After approaching constitutional issues from a domestic perspective, Session 7 of
the conference starts discussing the influence of international law on New Zealand
which is concluded by session 8 with a more targeted discussion on Trans-Tasman
relationships.

Session 7 took account of the fact that in today’s world countries are less and less
constitutional islands and cannot avoid being influenced by international law. As
one of the discussants, Kennedy Graham, points out “[p]erhaps no issue confronts
human society – governments, analysts, media and citizenry – more in the 21st
century than the relationship between major international treaties and national
constitutional processes.”

The discussants approach the topic from three different angles. First, Kennedy
Graham explores the influence of international treaties on the uncodified New
Zealand constitution. Treasa Dunworth examines the influence of international
law in New Zealand, arguing that while generally New Zealand has a receptive
approach to international law in its legal system, there is a need to have a robust and
thorough debate on the extent to which, and the basis on which international law
should play a part in the domestic legal system. Lastly, Ben Thirkell-White asks
whether in regard to international economic law, an end to executive dominance
had come, after assessing the adequacy of legislative scrutiny over the process of
economic treaty-making in New Zealand.

Parliament, the executive, and the Courts are all affected but also involved in
making international law relevant in the domestic sphere. As a starting-point,
Kennedy Graham’s paper gives an overview of the major international treaties
affecting New Zealand. He considers, taking a step back, to what extent interna-
tional treaties influence New Zealand constitutional thought. He points out that
major treaties of the twentieth century have heavily influenced the theory of
sovereignty and of constitutional thought in UN member states, New Zealand
being no exception.

Teresa Dunworth then examines the role played by Parliament in overseeing
treaty-making by the executive, suggesting incremental reform. She argues that
although there has been some measure of increased transparency and public
participation as a result of the changes to the treaty-making process, overall, the executive has not relinquished any real power to Parliament. Reform could incorporate a greater effort to ensure that the National Interest Analyses properly meet the criteria in the Standing Orders. Further she suggests that it would also be helpful if shadow reports were received. Indeed, they could be actively encouraged. This would go some way to mitigating the existing executive dominance of the process. Finally, broader and more transparent consultations would make the process more meaningful. Furthermore, she also discusses in which way international law is treated in the courts.

Lastly, Ben Thirkell-White puts the two earlier papers into perspective by focusing on international economic law which is particularly apt since even though the development of international economic law has stalled globally the New Zealand government continues to press ahead with some quite radical international economic agreements.