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NUCLEAR-TEST-BAN BILL

EXPLANATORY NOTE

General Policy Statement

The purpose of this Bill is to give effect to New Zealand's obligations under the Comprehensive Nuclear-Test-Ban Treaty (CTBT), drafted at the Conference on Disarmament in Geneva, and adopted by the United Nations General Assembly on 10 September 1996. The Treaty was opened for signature at New York on 24 September 1996 and signed on behalf of New Zealand on 27 September 1996. Enactment of this Bill is a prerequisite to New Zealand ratifying the Treaty.

The Treaty bans all nuclear weapon test explosions and any other nuclear explosions. Its terms have been agreed on after more than 3 decades of pressure for a comprehensive nuclear-test-ban. New Zealand has long been among the strongest supporters of nuclear disarmament, implementing significant prohibitions in its own territory in the New Zealand Nuclear Free Zone, Disarmament, and Arms Control Act 1987. By banning nuclear testing, the Treaty aims to halt the qualitative improvement of nuclear weapons. While the Treaty does not ban nuclear devices outright, it is nonetheless a major disarmament and non-proliferation achievement, and a significant step towards the ultimate elimination of nuclear weapons. A worldwide network of several hundred monitoring stations will make up an International Monitoring System, which will ensure compliance with the Treaty and so build confidence in the comprehensive ban.

The basic obligations the Treaty imposes on States Parties include prohibiting carrying out, causing, encouraging, or participating in, any nuclear weapon test explosion or other nuclear explosion. This Bill applies these prohibitions anywhere in New Zealand territory and, as required by the Treaty, extraterritorially in respect of New Zealand citizens, and in respect of any other person on board a New Zealand ship or New Zealand aircraft. Consistent with other disarmament legislation, the Bill provides for a maximum penalty for these offences of imprisonment for a period not exceeding 10 years, or a fine not exceeding \$1,000,000.

The official English text of the Treaty—

- is currently available in (1996) International Legal Materials 1439

No. 165—1

Price Code: J

- can, at present, be accessed through and downloaded from the Internet site of the Preparatory Commission for the CTBT Organization (<http://www.ctbto.org>)
- will, on request, be supplied by the Legal Division of the Ministry of Foreign Affairs and Trade (Wellington)
- is to be presented to the House, and published in the New Zealand Treaty Series (NZTS) and in the Appendices to the Journal of the House of Representatives (AJHR).

Clause by Clause Analysis

Clause 1 relates to the Short Title and commencement of the Bill. The Bill, except *clause 24 (2)*, will be brought into force by Order in Council when the Treaty enters into force. It is not yet certain when the Treaty will enter into force in international law. Under Article XIV paragraph 1 the Treaty enters into force on signature and ratification by a threshold list of 44 States, but in no case earlier than 2 years after 24 September 1996 (the date the Treaty opened for signature). At 6 April 1998, 41 of the 44 States had signed the Treaty, but the Treaty had been ratified by only 6 of the 44 States. Because the Provisional Technical Secretariat of the Treaty Organization must be conferred privileges, immunities, and capacities in New Zealand before the Treaty enters into force, *clause 24 (2)* comes into force on the day after the date on which the Bill receives the Royal assent.

PART 1

PRELIMINARY PROVISIONS

Part 1 contains the interpretation, application to the Crown, and purpose provisions.

Interpretation

Clause 2 relates to interpretation. *Clause 2 (1)* defines the terms “Clarification inspection”, “International Inspector”, “Minister”, “Secretary”, and “Treaty”. In addition, *clause 2 (2)* provides that terms used and not defined in the Bill have the same meaning as in the Treaty. These terms, and some related terms the Treaty uses that are not used in the Bill, are listed below with some Treaty provisions in which they appear:

“Clarification”: Article IV, paragraph 29, provides that “without prejudice to the right of any State Party to request an on-site inspection, States Parties should, whenever possible, first make every effort to clarify and resolve, among themselves or with or through the Organization, any matter which may cause concern about possible non-compliance with the basic obligations of this Treaty.”

“Conference of States Parties”: One of the 3 “organs of the Organization”. Article II, paragraphs 12 and 24, provide that the Conference is “composed of all States Parties” and is “The principal organ of the Organization.”

“Executive Council”: One of the 3 “organs of the Organization”. Article II, paragraphs 27 and 37, provide that the Executive Council consists of 51 States Parties and is “The executive organ of the Organization”. Article II, paragraph 40 (c), provides that the Executive Council shall “Receive, consider and take action on requests for, and reports on, on-site inspections in accordance with Article IV.”

“Inspection assistant”: The Treaty provides that “An inspection team may consist of inspectors and inspection assistants. An on-site inspection shall only be carried out by qualified inspectors specially designated for this

- function. They may be assisted by specially designated inspection assistants, such as technical and administrative personnel, aircrew and interpreters”: paragraph 14 of Part II of the Protocol.
- “Inspection mandate”: Article IV, paragraph 54, provides that “The Director-General [of the Technical Secretariat] shall issue an inspection mandate for the conduct of the on-site inspection.” The inspection mandate must contain “the location and boundaries of the inspection area specified on a map, taking into account all information on which the request was based and all other available technical information, in consultation with the requesting State Party”: paragraph 42 (c) of Part II of the Protocol.
- “International Data Centre”: Paragraph 16 of Part I of the Protocol provides that the functions of the International Data Centre of the Technical Secretariat are to “receive, collect, process, analyse, report on and archive data from International Monitoring System facilities, including the results of analysis conducted at certified laboratories.”
- “Observer”: Article IV, paragraph 61, includes provision that “The requesting State Party, subject to the agreement of the inspected State Party, may send a representative, who shall be a national either of the requesting State Party or of a third State Party, to observe the conduct of the on-site inspection; . . .” Article IV, paragraph 61, also provides that “There shall be no more than three observers from an aggregate of requesting States Parties.”
- “On-site inspection”: Article IV, paragraph 35, provides that “The sole purpose of an on-site inspection is to clarify whether a nuclear weapon test explosion or any other nuclear explosion has been carried out in violation of Article I and to gather facts which might assist in determining any possible violator.”
- “On-site inspection area”: Paragraphs 2 and 3 of Part II of the Protocol provide that “The on-site inspection shall be carried out in the area where the event that triggered the on-site inspection request occurred.” and that “The area of an on-site inspection shall be continuous and its size shall not exceed 1,000 square kilometres. There shall be no linear distance greater than 50 kilometres in any direction.”
- “Organization”: Article II, paragraphs 1 and 2, provide that all States Parties are members of the Comprehensive Nuclear-Test-Ban Treaty Organization established “to achieve the object and purpose” of the Treaty. Article II, paragraph 4, establishes the 3 “organs of the Organization”: the Conference of States Parties, the Executive Council, and the Technical Secretariat.
- “Technical Secretariat”: One of the 3 “organs of the Organization.” Article II, paragraph 42, provides that the Technical Secretariat “shall assist States Parties in the implementation of this Treaty.” The Secretariat’s functions include “Receiving requests for on-site inspections and processing them, facilitating Executive Council consideration of such requests, carrying out the preparations for, and providing technical support during, the conduct of on-site inspections”: Article II, paragraph 43 (f). Article II, paragraph 49, provides that the Secretariat “shall comprise a Director-General, who shall be its head and chief administrative officer, and such scientific, technical and other personnel as may be required.”
- “Treaty monitoring facility”: Article IV, paragraph 16, provides that “The International Monitoring System shall comprise facilities for seismological monitoring, radionuclide monitoring including certified

laboratories, hydroacoustic monitoring, infrasound monitoring, and respective means of communication, and shall be supported by the International Data Centre of the Technical Secretariat.”

PART 2

PROHIBITIONS AND OFFENCES

Part 2 creates offences required by New Zealand’s obligations under the Treaty. Article I of the Treaty states basic obligations—

“1. Each State Party undertakes not to carry out any nuclear weapon test explosion or any other nuclear explosion, and to prohibit and prevent any such nuclear explosion at any place under its jurisdiction or control.

“2. Each State Party undertakes, furthermore, to refrain from causing, encouraging, or in any way participating in the carrying out of any nuclear weapon test explosion or any other nuclear explosion.”

The Treaty (Article III, paragraph 1) obliges New Zealand to “take any necessary measures to implement its obligations under the Treaty” and, in particular, to take any necessary measures—

“(a) To prohibit natural and legal persons anywhere on its territory or in any other place under its jurisdiction as recognized by international law from undertaking any activity prohibited to a State Party under this Treaty;

“(b) To prohibit natural and legal persons from undertaking any such activity anywhere under its control; and

“(c) To prohibit, in conformity with international law, natural persons possessing its nationality from undertaking any such activity anywhere.”

Clause 5 therefore prohibits, and makes it an offence to engage in, conduct prohibited to a State Party under Article I. The Treaty requires that the prohibition apply to New Zealand nationals anywhere, and to other persons on board a New Zealand ship or New Zealand aircraft anywhere. To fulfil this requirement, *clause 6* gives extraterritorial scope to the prohibitions and offences in *clause 5*.

PART 3

INFORMATION AND DOCUMENTS

Part 3 relates to information relevant to the implementation of the Treaty.

Clause 7 provides that the Secretary, by written notice given to a person, may require the person to supply information and documents within a reasonable period specified in the notice. *Clause 8* provides that a person who, without reasonable excuse, fails to comply with a notice under *clause 7* to the extent the person is capable of complying with it commits an offence.

Clause 9 provides that a person commits an offence if, in a document prepared under *clause 7*, he or she makes a statement or omits any matter knowing that, or being reckless as to whether, the statement or omission makes the document materially false or misleading.

PART 4

CLARIFICATION INSPECTIONS

Part 4 relates to clarification inspections.

Clause 10 provides that a member of the police may conduct a clarification inspection of a place in New Zealand with the consent of a person in control of the place or under a search warrant. A warrant for a clarification inspection is to be applied for and issued under *clause 17 (1)* as if the clarification inspection were an on-site inspection. But on a clarification inspection the functions contemplated,

and powers provided for, in the Treaty for on-site inspections are to be exercised by a member of the police under a warrant instead of an international inspector.

PART 5

ON-SITE INSPECTIONS

Purpose of this Part

The purpose of *Part 5* is to facilitate on-site inspections under the Treaty by—

- (a) Confirming the right of international inspectors to inspect places in New Zealand within an on-site inspection area; and
- (b) Enabling New Zealand officers to secure access for an international inspector in a case where consent is, or may not be, obtainable; and
- (c) Enabling New Zealand officers to accompany or assist an international inspector.

The Treaty confers certain rights on international inspectors and imposes certain obligations on States Parties to assist on-site inspections.

Article IV, paragraph 56 of the Treaty provides that “Each State Party shall permit the Organization to conduct an on-site inspection on its territory or at places under its jurisdiction or control in accordance with the provisions of this Treaty and the Protocol.”

Article IV, paragraph 57, includes provisions that, if it is an inspected State Party, New Zealand shall have:

“(a) The right and the obligation to make every reasonable effort to demonstrate its compliance with this Treaty and, to this end, to enable the inspection team to fulfil its mandate;

...

“(c) The obligation to provide access within the inspection area for the sole purpose of determining facts relevant to the purpose of the inspection, ...

...

“(e) The obligation not to impede the ability of the inspection team to move within the inspection area and to carry out inspection activities in accordance with this Treaty and the Protocol.

“Access, in the context of an on-site inspection, means both the physical access of the inspection team and the inspection equipment to, and the conduct of inspection activities within, the inspection area.”

Paragraphs 86–87 of Part II of the Protocol to the Treaty provide that—

“86. The inspection team shall have the right to access the inspection area in accordance with the provisions of this Treaty and this Protocol.

“87. The inspected State Party shall provide access within the inspection area in accordance with the time-frame specified in paragraph 57 [ie, “as soon as possible, but in no case later than 72 hours after arrival at the point of entry”].”

An inspection team is usually given the right to gain access to buildings and other structures under the Treaty only after—

- (a) The Executive Council has approved an on-site inspection, the inspection team has transmitted a progress inspection report, and the Executive Council has approved the continuation of the inspection; and
- (b) The inspection team has demonstrated credibly to the inspected State Party that access to buildings and other structures is necessary to fulfil the inspection mandate and that the necessary activities authorised in the mandate cannot be carried out from the outside: (Article IV, paragraphs 46–47 and 53, and paragraph 91 of Part II of the Protocol).

The Treaty also makes provision for inspection teams to collect, handle, and analyse relevant samples on-site, and to remove those samples from the inspection area for analysis: paragraphs 97–104 of Part II of the Protocol. Drilling in the course of an on-site inspection is subject to the Executive Council approving a proposal submitted by the inspection team: Article IV, paragraph 48.

The Treaty also requires New Zealand to “assist the inspection team throughout the on-site inspection and facilitate its task”: Article IV, paragraph 58.

Part 5 therefore makes provision for a range of matters.

Access by International Inspectors

Clause 12 confirms the right of international inspectors to enter and inspect a place in New Zealand within an on-site inspection area for the purpose of exercising a function contemplated, or a power provided for, in the Treaty.

Clause 13 relates to the persons who may accompany an international inspector. These persons include “observers” in terms of Article IV, paragraph 61 of the Treaty (discussed above under *Part 1*).

Directions

Clause 14 provides for an offence of wilful failure to comply with a direction issued by the Minister for the purpose of facilitating an on-site inspection.

New Zealand Assistance with On-Site Inspections

Under *clause 15*, the Minister may appoint a person to accompany and assist an international inspector.

Clause 16 provides for identification certificates.

Enforcement

Clause 17 makes provision for a search warrant to be applied for and issued if the consent of a person in control of any place to an on-site inspection is not, or may not be, obtainable.

Clause 18 empowers search without warrant if a warrant is not immediately obtainable and delaying entry to the place until a warrant can be obtained would create a real risk that the exercise of a function contemplated, or a power provided for, in the Treaty would be frustrated.

Clause 20 provides for an offence of obstructing an international inspector who is exercising in New Zealand a function contemplated, or a power provided for, in the Treaty.

PART 6

MISCELLANEOUS PROVISIONS

Part 6 contains miscellaneous provisions.

Self-Incrimination

Clause 21 relates to the privilege against self-incrimination.

Regulations

Clause 22 contains a regulation-making power. The Bill is drafted on the basis that the purpose and principles of legislation to prohibit nuclear test explosions and other nuclear explosions should be contained in primary legislation, but that any necessary detail should be left to secondary legislation. This is on the basis that the purpose of the Act is to implement international obligations, and that the exact nature and extent of these obligations may evolve in order adequately to prohibit nuclear explosions. For example, *clause 22 (a)* authorises the making of

regulations providing for matters that are necessary or desirable to enable New Zealand to give effect to its obligations under the Treaty or any agreement or arrangement that is concluded between New Zealand and the Organization under the Treaty.

Application to Tokelau

Clause 23 (1) provides that the Bill, as modified by *clause 23 (2) and (3)*, is in force in Tokelau.

Amendments to Diplomatic Privileges and Immunities Act 1968

Clause 24 (1) amends the Diplomatic Privileges and Immunities Act 1968 to enable appropriate diplomatic privileges and immunities to be conferred, under that Act, on international inspectors, inspection assistants, and observers. *Clause 24 (2)* inserts a new section 10AA in the Diplomatic Privileges and Immunities Act 1968 relating to the privileges, immunities, and capacities of the Provisional Technical Secretariat of the Comprehensive Nuclear-Test-Ban Treaty Organization and related persons.

Rt Hon Don McKinnon

NUCLEAR-TEST-BAN

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A BILL INTITULED

An Act to implement in the law of New Zealand the Comprehensive Nuclear-Test-Ban Treaty

BE IT ENACTED by the Parliament of New Zealand as follows:

No. 165—1

1. Short Title and commencement—(1) This Act may be cited as the Nuclear-Test-Ban Act 1998.

(2) This Act, except **section 24 (2)**, comes into force on a date to be appointed by the Governor-General by Order in Council.

(3) **Section 24 (2)** comes into force on the day after the date on which this Act receives the Royal assent. 5

PART 1

PRELIMINARY PROVISIONS

Interpretation

2. Interpretation—(1) In this Act, unless the context otherwise requires,— 10

“Clarification inspection” has the meaning given to it by **section 10 (2)**:

“International inspector” means an individual designated by the Technical Secretariat, according to the procedures set out in the Protocol to the Treaty, to carry out an on-site inspection in accordance with the Treaty; and includes an inspection assistant as defined in the Treaty: 15

“Minister” means the Minister of the Crown who, under the authority of a warrant or with the authority of the Prime Minister, is for the time being responsible for the administration of this Act: 20

“Secretary” means the Secretary of Foreign Affairs and Trade: 25

“Treaty” means the Comprehensive Nuclear-Test-Ban Treaty, done at New York on 24 September 1996; and includes the Annexes to the Treaty, the Protocol to the Treaty, and the Annexes to the Protocol, and any amendments to, or substitutions of, those documents, that are, or will become, binding on New Zealand from time to time. 30

(2) Terms and expressions used and not defined in this Act, unless the context otherwise requires, have the same meaning as in the Treaty. 35

Cf. 1996, No. 37, s. 2

Purpose of this Act

3. Purpose—(1) The purpose of this Act is to implement New Zealand’s obligations under the Treaty.

(2) Every person exercising a power or discretion conferred under this Act must have regard to New Zealand's obligations under the Treaty.

Cf. 1996, No. 37, s. 4

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Act Binds the Crown

4. Crown bound—This Act binds the Crown.

PART 2

PROHIBITIONS AND OFFENCES

5. Nuclear explosions prohibited—(1) No person may—
10 (a) Carry out any nuclear weapon test explosion or any other nuclear explosion; or
(b) Cause, encourage, or in any way participate in, the carrying out of any nuclear weapon test explosion or any other nuclear explosion.

15 (2) Every person who engages in conduct prohibited by **subsection (1)** commits an offence.

(3) Every person who commits an offence against **subsection (2)** is liable on conviction on indictment to imprisonment for a term not exceeding 10 years or a fine not exceeding
20 \$1,000,000.

(4) Nothing in **subsections (1) to (3)** limits the New Zealand Nuclear Free Zone, Disarmament, and Arms Control Act 1987.

6. Prohibitions and offences also apply in certain cases outside New Zealand—(1) **Section 5** applies to acts done or
25 omitted to be done outside New Zealand—

(a) By a New Zealand citizen; or
(b) By any other person on board a New Zealand ship or New Zealand aircraft.

30 (2) If an offence against **section 5 (2)** is alleged to have occurred anywhere outside New Zealand,—

(a) An information may be laid only with the consent of the Attorney-General and on his or her certificate that it is expedient that the information be laid:
(b) Before the Attorney-General's consent has been obtained,
35 a person may be arrested, or a warrant for a person's arrest may be issued and executed, and the person may be remanded in custody or on bail, but no further or other proceedings are to be taken until that consent has been obtained.

40 Cf. 1996, No. 37, s. 5

PART 3

INFORMATION AND DOCUMENTS

- 7. Secretary may seek information**—(1) This section applies if the Secretary considers that any person is capable of giving information relevant to— 5
- (a) Clarification of a matter which may cause concern about possible non-compliance with Article I of the Treaty, which New Zealand must provide to another State Party on a request under paragraph 29 of Article IV of the Treaty; or 10
 - (b) Clarification as may be necessary to resolve an ambiguity that has arisen during an on-site inspection, which New Zealand, if it is the inspected State Party, must provide to an on-site inspection team under paragraph 61 (g) of Part II of the Protocol to the Treaty; or 15
 - (c) The implementation of the Treaty or the enforcement of this Act.
- (2) The Secretary may, by written notice given to a person, require the person to give to the Secretary such information as is specified in the notice, within such reasonable period and in such manner as is specified in the notice. 20
- (3) Information required by a notice under **subsection (2)** must be given in writing and,—
- (a) If given by a natural person, must be signed by the person; and 25
 - (b) If given by a body corporate, must be signed by an officer authorised to sign on behalf of the body corporate.
- (4) The Secretary may, by written notice given to a person, require the person to give to the Secretary particular documents, or documents of a particular kind, specified in the notice, within such reasonable period as is specified in the notice. 30
- Cf. 1996, No. 37, s. 14
- 8. Failure to supply information an offence**—(1) Every person commits an offence who, without reasonable excuse, fails to comply with a notice under **section 7** to the extent that the person is capable of complying with it. 35
- (2) Every person who commits an offence against **subsection (1)** is liable on summary conviction to imprisonment for a term not exceeding 1 year or a fine not exceeding \$100,000. 40

9. False or misleading statements and documents—

(1) Every person commits an offence who, in any document prepared under **section 7**, makes a statement or omits any matter knowing that, or being reckless as to whether, the statement or omission makes the document false or misleading in a material particular.

(2) Every person who commits an offence against **subsection (1)** is liable on summary conviction to imprisonment for a term not exceeding 1 year or a fine not exceeding \$100,000.

10 Cf. 1996, No. 37, s. 15

PART 4

CLARIFICATION INSPECTIONS

10. Clarification inspections—(1) This section applies if another State Party, without having made a request for an on-site inspection under paragraph 34 of Article IV of the Treaty, requests New Zealand to clarify, either directly or through the Organization, whether or not at a place in New Zealand there has been non-compliance with Article I of the Treaty.

(2) If this section applies, a member of the police may enter the place and conduct an inspection (a “clarification inspection”) of the place.

(3) For the purposes of **subsection (2)**,—

(a) **Sections 17 and 19** apply (with necessary modification) as if the clarification inspection were an on-site inspection; and

(b) The member of the police has the functions contemplated, and the powers provided for, in the Treaty for on-site inspections by an international inspector.

30 PART 5

ON-SITE INSPECTIONS

Purpose of this Part

11. Purpose of this Part—The purpose of this Part is to facilitate on-site inspections under the Treaty by—

35 (a) Confirming the right of international inspectors to inspect places in New Zealand within an on-site inspection area; and

(b) Enabling New Zealand officers to secure access for an international inspector where consent is not, or may not be, obtainable; and

40

- (c) Enabling New Zealand officers to accompany or assist an international inspector.

Cf. 1996, No. 37, s. 16

Access by International Inspectors

12. On-site inspections—An international inspector has the right, and every person must permit an international inspector, to— 5

- (a) Enter a place in New Zealand within an on-site inspection area in accordance with the Treaty; and
 (b) Inspect the place in accordance with the Treaty; and 10
 (c) Exercise, in connection with the on-site inspection, a function contemplated, or a power provided for, in the Treaty.

Cf. 1996, No. 37, s. 18

13. Persons who may accompany international inspectors—To facilitate on-site inspections, an international inspector may be accompanied by— 15

- (a) Up to 3 observers for the purposes of giving effect to paragraph 61 of Article IV of the Treaty:
 (b) A person appointed by the Minister under **section 15**: 20
 (c) A member of the police.

Cf. 1996, No. 37, s. 19

Directions

14. Ministerial directions—(1) The Minister may, by notice in writing, issue directions to any person for the purpose of facilitating an on-site inspection under the Treaty. 25

(2) Every person commits an offence who wilfully fails to comply with a direction given by the Minister under **subsection (1)**.

(3) Every person who commits an offence against **subsection (2)** is liable on summary conviction to a fine not exceeding \$100,000. 30

Cf. 1996, No. 37, s. 20

New Zealand Assistance with On-Site Inspections

15. Appointment of New Zealand officials—The Minister may appoint any person to accompany or assist an international inspector. 35

Cf. 1996, No. 37, s. 21

16. Identification certificates—The Minister may issue a certificate identifying an international inspector or other person authorised to accompany or assist an international inspector.

5 Cf. 1996, No. 37, s. 22

Enforcement

17. Search warrants—(1) A District Court Judge, Justice, Community Magistrate, or Registrar (not being a member of the police) may, on an application, issue a search warrant in
10 respect of a place in New Zealand if satisfied that there are reasonable grounds for believing that—

(a) The place is within an on-site inspection area; and
(b) Entry to the place is necessary for the purpose of exercising any function contemplated, or any power
15 provided for, in the Treaty.

(2) An application under **subsection (1)**—

(a) May not be made unless the consent of a person in control of the place is not, or may not be, obtainable; and

20 (b) Must be made in writing by a member of the police or person appointed under **section 15**; and

(c) Must include a copy of relevant provisions of the Treaty and a copy of the inspection mandate.

(3) For the purposes of **subsection (2) (a)**, “consent” means
25 consent to an international inspector, and any person accompanying or assisting the inspector, entering the place to exercise any function contemplated, or any power provided for, in the Treaty.

(4) A warrant issued under **subsection (1)**—

30 (a) Authorises the international inspector (and any person authorised to accompany or assist the inspector) to enter the place, at any time within 14 days of the issue of the warrant (or within such further time as the Judge, Justice, Community Magistrate, or
35 Registrar may specify in the warrant) for the purpose of exercising any function contemplated, or any power provided for, in the Treaty:

(b) Authorises a member of the police, or person appointed
40 under **section 15**, who accompanies the international inspector, to use such force as is reasonable in the circumstances for effecting entry to or inspection of a place specified in the warrant (including force to

break down a door or break open anything in the place):

- (c) May be issued without conditions or subject to any conditions the Judge, Justice, Community Magistrate, or Registrar thinks fit. 5

18. Search without warrant—(1) In the circumstances set out in **subsection (2)** an international inspector (and any member of the police, or person appointed under **section 15**) may exercise the powers in **section 17 (4)** in respect of a place as if a warrant under **section 17 (1)** had been issued in respect of the place. 10

(2) The circumstances referred to in **subsection (1)** are that a member of the police, or person appointed under **section 15**, is satisfied that there are reasonable grounds for believing, in respect of the place, that—

- (a) There are grounds for the issue of a warrant under **section 17 (1)**; and 15
- (b) It is not practicable to obtain possession of a warrant immediately; and
- (c) Delaying entry until a warrant can be obtained would create a real risk that the exercise of a function contemplated, or a power provided for, in the Treaty, would be frustrated. 20

19. Obligations of persons accompanying international inspectors—(1) Every person who accompanies an international inspector on an inspection— 25

- (a) Must carry any identification certificate issued to him or her under **section 16** or another means of identifying himself or herself as a person authorised to accompany or assist an international inspector; and
- (b) Must produce the identification certificate or other means of identification to any person appearing to be in charge of a place entered— 30
- (i) On entering the place (if such a person is then present); and
- (ii) At any reasonable time afterwards, if asked to do so by the person; and 35
- (c) Must have any warrant (whether issued under **section 17** or otherwise) authorising entry to the place with him or her and produce it if required to do so; and
- (d) If any thing is seized, must ensure that an occupier or person in charge of the place is given a written inventory of all things seized. 40

(2) If there is no person appearing to be in charge of the place at any time between the time of entry and the time the inspection concerned has been completed, every person who accompanies an international inspector on the inspection must, as soon as is practicable after the inspection is completed, ensure that an occupier or person in charge of the place is given a written notice stating that the place has been entered, and specifying—

- (a) The time and date of entry;
 - (b) The circumstances and purpose of entry;
 - (c) The name of every person entering.
- (3) If a person appointed under **section 15** discovers any offence or suspected offence under this Act as a result of accompanying an international inspector on an on-site inspection, the person must report that offence or suspected offence to the police as soon as practicable after the completion of that inspection.

Cf. 1996, No. 37, s. 25

20. Obstruction of international inspectors—(1) Every person commits an offence who wilfully obstructs, hinders, resists, or deceives any international inspector who is exercising in New Zealand any function contemplated, or any power provided for, in the Treaty.

(2) Nothing in **subsection (1)** applies to a refusal to give consent to entry by an international inspector who is not acting pursuant to **section 18** or a search warrant (whether issued under **section 17** or otherwise).

(3) Every person who commits an offence against **subsection (1)** is liable on summary conviction to imprisonment for a term not exceeding 6 months or a fine not exceeding \$20,000.

Cf. 1996, No. 37, s. 26

PART 6

MISCELLANEOUS PROVISIONS

Self-Incrimination

21. Self-incrimination—(1) A person is not excused from answering a question or giving any information or document under this Act or the Treaty on the ground that to do so may incriminate or tend to incriminate that person.

(2) A self-incriminating statement or document made or given under this Act or the Treaty is not admissible as evidence in criminal proceedings against that person except on the

prosecution of that person for an offence against **section 9 (1)** in relation to that statement or document.

Cf. 1996, No. 37, s. 28

Regulations

22. Regulations—The Governor-General may from time to time, by Order in Council, make regulations for all or any of the following purposes: 5

- (a) Providing for any matter that is necessary or desirable for the purpose of implementing the Treaty or any agreement or arrangement that is concluded between New Zealand and the Organization under the Treaty: 10
- (b) Prescribing offences in respect of the contravention of or non-compliance with any provision of any regulations made under this section, and prescribing fines, not exceeding \$5,000, that may, on summary conviction, be imposed in respect of any such offence: 15
- (c) Providing for such other matters as are contemplated by or necessary for giving full effect to this Act and for its due administration. 20

Cf. 1996, No. 37, s. 29 (1)

Application to Tokelau

23. Application to Tokelau—(1) Subject to **subsections (2) and (3)**, this Act is in force in Tokelau.

(2) A prosecution for an offence under this Act alleged to have been committed in Tokelau is to be heard and determined by the High Court of New Zealand in the exercise of its powers under section 3 of the Tokelau Amendment Act 1986. 25

(3) Despite **section 17 (1)**, an application for a search warrant under **section 17 (1)** in respect of a place in Tokelau is to be heard and determined by a Judge of the High Court of New Zealand. 30

Amendments to Diplomatic Privileges and Immunities Act 1968

24. Amendments to Diplomatic Privileges and Immunities Act 1968—(1) Section 10A of the Diplomatic Privileges and Immunities Act 1968 is amended by inserting, after paragraph (aa), the following paragraph: 35

“(ab) Confer upon any persons to whom paragraph 57 of Article II of the Comprehensive Nuclear-Test-Ban Treaty applies, and any persons to whom Part II, Section B of the Protocol to that Treaty applies, any 40

additional privileges and immunities that are required by that Treaty; and”.

(2) The Diplomatic Privileges and Immunities Act 1968 is amended by inserting, after section 10A, the following section:

5 “10AA. **Privileges, immunities, and capacities of Provisional Technical Secretariat of Comprehensive Nuclear-Test-Ban Treaty Organization and related persons**—(1) The Provisional Technical Secretariat of the Comprehensive Nuclear-Test-Ban Treaty Organization (“the
10 PTS”) has the legal capacities of a body corporate.

“ (2) The PTS has the privileges and immunities specified in the Second Schedule.

15 “ (3) The Director-General of the PTS, and members of the staff of the PTS, have the privileges and immunities specified in the Fourth Schedule.”

Cf. 1996, No. 37, s. 31

