poor measure of anything you do in government — but about the quality of that contribution and the commitment to lifting it. So we have been through a process of renovation of the agencies and the defence forces that I think has earned respect.

**Holding shape**

What I think is important to New Zealand in this multi-polar world is really the truism: understanding what our own interests are and holding our shape amid the tensions that arise out of this multi-polar world. So we need to understand that, if we are in Tonga, there is going to be a discussion from other countries about what we are doing there and whether we are pushing and shoving, and know our place.

When you are in Japan, you become much more aware of the contending interests with different disputes going on there, and that everyone is trying to recruit one word of your statement to their side of it. It matters to them. And, of course, when we are dealing with the United States, it is pretty important that we understand where our long-term interests lie there and I think spend a bit less time following Twitter, as far too many people do, and a bit more time understanding the United States as the largest economy in the world with the largest defence forces, and understanding what they are thinking about their relationship, particularly to the growing power of China. In that context, probably the most important discussions I have had this year were with Secretary of State Rex Tillerson when he visited here in June and with Premier Li from China. It was fascinating in the short space of a couple of months to get two views of what they think they are doing. What was striking about it was the similarity of the views, which was, if anything, reassuring rather than worrying — and by that I mean the acceptance of each other's economic power, and the wariness of the projection of each other's military power and, of course, the vital necessity of New Zealand to understand subtleties of that analysis.

I will conclude with one small example where, if we are open to opportunities, we can for fleeting moments exercise influence. When I was finance minister, John Key and I were associated in a decision to get involved very early in the Asia Infrastructure Investment Bank. So we were the first developed economy to say that when we visited here in June and with Premier Li from China. It was fascinating in the short space of a couple of months to get two views of what they think they are doing. What was striking about it was the similarity of the views, which was, if anything, reassuring rather than worrying — and by that I mean the acceptance of each other's economic power, and the wariness of the projection of each other's military power and, of course, the vital necessity of New Zealand to understand subtleties of that analysis.

So now the ADB is regarded as a credible multinational institution, and it has happened really quite quickly, only having begun a couple of years ago. Our influence, of course, has now diminished — we are back down to our .5 per cent or whatever it was. But for the time we were the only developed country involved, I believe we had a decisive influence. I do not mean that in a political sense, but in the best traditions of the trust that people have in a small country that is smart about where it contributes, and effective when it can see the opportunity. And part of the role of this NZIA is to make sure that tradition is maintained.
Meeting the challenge of the globalisation paradox

Andrew Little outlines a Labour vision for meeting the global challenges ahead.

The evidence continues to mount that we are in a time of great political change. Around the world, the political ground is moving. Last year the United Kingdom experienced its political earthquake — which we now know as Brexit. And at the end of the year the American political establishment was shaken as Donald Trump won the presidency.

It is not that either of these developments was unpredictable or unlikely, despite them coming as a surprise to many. Both enjoyed significant levels of popular support in their respective jurisdictions before the ballot results were known. But the political establishment in both of those countries expected — or maybe they just hoped — that neither of the outcomes would achieve the majority support they did. So, what stands out is that both results ran completely counter to the conventional political commentary.

The political establishment failed to anticipate either event because of something I suspect many are still struggling to accept: that our democratic systems — flawed and imperfect as they always have been — are increasingly incapable of keeping up with the changing demands and expectations of the complex communities they are meant to serve.

Conventional political systems are proving themselves to be out of touch with ordinary people — the vast, unrecognised, unseen and unheard sea of the alienated and marginalised citizens who have been left behind by technological and economic change; systems that are out of touch with those who are just disillusioned by politics and political systems that seem incapable of dealing with the major challenges of the day — like growing inequality, intractable poverty and environmental neglect.

These same trends have continued in France, where the French people have turned to Emmanuel Macron, the youngest president in the history of the republic, whose party was really only started as a movement a year ago but is now the largest party in that country’s National Assembly. This year, in the United Kingdom, the Conservatives entered their general election campaign confident they would increase their majority. It was supposed to be a slam dunk for Theresa May, and Jeremy Corbyn was written off from the outset. But as it turned out on 8 June, Corbyn destroyed May’s majority and delivered the biggest increase in the Labour Party’s support since 1945.

Conventional politics of the past 30 years is being challenged. These trends reflect the bankruptcy of so-called orthodox solutions in the face of the increasing wealth gap and widening technology gap, along with a growing sense of economic and personal insecurity and the polarisation of many communities today. These changes have huge implications for politicians in election campaigns, and for foreign policy practitioners. The fact is there is growing disillusionment across many sectors of society. If political systems do not respond effectively and meaningfully, then unpredictable change will occur. The soothing balm of political rhetoric and propaganda is not a meaningful response.

Legitimate expression

We should also accept that what is happening is nothing other than a legitimate expression of the democratic system. This groundswell of change is looking for ways to be expressed and to be represented in our political system. To ignore this change would be to choke our polity; to demean our democracy. These movements are what make democracy effective. For those of us at the progressive end of politics, the changing political world brings huge opportunity.

Much of this popular disillusionment we are seeing is aimed at the failed promise of 21st century globalisation. Globalisation, by which I mean the deregulation of international trade and investment rules to allow the faster movement of capital, goods and services across borders, has been around since the rise of modern capitalism in the 18th century. Twenty-first century globalisation
was meant to enable countries to focus on their competitive advantage. But that has not happened. I take the view that globalisation is neither a panacea nor a Pandora’s box. More than 30 years on from the neo-liberal revolution, we can see that economic globalisation has created both opportunity and challenge. It has lifted many out of relative poverty. But it has made others poorer and created added uncertainty and insecurity. A small few have been disproportionately and hideously enriched.

The rapid expansion of free trade, the growth of supranational institutions and their growing importance to the global economy, the rise of developed nations and the development of the internet and communications technology unimaginable even twenty years ago — all have meant the world has become smaller and more connected. But they have also enabled, for example, multinational corporates to game tax and investment rules to maximise gains for them and to contribute little to host countries.

Globalisation paradox
The paradox of 21st century globalisation is that, although it has enabled some nation states to lift their people out of poverty, it has arguably constrained nation states from collaborating effectively to combat global issues like climate change, for fear of affecting foreign investment. The principal failure of globalisation, at least in its 21st century neo-liberal form, has been that too many people have missed out on the gains. Even as globalisation has led to income convergence on a global scale, it has led to income divergence within wealthy nations like New Zealand. For many, globalisation has led to job losses, greater insecurity and a growing gap between the rich and the poor.

It is true that the technology revolution has led to many new jobs. Some will have kids who aspire to be mobile app developers, drone technicians, cloud data scientists or America’s Cup technologists — jobs that hardly even existed when they were born. But that same revolution has caused other jobs to die. Typists, postal workers, skilled manufacturing workers, even journalists and accountants have all suffered as the sun has started to set if not on their industries then on the usefulness of their skills within those industries. And here is the problem — not everyone who used to be a postal worker or a skilled manufacturing worker is going to be a budding app developer. Not all ex-typists fly drones.

The reason why governments see personal prosperity for individuals as a public policy goal is not because prosperity is good for its own sake; it is because policies geared to greater prosperity allow for wealth to be shared. The record of the last twenty years shows that the very opposite has been taking place. A recent World Bank study of global income distribution confirms that the top 1 per cent of income earners pulled in over 60 per cent of income gains over a recent twenty-year period. And while incomes in the developing world have also risen strongly, incomes for the modest-income majority in wealthy countries simply have not kept pace during the same twenty years.

Stark evidence
This is starkly evident in New Zealand. I was born in a relatively egalitarian society, but UNICEF reported in June that we have one of the greatest levels of income disparity in the developed world. Globalisation’s failures, however, are not limited to the shores of rich countries like New Zealand. In the most vulnerable communities in the developing world, globalisation has also sometimes led to exploitation by transnational firms that owe loyalty to no place.

When incomes do not keep up with peoples’ dreams and aspirations, then something gives. I spoke to a young schoolteacher recently who told me of his and his partner’s circumstances. In spite of having each a good income, between them the couple feel they can never own their own home in Auckland. Whatever they save will never be enough. They have simply given up on the Kiwi dream, and that is a terrible sentiment, shared by too many of our young people.

We cannot stop change, and I would not want to. The tide of technological change and innovation will continue, and so it should. What we can do, however, is chart a path that gives New Zealanders the confidence to face the challenge and lead in a world of change. The job of the government is to ensure that we do not see ourselves as passive victims of global forces, but rather as people who can adapt and reap the advantage of them.

To achieve that we must be ever mindful of how our economic profile is changing and the consequences that has in the workplace and wider society. In times like these, the nation state through the agency of central government has an important role to play. Apart from navigating change and ensuring a fair distribution of wealth, the state provides identity, security and certainty. It lets us determine what is right for our people. It lets us work together to ensure that prosperity is shared widely and fairly.

Illusory notion
I reject the idea that in an increasingly globalised world the nation state is fated to disappear. The theory of the diminished state simply does not work. The notion that a globalised and unregulated free-market economy will deliver prosperity for all is an illusion. A responsible and responsive state has a duty to ensure that prosperity and obligations are shared, that the primary beneficiaries of globalisation — the multi-billion dollar transnational firms that now gird the globe — also pay their ‘fair share of tax’; that they meet the same social obligations as you and me. All this is the broad context in which political competition takes place in the 21st century, and in which foreign policy is crafted around the world.

Turning now to a few of the key issues in world politics today, one of the great promises of globalisation is the international institutions that help us deal with truly global issues. These institutions interact with domestic politics in every country. It is an old adage that politicians come and go, but institutions remain. It also happens to be true.

In the context of the Trump presidency, the important thing is that our international institutions remain strong and vital. As I said to US Secretary of State Rex Tillerson during his visit in early June, the challenge right now is to ensure that the idiosyncrasies of the present administration do not weaken the world’s collective ability to work together on issues such as climate change. Politicians come and politicians go, but the institutions of international co-operation must remain strong.

With regard to developments in the Middle East, the Labour Party has always stood for peace amongst nations. One of the proudest moments in our party’s history was Labour Prime Minister Peter Fraser’s role as one of the driving forces in the formation of the United Nations in 1945. Wherever a community is ravaged by war, Labour stands for any practical step we can take towards peace. The continuing wars in the Middle East, and terrorism in Europe, worry us all, and ought to take the attention of every nation state.
Unwise invasion

The New Zealand Labour Party opposed the unwise 2003 invasion of Iraq, led by the United States, United Kingdom and Australia, an invasion that was not justified by the need to deal with then-claimed weapons of mass destruction. As we predicted, that foray has further destabilised the Middle East. A decade later, the scourge of ISIS/Daesh blights Iraq and Syria and now, as revealed recently, the Philippines. Afghanistan is an issue that remains unresolved. While many Iraqi and Syrian factions have come together, broad international support to confront ISIS — and in Iraq at least ISIS has almost been defeated — underlying sectarian conflicts are far from resolved. I visited Iraq last year and spoke with the generals. They will tell you that what exercises their minds most today is what happens after the retaking of the city of Mosul and how to balance the competing sectarian claims in the south.

Yemen, a very poor country, is a theatre of war with complex alliances underpinned by regional neighbours. I am also troubled by the blockade of Qatar. Whatever disputes Qatar has with its neighbours, the broad-based sanctions and blockades are an alarming escalation of tensions. High fences do not make for good neighbourly relations.

Many issues in the developing world — in the Middle East and elsewhere — revolve around how enthusiastically governments defend the human rights of their people. Let me just state this: every country has a moral duty to stand up for the rights of its citizens, even when doing so makes it harder for those same governments to do other things they might like to do. And the richer the country, the fewer excuses for inaction they have.

I want to make two points about Israel and the Palestinians. First, we unequivocally support the state of Israel’s right to exist. Israel must be allowed, and supported, to defend and protect its borders, its territories and its people. The international community must oppose existential threats to Israel. But we also support the two-state solution. The Palestinian people have the same rights as Israelis to live in security in a nation state of their own at peace with their neighbours. That right means a Palestinian state cannot have its borders effectively shrunk year after year by the housing encroachments of an occupying power in breach of international law.

Favoured approach

New Zealand, of course, cannot achieve world peace by itself. We believe the path to achieving a better world is first and foremost multilateral, working through and seeking to improve organisations such as the United Nations and the World Trade Organisation. While the very threat of a permanent member’s veto at the UN Security Council has made the policing of chemical weapons and other atrocities difficult, we must continue to stand up for the United Nations. We support an international system that is rules-based rather than one where countries impose their will on others by virtue of their size and power. We are committed to acting collectively to deal with problems that increasingly transcend national boundaries. Labour has always maintained an independent foreign policy. The so-called four firsts with China are examples of our leadership within Asia, including our world-leading free trade agreement with China. Our uncompromising opposition to nuclear weapons and proud nuclear-free status is world-famous.

Moving to domestic matters here in New Zealand, we face a general election in September. I will not cite Labour’s full manifesto, but I want to highlight a couple of areas. One of the issues that attracts controversy just by talking about it is immigration. Recently we announced that we will take a breather on the record levels and volume of immigration we are experiencing in New Zealand until we can build the facilities that everyone in New Zealand needs. Our target is to reduce net immigration by 20–30,000. But I am the first to accept that New Zealand was built on immigration. When new immigrants come here, they do not just bring vital skills and talent, they enrich our country culturally and make New Zealand a better place.

I look forward to the day where we have the homes, roads, schools, hospitals and other public infrastructure to ensure that everybody who does come here can enjoy the benefits comfortably of what New Zealand has to offer. To achieve this, we must create the social and economic conditions that make successful settlement possible. We are now experiencing migration flows at record levels. Even as we take a breather on immigration, Labour is committed to maintaining New Zealand’s reputation as a tolerant, diverse society.

Refugee commitments

The Labour Party will also honour our commitments to refugees, and that includes doubling the refugee quota from 750 to 1500. Since the mid-1980s our population has grown by a third and our GDP has doubled. But our base refugee quota has not kept up with our population growth and our economic growth. We can do better and we should.

We will also honour our commitment to our Pacific neighbours. The Pacific Quota will remain unchanged. We will also introduce the category of climate change refugee, targeted at the people of small Pacific states who will be the first victims of rising sea levels. We are committed to the Paris Agreement on climate change, meeting our obligations under it and building further consensus on the basis of this historic agreement. We will also continue to support our Pacific neighbours in meeting the challenges of climate change.

Domestically, we are committed to environmental protections and will ensure that water quality standards are improved and effectively applied. We want our rivers and lakes to be swimmable and available for all to enjoy without fear of sickness and contamination. This has always been central to New Zealand life, and we plan to restore it.

We will also ensure that companies and individuals who use large volumes of public water for private gain pay a national levy that can be fed back into water management and quality programmes. And we will ensure that bottling companies that profit from the sale of our artesian waters pay a levy for the privilege of accessing these unique resources.

Independent commissioner

We will also establish an independent climate change commissioner to ensure our climate change commitments under Paris are being met, and in cases where they are not being met, provide independent advice on what we need to do. That is a commitment to the rest of the world.

With regard to trade and about sovereignty, we are often told there is a trade-off between the two, but the terms of that trade-off differ from agreement to agreement. Labour is a party of trade. We negotiated the China free trade agreement and will always support market access where it is in the national interest. This,
however, differs from the Trans-Pacific Partnership. We opposed this because it placed private corporate interest above our national interest. It sought to establish special rules for international corporates and weakened New Zealand’s ability to protect the welfare of its own citizens and regulate in the interests of our own people.

I have never accepted the argument that in the 21st century international trade must always come at the expense of a country’s democratic right to legislate. It is entirely reasonable and natural that we should be masters of our own house, which is why Labour will continue to oppose agreements that erode our sovereignty.

We do, however, support international partnerships when they assist developing economies. National interest does not mean that poor countries should be left to be poor. Sharing wealth is important internationally just as it is domestically. International corporates should not be free to exploit people, and they should pay their fair share of tax.

The future is about embracing technological and social change. We cannot stop or control change. The key question is how we frame our perceptions of the future and how we prepare for that change. To be a successful society our prosperity must be shared. We need to invest in our young people and support people through the transitions that lie ahead. We need to be flexible enough to deal with the changes and shocks that are coming our way. We need to lead change and harness the talents of all, so that our economy delivers a share in prosperity for all our citizens.

**New approach**

After nine years we need a new approach to many of the questions that face us. We need a fresh approach that sees people not profit as its driving force and people as our most valuable asset. We need a renewed social partnership between an active and capable government and a business sector focused on innovation and inclusion. We need to bring this sense of social partnership and our capacity to innovate to meet the challenges of the future in international relations too.

The New Zealand Labour Party has an historic record in forging its independent foreign policy. That policy has always been the product of ambitious and principled thinking. We have to continue that tradition and ensure that our voice is heard, that New Zealand continues to be trusted as an honest broker and a strong and principled actor in international affairs. We need policies that will promote innovation and give workers a stake in what can and must be a brilliant future for New Zealand. And we need an approach to international affairs that is outward looking and does not shy from the huge challenges that we face as a global community.

Labour has those policies and the vision to make that happen. It is time to leave behind the tired and worn out arguments, and the false dichotomy whereby being open means we should sacrifice our sovereign right to govern in the interests of people, which includes embracing diversity and technological change, and facing the future of work, lifting prosperity and sharing prosperity fairly.
Towards a new global compact

James Shaw provides a Green Party perspective on world affairs and the challenges and opportunities now confronting New Zealand.

Many casual observers of international affairs might fairly assume that, right now, there are more challenges than opportunities. They might have a point. Someone once said, ‘I think that you will all agree that we are living in most interesting times.’ That someone was Joseph Chamberlain. We face:
- populism and demagoguery;
- paralysis at the United Nations on how to deal with situations like Syria;
- challenges to the consensus on climate change and how to prevent it from getting worse.

What we need around the world in the opening stages of the 21st century is a good dose of hope. Not a cross-your-fingers-and-hope-for-the-best kind of hope, but the kind of hope that is born out of our efforts to make things better. We need to look ahead, to be aware of future dangers and opportunities; to be compassionate towards one another; to be respectful of other cultures; to know when and how to resist increasing arrogance and intolerance, to pursue the art of stable and lawful strengthening of relations among all our nations — without exception.

Key areas

There are three key areas where I think the opportunities exist amongst the challenges. The first is the challenge of dangerous and irreversible climate change. It is the very definition of existential crisis. But we are presented with the task of using this crisis as a chance to transition to a fairer, cleaner economy.

The second key area is events that undermine the international commitment to the rule of law and the authority of the United Nations. The use of force without concern for consensus among UN member states is a dangerous precedent to set. And finally the concern we all feel at the rise of populism in nations that we have previously looked to as strong examples of tolerance and openness, populism that promotes the idea that we should close borders, restrict trade and reject diversity.

What we are calling for is a new global compact for the 21st century. We believe that such a global compact can emerge from the existing values and principles articulated in recent UN declarations; through reform of the United Nations; and the critical ingredients — political vision and will. But we also believe that if we do not proactively develop such a new global compact, then the existing world order will collapse under the strain of planetary stress and the political convulsions arising from that, and a new compact will only emerge from the ashes — perhaps. We would obviously prefer the former — an orderly transition — rather than the latter, a disorderly one.

So what kind of policies would the Green Party seek to effect in a coalition government, after 23 September this year? Particularly in relation to those three challenges – climate change, the rule of law and populism?

Climate protection

We obviously affirm the 2015 Paris Agreement, which calls for net-zero greenhouse gas emissions, globally, in the second half of the 21st century, in order to limit global warming to 2°C. But, for the sake of our children, the Green Party is in favour of a strong interpretation of the Paris Agreement. That agreement also says that ‘developed countries should continue to take the lead’. This requires developed countries to achieve national net-zero emissions in the early stages of that half-century. Our political opponents think that we can put off that goal until later. I do not believe that is morally right or even economically astute.

In April, a cross-Parliament, all-party group of 34 members of Parliament commissioned leading international research agency Vivid Economics to report on New Zealand’s emissions pathways. It concluded that, while eye-wateringly ambitious, it is entirely possible for New Zealand to achieve net-zero domestic emissions by 2050. We embrace that possibility. We shall do everything within our power to realise that possibility. In our
A Green government in 2017 would set the goal of net-zero emissions by 2050. To that end, we shall legislate for an independent climate commission whose function will be to develop five-year emission budgets from 2021 to 2050, with a transition period of 2018 to 2020. The commission will pass such budgets to the government whose job it will be to develop policy measures to achieve emissions reductions within those budgets. We are also interested in pursuing bilateral deals with developing countries to assist them to reach their own Paris targets. But that would not be at the expense of domestic emissions neutrality.

The precise policy measures to that end can be worked out with partners in a coalition. I am not worried about our joint ability to ensure that a reduction in gross emissions and increase in sequestration can be achieved. In order to make a tangible commitment to tackling climate change, however, we will have to change the government. National have not been strong on the long-term challenges we face as a nation. New Zealand’s carbon emissions have been steadily increasing, and are now 20 per cent higher than they were when National came to power nine years ago.

**Costly failure**

National’s failure to take any meaningful economic action on the climate means that we are on track to have to pay for other countries to act in our place. And it is going to cost us a lot in the future. In May we revealed Cabinet briefing papers that estimate the cost of National’s inaction on the climate to be, on average, about $1 billion dollars a year from 2021 to 2030 to buy carbon credits abroad. And that is at today’s carbon prices. If carbon prices increase dramatically, we will be exposed to a bill that makes our looming superannuation deficit look small by comparison.

Joseph Stiglitz and Nicholas Stern have issued a warning that carbon prices will need to quadruple and sooner rather than later. They say that, by 2020, carbon prices need to be between US$40 and $80 (NZ$56–113) and, by 2030, between $50 to $100 (NZ$71–142). We still have a small window of opportunity left to act. New Zealand has got the resources and the clean energy expertise to meet the climate challenge and show the world how.

This is, in fact, one of the great economic opportunities of our lifetimes that National is simply allowing to pass us by while they have their heads buried under the sea looking for more oil.

Here is how we would stage our shift towards carbon neutrality: we would

- as mentioned above, establish a climate commission to take the carbon accounting out of the hands of the politicians and into the hands of experts;
- set a stronger price on carbon and set a likely price path to give business the stable and predictable operating environment that it needs in order to be able plan and invest (or divest);
- phase the biggest polluters, like agriculture, into the carbon pricing plan;
- set in place positive government incentives to help soften the transition (like a climate tax cut) and provide the capital (like a Green investment bank);
- set the standards needed to drive energy efficiency, the growth in renewables and the changes to our towns and cities and the transport networks that service them;
- help fund the research and development needed to speed up the transition and create the valuable intellectual property we can sell to the rest of the world.

**Central focus**

Of course, combating climate change is about more than just nurturing a greener economy. It is a commitment that we have made alongside hundreds of other nations to work together in our common interest, and in the interest of generations to come. A Green government would also put climate change front and centre in our trade policy and our approach to any future negotiations. From our perspective, well-designed and fair trade is good for people around the world and climate change is the greatest economic threat (and opportunity) we face.

We need to start to integrate our thinking so that trade is put to use to both improve living standards and combat climate change. This means not agreeing to provisions in trade agreements that might undermine the government’s rights to regulate to support climate action. Or it might mean looking at ways to prevent ‘free riders’ who do not live up to their obligations under the Paris Agreement to reduce their emissions. Putting our money where our mouth is on climate change reflects our commitment to the rule of law, which is the second challenge we face.

New Zealand does need a stronger national policy with respect to the rule of law over global affairs. The Green Party in government will immediately introduce two practical policy measures. The first is the ratification of the 2010 Kampala Amendment to the Rome Statute, which makes aggression
a justiciable leadership crime in domestic law. New Zealand has proven to be a laggard in this respect, falling behind leading states such as Germany, Netherlands, Switzerland, Liechtenstein, Spain, Portugal and Samoa. This step would make it a crime for our prime minister, including a Green prime minister, to commit New Zealand troops to combat, if it is not compatible with the UN Charter.

Specific proposals

Secondly, New Zealand will advance specific proposals for reform of the UN Security Council, including circumscription of the veto. We would actively support and promote a protocol under which the Permanent Five members undertake not to exercise the veto in situations when mass atrocities are being committed. France and other countries have been active in this area and New Zealand should be doing more. The crisis in Syria has demonstrated the scale of the human cost when the veto is not constrained.

We also believe that urgent effort is needed to put nuclear disarmament back at the top of the global agenda. New Zealand has shown some leadership in the negotiations for a Nuclear Weapons Convention, and I acknowledge the government for that. The convention will amount to a total prohibition on nuclear weapons — possession, deployment and use. A Green government will be one of the first to ratify and promote the treaty when it is concluded.

We know that the major powers oppose such a treaty. They opposed the nuclear-free zones as well from the 1960s to the 1990s. Yet these were concluded successfully in Latin America, the South Pacific, Africa and South-east Asia, in defiance. It is time that the hollow promises of the nuclear powers to continue nuclear disarmament negotiation in good faith (which is a legally-binding obligation under the Non-Proliferation Treaty) are exposed. Even if the nuclear powers do not immediately consent to such a treaty, it still will enter into force under international law. Nuclear disarmament is an area where New Zealanders can look at their history and feel proud. The importance of that should not be understated.

Populism challenge

Finally, I turn to the question of political leadership and the challenge of populism. We want to show leadership on the international stage on issues that New Zealanders feel strongly about. That means doing more than just talking up the potential for trade deals to solve complex political problems. We believe that the political upheaval across Europe and the United States is an opportunity as well as a challenge. We have the opportunity to speak loudly and clearly about our values and what we will do to protect and promote them; to reject demagoguery outright, instead of demurring that it is simply ‘not what we would do’.

Many New Zealanders, like me, would have felt relief at recent electoral results in Europe. Extremist populist and nationalist movements did not extend their reach further into democratic societies. That is a welcome sign. We are grateful to continue to have liberal democracies we can look to as allies in Canada, France, Germany and elsewhere in Europe. Those alliances remain as important as ever.

That does not mean that we do not have significant differences of opinion and priority. Clearly we do, not least on the question of climate change and our mutual commitments under the Paris Agreement. But what matters more is that we can have a reasonable, facts-based debate about the issues that are important to us with our fellow democracies. We can negotiate. We can compromise, where we need to; and we can collaborate to find solutions. In light of recent upheavals around the world, we are grateful for that.

We are hopeful that in the upcoming election, New Zealand will reject any appeals to an imaginary past world; a world in which we did not have to navigate how to live with people who are different from us. I believe that in the upcoming election, we have the opportunity to make a bold choice to stand with those liberal democracies around the world that remain, well, liberal; to lead rather than follow; an Aotearoa New Zealand that is open and inclusive, not closed and intolerant. Thankfully, Kiwis have a pretty good record on working together. We believe that looking after people who live here and looking after the planet we live on is the best way to keep that tradition — and hope — alive.
Alister McIntosh: a mandarin for all seasons

Ken Ross examines the long-serving secretary of external affairs’ relationship with contrasting prime ministers in the 1950s.

‘the man who makes New Zealand tick’ (Sir Michael Adeane, 1962)1

A seasonal cycle defines Alister McIntosh’s relationship with the four prime ministers he worked with as head of the departments of Prime Minister (1945–66) and External Affairs (1943–66). New Zealand’s outstanding diplomatic mandarin’s 23-year tutelage of this quartet can be portrayed by Peter Fraser’s high summer; Sid Holland’s Cold War winter; Walter Nash’s new spring; and, lastly, the autumnal glow, for McIntosh, of the Keith Holyoake years.

McIntosh has himself told us of his working with Fraser (prime minister, 1943–49).2 The autumnal nature of his six years with Holyoake (1960–66) surfaced in my previous article.3 His relationships with Holland (1949–57) and Nash (1957–60) are a compare and contrast exercise: the winter and spring of McIntosh’s external affairs career.

With Nash’s encouragement, McIntosh garnered the prime minister as good a legacy as could possibly be accomplished. Their major lasting achievement has to be the 1959 Antarctica Treaty. There was much more, too, notably the Laos effort — when Nash, in 1960, stilled the prospect of another Asian war — and his deciding Samoa would have early and full independence (in the face of strong opposition from Australia, Britain and others).

Because of the way McIntosh moved within the Five Eyes ‘club’ he enabled Nash to do the ‘tea and conversation’ act with global leaders, particularly Harold Macmillan (the British prime minister, 1956–63) and Dwight Eisenhower (the United States president, 1957–61) while by-passing Robert Menzies (the Australian prime minister, 1949–66), who sought to stymie Nash’s diplomatic endeavours. Nash’s good access to Dag Hammarskjöld (the United Nations secretary-general, 1952–62) pivoted on Bruce Turner, a New Zealander well-known to Nash and McIntosh, who had, by the mid-1950s, become, in Hammarskjöld’s words, ‘the Minister of Finance for the UN’.4

McIntosh was averse to fronting up in public as a speaker or author. When declining an invitation by the Palmerston North Rotary Club in April 1961, he explained:

it has been the practice in this Department under successive governments to decline permission for any officer to speak in public on matters affecting external affairs. It is felt that any public statements are more appropriately made by members of the Government, preferably Ministers.5

He went public just twice in his 23 years: at a 1961 conference of the New Zealand Institute of Public Administration and when accepting an honorary doctorate from the University of Canterbury in 1965.6

An ‘off-the-record’ talk to New Zealand’s newspaper editors in early May 1962 provides a sublime sketch of McIntosh’s diplomatic skills, as he explained to them how New Zealand could best manage our ANZUS undertakings to the end of gaining influence at the highest levels in Washington.7 It is a classic — mirroring Gerald Hensley’s account of McIntosh showing the newbie Hensley, in 1958, how to craft a Walter Nash speech.8

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Sid Holland and Walter Nash were the winter and spring ‘seasons’ for Alister McIntosh’s 23-year tutelage of his quartet of prime ministers, Peter Fraser, Sid Holland, Walter Nash and Keith Holyoake. Nash enabled McIntosh to flourish at his finest and that, in turn, enhanced Nash’s ‘tea and conversation’ encounters with global leaders, particularly his British counterpart, Prime Minister Harold Macmillan. Whereas Holland required McIntosh to play defence as he sought to construct a foreign service populated with New Zealand’s best. Nowhere was this more apparent than in his efforts to shield controversial diplomat Paddy Costello from Holland’s efforts to remove him.
Muddling leader

While, not contradicting Keith Sinclair’s Walter Nash (1976), or refuting McIntosh’s grumblings about the wretchedness of Nash’s character — highlighted in Ian McGibbon’s Unofficial Channels (1999) — the McIntosh Papers show another perspective: an adept snapshot of a muddling Nash (by then 75) from his first day as prime minister. By being in the prime ministerial suite Nash reinvigorated McIntosh, who then performed at the highest levels with counterparts, particularly in Washington and London.

An important victory for McIntosh was persuading Nash to take the external affairs portfolio. McIntosh made clear to Nash that none of his prospective ministers was up to that task and, furthermore, that Nash could make his mark in global diplomacy. In 1973 McIntosh explained to that year’s intake of new diplomats that with the return of the Labour Party to power Nash ‘did have somewhat different ideas from the Holland regime and he did attempt to give some new directions but of course he was not in office long enough for these to have lasting effects’.9 McGibbon’s comment — ‘only occasionally, as in the case of Walter Nash in 1960, did a New Zealand prime minister seek to step onto the world stage’ — is pitch perfect.10

McIntosh accompanied Nash on six of his seven international trips as prime minister, inevitably writing up detailed records of the key meetings and the trip reports to Cabinet.11 The McIntosh Papers at the Alexander Turnbull Library include two sets of such material, both highlighted here.

The first set of papers relates to Harold Macmillan’s January 1958 visit to New Zealand — the only time a British prime minister has toured the country.12 Nash hosted him, though Holland had issued the invitation. Macmillan arrived five weeks after Nash became prime minister (with the country in the Christmas/New Year holiday ‘shut-down’ for much of that period). The various accounts13 of the pair’s numerous and lengthy discussions during the visit show them establishing considerable rapport — validating Geoffrey Cox’s observation that Nash was ‘extraordinarily skilful at getting in with and keeping in with people of power’.14 Their rapport developed further in the course of subsequent encounters in London and in New York, at UN General Assembly sessions. Nash also stayed weekends with the Macmillans at Chequers when he visited Britain.

Macmillan’s recollections of Nash are sprinkled through two volumes of his memoirs.15 He records Nash as an ‘old-fashioned radical, rather than a socialist’, whose ‘hero was Gladstone, not Marx’. Macmillan quips of their several lengthy conversations in New Zealand that they were ‘both useful and informative, if somewhat repetitive’.

Crowning moment

Sidney Holland with Jawahalal Nehru

The two leaders’ crowning moment connects to the second set of material highlighted — during a ten-week trip Nash spent five days in the Soviet Union in April 1960. Before he went there Nash was in London to be briefed by Macmillan, who a year earlier had become the first British prime minister since the Second World War to visit the Soviet Union. (Nash’s visit was the first ever to Moscow by a New Zealand prime minister.) Nash returned to London immediately after his time in the Soviet Union to brief Macmillan, before travelling to Washington to repeat the briefing with President Eisenhower.16

For his briefings, Nash used McIntosh’s reports of the five days in the Soviet Union that he had written up in London — the records of the discussion with Khrushchev (thirteen foolscap pages) and the impressions of the Soviet Union (twelve pages). McIntosh passed copies to the British and Americans, as they were invaluable coinage in the Five Eyes ‘club’.17 These documents are in Wellington’s Turnbull Library in the McIntosh Papers, as are also parts, including biographies of 39 prominent Soviet officials, of the top secret brief prepared for Nash by the Joint Intelligence Bureau (Wellington).18

A nervousness emanated from the New Zealand Embassy in Washington: by visiting the Soviet Union Nash might prompt Washington to cut the supply of CIA intelligence.19 It is more likely that the Americans well appreciated Nash (and, particularly, McIntosh) for sharing their insights.

Laos was the episode that gave Nash some fleeting fame beyond New Zealand. He led New Zealand’s opposition to SEATO involvement in the crisis.20 Nash, with McIntosh, was concerned ‘lest New Zealand should get involved in a war under unacceptable circumstances in an unacceptable place’.21 Early in the piece, Corner had informed McIntosh, on 14 May 1958, in a top secret personal message that the British ‘Foreign Office believe that Mr Nash’s forthright approach [on Laos] to Mr Dulles produced a significant and in their view healthy effect’.22

Sharp turn

McIntosh’s spring-time with Nash was a sharp turn from the previous eight years of Sisyphean travail, when Sid Holland was prime minister. Holland’s dynamic, as he explained to a senior British minister in September 1953, was: ‘we are a very British community, and our roots are very deep down in the British tradition and the British way of life’.23

Admittedly, it was on Holland’s watch that the ANZUS pact and SEATO came into being. But, in 1956, the Suez Crisis had Holland going all the way with British Prime Minister Anthony...
Eden’s catastrophic stuff-up.\(^2\) McIntosh (and his department) was appalled by their having to defend the chaotic mess, which also nearly ensnared the New Zealand navy’s HMNZS Royalist.

Holland was the only one of McIntosh’s four prime ministers not to also hold the external affairs responsibility. His three external affairs ministers — Frederick Doidge, Clifton Webb and Tom Macdonald — were fitful performers in the role. McIntosh essentially played defence during Holland’s prime ministership.

Uppermost for McIntosh during the Holland years was holding the external affairs department together. His other responsibility — the Prime Minister’s Department — was virtually razed in the early 1950s with the National Publicity Studio, the National Film Unit and the Information Services shaved off, taking 150 of that department’s 160 personnel. The department absorbed the new Joint Intelligence Bureau (Wellington), created to meet the expectations of the other Five Eyes partners, and had also a one-man band in Reuel Lochore covering national security matters. Lochore was to give McIntosh no end of trouble throughout the remainder of McIntosh’s career.

There was much more contributing to McIntosh’s stresses with Holland. He took a rough buffeting when jostling with the Police, whose Special Branch had the security vetting responsibility for civil servants until the Security Intelligence Service took up that task in 1957.

Security vetting

In her *More than law and order: policing a changing society 1945–1992* (2005), Susan Butterworth outlines the Special Branch’s limited capacity and ability to process ‘some 6,000 vettings’ in 1955 that involved, as well as civil servants, all military personnel, and, presumably, the police. That year, External Affairs’ vettings would have numbered only around 25; but they were presumably more intrusive for national security considerations than the then standard vetting. In the heavy-handed Cold War protocol, all too evident from the Special Branch material now at Archives New Zealand in Wellington, it was a perfunctorily brutal approach very reliant on informers, such as George Fraser, who has recounted the foibles of that role in his confessional *Seeing Red: undercover in 1950s New Zealand* (1995). It is not at all surprising that McIntosh became engulfed by the tribulations.

By early 1978 McIntosh accepted he would not be writing what he had so wanted to — a biography of Peter Fraser. Michael King took on the task of recording the story-telling McIntosh wanted aired. King interviewed McIntosh 24 times before his death: the first interview was on 16 March. McIntosh died three days after the final interview on 27 November 1978. Much later, King wrote that ‘there were things he [McIntosh] said then that he wanted to appear in the public record after a decent amount of time had passed’.\(^2\)

Loyalty issues

An undated draft footnote King seemingly prepared for his *Penguin History of New Zealand* (2003) has a post-it note stating ‘not eventually used’; but for this discussion it warrants airing:

The [External Affairs] department was to be rocked in the early 1950s by police security reports that cast doubts on the loyalties of about a dozen of its officers [that is a quarter of his diplomatics] and eventually resulted in the resignations of four of them. These investigations grew in part out of a McCarthy-ist climate and were given momentum by anonymous letters to government and opposition MPs, and by a visit by the American ambassador to [Prime Minister] Holland. Some of the reports uncovered grounds for legitimate concerns (meetings with a Soviet agent, for example). But they also revealed such a degree of inaccuracy and naivety that McIntosh proposed the need for a new and more professional system of vetting public servants for security sensitive jobs. The result was the establishment of the Security Intelligence Service in 1956. The major subsequent regret of McIntosh and other senior civil servants was that it was headed by a career army officer and run on MI5 lines.\(^2\)

High profile cases, particularly that of Paddy Costello, have had much oxygen — but, as yet, none of the accounts concerning Costello carry authority.\(^2\) McIntosh strenuously sought to hold on to Costello, who in 1950 he regarded as his ‘most brilliant linguist and diplomatic officer’.\(^2\) But Holland prevailed: his implacable determination was prompted by British insistence that Costello be dispensed with. The paradox was that McIntosh had never had Costello on External Affairs’ permanent staff and then, despite Holland’s success, he never really parted company with him, endeavouring whenever in Britain to meet with the now Manchester-based Professor Costello.

McIntosh wanted ‘to recruit people who possessed those qualities of character and personality and New Zealandishness which could cause people overseas, as well as their compatriots, to feel and say, “That must be the best type of New Zealander”’.\(^2\) In Mc-Intosh eyes, Costello was one of them and parting with him ranks among the most distressing of McIntosh’s professional moments.

NOTES
1. Alexander Turnbull Library (ATL), MS-Papers-8752-206. Adeane, the Queen’s private secretary (1953–72) was describing Alister McIntosh to Sir Bernard Fergusson, who was about to be New Zealand’s governor-general. Michael King’s handwritten note says the comment was made at the Savoy Hotel, ahead of Fergusson departing for Wellington in late 1962. Fergusson reportedly passed the insight to McIntosh in 1977.
2. Sir Alister McIntosh, ‘Working with Peter Fraser in Wartime’, in Margaret Clark (ed), *Peter Fraser* (Palmerston North, 1997),
pp.159–68, is an abridged version of an address McIntosh gave in June 1973 to the New Zealand Historical Society. The address is in the New Zealand Journal of History, vol 10, no 1 (1976), pp.3–20. The 1973 talk and the 1976 article, along with associated working material and feedback, are in ATL, MS-Papers-6759-177.


4. ATL, MS-Papers-6759-358 has McIntosh’s 23 February 1956 letter to Turner mentioning Hammarskjöld used the term when briefing Prime Minister Holland and his ministers while in Wellington earlier that month.

5. ATL, MS-Papers-6759-391, folio 15.


7. ATL, MS-Papers-6759-176.


9. ATL, MS-Papers-6759-176, folio 10, p.2.


11. The itineraries are at Archives New Zealand (ANZ), files R17517579 to R17517585.

12. John Major, while prime minister, attended some of the 1995 Commonwealth Heads of Government Meeting. Tony Blair spent 24 hours in Auckland on a low profile stop-over in March 2006, which had no public engagements other than a behind-closed doors speech and talking with his counterpart, Helen Clark.

13. ATL, MS-Papers-6759-105 contains McIntosh’s official accounts of three conversations, each lasting several hours, between the two prime ministers on 20, 23 and 24 January plus the record of the discussion at a Cabinet meeting on 24 January. The British high commissioner, George Mallaby, details the visit and his assessment of Nash in his memoir, From My Level: Unwritten Notes (London, 1965), pp 63–70, 78–84.

14. Keith Sinclair, Walter Nash (Auckland, 1976), p.228, and endnote 68 (p. 397). Cox was interviewed by Sinclair on 4 February 1974. Cox worked closely with Nash when both were on the staff of the New Zealand Embassy in Washington, 1943–44.


16. ANZ, Nash Papers, bundle 2325, box 2082 has ‘Notes of Discussion between Prime Minister and President Eisenhower 1 June 1960’. The Macmillan briefing is not in the folder but in the companion folder in this box are three messages between Macmillan and Nash in late September 1960, beginning with Macmillan checking with Nash if he planned to attend the about to commence UN General Assembly, which President Eisenhower had decided to address as Khrushchev had declared he was doing. Macmillan and Nash opted to attend.

17. ATL, MS-Papers-6759-374, folio 67. McIntosh sent the copy for passing to the Americans with a covering note, dated 3 May 1960, to Lloyd White, the senior official at the New Zealand Embassy in Washington, stating ‘copies were given to the United Kingdom’.

18. ATL, MS-Papers-6759-121 has these three documents. The trip report and the record of the discussions with Khrushchev are also at ANZ, Nash Papers, bundle 2325, box 2082.

19. ATL, MS-Papers-6759-390, folio 047, is a 28 April 1960 message from a Washington embassy staffer, Ralph Mullins, raising this concern when reporting the United States’ Moscow embassy coverage of Nash’s visit to the Soviet Union.


22. ATL, MS-Papers-6759-107, folio 3.

23. ATL, MS-Papers-6759-058. Holland was writing to Viscount Swinton, the secretary of state for Commonwealth relations, who handled London’s relations with New Zealand.


25. ATL, MS-Papers-2096. King wrote to Richard Woods, the head of the SIS, dated 23 May 2003. A similarly worded letter had been earlier written to the prime minister, dated 31 Mar 2000. Both are in ATL, MS-Papers-8752-206. See also the ATL, 77–107 series.

26. ATL, MS-Papers-8752-206.

27. Costello’s story is the subject of James McNeish’s much acclaimed The Sixth Man: the extraordinary life of Paddy Costello (Auckland, 2007). McNeish accessed the McIntosh Papers at the Turnbull Library; however, he makes no use of much material that is in McIntosh’s correspondence at the library, but that is essential for understanding McIntosh’s determined support for Costello. In that correspondence McIntosh kept Carl Berendsen, R.M. Campbell, Doug Zohrab, Geoffrey Cox, and Dan Davin alert to his endeavours on behalf of their friend, Paddy.


Correction
In the article ‘A very complicated business’ by Ken Ross in the last issue (vol 42, no 4, p.8) we mistakenly included the wrong image for Ngāio Marsh. The person depicted is in fact Josephine Tey, the pseudonym of the Scottish author of mystery novels Elizabeth MacKinnon (1896–1952). Also, the image of Alister and Doris McIntosh on the same page was from the Alexander Turnbull Library, Wellington (EP 1966/3492). The image of McIntosh on the following page was also from the library’s photographic collection.
Peace and justice

George Troup discusses the role of the legal institutions of The Hague in international affairs.

My starting point is the classic statement of foreign policy realpolitik by Thucydides, the historian of the Peloponnesian War, 2500 years ago: 'In this world, questions of right and wrong arise only between equals in power. The strong do what they can, the weak suffer what they must.' This thought goes back even further; take Aesop’s fable of the wolf and the lamb, memorably distilled in La Fontaine’s version: the strong always have the best arguments. In other words, might is right.

Is size really everything? For the sake of small (weak) states we must hope not.

Let us fast-forward 2000 years to the early 17th century, when the Dutchman Hugo Grotius (Huig de Groot) laid the foundations of international law with his influential works on the law of war and peace and on the law of the sea. His concept of international society underpinned the Peace of Westphalia of 1648, which ended the Thirty Years’ War (or, as the Dutch call it, the 80-year war of independence from Spain). This war was the bloodiest in Europe, and the nearest to total war, until the First World War. Westphalia established the principle of the equality of all states in international law and the right of national political self-determination. To this extent we can see it as positive for small states; but the accompanying concept of the absolute sovereignty of states is less conducive to international co-operation and the rule of law. The main instrument of statecraft under the so-called Westphalia system was the balance of power among hegemonic ambitions. The Westphalia system was, of course, devised by and for Europeans, but the geo-strategic realities of the next few centuries made it the de facto global norm.

The world wars of the 20th century exposed the limitations of the Westphalia system and galvanised the search for better institutions. The United Nations is the most obvious expression of the Westphalia system and galvanised the search for better institutions. The Westphalia system was, of course, devised by and for Europeans, but the geo-strategic realities of the next few centuries made it the de facto global norm.

The International Court of Justice

The world wars of the 20th century exposed the limitations of the Westphalia system and galvanised the search for better institutions. The United Nations is the most obvious expression of the aspiration to find an alternative to the law of the jungle. An axiom of foreign policy for many countries, including New Zealand and also the Netherlands, is that a rules-based international order is in our interests (in the trade and economic arena as well). In other words, we identify with the weak in the dictum quoted at the beginning. This is an important reason why we have always been attracted to institutions like the United Nations with its one-country-one-vote in the General Assembly, and have staunchly opposed the veto power ever since the San Francisco Conference of 1945.

In this article I explore the extent to which the legal institutions in The Hague have been able to neutralise the power imbalance between the great and the small. I will be essentially drawing from material in the public domain, seen through the lens of my experience in The Hague working in various ways with the institutions. The opinions stated are personal, though my personal views generally coincide with New Zealand’s official positions. My perspective is that of a generalist diplomat rather than a legal specialist, so my emphasis is on the political dimension.

Legal capital

Why The Hague? Several secretaries-general of the United Nations have recognised The Hague as the ‘Legal Capital of the World’. The city’s motto is Pax et Justitia — Peace and Justice. Fittingly, the mayor of the city during my time was a former foreign minister. How did The Hague come to assume this role?

At the end of the 19th century there was growing concern over the dangerous arms race between Britain and Germany. In 1899 Tsar Nicholas II convened the first-ever international peace conference, in The Hague. It seems that the city was chosen because it was accessible, neutral, and efficient; perhaps there were also echoes of Grotius, as well as the presence and influence of the great Dutch jurist Tobias Asser. Twenty-six sovereign states attended, mostly European. Included on the agenda was the voluntary arbitration of international disputes. This led to the Convention for the Pacific Settlement of International Disputes and the establishment of the Permanent Court of Arbitration (PCA). A second Hague peace conference was held in 1906, with wider participation but less groundbreaking results. Interestingly, the Tsar’s response when
his cousin Kaiser Wilhelm II appealed to him to help avert the escalation towards war in the summer of 1914 was to suggest re-convening the Hague conference.

The Scottish/American industrialist Andrew Carnegie, as a philanthropist with an interest in peace, was approached to fund a suitable building as the seat for the PCA. I understand that he was initially reluctant, objecting that his priority was libraries. The deal was clinched when it was suggested that the building could house the world’s finest international legal library, and he wrote a cheque for US$1.5 million, which bought a lot in those days. A spectacular building resulted — the disneyesque Peace Palace, the most recognisable icon of the city of The Hague. It opened in 1913, just in time for the First World War. Many countries made contributions in kind to the building and its decoration. There were big celebrations in 2013 for the centenary, while I was there; New Zealand donated legal texts to the library to mark the occasion.

The Carnegie Foundation was established to manage the building. The Dutch government makes a substantial financial contribution, and the foundation is always chaired by an eminent Dutchman.

Carnegie was keen for the First World War peace treaty negotiations to be conducted in the Peace Palace. But United States President Woodrow Wilson had little time for Carnegie and wanted to recognise the role of France in the war, so the negotiations took place in Paris. Wilson’s 14-point manifesto for peace was not much concerned with the settlement of disputes (other than the call for open diplomacy), but point 14 called for the establishment of a League of Nations. The Hague was canvassed as the seat for the league, but it seems that the Dutch tilt towards Germany during the war as well as disagreement over the fate of the Kaiser counted against it, and the nod went to Geneva.

The Hague did, however, secure the prize of hosting in the Peace Palace the Permanent Court of International Justice (PCIJ) that was established as part of the League of Nations. The PCA and the PCIJ, along with the library and the Hague Academy established around the same time, seem to have provided the critical mass and centre of excellence to drive continuing growth in the city’s legal role.

**Individual institutions**

Turning to the individual institutions, I look at them through my ‘small country’ political lens, considering their history, governance and performance, and how they contribute to levelling the playing field among nations (in other words, how willing in practice are the big players to accept constraints on their power and sovereignty?). I also consider the nature of the institutions’ relationship with the UN system, and, of course, point out some of the angles of particular interest to New Zealand.

I have divided the institutions into three categories — litigation, penal tribunals and non-court institutions.

**Litigation:** Although it is not the oldest, the International Court of Justice (popularly known as the World Court) is the best known of the institutions. It replaced the PCIJ after the Second World War. It is one of the six principal organs of the United Nations (along with the General Assembly, Security Council, Economic and Social Council, Trusteeship Council and Secretariat), which is a point of pride. It is the only Hague legal institution that is formally part of the United Nations, although the United Nations has some role in most. Its role is to settle inter-state litigation, and to provide advisory opinions when requested by specified UN bodies or agencies. Its budget is part of the UN budget, and currently stands at about US$25 million per year.

There are fifteen judges on the court, elected for nine-year terms (one-third elected every three years); they can be re-elected. They are expected to represent the diversity of the world’s major legal systems — in particular the civil law system (continental Europe and its former colonies) and the common law system (the English-speaking world). The same regional balance as for the 15-member UN Security Council is maintained among the judges. Cases are determined in accordance with the provisions of international agreements, international custom, generally recognised principles of law, judicial decisions and experts’ writings. The court has jurisdiction where the parties specifically agree to refer a dispute to it, where a treaty specifically provides for it or when the states involved have made a declaration accepting its compulsory jurisdiction. Such declarations may or may not include reservations, and they can be reversed. Currently 75 states, including New Zealand and Australia, accept the court’s compulsory jurisdiction, most with reservations.

The role of the five permanent members of the Security Council (P5) is something of a sore point. To be elected to the court, a judge must obtain a majority of votes in both the Security Council and the General Assembly. The P5 always vote as a bloc in the Security Council to ensure that each of them is represented on the bench, despite only one of them (the United Kingdom) accepting the court’s compulsory jurisdiction.

During my time in The Hague, Sir Kenneth Keith was a judge of the court — the first New Zealander to be elected, in 2005. I had campaigned with him for his election during my earlier incarnation as ambassador in Mexico. Unfortunately for me, New Zealand’s involvement in the Japanese whaling case meant that he and I were off limits to each other for much of my time there.

**Self-governing court**

The court is very much self-governing; the president and vice president are elected by their fellows every three years, which apparently involves frantic lobbying among the judges. The current president is Ronnie Abraham of France. Ambassadors have no governance role in the ICJ, though they are usually

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*The International Court of Justice in session*

*Sir Kenneth Keith*
engaged in the cases involving their countries.

The court has had its ups and downs over the years. A low point was in 1966, when the court (on the casting vote of its Australian president) declined to rule on the merits in a case brought by Ethiopia and Liberia against South Africa’s rule in South West Africa (now Namibia). The docket of cases dried up completely. In 1986, however, a ruling against the United States in a case brought by Nicaragua helped restore the court’s standing in the eyes of developing countries, and it is now kept busy. Around 100 countries have used it over the years.

Latin American countries have made extensive use of the court in addressing the many territorial claims which are a legacy of 19th century decolonisation. Under the 1948 Pact of Bogotá most of them agreed to submit such disputes to peaceful resolution procedures. This has the political advantage for their governments that they do not have to be seen to compromise on vital national interests. Most of my Latin American ambassadorial colleagues in The Hague were eminent international lawyers, whose main role there was in managing their countries’ cases before the ICJ.

New Zealand has appeared before the ICJ three times: with Australia against France on French nuclear testing in the 1970s; as one of 22 states appearing in the proceedings concerning an advisory opinion on the legality of nuclear weapons in the 1990s; and in 2013 as an intervener (third party) in the case brought by Australia against Japan’s whaling in the Antarctic. An attempt in 1995 to reopen the case from the 1970s was rejected by the court. In each case, our participation was led by the attorney-general. As ambassador I had an active role as ‘co-agent’ in the latest case, exchanging documents and liaising with the registrar, particularly on the procedural conduct of the case. The court found that Japan’s programme at the time did not constitute genuine scientific whaling, and its ruling picked up a good deal of New Zealand’s argumentation. I note, however, that Japan has resumed its programme after making some changes, and has now excluded living marine creatures from its acceptance of the ICJ’s jurisdiction. Sir Geoffrey Palmer has commented that taking the ICJ route rather than continuing to seek a negotiated settlement with Japan may have been counterproductive.

An interesting angle in the case is that Australia, which did not have one of its own nationals on the court bench at the time, was able to designate an ad hoc judge for the whaling case. If New Zealand had been a full party, the presence of Keith on the bench would have prevented this (there was already a Japanese judge, former ICJ President Hisashi Owada, the Japanese crown prince’s father-in-law).

**Oldest body**
The PCA, dating back to 1899, is the oldest of the Hague legal bodies. There are currently 121 member states. Each member state nominates four potential arbitrators; these four are collectively known as the National Group, and have a role in nominating judges for the ICJ. Parties to a case are free to choose arbitrators from outside this pool, however. The PCA has an Administrative Council in The Hague, but as ambassador I had limited contact with it.

The PCA’s mandate is to settle disputes arising out of international agreements: between states, or between states and non-state parties. This is done by the establishment of a specific tribunal for each case, with each party nominating arbitrators and both agreeing on an independent chair. This model is essentially that used for the settlement of trade disputes, including through the World Trade Organisation and the proposed Trans-Pacific Partnership. The PCA has a direct role in other major bodies involved in settling trade or investment disputes, such as the International Centre for Settlement of Investment Disputes and the UN Commission on International Trade Law.

Arbitration is seen as having some advantages over a full judicial process, as the proceedings are simpler and usually quicker. In the case of the PCA, the parties have flexibility to agree on the rules of procedure for each case, and hearings are usually held behind closed doors. But the work of the PCA does not contribute to the development of international law as does the ICJ, particularly through the latter’s advisory opinions, and it is less bound in to coherence with international jurisprudence. The PCA is based in the Peace Palace, but hearings can take place anywhere in the world.

The PCAs’ jurisdiction generally arises from both parties being signatory to a particular treaty or convention that has a role for the PCA as arbiter. Because the parties to a dispute cover the costs of the hearing, the PCA budget is modest — about €1 million a year. The first case involving a non-state party (Radio Corporation of America v Republic of China) was heard in 1935. With only three cases between 1946 and 1988, the PCA became known as the Sleeping Beauty of the Peace Palace, but it was kicked back to life with the establishment of the Iran–US Claims Tribunal in 1981. It is now extremely busy, with six inter-state proceedings, 76 investor–state disputes arising from treaties, and 44 ‘other’ cases on the docket.

**High-profile case**
The highest-profile recent case was brought by the Philippines in relation to China’s activities in the South China Sea. The PCA’s jurisdiction arose from the fact that both the Philippines and China are signatories to the UN Convention on the Law of the Sea. The PCA tribunal found comprehensively against China; China rejected the findings, and the Philippines president subsequently elected, Rodrigo Duterte, has stated that he will set them aside.

Another recent case was brought in 2013 by East Timor in relation to Australia’s alleged conduct during negotiations in 2004 over the maritime arrangements treaty between them; East Timor alleged that bugging by Australia had given it an unfair advantage. The espionage allegations have now been withdrawn as a ‘confidence-building measure’ as the two parties engage in a conciliation process. East Timor has withdrawn from the treaty in question. Other aspects of this matter, relating to Australia’s seizure of documents, were adjudicated by the ICJ in East Timor’s favour; the substantive proceedings initiated before the ICJ, in parallel with those under the PCA, have been withdrawn.

I mention in passing the newest litigation-related body: the Panel of Recognised International Market Experts in Finance (PRIME Finance), which was launched while I was in The Hague. Its role is in dispute resolution and education in this complex technical area, promoting the rule of law in emerging markets. Hearings are held in the Peace Palace.

**Penal tribunals:** The idea of an international tribunal to judge political leaders accused of international crimes was raised at the Paris Peace Conference in 1919, and again in Geneva under the League of Nations. The zeal to end impunity for war crimes was associated with the very beginnings of the UN concept in 1941 (before Japan and the United States entered the war), with Allied countries, including New Zealand, declaring that an organised process of justice to punish German war crimes was a principal war aim. This aim was incorporated in the St James Declaration and the London
defence. to secure convictions rather than to conduct fair trials. Harhoff was succumbing to political pressure from the United States and Israel the tribunal’s president, the Jewish-American Theodore Meron, of Harhoff, a Danish judge on the ICTY, circulated a letter accusing deal of lobbying. to the ICJ, and ambassadors in The Hague are subjected to a good ICTY as a way-station in a career path which they hope will lead containing an interesting episode during my time when Frederik Harhoff, a Danish judge on the ICTY, circulated a letter accusing legal aid and family visits, as well as the prosecution and defence functions and the conduct of trials. The ICC embodies the aspiration of the international community to end the impunity of the powerful. Around the time of the Rome Statute the concept of Responsibility to Protect (R2P) was being developed, also in response to the failure of the international community to prevent humanitarian violations. The report of UN Secretary-General Kofi Annan promoting R2P, We the Peoples, was presented in 2000 and endorsed by all UN members at the World Summit of 2005. Responsibility to Protect has been described as the most important shift in the concept of sovereignty since Westphalia. It is open to abuse, and is not always practised; intervention in countries to protect the population remains subject to Security Council authorisation, and thus to the veto. Prosecution decisions in response to referrals are completely independent of governments, like the substantive work of all of the courts in The Hague. The ICC is based on the principle of complementary jurisdiction: it takes cases if national courts are unable or unwilling to prosecute; or cases may be referred by the UN Security Council. (The irony of the court’s work being mandated by P5 members who do not belong to it or contribute to the budget does not go unnoticed.) The ICC got off to a slow start; although it began functioning in 2002, the first judgment was not issued until 2012. Some of the blame for this was attached to the first prosecutor, the publicity-hungry Luis Moreno Ocampo of Argentina. Since 2011 the prosecutor has been Fatou Bensouda of The Gambia, Moreno’s former deputy, and the quality of trial preparation is generally considered to have improved. Forty individuals have now been indicted (all from Africa, although investigations further afield have been undertaken) and three have so far been convicted: Jean-Pierre Bemba, Germain Katanga and Thomas Lubanga Dyilo, all from the Democratic Republic of the Congo.

African complaints The court has been criticised for picking on Africa. Some African governments have refused to honour its arrest warrants, for example in respect of Sudanese President Omar al-Bashir, who has been allowed to travel freely in and out of a number of African countries. During my time, there was a push at the African Union for African members to withdraw from the court as a bloc in protest at the trial of sitting President Kenyatta of Kenya (the Kenyatta case has since

Charters of 1945, giving rise to the Nuremberg and Tokyo trials after the war. Less well known, the parallel UN War Crimes Commission of 1943–48 supported nearly 2000 war crimes trials. Despite a feeling that Nuremberg and Tokyo were flawed as victors’ justice, the ‘Nuremberg principles’ became widely accepted. The political impasse during the Cold War meant that little action was seen for the next 50 years, however.

Yugoslavia tribunal

A pioneer body was the International Criminal Tribunal for the former Yugoslavia (ICTY), established in 1993 by a resolution of the UN Security Council in response to the atrocities and violations of humanitarian law being committed in Slovenia, Croatia, Bosnia Herzegovina and subsequently Kosovo and Macedonia. Like the other penal institutions, the ICTY does not operate from the Peace Palace, though the library constitutes an important resource. It has issued 161 indictments for serious violations of international humanitarian law, leading to 83 persons being sentenced, nineteen acquitted and thirteen referred to national jurisdictions; seventeen died before the process was concluded. Twenty indictments were withdrawn, and seven convictions are under appeal. The ICTY is now winding down; any further appeals will be held under the auspices of the Permanent Mechanism for International Criminal Tribunals, which also folds in the Rwanda Tribunal, the ICTY’s sister organisation based in Tanzania. The ICTY’s budget, which is approved by the UN General Assembly, was over US$100 million a year at its height, but has been reducing. Ambassadors in The Hague do not have a direct governance role, although many take an interest.

The ‘big three’ indictees were Serbian leader Slobodan Milošević, Bosnian Serb leader Radovan Karadžić, and Bosnian Serb general Ratko Mladić. Milošević died in 2006 during his trial; he basically smoked himself to death. Karadžić was convicted last year of genocide, war crimes and crimes against humanity, and sentenced to 40 years’ imprisonment; his conviction is under appeal. Mladić was the last to be arrested, following EU arm-twisting of Serbia. His trial began in May 2012 and finished in December last year; the verdict is expected later this year. The Dutch attached particular importance to bringing him to trial in view of his alleged responsibility for the Srebrenica massacre, where Dutch UN peacekeepers were helpless bystanders.

There are a number of New Zealand lawyers on the ICTY staff, and some of New Zealanders who served as peacekeepers in the region have been called as witnesses. In my observation the judges have been a mixed bag. A number apparently do not have experience in managing trials, and this partly accounts for the inordinate length and complexity of some of them. Some judges regard the ICTY as a way-station in a career path which they hope will lead to the ICJ, and ambassadors in The Hague are subjected to a good deal of lobbying.

An interesting episode occurred during my time when Frederik Harhoff, a Danish judge on the ICTY, circulated a letter accusing the tribunal’s president, the Jewish-American Theodore Meron, of succumbing to political pressure from the United States and Israel to raise the bar for convictions to an unrealistically high level. One of Harhoff’s colleagues commented to me that his reasoning was flawed, being based on the idea that the purpose of the tribunal was to secure convictions rather than to conduct fair trials. Harhoff was disqualified from further trials on the grounds of bias against the defence.

Criminal court

Although not the oldest of the penal tribunals in The Hague, the International Criminal Court (ICC) with its universal jurisdiction constitutes what is intended to be the definitive model. It was established by the Rome Statute of 1998, which was based on a 1994 draft by the International Law Commission, and is largely independent of the United Nations. New Zealand took an active role in negotiating the Rome Statute. One hundred and twenty-four states have now ratified it and are thereby members of the court; this includes only two of the P5, the United Kingdom and France. (The United States did sign the Rome Statute but has made it clear that it will not ratify; the possibility of foreign courts trying US citizens constitutes a red line.) The ICC has jurisdiction for genocide, crimes against humanity and war crimes; and for the crime of aggression (defined in 2010, but not yet activated). The focus is on perpetrators in leadership positions. The ICC’s jurisdiction does not apply retrospectively. It is governed by the Assembly of States Parties, which meets alternately in New York and The Hague. The annual budget is around €150 million, which includes provision for victim participation, legal aid and family visits, as well as the prosecution and
been dropped as witnesses pulled out). This movement gained momentum last year, with a number of governments, including the Gambia and South Africa, announcing their withdrawal. The latest news to hand is that this tide of rejection has receded somewhat, with South Africa's withdrawal being blocked by a domestic court as unconstitutional. It now looks as if only Burundi will withdraw this year.

In my personal opinion, much of this criticism of the court for bias is unfair. At the time of its establishment, support from African governments was particularly strong in recognition of the value of its complementary jurisdiction in compensating for gaps in their own judicial systems, and many of the situations investigated by the court have in fact been referred by African governments.

Witness intimidation and the conduct of its personnel in the field have also been problems for the ICC. The messy governance structure, with responsibility divided between The Hague and New York, is a source of frustration, and the lack of support for the court from the Security Council (for example, in response to breaches by governments) has been disappointing.

There is particular sensitivity over the involvement of the Palestinian Authority. The authority joined the court last year, despite strenuous efforts by Israel to dissuade and prevent it. It has submitted evidence of actions by Israel, now under preliminary examination by the court along with acts by Palestinians. There has been speculation that the United States will use its Security Council veto to prevent any action against Israel by the ICC, just as Russia and China in 2014 vetoed referral of the Syrian situation to the ICC.

**Lebanon tribunal**

The Special Tribunal for Lebanon (STL) was set up in 2007 by the Security Council to investigate the 2005 assassination of former Lebanese Prime Minister Rafik Hariri and related assassinations, after the investigations by the Lebanese authorities and the United Nations had bogged down. The backdrop to the case is a long-running civil war, which has killed at least 120,000, and a pattern of interference by outside powers accompanied by huge refugee flows. The trial is being conducted under Lebanese law, and four of the eleven judges are Lebanese. The annual budget is around €60 million a year, half paid by Lebanon.

During most of my time in The Hague, the president of the STL was the New Zealand judge Sir David Baragwanath, who also played an important role in setting up PRIME Finance. In preparing this article, I have benefited greatly from access to his extensive and penetrating writings on the philosophy and practice of international law.

Former New Zealand police personnel have also been involved in the preparation of the case, which is currently under way, with five members of Hezbollah on trial in absentia. The case rests largely on telephone metadata: a dedicated network of 63 mobile phones was identified, linked to senior Hezbollah figures. The suspects were identified through the patterns of movement of these phones, as the suspects also carried personal phones to contact family and friends.

Three years after the start of the trial, the prosecution evidence is still being presented. In addition to the five alleged conspirators, three journalists and one media organisation were indicted for interfering with the administration of justice by publishing information on confidential witnesses; two were convicted and fined, and two acquitted.

The security measures at STL HQ are extreme. The precarious security situation in Lebanon and the open hostility of Hezbollah to the STL make it difficult to see the indictees ever being arrested; if they are, there is provision for a fresh trial to begin. The public reaction in Lebanon to the revelations at the trial suggests that Hezbollah has been paying a political price for the assassination.

**Special court**

The Special Court for Sierra Leone (SCSL) was set up in 2002 by the United Nations, at the request of the government of Sierra Leone, to address crimes against civilians and UN peacekeepers during the civil war between 1991 and 2002. Under a further agreement of 2010 between the United Nations and Sierra Leone, it transitioned to a Residual Special Court based in Freetown. The majority of the judges were international judges appointed by the UN secretary-general, with the other judges appointed by the government of Sierra Leone.

While operating in The Hague, the SCSL issued thirteen indictments for crimes against humanity, of which ten were brought to trial with nine persons convicted. These included then-president of Liberia Charles Taylor, who is now serving a 50-year prison sentence in the United Kingdom for eleven counts of aiding and abetting war crimes and crimes against humanity committed by the Revolutionary United Front, including murder, terrorism and rape. Taylor's was the first conviction since Nuremberg for crimes committed by a head of state in office, and the SCSL cases were the first to seek convictions for the use of child soldiers, forced marriage and attacks against UN peacekeepers.

The SCSL also conducted contempt and witness tampering trials. There has been criticism of the court for selectively prosecuting war criminals who were opposed to Western interests.

At the beginning of this year, the Kosovo Relocated Specialist Judicial Institution (KRSJI) was established in The Hague. I have no first-hand knowledge of this body, so have had to rely on public sources. The KRSJI is not strictly an international institution, being part of the Kosovo legal system, operating under Kosovo law. It was located outside Kosovo territory at the request of the prosecutor, in order to allow for adequate protection for witnesses. Its function is to try alleged war crimes committed by members of the ethnic Albanian paramilitary Kosovo Liberation Army against ethnic minorities and political opponents between 1998 and 2000. The judges are international and the staff are provided by the European Union, which also funds the court. The court was established following a Council of Europe report of 2011 and an investigation by the European Rule of Law Mission in Kosovo (EULEX). As well as the humanitarian and legal considerations, this new court may be viewed in the context of the European Union's strategic goal of normalising and enhancing relations with Serbia.

The Khmer Rouge Tribunal, based in Cambodia, falls outside the scope of my survey.

**Non-court institutions:** Two EU legal bodies, Europol and Eurojust, are also part of the Hague ecosystem. Eurojust undertakes judicial co-operation and is a closed book to me, whereas I had some contact with Europol, the EU equivalent of Interpol. But
despite the efforts of the Dutch government, the European Court of Justice and the European Court of Human Rights are based elsewhere — in Luxembourg and Strasbourg respectively.

**Private law**
The Hague Conference on Private International Law (HCPIIL) was originally held in 1893. The present institution of the same name goes back to 1951, and promotes cross-border co-operation in civil and commercial matters. There are now 40 conventions under its umbrella, with the Hague Conventions on adoptions and abduction being the best known. The Hague Conference currently has 81 members, including New Zealand, and a budget of around €4 million. During my time in The Hague the New Zealand judge Peter Boshier, now our chief ombudsman, was a leading light in the substantive work of the conference.

Many New Zealanders have been among the 40,000 students who have passed through the Hague Academy of International Law, which has been running summer courses in the Peace Palace since 1923.

The Hague International Model United Nations (THIMUN) is actively supported by many New Zealand schools. It now has offshoots in Qatar and Singapore as well. We used to invite the participating New Zealand students (many of whom had an eye on a future career in the foreign service) for afternoon tea and a chat at the Embassy, and also sometimes took pleasure in providing briefings for students from other countries who were preparing to play the role of New Zealand at THIMUN.

As in all major international centres, a number of think tanks and non-governmental organisations have grown up around the legal institutions in The Hague.

**Efficacy question**
Have the legal institutions in The Hague contributed to a more just and peaceful international order? It is clear that they do not provide a magic bullet — or perhaps that should be magic shield. I imagine that few of us would seriously expect that. We cannot wish away the reality of hard and soft power — the military might and the broader influence of the major players, including of course the veto in the Security Council. (Like many others, I see the veto as the original sin of the United Nations, but it was the price of getting the Soviet Union and the United States to participate at all.) It is easy to criticise the big players for holding on to their privileges, but it is understandable that they are not always keen to submit to rules that apply to all — after all, they have a lot to forgo. I note that even in relatively powerless countries, public opinion is often uncomfortable with the idea of international arbitration — many prefer to cling to the figment of national sovereignty.

When I look at our era in a longer-term historical perspective, what I find remarkable is not that there are evident power imbalances — there certainly are. Rather, it is the extent to which major powers have been willing to submit themselves to institutionalised processes, setting up institutions that constrain the exercise of their power and generally accepting the outcomes.

A belief in American exceptionalism, including an allergy to foreign courts, is at the heart of the United States’ international personality. But after both world wars this sense of America being special expressed itself in idealistic ways, through taking a lead in the creation of the institutions that make up the so-called liberal international order, notably the United Nations. And in our time, humanitarian crises have mobilised public opinion to take action against abuses of power by leaders. There may be some deterrent effect from the penal tribunals, though we do not know the counter-factual.

The result of all this is that the sphere of the rule of law in international relations has expanded; from my point of view, and surely for New Zealand, this is a good thing. In many of the cases I have referred to in this survey, the ‘lamb’ prevailed over the ‘wolf’, though I did not select the examples on that basis; and the concept of Responsibility to Protect has shifted the dial as to what behaviour the international community will accept.

Sometimes in The Hague I heard the argument that the emphasis on bringing leaders to justice worked against the interests of peace — according to this reasoning, dictators are more likely to cling to power if they face retribution when they lose it. This trade-off between peace and justice undoubtedly exists to some extent, particularly in post-conflict situations in the short term (as we have seen recently in Colombia), and there is a chicken-and-egg argument about which needs to come first. But my view is that in the longer term peace and justice are mutually reinforcing and both are necessary.

**Qualified verdict**
As regards the present, then, my conclusion is that the legal institutions of The Hague have been able to temper to some extent the reality behind the cynicism of Aesop and Thucydides — that is, to the extent that the better nature of the big powers has made them willing to permit this. So: a qualified positive verdict.

When I delivered the address which forms the basis of this article, in October last year, I expressed a degree of optimism — heavily qualified — about the future of the rule of law in international affairs. Since then, with the election of President Trump in the United States, the picture has darkened. It will be some time before we can know to what extent his disengagement from international institutions represents the new normal rather than an aberration. It is also interesting to speculate whether the emergence of a new balance of power, with China carrying greater weight, will allow recent gains to be held, let alone built on. One thought sometimes articulated is that the current liberal international order reflects Western values and that China will be looking to create new institutions more in line with its own values. The new Asian Infrastructure Investment Bank, a counterweight to the World Bank and the first generation of regional development banks, has been cited as an example of such a challenge to the post-war institutions. And China holds particularly strong views regarding non-interference in the affairs of states. The jury is still out, and while the still-unfolding situation in the South China Sea is of concern, it is worth noting that to date China has in its actions been respectful of the international institutions that restrain the powerful: it has been accepting of the status quo since it joined the World Trade Organisation, for example, and it has had less recourse to the veto in the Security Council than any of the other P5 members.
Despite the misadventures of hard power in places like Iraq and Afghanistan in recent years, Eliot Cohen demonstrates in his new book that he remains convinced military force must be an essential part of a state’s (specifically, the United States’) response to issues arising in the contemporary world. He assesses the United States’ strength relative to four principal challenges, and advocates for military force as an important part of the answer to those challenges. He concludes by offering a set of six rules for the use of military force (with the caveat that experience may require adaptation).

Cohen sets the scene for his argument by outlining and swiftly dismissing five objections to hard power: that the world is becoming more peaceful and thus there is less need for force; that the balance of power diminishes the need to exercise military force directly; that soft power is an adequate replacement for hard power; that the United States is not very good at hard power and so should not place a particular emphasis on it; and that the so-called isolationist position prioritises domestic needs over international intervention. Like any position in international relations, each of these has its weak points and Cohen seeks those out, but not in much detail. These alternatives to the direct use of military force deserve more nuanced examination than Cohen gives them, but in fairness to the author there are many other books that could be read to get that more balanced perspective.

Cohen is a learned and eloquent writer and his powers are on full display when he lays out the four primary international relations challenges the United States currently faces: the rise of China as a major power; the on-going and serious aggravations and deprivations of jihadist movements; regionally bound but still significant exercises in aggressive power by states such as Russia and Iran that display degrees of instability and unpredictability; and the complexity of ungoverned and common spaces (physical and virtual). He demonstrates a keen sense of history’s part in shaping those challenges as they exist today. His reflections on the way that imperialism has created power vacuums and anarchic peripheral zones are particularly pertinent when considering current security problems, such as the implosion of Syria. Nevertheless, some of Cohen’s observations are not entirely compelling. There is a pleasing surface symmetry to the distinction Cohen makes between China as the strategic descendant of Sun Zi and the United States as the strategic descendant of Carl von Clausewitz, for example. However, his assessment of the relative inferiority of the Sun Zi (China) way of war based on, among other things, the somewhat outdated example of military operations during the Korean War feels a little out of place considering how far China has developed since then. The most accessible element of Cohen’s argument is his conclusion, which amounts to a Cohen Doctrine on the use of force. His maxims are as follows:

- understand your war for what it is, not what you wish it to be;
- planning is important; being able to adapt is more important;
- preferably go short, but prepare to go long;
- while engaging in today’s fight, prepare for tomorrow’s challenge;
- adroit strategy matters, but perseverance usually matters more; and
- a president can launch a war but to win it, he or she must sustain congressional and popular support.

Cohen introduces these principles as a more general and realistic alternative to the Weinberger Doctrine of the 1980s and its 1990s successor, the Powell Doctrine, both of which emphasise to some degree vital national interest, clear objectives and wholehearted commitment of force and political and public support.

It is perhaps unfortunate that this book was written before the most recent US presidential election, and the corresponding ground-shift in government policy about the use of military force. The current administration in Washington appears to both support Cohen’s call for resurgence in spending on the military and negate his considered maxims for the use of hard power. Cohen is a proponent of neo-conservatism in foreign policy, which typically advocates the active promotion of democracy internationally, including using military force as a means to do so. However, he has become a vocal critic of President Trump, citing his concerns about the president’s ‘temperament and character’ and a belief that ‘his strategy is terrible’ (The Atlantic, 29 Jan 2017). For one who supports the use of military force only in conjunction with careful strategic policy and application, the unpredictability in foreign policy touted by the administration must seem imprudent.

Cohen has written a thought-provoking book, and it is instructive for New Zealand readers to hear a careful argument for the use of force from an international perspective. It would be unsurprising, however, if some readers feel his central concept has limited application in a New Zealand context, given the many differences in hard power capabilities between this country and the United States. It is unlikely that New Zealanders would perceive the threats Cohen thinks important in the same nature or degree as he does, and the balance in a small state between hard power and soft power often leans in favour of the latter. Nevertheless, as military force remains an option for the New Zealand government in foreign policy, give-
THE BROKEN DECADE: Prosperity, Depression and Recovery in New Zealand, 1928–39

Author: Malcolm McKinnon
Published by: Otago University Press, Dunedin, 2016, 512pp, $49.95.

Malcolm McKinnon’s The Broken Decade: Prosperity, Depression and Recovery in New Zealand, 1928–39 is ‘a narrative and an analytical history of the Depression of the 1930s that primarily focuses upon ‘the politics of the period’. Those hoping for a new social history of the period need not consider their hopes dashed; the book is more accessible than the preface intimates and the experiences of ordinary New Zealanders are captured throughout.

Contrary to the received history of the Great Depression in New Zealand — that the Labour government of 1935 radically changed the political consensus from laissez-faire to interventionist, creating a more caring and egalitarian society — McKinnon argues that what took place was much less transformation than it was restoration.

McKinnon asserts that The Sugarbag Years, Tony Simpson’s seminal 1974 oral history of the period, ‘confirmed the view of the slump as a story of desperate people and callous and unforgiving authorities, be they bankers, businessmen, officials or, most often, politicians in government’. It rings true when McKinnon writes that Simpson’s book is ‘the study that more than any other is cited by New Zealanders when “the Depression of the 1930s” is mentioned’;

my father used to read excerpts of the book to me when I was a child, and for that reason, and because of that book, I have always felt closer to those stories than to any of the histories I have read since. However, The Broken Decade argues for more nuance in the historiography, stating that ‘the story of the Depression is as much a tale of a struggle to restore a world as it is a story of building one’. McKinnon highlights the similarities between Labour’s actions in the 1930s and those of the liberal Joseph Ward in the 1920s, and cites continuity rather than change in the commitment to increased borrowing, state-expansion and welfare.

Some of the lesser-known voices of the Depression comprise the most interesting narratives in The Broken Decade. ‘In September 1933 Elizabeth McCombs took her seat in parliament. Truth put her on its front page, even though no breath of scandal could be exploited.’ McCombs had won the by-election triggered by the death of her husband, James, and increased his majority by 2500 votes. She used her maiden speech to champion the cause of unemployed women and youth, who were not eligible for assistance despite paying taxes. And in words that would not be out of place in a debate on the current Auckland housing crisis (or ‘challenge’, as some prone to the semantics of denial are wont to label it), McCombs told her colleagues that many city-dwellers were now ‘compelled to live in rooms’, and that she knew ‘of several cases where a whole family lives in one room’. Replace ‘room’ with ‘garage’ and it is hard not to feel aggrieved at the continuity of poverty in Aotearoa.

But the country’s depressing lack of progress on tackling poverty notwithstanding, this is a fantastic read. Admittedly, The Broken Decade is much more academic than it is popular history, but it is meticulously-researched, intriguing and informative. I fully anticipate it becoming a touchstone text for teachers, students and historians in the future, and I heartily recommend it to anyone interested in the mistakes, struggles and triumphs of one of the most challenging decades in New Zealand’s history.

NEW ZEALAND NATIONAL SECURITY: Challenges, Trends and Issues

Editors: William Hoverd, Nick Nelson and Carl Bradley
Published by: Massey University Press and Massey Defence and Security Studies, Palmerston North, 2017, 304pp, $55.

This book offers a timely consideration of the key trends, issues and national security challenges facing New Zealand. Split into three parts, its scope is broad; it contains fifteen chapters by academics (mainly from Massey’s Centre for Defence and Security Studies) and government practitioners. This approach is a fruitful one, as chapters that contextualise changing trends and consider some of the emerging ‘big’ national security questions are complemented by more practical-minded treatments that outline agency structures, operations and priorities.

In the introduction, Dr William Hoverd establishes the book’s thematic basis. He explains that security, as concept and practise, has evolved since the end of the Cold War. In the context of a globalised international system, security is now fundamentally linked to a nation’s global inter-connectedness: the state is no longer the alpha and omega, with non-state threats and inter-state links multiplying. ISIS acts as an example: a threat that operates somewhat like a traditional state but also uses the IT revolution to spread its message and inspire attacks abroad, with attendant risks for New Zealand. Another key theme is that the New Zealand security sector has internalised and operationalised the conceptual widening of security. As such, a ‘whole-of-government’ approach and response to security issues is increasingly common.

Chapters by Professors Rouben Azizian and Aileen San Pablo-Baviera explain that China’s growing economic heft and assertive policies are altering the Asia-Pacific regional order, bringing China into contention with the United States. Given the diverging vectors of Wellington’s trading relationship with China and its security/intelligence links with the United States, New Zealand’s ‘independent’ credentials and ability to maintain equilibrium are at risk. There is no easy solution to this conflict of interest. The authors recommend that New Zealand adopt a proactive strategy to shape security architectures, and consider acting as an interlocutor of sorts to aid China and the United States to establish a common security agenda. While an attractive idea, in interviews a co-author (Waikato PhD candidate Francesca Dodd-Part) and I conducted last year we found that a majority of local academics and agency practitioners vehemently opposed this course of action. Nonetheless, the logic and practicability of this proposal deserve fuller consideration, as it is possible ‘group think’ on this issue has taken hold.

Dr Anna Powles shows that trends are working against New Zealand's history. She argues for more nuance in the historiography, stating that ‘the story of the Depression is as much a tale of a struggle to restore a world as it is a story of building one’.

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But the country’s depressing lack of progress on tackling pov
New Zealand’s influence in the South Pacific. Russia and China are playing larger roles, and there is a desire by island states to balance Anglo-Saxon influence and carve out a more region-specific multilateral agenda. This overlays a region that faces a growing array of complex governance, resource and economic challenges. Powles is provocative, and arguably correct, in calling for a radical strategic realignment in Wellington’s approach to the region to prevent its further marginalisation.

Another key theme woven through the book, considered deeply by Dr Negar Partow, is the trend towards ‘securitisation’. Partow describes how the state is losing its ability to control the information flow to citizens. The IT revolution is universalising access to information, leading to the emergence of transnational micro-communities, increasing the influence of non-state actors and reducing the mobilisation power of nationalism. Elites are thus turning to securitisation and ‘othering’ to retain their authority and ensure cohesion. The politics of fear, rather than hope and vision, is the order of the day. This is marginalising the democratic role of citizens in national security affairs at a time when the media and public seek greater transparency from government. While Negar implores New Zealand to re-conceptualise national security and emphasise the ‘human security’ of individuals, state elites are resistant, seeking to maintain the existing power distribution within states.

Howard Broad (deputy chief executive, Security and Intelligence, DPMC) provides a valuable insight into New Zealand’s national security architecture, its objectives, operational capabilities and the emerging challenges and threats he sees facing New Zealand. He concludes with a thought provoking discussion of the issues that keep him awake at night. These include the different appreciation of risk held by the public compared to national security practitioners, and how to find the right policy balance to guide decision-making; and the need for some level of transparency to build trust between citizens and government that, if taken too far, could undermine parts of the system. He worries that the sector could miss something that turns out to be catastrophic. He ends with the mission statement, ‘Forewarned is forearmed’, which suggests the national security sector must remain vigilant.

Terry Johanson calls into question the efficacy of cross-government national security co-ordination, identifying a tension between the siloisation of individual agencies and the authority of the prime minister, who holds considerable authority to set the discourse of national security efforts. Worryingly, Johanson believes this prevents a sub-discourse on national security between agencies. As such, forging a national security strategy that separates political authority from security co-ordination, like the Australian model, is advised.

Dr Damian Rogers argues that we need to think carefully about the unintended effects of scholars working with or on behalf of government agencies. He states that this contains inherent risks, citing the case of the compliant/collusive relationship that emerged between the Australian National University and the Australian government in the 1990s. This could curtail our ability to comprehend emerging threats to New Zealand, and thus would be a self-inflicted wound for government officials, who could miss out on vital and diverse research as scholars direct themselves towards mundane (and politically insensitive) pursuits. This risk makes sustaining the intellectual independence of scholars a vital issue. In my view, Rogers could not be more right on this issue. William Hoverd partly addresses this in the prior chapter, asserting that local research should have an evidentiary basis to strengthen its validity and conclusions. This is only part of the answer. If honest, all academics (and, I would wager, government employees) can attest to the force of self-censorship, especially when future research grants depend on sustaining positive academic—agency working relationships. If this is perceived to be dependent on what one chooses to write about, risk-aversion becomes a rational default position for scholars. Political correctness may further constrain intellectual inquiry, lest they touch upon deeply held ideological foreign policy positions. This could have catastrophic implications, as officials receive a steady stream of research that reinforces existing assumptions at a time when change is outstripping any individual’s or organisation’s ability to understand, let alone identify in a timely manner, emerging threats.

There are a number of questions I think worth raising as a result of the examination and tensions identified throughout the book. For example, at the level of primary strategic alignment, what other options exist beyond attempting to maintain ‘balance’ between China and the United States? Is neutrality an option, and what would the benefits and costs be? Is New Zealand a candidate to test dual-alignment with Beijing and Washington? And what would that look like? What are the risks of continually asserting to domestic and international audiences that we have an ‘independent’ foreign policy, bearing in mind the reality of our security and intelligence alignments? Other questions come to mind: why is there no national security strategy? What are the downsides of producing one? Do government agencies have effective strategic foresight capabilities? How do we go about building the connections between the national security sector and the population to ‘initiate a whole-of-society discussion’ that the book calls for? With this question in mind, should international relations be taught as a core component in high schools? What about teaching the value of liberal civics? What affects will the following trends have on international relations and New Zealand’s national security: big data, artificial intelligence, nanotechnologies, economic and military robotisation, demographic changes, the rise of populism and the trend towards authoritarianism in a number of democracies, including the Trump administration’s assault on America’s democratic institutions.

The issues identified in the book, and perhaps some I note above, implore us to ‘think through the unthinkable’, and forge ongoing work programmes between and across academic and government institutions. Resourcing is urgently required to support this (perhaps a dedicated think tank focused on national security issues would prove valuable). After all, having broadened the concept of security, we must now question whether New Zealand has the intellectual capital — and researchers sufficient research time — to drill deep down and across the ‘new’ security issues identified in the book, and to consider the known and currently unknown threats on the horizon.

Ultimately, this is an excellent book containing a number of valuable contributions on topics I have not had space to address (such as border and maritime security, the role of New Zealand’s special forces, cyber security, terrorism and organised crime). Students, scholars and practitioners should all find something of interest here, and hopefully the book inspires a programme of research to delve deeper into the issues it identifies.

REUBEN STEFF
On 20 July NZIIA Life Member Stephen Hoadley’s book *New Zealand Trade Negotiations* was launched at Victoria University of Wellington, with about 150 present. Both Charles Finny (Saunders Unsworth) and Stephen Jacobi (executive director of the New Zealand International Business Forum) addressed the gathering, the former representing Minister of Trade Todd McClay, who was unable to attend because of travel complications but who sent his regrets. So, too, did Dr Anthony Smith, the chair of the NZIIA’s Research Committee.

**Charles Finny:**
While surprised to be making these comments, I am pleased to be doing so because I had booked to attend this event and was keen to purchase a copy of Stephen’s book. This is a book that needed to be written and the timing of its publication is excellent.

I have not read the book yet. But I have read some comments in the media by Steve about his book. So I know it is a good news story. It should be, as New Zealand has achieved much in the trade-negotiating arena since we faced the crisis of the United Kingdom entering the European Economic Community in the early 1970s.

We now have much better disciplines in the GATT/WTO and over 50 per cent of our goods exports are now liberalised and protected by free trade agreements. Given our size and the sensitivity of what we are best at producing, this is an incredible achievement. It has not been easy but the government has developed a team of world-class negotiators and we have had excellent political leadership from a succession of trade ministers, including Hon Jim Sutton, who is with us tonight.

Most recently this expertise was recognised by the British government in the appointment of former New Zealand trade negotiator Crawford Falconer as the United Kingdom’s chief trade negotiator. Indeed, I was in London a couple of weeks ago talking to officials, diplomats and the private sector about Brexit and the post-Brexit trade policy challenges facing the United Kingdom. I was shocked at the low level of expertise in the United Kingdom in this space. They certainly need Crawford Falconer’s expertise but they could probably do with the assistance of the full MFAT trade negotiating team.

We have achieved much in the trade policy space, but there is much more work to be done. And the challenges are probably greater than they have been in recent years. If he had been here, Todd McClay would almost certainly have referred to the government’s new trade strategy that was launched a few months ago. This sets a new target of having 90 per cent of our goods exports covered by free trade agreements by 2030. This is going to be a challenge. For example, it cannot be achieved without a free trade agreement with the United States.
I wish to commend the great work being done by McClay and the current negotiating team he leads. Aside from the new trade strategy, three developments deserve attention. The first is the recent announcement that New Zealand will be negotiating a free trade agreement with the Pacific Alliance (Mexico, Colombia, Peru and Chile). This reflects hard work begun by McClay’s predecessor, Tim Groser, and excellent work by McClay in the time he has been minister. The second is the fact that the Trans-Pacific Partnership is alive, even without the United States. There is a good chance we will have agreement on TPP–11 at the end of the year. This will be an incredible achievement by McClay and his team.

Equally important is the prospect of a free trade agreement negotiation with the European Union. Many of the former officials in this room tonight would never have dreamed that such a negotiation would be possible. I am expecting the negotiation to be launched in November.

Much has been said about a possible negotiation also with the United Kingdom. This might happen, but it will not happen quickly and, as I have noted, the United Kingdom is in a real mess right now. I suggest that everyone focus on achieving a high-quality deal with the European Union in the short term.

One element of the new trade strategy involves an increased focus on communicating on the importance and benefits of trade negotiations to the wider New Zealand population. The government needs to ensure it has a social license to conduct new negotiations. It is in this context that Stephen Hoadley’s book is so well timed. This will I am sure become a reference document for all interested in New Zealand trade policy and for students of trade policy. In that context I note that VUW, where we are this evening, has begun a master of international trade degree. I am sure Dr Hoadley’s work will be a must read for the students of this course.

Stephen Jacobi:
The New Zealand International Business Forum is delighted to join with the New Zealand Institute of International Affairs in launching this important new book. Our warmest congratulations to Professor Hoadley for this achievement.

His work advances our understanding of both the extent and the success of New Zealand’s trade negotiating effort over recent decades. Given the importance of international trade to New Zealand’s economy, it is surprising that so little is written about this effort in the academic literature.

Some years ago, in the aftermath of the riots at the WTO meeting in Seattle, the (then) Trade Liberalisation Network was established, under Brian Lynch’s leadership, to enhance New Zealanders’ support and understanding for trade. The TLN initiated a campaign under the slogan ‘Trade Rules OK’ — aiming to show that free trade was not the law of the jungle, but a deliberate and considered effort to set the rules of the game and deliver advantage for New Zealand.

A generation later, in the face of new questioning about the pace and extent of globalisation in some parts of the world, the TLN’s mantle has passed to the New Zealand International Business Forum. The forum’s campaign is organised around the theme of Tradeworks — please follow us on the web, on Twitter, on Facebook and on LinkedIn!

The media may have changed, but the message is broadly the same — trade works for New Zealand. Trade keeps New Zealanders working and the search for better trade rules is as pressing today as it ever was. I cite all this because Professor Hoadley’s book provides ample academic evidence that trade rules are ok and trade can and does work for New Zealand. It chronicles the ups and downs, the reversals and occasional triumphs in the history of New Zealand’s negotiations with our major partners and in instruments like the TPP and in the WTO.

In so doing, he brings to light some extraordinarily challenging situations — some existential even — which over time have faced New Zealand as a trading nation. With his eight phases of trade negotiations, Hoadley establishes a useful framework for understanding how these complex policy initiatives are progressed by successive generations of talented trade negotiators.

We at the New Zealand International Business Forum are particularly pleased at the attention paid to the role of business, something frequently overlooked as academics debate the externalities associated with trade. This is not to suggest such debate is unjustified — on the contrary, the value of Hoadley’s work is that the debate will be more grounded in fact and the challenges facing negotiators will be better understood.

This, in essence, is why the NZIBF, as a group of business leaders concerned with the way New Zealand integrates into global markets, chose to support the publication of this book. We welcome the debate about trade and are pleased to participate in it alongside other members of civil society.

I should like to take this opportunity to extend our collective thanks for the work Todd McClay is doing to lift the quality of the trade debate and take the trade message directly to the people of New Zealand. We welcome also the steps being taken to engage more with business and public stakeholders, including through the newly re-established Ministerial Advisory Group, along with moves to restore the bipartisan support for trade that was a hallmark of the efforts described in Hoadley’s work.

As we look at the environment for trade negotiations today, we find a landscape as challenging as ever. A new protectionism is rising in some parts of the world, while in others, particularly close to us in Asia, globalisation is continuing to expand under new models, such as China’s ambitious ‘Belt and Road’ initiative. All this requires the sort of political leadership, negotiating skill and tenacity as well as business and public support described by Hoadley.

On behalf of the New Zealand International Business Forum, which knows that trade works, I commend this book to you all; I thank New Zealand’s negotiators for their hard work and I congratulate Professor Hoadley again for this admirable contribution to New Zealand’s economic history.

Stephen Hoadley:
I am the sole author of the book that we are launching tonight. But others have contributed significantly to bringing this book to completion. Last year Anthony Smith, chair of the NZIIA Publications and Research Committee, encour-
aged me, offered editorial suggestions and facilitated publication of the book by the NZIIA. He also recruited three reviewers, who made constructive critiques of my near-final draft. To those reviewers who may be present tonight, I offer my sincere thanks. You helped me avoid misperceptions, errors and omissions and improved the book as a result.

Stephen Jacobi joined the project early this year in his capacity not only as executive director of the New Zealand International Business Forum but also as one of New Zealand’s most experienced advocates of trade liberalisation. He contributed both to the book’s production and to the quality of its text by offering apt factual and interpretive suggestions. My university, specifically the School of Social Sciences, headed by Professor Simon Holdaway, also encouraged me and contributed materially to the book’s production.

In synthesising this book’s contents, I have relied on diverse sources. These include academic analyses such as those by Frank Holmes, Gary Hawke, Brian Easton and Stuart McMillan and numerous overseas scholars of negotiation cited in chapters one and eleven. I have also used timely news reports of trade events, for example by the New Zealand Herald’s Fran O’Sullivan and Audrey Young.

The web pages of the Ministry of Foreign Affairs and Trade, particularly the National Interest Analysis of each trade agreement, and other official and business association websites have provided a wealth of authoritative information. Some of the individuals I have met over the years who have provided inspiration and information on trade issues include ministers Brian Talboys, Hugh Templeton, Philip Burdon, Mike Moore, Lockwood Smith, Jim Sutton, Phil Goff, Helen Clark, Tim Groser, and Murray McCully and officials such as Merwyn Norrish, John Scott, Peter Hamilton, Rachel Fry, John Wood, Wade Armstrong, David Walker, Crawford Falconer, Richard Nottage, Stephen Payton, Martin Harvey, Mark Trainor and Ted Woodfield. I regret never having met Jack Marshall but recognise him as New Zealand’s first trade minister and the champion of New Zealand’s first major negotiation, the securing of entry for butter and cheese to the European market via Protocol 18 in 1971.

I would like to thank especially my wife Wyn Hoadley QSO for encouragement and support throughout this book project and those that preceded it over the years. My daughter Commander Jennie Hoadley RNZN is also here today to support me. Your name might not have been mentioned yet, but I wish to acknowledge officials and business leaders who have engaged in trade negotiations present tonight.

Negotiators, please be assured that my book does not presume to tell you how to conduct negotiations. You already know how, and have done so successfully for decades, so I have learned from you, not the reverse. My book is directed rather to aspiring negotiators, and also to students, scholars, journalists and the general reader seeking background and context on trade issues. It can be used as a reference source of historical trade events, an analysis of the negotiating process or a collection of propositions, such as those found in the Lessons Learned chapter, to be further explored or applied.

Ministers, officials and businesspeople who have been deeply engaged in specific trade negotiations may search the book in vain for the intimacy of events that they have experienced. As a scholar I am an outsider to the necessarily confidential process of negotiation between ministers and officials of sovereign states, and may not see important details. Therefore, I invite you to regard this book as an opportunity to fill the gaps by writing of your own experiences, as former Chief Trade Commissioner Ted Woodfield and the late Bruce Brown have done, to inform scholars, journalists and the general public of your good work. Only then will the significant achievements of New Zealand’s trade negotiators over the years be fully appreciated, and ill-informed and misdirected critiques be moderated. Your insights can make the next edition of this book richer and more complete.

In conclusion, I hope that my book, which is the first academic survey of New Zealand’s trade negotiations from the 1960s to the present, will contribute to a better-informed and more sympathetic public debate. I hope it will legitimate the initiatives of Minister McClay and his officials as they complete pending free trade agreements and move into a new round of free trade negotiations with the European Union, the United Kingdom, the Pacific Alliance and other new partners. It is my firm belief that the success of ministers, officials and export leaders in trade negotiations will enhance New Zealanders’ wellbeing. Well done so far. And good luck to you all in the future.

Stephen Hoadley speaks to George Troup while signing books
The National Council.

The NZIIA held its annual National Council meeting at the Wellington Club on 21 June. At the outset, the council acknowledged the passing of three significant figures in the past year — Life Member Bruce Brown, Honorary Vice President Dame Laurie Salas and Nelson branch Chair Hugo Judd.

President Sir Douglas Kidd reported ‘a busy and successful year’. He noted four significant events — Brexit, the election of Donald Trump, the visit of a US warship to New Zealand and the NZIIA’s conference in November, which he described as a ‘triumph’ for the director and secretary. He acknowledged ‘the massive support of the institutions with whom we have intense partnership engagements, namely, the Ministry of Foreign Affairs and Trade and Victoria University of Wellington’ and the valued relationship with the EU delegation in New Zealand.

The ensuing election of officers was notable for the degree of continuity. Sir Douglas and Professors Roberto Rabel and Athol Mann were all re-elected — as president, vice president and treasurer respectively. Dr Anthony Smith having indicated a wish to stand down, the filling of the position of research committee chair was held over for the Standing Committee to resolve. That committee was also unchanged, with all members being re-elected.

Executive Director Maty Nikkhou-O’Brien reported ‘a fruitful year’, noting that the NZIIA had ‘reached new grounds in our mission to excite and engage New Zealanders, from all walks of life, about international affairs’. She pointed to the greater engagement of people with international affairs, which was reflected in high attendance at National Office events. This had led to the problem of finding venues big enough to cater for the enlarged audiences — ‘a new experience for the NZIIA, in terms of scale, profile, and reach’. ‘It is fair to state’, she suggested, ‘that the Institute sits in a “growth industry” where there is demand: people want to know, discuss, debate current affairs, and, additionally, people are willing to pay to attend. Corporate and Institutional members remain stable.’ Meeting attendances were up from a 50–80 average a few years ago to 150–350. The aim was to broaden interest to fill the gap between students and seniors by bringing in young professionals and people from the business sector. Maty noted an active presence on social media. She expressed her hope that it might be possible to replicate Wellington’s success elsewhere, especially Auckland.

Treasurer Athol Mann reported a substantial surplus, up nearly 39 per cent on the previous year’s. He pointed to the conference as ‘a key contributor’ to this very satisfactory outcome.

In reporting on the NZ International Review, Dr Ian McGibbon noted the contribution made by the Editorial Committee and the National Office, the pleasing increase in subscriptions and the slightly higher than budgeted-for deficit.

Dr Anthony Smith’s report on the Research Committee was received in his absence. He noted two publications by Stephen
Hoadley that the committee had supported.

Seven of the NZIIA’s nine branches had representatives at the council. Auckland Chair Gregory Thwaite reported a core membership of about 40, and a solid programme of meetings with attendances ranging from 6 to 130. He referred to the problems of confronting efforts to increase membership.

Speaking for the Christchurch branch, Dr Chris Jones, the chair, introduced Dr Serena Kelly, who would be acting in his place while he took sabbatical leave later in the year. He noted an ‘active and interesting year’ with fourteen meetings, and the need for more business oriented presentations. Membership was now back up to 75. The branch had strengthened ties with the University of Canterbury during the year.

On behalf of Hawke’s Bay, Ken Aldred advised that the branch had now foregone the former two-meeting format that had been a feature of its approach. Six meetings were held during the year with usually 70 to 80 attending.

Dr Tadishi Iwani reported on the Palmerston North branch’s activities. He noted that Professor Rouben Azizian, the head of the Centre for Defence and Security Studies at Massey University, would be co-chair in future. Seven meetings, all at the International Pacific University, were held.

Representing the Timaru branch, Life Member Brian Foley reported that membership had now drifted down to ten. Several meetings were held.

Wairarapa branch Chair Paul Harris reported eleven meetings, with attendance from 35 to 100. The branch had 102 members. The need to consider fundraising to meet needs in 2017 was noted.

The Wellington branch had ‘another productive year’ with sixteen meetings in 2016. While the branch had had a ‘sobering’ drop in membership in recent years, down to 172, this had been turned around. There were now more than 300 members. In a thoughtful presentation Lisa Marriner, the Wellington branch deputy chair, spoke about the Wellington branch’s approach. The success of its efforts, she suggested, was the result of a combination of reasons. The topicality of events arranged by the branch was important, as was the engagement with students and the continuing success of the Careers Without Borders evening. There was also close collaboration with the NZIIA National Office on the timing and promotion of functions. Looking to the future, Lisa raised the possibility of podcasts, asking the question: ‘is it worthwhile going to where members are’. She noted the strength of the student element of the branch, and introduced two student representatives, Grace Carroll and Matthew Morrison, who gave a short presentation on branch efforts to engage students.

Reports were also received from the Nelson and Waikato branches.

The NZIIA’s Annual Dinner was held in the evening following the council. One hundred and fifty were present. The prime minister, Bill English, was the guest of honour. In his address he outlined his perceptions of international affairs and his role. (The text of his remarks is to be found elsewhere in this issue.) Among the guests at the dinner were two visiting senators from Mexico, Senator María Elena Barrera of the Ecologist Green Party and Senator Ana Gabriela Guevara of the Mexican Labour Party.
The full list of officers elected at the National Council meeting:

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The staff of the National Office comprises:

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Mrs M. Nikkhou-O’Brien

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