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Ted L. McDorman*

The Tabling of International Treaties in
the Parliament of Canada: The First
Four Years

In January 2008, the government of Canada announced the adoption of the policy that international treaties would be tabled in the House of Commons following their signature or adoption and prior to Canada formally notifying its intention to be bound by the treaty. This article provides an overview of the Tabling Policy, the domestic legal structure of treaty-making in Canada, a description of the international instruments that have been tabled under the Policy from 2008 to 2011, and a review of the one treaty that has been discussed at length in the House of Commons.

En janvier 2008, le gouvernement du Canada a annoncé qu'il adoptait une politique voulant que les traités internationaux soient déposés devant la Chambre des communes après leur signature ou autrement, mais avant que le Canada n'exprime son consentement à être lié. L'article donne d'abord une vue d'ensemble de la politique sur le dépôt des traités, de la structure juridique canadienne de l'établissement de traités au Canada ainsi qu'une description des instruments internationaux qui ont été déposés sous le régime de la politique de 2008 à 2011; il passe ensuite en revue l'un des traités qui a fait l'objet de longues discussions à la Chambre des communes.

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Introduction

- I. *International treaties*
- II. *Canada's domestic legal framework for treaty-making*
- III. *A few notes on the internal guidelines for the treaty-making process*
- IV. *The 2008 Tabling Policy*
 1. *Coverage*
 2. *Procedure*
 3. *Exceptions*
 4. *Content*
- V. *What has been tabled 2008–2011*
- VI. *Specific treaties*
 1. *The Amendment to the NAFO Convention*
 2. *The Canada–EFTA Free Trade Agreement*
 3. *The Canada–Columbia Free Trade Agreement*

Conclusion

Introduction

In January 2008, then Minister of Foreign Affairs Maxime Bernier announced the adoption of the policy that international treaties would be tabled in the House of Commons.¹ The intent of the policy was:

to ensure that all instruments governed by public international law, between Canada and other states or international organizations, are tabled in the House of Commons following their signature or adoption by other procedure and prior to Canada formally notifying that it is bound by the Instrument.²

The document that followed, the “Policy on Tabling of Treaties in Parliament” includes: Annex A, departmental guidelines for the treaty-making process; Annex B, the procedures to be followed for the tabling of treaties in the House of Commons; and Annex C, a note on non-binding international instruments.³ At the heart of the policy is defining a role for the House of Commons in Canada’s international treaty-making process.

This contribution starts with a short section on international treaties and terminology, followed by a brief background on the domestic legal

1. Foreign Affairs and International Trade Canada, News Release, “Canada Announces Policy of Tabling Treaties in House of Commons” (28 January 2008), online: Canada News Center <<http://news.gc.ca/web/article-eng.do?nid=374729>>.

2. Canada, “Policy On Tabling of Treaties in Parliament” (3 March 2011), online: Canada <www.treaty-accord.gc.ca/procedures.aspx> at 2 [2008 Tabling Policy].

3. *Ibid.*

structure of Canada's treaty-making, an overview of the 2008 Tabling Policy, a description of the international instruments that have been tabled under the Policy from 2008 to 2011, a review of the one treaty that has been discussed at length in the House of Commons as well as notes on two others and a few words of conclusion.

I. *International treaties*

A key, though somewhat self-evident fact is that an international treaty can exist only between entities that are subjects of international law. Subjects of international law include States and, in certain cases and for certain purposes, international organizations.⁴ That Canada is recognized as a State with the capacity to negotiate with other States and enter into international treaties with States and international organizations is not in doubt.

The sacred text on international treaties between States is the 1969 *Vienna Convention on the Law of Treaties*⁵ which, amongst other things, defines (as will be explained below) what is a treaty between States and, as a result, what is *not* an international legally binding instrument. Canada is a party to the *Vienna Convention on the Law of Treaties* and the 2008 Tabling Policy states that the *Convention* "can be described as a codification of public international law on treaties."⁶ This is not a hotly contested matter.⁷ There is also the 1986 *Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations*,⁸ "which, in effect, applies to those treaties the provisions of the 1969 Convention, suitably adapted."⁹ Canada is not a party to the 1986 *Vienna Convention*, nor is it in force. As one authority has noted: "The fact that the provisions of the 1986 Convention are so very close to those of the 1969 Convention is almost certainly the principal reason why most States have not bothered to become parties."¹⁰

Part II of the 1969 *Vienna Convention*, entitled "Conclusion and Entry into Force of Treaties," sets out the well-known structure of:

4. See generally on subjects of international law, Malcolm Shaw, *International Law*, 6th ed (Cambridge: Cambridge University Press, 2008) at 195-197, 217-223, and 1296-1309.

5. *Vienna Convention on the Law of Treaties*, 23 May 1969, 1155 UNTS 331 (entered into force 27 January 1980) [VCLT]. Canada became a party to the *Vienna Convention* in 1994, see *Canada Treaty Series* 1980, No 37.

6. 2008 Tabling Policy, *supra* note 2 at 5.

7. Anthony Aust, *Modern Treaty Law and Practice*, 2d ed (Cambridge: Cambridge University Press, 2007) at 12.

8. *Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations*, 21 March 1986, 25 ILM 543 (not yet in force).

9. Aust, *supra* note 7 at 8 and see 399-401.

10. *Ibid* at 401.

- First, the conclusion or adoption of a treaty, which means essentially when and how a text of a treaty is finalized;¹¹
- Second, the signature of a treaty, where this is indicated by a treaty, which is essentially a half-way for a State between acknowledging the conclusion of a treaty and the acceptance to be bound by a treaty by becoming a party to it;¹² and,
- Third, the entry into force of a treaty, which involves both a State formally accepting to be a party to the treaty (often referred to as ratification) and, depending on treaty wording, determining at what point in time a treaty comes into force for a State party.¹³

It is important to note that this is a generalized structure and individual treaties, for example, those done by an exchange of letters, can compress and/or skip parts of the structure.

An international treaty creates rights for and obligations on a State when the State has formally become party to the treaty and the treaty has, pursuant to the terms within the treaty, entered into force. Unless the instrument clearly states to the contrary, the act of concluding and adopting the text of a treaty does not have direct international legal consequences for a State that has participated in the conclusion of the adoption of a treaty.¹⁴ As for signature, as the 2008 Tabling Policy notes, “signature is not without consequence” and references the 1969 *Vienna Convention* to the effect that where Canada has signed a treaty “Canada has to refrain from acts which would defeat the object and purpose of the treaty, at least, until it shall have expressed clearly its intention not to become a party to the treaty.”¹⁵

The 2008 Tabling Policy refers to two other provisions of the 1969 *Vienna Convention* by way of a warning to departments and agencies to take care respecting the nature of the instruments being discussed and/or negotiated with foreign entities. The two provisions are: Article 26, “[E]very treaty in force is binding upon the parties to it and must be performed by them in good faith”; and the answer to at least one perennial question on international law exams, Article 27: “A party may not invoke

11. See *ibid* at 84-93.

12. *Ibid* at 96-100.

13. *Ibid* at 103-116.

14. *VCLT*, *supra* note 5, Article 24(4); and see Aust, *supra* note 7 at 116-117.

15. 2008 Tabling Policy, *supra* note 2, Annex A at 5.

the provisions of its internal law as justification for its failure to perform a treaty.”¹⁶

II. *Canada's domestic legal framework for treaty-making*

The role of the democratically-elected bodies in treaty-making is an issue that has arisen in almost all Westminster-based constitutional systems for the following reason:

[T]he power to conduct foreign relations, including the power to make treaties, is one of the royal prerogatives retained by the Crown and carried out by the executive branch of government... Since prerogative powers, by definition, provide the executive with the power to act *without the consent of Parliament*, treaty making, including treaty ratification, is legally a wholly executive act within the UK and most Commonwealth States.¹⁷

In 2010, the Supreme Court of Canada reiterated the existence of the Crown prerogative as regards foreign affairs¹⁸ and recognized that courts “possess a narrow power to review and intervene on matters of foreign affairs.”¹⁹ There is little doubt that in Canada the Crown prerogative includes treaty-making, although the historical path to this result was somewhat circuitous,²⁰ questions having been raised whether treaty making may also be part of Crown prerogative resting within the provincial sphere,²¹ and Canada’s written constitution is silent on the matter.²² Two authors have summarized the situation as follows: “The Canadian approach to treaties and treaty making is... an amalgam of history, principles of public law, case law, administrative practice, and legislative direction.”²³ The background press release that accompanied Minister Bernier’s 2008 announcement expressly states:

16. *VCLT*, *supra* note 5, Articles 26 and 27, as cited in 2008 Tabling Policy, *supra* note 2, Annex A at 2.

17. Joanna Harrington, “Redressing the Democratic Deficit in Treaty Law Making: (Re-)Establishing a Role for Parliament” (2005) 50:3 McGill LJ 465 at 473 [Harrington, “Redressing the Democratic Deficit”] [footnotes omitted, emphasis added]. See more generally Joanna Harrington, “Scrutiny and Approval: The Role for Westminster-Style Parliaments in Treaty-Making” (2006) 55 ICLQ 121 [Harrington, “Scrutiny and Approval”].

18. *Canada (Prime Minister) v Khadr*, [2010] 1 SCR 44 at para 35.

19. *Ibid* at para 38.

20. See Harrington, “Redressing the Democratic Deficit,” *supra* note 17 at 474-476; see also Gibran van Ert, *Using International Law in Canadian Courts* (Toronto: Irwin Law, 2008) at 92-94.

21. See *ibid* at 99-123.

22. Harrington, “Redressing the Democratic Deficit,” *supra* note 17 at 474; and Armand de Mestral & Evan Fox-Decent, “Rethinking the Relationship Between International and Domestic Law” (2008) 53:4 McGill LJ 573 at 596.

23. *Ibid* at 596-597.

The government will maintain the executive role in negotiating agreements...

The government will maintain the legal authority to decide whether to ratify the treaty.²⁴

Another product of the Westminster constitutional model is the sharp divide between the international legal sphere and the domestic legal sphere, and the fact that for international treaties to have effect within the country (and be applied by courts) they must be brought into national law through statutes.²⁵ The theory is that the executive cannot usurp the authority of parliament through entering into an international treaty. This “dualist” approach applies in Canada with the additional factor that legislative implementation is to follow the division of legislative authority between the federal and provincial governments set out in the Canadian constitution.²⁶ Thus, the House of Commons has a well-understood role in the treaty process: that of legislatively implementing treaty obligations into the law of Canada, where those obligations are constitutionally within the federal area of authority. The 2008 Tabling Policy notes that “Canada must amend its domestic law before undertaking treaty obligations.”²⁷

Not all international treaties require or have resulted in statutory implementation by federal or provincial legislatures. Harrington notes that once Canada becomes a party to a treaty, regardless of whether it does not require formal statutory implementation, the commitment to the treaty “puts pressure on a state’s domestic institutions to take steps to ensure compliance.”²⁸ More generally, she goes on to comment that the lack of engagement with Parliament by the executive “supports complaints that a ‘democratic deficit’ exists in the treaty-making process given the executive’s ability to engage the nation in legal commitments without involving the institution responsible for making law.”²⁹ More fundamentally, the authority of the executive respecting treaty-making is part of the concern over the concentration of power and authority within

24. “Canada Announces Policy of Tabling Treaties,” *supra* note 1, Backgrounder, “Treaty Procedure in the House of Commons.”

25. See generally van Ert, *supra* note 20 at 228-232.

26. See generally *ibid* at 255-272.

27. 2008 Tabling Policy, *supra* note 2 at 6.2.

28. Harrington, “Redressing the Democratic Deficit,” *supra* note 17 at 467. It is an accepted presumption of statutory interpretation that the laws of Canada are, to the extent possible, to be interpreted and applied in such a manner as to be consistent with Canada’s international obligations, including those that arise from so-called unimplemented treaties. See van Ert, *supra* note 20 at 161-164 and 233-234.

29. Harrington, “Redressing the Democratic Deficit,” *supra* note 17 at 468; and see de Mestral & Fox-Decent, *supra* note 22 at 614-615.

the executive level of government in Canada at the expense of the authority of the elected parliamentarians.³⁰

As has been well-described elsewhere, Australia and the United Kingdom, at the time of the announcing of the 2008 Tabling Policy, had policies that engage their elected parliaments in the treaty ratification process.³¹

[C]oncerns about the democratic credentials of the treaty-making process have motivated various reforms, including the adoption in Australia of a dedicated committee procedure to ensure parliamentary scrutiny... of all treaty actions after signature but before ratification. Britain has also modified its process by requiring the tabling of both treaties and explanatory memoranda in Parliament in order to draw the attention of parliamentary committees to the opportunity to scrutinize.³²

Other States, such as the United States, France, and South Africa in one form or another require legislative consent prior to the State becoming a party to an international treaty.³³ The Backgrounder press release acknowledges that the 2008 Tabling Policy is similar to that then in existence in Australia and the United Kingdom, making note that the Policy is closer to that found in the United Kingdom.³⁴

There is a history in Canada of tabling treaties before Parliament that is seen as having existed from 1926 to the 1960s, albeit only for what were deemed important treaties.³⁵ De Mestral and Fox-Decent note that: “After 1968 even the practice of tabling treaties in the House of Commons was gradually abandoned for reasons that remain unclear.”³⁶ Harrington comments that the tabling practice was “either forgotten or abandoned.”³⁷

30. See de Mestral & Fox-Decent, *ibid* at 614-615.

31. Harrington, “Scrutiny and Approval,” *supra* note 17 at 126-136. In 2010, the United Kingdom adopted the *Constitutional Reform and Governance Act 2010* (UK), c 25 [*UK Reform Act*], which contains Part 2, “Ratification of Treaties,” sections 20-25. This legislation “formalized” the existing procedures and policy for allowing Parliament to scrutinize treaties. See Jill Barrett, “The United Kingdom and Parliamentary Scrutiny of Treaties: Recent Reforms” (2011) 60 ICLQ 225 at 243 and, more generally, 225-245. As described by Barrett at 227: “The Act does not require a vote by either House of Parliament to approve ratification of a treaty; rather it sets out the legal consequences in the event of a vote by either House against ratification.” The most interesting legal consequence is that if the House of Commons consistently votes against ratification of a tabled treaty, the government can be thwarted from becoming a party to a treaty.

32. Harrington, “Redressing the Democratic Deficit,” *supra* note 17 at 469.

33. See briefly de Mestral & Fox-Decent, *supra* note 22 at 605-608.

34. “Canada Announces Policy of Tabling Treaties,” *supra* note 1, Backgrounder “Treaty Procedure in the House of Commons” at paras 2 and 7; and see de Mestral & Fox-Decent, *supra* note 22 at 591.

35. See Harrington, “Redressing the Democratic Deficit,” *supra* note 17 at 476-477 and van Ert, *supra* note 20 at 95-97.

36. De Mestral & Fox-Decent, *supra* note 22 at 609.

37. Harrington, “Redressing the Democratic Deficit,” *supra* note 17 at 477.

While not a matter of tabling, the House of Commons did discuss the ratification of the *Kyoto Protocol to the United Nations Framework Convention on Climate Change*.³⁸ On 25 November 2002, the Minister of Environment introduced into the House of Commons the following motion: “That this House call upon the government to ratify the Kyoto Protocol on climate change.”³⁹ There followed a spirited debate focused on, amongst other things, the role of provinces in ratification of major international treaties.⁴⁰ Ultimately, the motion was adopted 196-77 on 10 December 2002,⁴¹ Canada becoming a party to the *Kyoto Protocol* on 17 December 2002.

III. *A few notes on the internal guidelines for the treaty-making process*⁴²
Annex A of the 2008 Tabling Policy describes the internal procedures followed with respect to treaty-making. There are several points of note. First, for most treaties, a memorandum to cabinet (MC) is prepared by the relevant department or departments for which cabinet approval is necessary before the commencement of negotiations. What is also approved is, depending on the situation, the negotiating instructions. Second, an MC is prepared for cabinet approval for signature and ratification of a treaty, usually in a single document. Most of the content of Internal Guidelines is of little interest beyond those responsible for seeking cabinet approvals.

IV. *The 2008 Tabling Policy*

The 2008 Tabling Policy has four principal components: coverage, procedure, exceptions, and content. As already noted, the goal of the Tabling Policy is to inform the House of Commons of treaties to which the government is anticipating becoming a party and to provide to the House an opportunity to comment upon the treaties before the government decides whether or not to do so. As such, the Tabling Policy is not about informing the House of Commons of matters respecting treaties to which Canada is a party, such as when a treaty formally enters into force for Canada, when other States become parties to a treaty or, as occurred in late

38. *Kyoto Protocol to the United Nations Framework Convention on Climate Change* (11 December 1997) 2303 UNTS 148, 37 ILM 22.

39. *House of Commons Debates*, 37th Parl, 2nd Sess, No 31 (25 November 2002) at 1847.

40. See Donald M McRae & John H Currie, “Treaty-Making and Treaty Implementation: The Kyoto Protocol” (2003) 29:2 Canadian Council on International Law Bulletin at 1 and 5, online: Canadian Council on International Law <www.ccil-ccdi.ca/ccil-bulletin/>.

41. *House of Commons Debates*, 37th Parl, 2nd Sess, No 43 (11 December 2002) at 2524-2525.

42. See generally de Mestral & Fox-Decent, *supra* note 22 at 590-593.

2011 in regards to the *Kyoto Protocol*, when Canada decides to withdraw as a party to a treaty.⁴³

1. Coverage

Coverage refers to what international instruments are subject to the Tabling Policy. The Policy notes that the term “treaty” is “any type of instrument governed by public international law.”⁴⁴ Reference is made to the definition of a treaty from Article 2 of the 1969 *Vienna Convention on the Law of Treaties*:

“treaty” means an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation.⁴⁵

The Tabling Policy applies to international instruments that meet this definition and agreements made with international organizations that “are governed by public international law.”⁴⁶

It is the usual situation that an amendment to an existing treaty is itself a separate treaty and, therefore, subject to the conclusion, signature, and ratification procedures. Therefore, amendments to treaties are covered by the Tabling Policy. Nevertheless, there is a great variety of procedures in treaties for their amendment such that it has been noted that no two procedures are the same.⁴⁷ This can raise potential problems under the Tabling Policy. One complication that can arise is for those conventions where there is a tacit acceptance procedure for amendments, whereby when an amendment text is approved by the treaty parties, it is to come into legal effect for all those parties that have not objected by a certain date. The goal of the tacit amendment procedure is to shorten the time for entry into force of amendments. If the date for entry into force of an amendment subject to the tacit acceptance procedure does not correspond with a sitting of the House or the twenty-one day waiting period, then an exception or some other “fix” may be necessary. A further complication is that many international treaties contain annexes, schedules and appendices

43. Environment Canada, Press Release, “Statement by Minister Kent” (12 December 2011) online: Environment Canada <www.ec.gc.ca>; and see Bill Curry & Shawn McCarthy, “Canada formally abandons Kyoto Protocol on climate change,” *The Globe and Mail* (12 December 2011), online: The Globe and Mail <www.theglobeandmail.com>.

44. 2008 Tabling Policy, *supra* note 2 at 5. Interestingly, the *UK Reform Act*, *supra* note 31, section 25, in defining an international treaty uses the phrase “binding under international law.” For a discussion of the distinction, see Barrett, *supra* note 31 at 232-234.

45. 2008 Tabling Policy, *supra* note 2 at 5.

46. *Ibid.*

47. Aust, *supra* note 7 at 267 and, more generally, at 266-270.

that are considered to be part of the main treaty and often are amendable using a less-stringent procedure than exists for amending the main text of a convention. In this situation, some flexibility may be reasonable as regards the coverage of the Tabling Policy.

A slightly different situation occurs where a treaty gives to the State parties the authority to adopt measures, such as under some treaties that establish regional fisheries management organizations with the authority to adopt quota and fisheries management measures, which become binding on member States immediately on adoption or within a period of time where no objection is made. These measures are not amendments per se, rather they are best seen as operational measures adopted pursuant to a treaty.⁴⁸ *Prima facie* such measures do not appear to be captured by the intent of the Tabling Policy.

The Tabling Policy notes the distinction between international instruments (treaties) that are binding in international law and, hence, create international legal obligations on Canada, and international instruments that are not binding in international law. Regarding the latter, the Tabling Policy indicates that non-legally binding instruments “can be considered as creating only moral or political commitments.”⁴⁹ In Appendix C it is noted that these documents “nonetheless...should not be treated lightly.”⁵⁰ Because there is a clear difference in law between the two types of instruments, there is a focus on ensuring an understanding of the distinctions and a warning that care must be taken. In particular, merely labeling a document as a “Memorandum of Understanding” or something similar is not in itself sufficient to indicate that the instrument is not a legally binding commitment. Annex C of the Tabling Policy advises:

The terminology used in drafting non-legally binding instruments must clearly indicate that these are not legally binding instruments. The provisions of such an instrument should be cast as expressions of intent rather than as obligations.⁵¹

The need for the warning arises because whether an instrument is or is not an international treaty turns on whether there was “an intention to create obligations under international law,”⁵² which requires an examination of a

48. For a brief discussion of this and related issues, see Barrett, *supra* note 31 at 236-238.

49. 2008 Tabling Policy, *supra* note 2 at 8.

50. *Ibid* at Annex C.

51. *Ibid*.

52. Aust, *supra* note 7 at 20 [emphasis omitted] and, more generally, at 20-21, and concerning memoranda of understanding, at 32-57; and Shaw, *supra* note 4 at 905-907.

host of factors and not just the nomenclature employed in the title of the instrument.

2. *Procedure*

The tabling of documents within the House of Commons by a minister is a means by which information is communicated to the members of the House. The tabling of documents is noted in the House *Journals* and these documents become sessional papers of the House. Sessional papers are public documents. The 2008 Tabling Policy provides explicit guidance on the process of tabling treaties in the House of Commons.⁵³

Tabling of a treaty is only to take place once the Cabinet has provided “policy approval of the treaty” which includes the approval to both sign/ conclude a treaty and to become a party to the treaty (ratify) should the government so decide after the tabling procedure is completed.⁵⁴ For treaties that do not require implementing legislation, there is to be a twenty-one sitting day waiting period from the time of tabling before the necessary steps are taken for Canada to become a party.⁵⁵ For treaties that require implementing legislation, there is to be a twenty-one sitting day waiting period from the time of tabling before the introduction into Parliament of the necessary implementing legislation and only when the legislation is adopted will the necessary steps be taken for Canada to become a party.⁵⁶ The twenty-one sitting days are, as suggested, twenty-one consecutive days when the House of Commons is in session. During the waiting period the Members of Parliament can initiate debate about the treaty or request a vote on a motion regarding the treaty.⁵⁷ At the end of the waiting period, the government, “will consider any concerns raised by the Opposition Parties during the tabling process”⁵⁸ and then decide whether to become a party to the treaty or whether, if not previously determined, legislation is necessary before becoming a party to the treaty.⁵⁹

3. *Exceptions*

An exception to the above procedure can be sought by the Minister of Foreign Affairs (and the lead ministers) from the prime minister or the

53. 2008 Tabling Policy, *supra* note 2 at Annex B.

54. *Ibid*, Annex A at 5 and Annex B.

55. *Ibid* at 6.2(a).

56. *Ibid* at 6.2(b).

57. *Ibid* at 6.2(a).

58. *Ibid* at 6.6(a). As regards the new *UK Reform Act* on this matter, see *supra* note 31.

59. *Ibid* at 6.6(b).

cabinet.⁶⁰ An exception “may be appropriate in certain cases, such as where a treaty’s ratification is urgently required.”⁶¹

4. *Content*

The tabled documents are to include the treaty in question and an explanatory memorandum designed to provide information regarding the content of the treaty to “ensure that Members of Parliament and the public have sufficient information to assess why Canada should enter into the treaty.”⁶² Annex B notes that the memorandum is to explain: why becoming a party to the treaty is in the national interest of Canada; the advantages and disadvantages of Canada becoming a party; the obligations that arise from the treaty; the likely economic, social, cultural, environmental and legal effects and impacts of becoming a party to the treaty; and the compliance costs of the treaty.⁶³ There are a number of other points to be covered and a template to be followed.⁶⁴ Of note is that the memorandum is to provide a description of the consultations “undertaken with...self-governing Aboriginal Governments, other government departments and non-governmental organisations prior to the conclusion of the treaty, as appropriate.”⁶⁵ Further, the memorandum is to describe any reservations or declarations to be made respecting the treaty and how the treaty can be terminated.⁶⁶ The tabling of treaties is the responsibility of the Minister of Foreign Affairs⁶⁷ and, more specifically, the Treaty Section of the Department of Foreign Affairs and International Trade is responsible for the preparation of the treaty, the accompanying memorandum and other documents to be tabled.⁶⁸

V. *What has been tabled 2008–2011*

Between 2008 and 2011, there have been 149 treaty instruments tabled in the House of Commons.⁶⁹ During this period fourteen exemptions to the tabling requirements were given for treaty instruments that were subsequently tabled in the House of Commons.

60. *Ibid* at 6.3(a).

61. *Ibid* at 6.3.

62. *Ibid* at Annex B.

63. *Ibid* at Annex B.

64. *Ibid* at 6.4(b) and Annex B.

65. *Ibid*.

66. *Ibid*.

67. *Ibid* at 10.

68. *Ibid*, Annex A at 6 and Annex B.

69. Seven of the instruments were retabled as a result of the Parliament session ending before the twenty-one sitting days was reached.

During the 39th Parliament (February to June 2008) twenty treaties were tabled. Four were retabled during the 40th Parliament, Second Session, in 2009 as the House adjourned before the twenty-one sitting days deadline was reached. One Exchange of Notes was tabled though it had already entered into force after having been the beneficiary of an exemption from the twenty-one days requirement. Over half of the instruments were bilateral, three involved amendments to existing treaties, two were regional agreements and two were multilateral agreements, originating from the International Maritime Organization.

During 2009, the 40th Parliament, Second Session, sixty-four treaties were tabled in the House of Commons. Over half of the instruments were bilateral. Three of the instruments dealt with either protocols or annexes to existing multilateral treaties, and nine involved amendments to existing agreements. There were six multilateral conventions tabled and two instruments involving a regional fisheries agreement respecting tuna. Four instruments related to the “Final Acts” of organizations such as, for example, the Universal Postal Union. Two new members of the North Atlantic Treaty Agreement (NATO) resulted in Protocols of Accession that were tabled after their entry into force and having been granted an exemption. An exchange of letters extending in force and amendments to Annex VI of the *Canada-US Pacific Salmon Treaty*⁷⁰ also received an exemption from the twenty-one sitting days requirement and was tabled after entry into force. Also of note was the tabling of the Amendment to the Convention on Future Multilateral Cooperation in the Northwest Atlantic Fisheries,⁷¹ discussed further below.

During the 40th Parliament, Third Session, from March 2010 to March 2011, fifty treaty instruments were tabled in the House of Commons. Again over half were bilateral agreements and six involved amendments to existing agreements. Five of the instruments dealt with amendments

70. *Canada-United States Pacific Salmon Treaty*, 28 January 1985, 1469 UNTS 357, Can TS 1985 No 7 [*Salmon Treaty*]. In 1999, new management and allocation measures were completed under the umbrella of the 1985 Treaty. See *Exchange of Notes relating to the Pacific Salmon Treaty*, 30 June 1999, Can TS 1999 No 58 [*1999 Exchange of Notes*]. It was an Annex that was part of the 1999 Exchange of Notes that was being amended and extended. See generally Don McRae, “The Pacific Salmon Commission” in Dawn A Russell & David L VanderZwaag, eds, *Recasting Transboundary Fisheries Management Arrangements in Light of Sustainability Principles* (Leiden/Boston: Martinus Nijhoff, 2010) at 101-113; and Ted L McDorman, *Salt Water Neighbors: International Ocean Law Relations between the United States and Canada* (New York: Oxford University Press, 2009) at 292-307.

71. *Amendment to the Convention on Future Multilateral Cooperation in the Northwest Atlantic Fisheries*, 28 September 2007, NAFO/GC Doc 07/4, online: <www.nafo.int> [*Amendment to the NAFO Convention*]. The amendment is to *Convention on Future Multilateral Cooperation in the Northwest Atlantic Fisheries*, 24 October 1978, Can TS 1979 No 11.

to annexes or appendices to multilateral environment agreements such as the *Convention on the International Trade in Endangered Species of Wild Fauna and Flora*.⁷² A bilateral agreement with the United States was an extension of an existing agreement. Of note were three multilateral treaties originating from the International Labour Organization (ILO) including the *Forced Labour Convention*,⁷³ originally completed in 1930 as one of the eight core conventions of the ILO.

During the 41st Parliament, First Session, which commenced June 2011 and at the time of writing is still sitting, there were twenty-two treaty instruments tabled up to the end of 2011. Sixteen of the instruments were bilateral agreements and one was an amendment to an existing treaty. Two were multilateral agreements: the 2010 *Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing*,⁷⁴ and the 2011 *Agreement on Cooperation on Aeronautical and Maritime Search and Rescue in the Arctic*.⁷⁵ Again, an exchange of letters extending in force and amending an Annex of the *Canada-US Pacific Salmon Treaty*⁷⁶ also received an exemption from the twenty-one sitting days requirement and was tabled after entry into force.

Looking across the four years in total:

- 17 of the treaties tabled were free trade agreements or related to free trade agreements;
- 18 were bilateral tax treaties;
- 12 were global multilateral treaties, several of which were mentioned above;
- 12 were bilateral agreements with the United States;
- 19 involved amendments to treaties;
- 10 involved annexes or protocols to existing treaties;
- 2 were agreements with international organizations; and
- 2 were human rights agreements, including the 2006 *Convention on the Rights of Persons with Disabilities*.⁷⁷

72. *Convention on International Trade in Endangered Species of Wild Fauna and Flora*, 3 March 1973, 993 UNTS 243.

73. *Forced Labour Convention*, 28 June 1930, 39 UNTS 55.

74. *Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing*, 22 November 2009, online: UN Food and Agriculture Organization <www.fao.org>.

75. *Agreement on Cooperation on Aeronautical and Maritime Search and Rescue in the Arctic*, 12 May 2001, online: Arctic Council <www.arctic-council.org>.

76. See *Salmon Treaty and 1999 Exchange of Notes*, *supra* note 70.

77. *Convention on the Rights of Persons with Disabilities*, 13 December 2006, 2515 UNTS 3.

VI. *Specific treaties*

1. *The Amendment to the NAFO Convention*

Since the adoption of the 2008 Tabling Policy, the *Amendment to the NAFO Convention*⁷⁸ is the only tabled treaty that has received significant attention by the House of Commons. It is worth noting that the *Amendment* did not require the enactment of new legislation or amendments to existing legislation.

The tangled and detailed history of the 1978 *NAFO Convention* and the 2007 *Amendment to the Convention* are beyond the scope of this contribution.⁷⁹ There have been long-standing concerns within Atlantic Canada, and in particular Newfoundland and Labrador, that foreign fishing activities beyond Canada's eastern 200-n. mile zone adversely affected the availability of fish stocks within Canadian waters. The remit of the parties to the *NAFO Convention* was to manage designated fisheries resources adjacent to Canada's 200-n. mile zone and it was seen that the 1978 *NAFO Convention* was not very effective in this regard. The amendments to the *NAFO Convention*, which involved almost a complete institutional restructuring and the adoption of new concepts and mechanisms, were designed to be a modernization of the *Convention* with the goal of greater effectiveness.

The negotiation of the *Amendment* was finalized in September 2007. Both the Senate and House Standing Committees on Fisheries and Oceans held hearings on the proposed *NAFO Convention* amendments starting in March 2009. The subsequent debates about the amendments centred on whether the changes to alter the perceived flaws of the 1978 *NAFO Convention* were sufficient to make the amended *Convention* effective and whether too much had been conceded by the Canadian negotiators.

The *Amendment to the NAFO Convention* was tabled on 12 June 2009.⁸⁰ The explanatory memorandum tabled with the *Amendment to the NAFO Convention* (attached as an annex to this article) provided a flavour of some of the above issues, though little of the detail. As explained above, the explanatory memoranda are not designed to provide a detailed analysis of complex treaty wording or of the complexities of negotiating trade-offs and positions.

78. *Amendment to NAFO Convention*, *supra* note 71.

79. *Convention on Future Multilateral Cooperation in the Northwest Atlantic Fisheries*, 24 October 1978, 1135 UNTS 369, Can TS 1979 No 11, [*NAFO Convention*]. See Dawn A Russell, "NAFO and ICCAT: The Implementation of Sustainability Principles and Practices in the Management of Straddling Stocks and Highly Migratory Species" in Russell & VanderZwaag, *supra* note 70 at 240-260.

80. *House of Commons Debates*, 40th Parl, 2nd Sess, No 74 (12 June 2009) at 4558.

In October 2009, the House Standing Committee on Fisheries adopted a recommendation that the *Amendment* not be ratified until the Committee had a further twenty-one sitting days to study the matter and report to the House.⁸¹ The House Committee continued its hearings and work on the Amendment to the NAFO Convention and adopted by vote of 6-5 on 17 November 2009 a recommendation tabled in the House the next day that Canada “not ratify” the *Amendment* and that Canada notify NAFO of its objection to the amendments.⁸² On 23 November 2009 a motion was put before the House of Commons that the recommendation of the Committee on Fisheries be concurred with.⁸³ Debate in the House took place on the 23 November⁸⁴ and continued on 7 December.⁸⁵ On 10 December 2009, the House voted in favour of the motion recommending that Canada not ratify the *Amendment to the NAFO Convention* by 147-142.⁸⁶

The explanatory memorandum noted that representatives from the government of Newfoundland and Labrador were party to all of the negotiations and the adoption of the instrument and that there had been extensive consultation with industry and the government of Newfoundland and Labrador “which fully supported Canada’s ratification of the Amendment.”⁸⁷ While this may have been the case in June 2009, by September the Premier of Newfoundland and Labrador was firmly against acceptance by Canada of the *NAFO Convention* amendments⁸⁸ and subsequently supported the recommendation from the House Standing Fisheries Committee⁸⁹ and the vote in the House of Commons.⁹⁰

81. See House of Commons, Standing Committee on Fisheries and Oceans, *Minutes of Proceedings*, 40th Parl, 2nd Sess, No 37 (8 October 2009); and *House of Commons Debates*, 40th Parl, 2nd Sess, No 95 (19 October 2009) at 5872 [Seventh Report of the Standing Committee on Fisheries and Oceans].

82. See House of Commons, Standing Committee of Fisheries and Oceans, *Minutes of Proceedings*, No 44 (17 November 2009) and *House of Commons Debates*, 40th Parl, 2nd Sess (18 November 2009) at 6911 [Eighth Report of the Standing Committee of Fisheries and Oceans].

83. *House of Commons Debates*, 40th Parl, 2nd Sess (23 November 2009) at 7083.

84. *Ibid* at 7083-7090.

85. *House of Commons Debates*, 40th Parl, 2nd Sess (7 December 2009) at 7737-7748.

86. *House of Commons Debates*, 40th Parl, 2nd Sess (10 December 2009) at 7937-7939.

87. “Explanatory Memorandum on the Amendment to the Convention on Future Multilateral Cooperation in the Northwest Atlantic Fisheries” (June 2009) see the Appendix of this article.

88. Newfoundland and Labrador, News Release, “Premier Calls for Immediate Action from Prime Minister on Proposed NAFO Amendments: Sovereignty within 200-Mile Limit Threatened” (11 September 2009), online: Newfoundland and Labrador <www.releases.gov.nl.ca/releases/2009/exec/0911n09.htm> which includes a link to a letter of 11 September 2009 to the Prime Minister calling for the Canada not to support the amendments to the *NAFO Convention*.

89. Newfoundland and Labrador, News Release, “Province Pleased With Standing Committee Decision on NAFO Convention” (20 November 2009), online: Newfoundland and Labrador <www.releases.gov.nl.ca/releases/2009/fishaq/1120n01.htm>.

90. Newfoundland and Labrador, News Release, “Province Calls on Government of Canada to Follow Vote of Own Parliament” (11 December 2009), online: Newfoundland and Labrador <www.releases.gov.nl.ca/releases/2009/Fishaq/1211n07.htm>.

Canada ratified the *Amendment to the NAFO Convention* on 11 December 2009⁹¹ one day after the House of Commons vote. The *NAFO Amendment* has not yet come into international legal force as other parties to the 1978 convention have been slow to ratify the *Amendment* and the condition for entry into force of the amendments, requiring ratification by three-fourths of the contracting parties of the 1978 *NAFO Convention*,⁹² has at the time of writing not been met.

The action by the government in not acceding to the recommendation of the House of Commons is consistent with the Tabling Policy and, more generally, with the understood role of the executive regarding its authority respecting whether or not to become a party to an international treaty. While there is no record in the House of Commons that the request from the Standing Committee on Fisheries and Oceans to not make a decision until a further twenty-one sittings days expired was formally dealt with, it is the case that a further twenty-one sitting days elapsed before the government went forward with the formalities to become a party to the *Amendment to the NAFO Convention*. It is to be noted that the request from the Standing Committee had been adopted without dissent.⁹³

2. The Canada–EFTA Free Trade Agreement

The *Canada–European Free Trade Association (EFTA) Free Trade Agreement* was completed in January 2008⁹⁴ and was the first treaty tabled under the Tabling Policy on 14 February 2008.⁹⁵ Noting the new Policy, the House of Commons Standing Committee on International Trade “took the opportunity to conduct hearings” on the EFTA Free Trade Agreement and reported back to House on 10 April 2008.⁹⁶ The Committee Report noted that the Agreement “promises modest gains in trade” and could act as catalyst for future trade.⁹⁷

91. Fisheries and Oceans Canada, News Release, “Canada Ratifies Amended Convention of the Northwest Atlantic Fisheries Organization” (11 December 2009), online: Fisheries and Oceans Canada <www.dfo-mpo.gc.ca/media/npres-communique/2009/hq-ac48-eng.htm>.

92. *NAFO Convention*, *supra* note 79, Article XXI(3).

93. See Seventh Report of the Standing Committee on Fisheries and Oceans, 8 October 2009, *supra* note 81.

94. *Free Trade Agreement between Canada and the States of the European Free Trade Association (Iceland, Liechtenstein, Norway, Switzerland)*, 26 January 2008, Can TS 2009 No 3.

95. *House of Commons Debates*, 39th Parl, 2nd Sess (14 February 2008) at 3079.

96. House of Commons, Standing Committee on International Trade, Fourth Report (April 2008) at 1, presented to the House of Commons, 10 April 2008, *House of Commons Debates*, 39th Parl, 2nd Sess (10 April 2008) at 4721.

97. *Ibid* at 5.

3. *The Canada–Colombia Free Trade Agreement*

On 21 November 2008, Canada and Colombia completed their free trade agreement,⁹⁸ an agreement on the environment⁹⁹ and an agreement on labour cooperation.¹⁰⁰ It was clear that legislation would have to be adopted by parliament to implement the free trade agreement and the related agreements.

In June 2008, the House of Commons Standing Committee on International Trade in their report entitled “Human Rights, the Environment and Free Trade with Colombia,” recommended, amongst other things, that “Canada should not sign and implement a free trade agreement with the Government of Colombia until the Canadian government has taken into account the recommendations contained in this report.”¹⁰¹ The core of the recommendations were concerns about human rights within Colombia.

The three agreements were tabled in the House of Commons on 26 March 2009,¹⁰² at the same time that legislation was introduced in the House to implement the free trade agreement.¹⁰³ An exemption had been sought and granted under the Tabling Policy to allow for the three agreements to be tabled at same time as the implementing legislation. The attention of the parliamentarians was on the legislation rather than the treaty, thus the twenty-one sitting days passed before debate ensued on 25 May 2009 on the implementing legislation.¹⁰⁴ The proposed legislation died on the order paper at the end of the 40th Parliament, Second Session. In response to concerns raised by the House Committee and during debate, Canada and Colombia entered into the *Agreement concerning Annual Reports on Human Rights and Free Trade* in May 2010.¹⁰⁵ The implementing legislation was reintroduced in March 2010 and ultimately received Royal

98. *Free Trade Agreement between Canada and the Republic of Colombia*, 21 November 2008, Can TS 2011 No 11 (entered into force 15 August 2011). See the Canada Treaty Information website at <www.treaty-accord.gc.ca> for information on the Agreement.

99. *Agreement on the Environment between Canada and the Republic of Colombia*, 21 November 2008, Can TS 2011 No 12.

100. *Agreement on Labour Cooperation between Canada and the Republic of Colombia*, 21 November 2008, Can TS 2011 No 13.

101. House of Commons, Standing Committee on International Trade, “Human Rights, The Environment and Free Trade with Colombia” in *House of Commons Debates*, 39th Parl, 2nd Sess, No 116 (19 June 2008) at 7142.

102. *House of Commons Debates*, 40th Parl, 2nd Sess, No 34 (26 March 2009) at 1969.

103. Bill C-23, *An Act to Implement the Free Trade Agreement between Canada and the Republic of Colombia, the Agreement on the Environment between Canada and the Republic of Colombia, and the Agreement on Labour Cooperation between Canada and the Republic of Colombia*, 2nd Sess, 40th Parl, 2009.

104. *House of Commons Debates*, 40th Parl, 2nd Sess, No 64 (25 May 2009) at 3639-3653, 3670-3693.

105. *Agreement concerning Annual Reports on Human Rights and Free Trade between Canada and the Republic of Colombia*, 27 May 2010, Can TS 2011 No 14.

Assent on 29 June 2010.¹⁰⁶ The Canada–Colombia Free Trade Agreement came into force on 15 August 2011 following the mutual notification of the necessary legislation in each State having been adopted.

Conclusion

The 2008 Tabling Policy has been applauded by de Mestral and Fox-Decent as a “move in the right direction” in terms of a greater involvement of Parliament in treaty-making.¹⁰⁷ The same authors note, however, that the Tabling Policy, “while representing a valuable codification and clarification of procedure and policy...is a political gesture without much legal importance.”¹⁰⁸ More succinctly, one assessment of the Tabling Policy has argued that the “passing treaties through the House of Commons remains a courtesy on the part of the executive....”¹⁰⁹

The 2008 Treaty Tabling Policy is consistent with the Westminster constitutional structure for treaty-making and follows the policy on tabling treaties in parliament that then existed in the United Kingdom. It is premised on enhancing transparency respecting Canadian treaty-making, but while the Policy affords an opportunity to the House of Commons to engage on treaties, it is up to the House to activate that opportunity and for the government to decide how to respond to what is said in or done by the House.

106. *An Act to Implement the Free Trade Agreement between Canada and the Republic of Colombia, the Agreement on the Environment between Canada and the Republic of Colombia, and the Agreement on Labour Cooperation between Canada and the Republic of Colombia*, RSC 2010, c 4.

107. de Mestral & Fox-Decent, *supra* note 22 at 614.

108. *Ibid.*

109. Laura Barnett, “Canada’s Approach to the Treaty-making Process,” PRB 08-45E (24 November 2008), online: Parliament of Canada <www.parl.gc.ca/Content/LOP/researchpublications/prb0845-e.pdf> at 2; and Laura Barnett & Sebastian Spano, “Parliamentary Involvement in Foreign Policy,” PRB 08-60E (10 November 2008), online: Parliament of Canada <www.parl.gc.ca/Content/LOP/researchpublications/prb0860-e.pdf> at 2.

Appendix

***Explanatory Memorandum on the Amendment to the Convention on Future
Multilateral Cooperation in the Northwest Atlantic Fisheries***

***Note explicative sur l'Amendement à la Convention sur la future coopération
multilatérale dans les pêches de
l'Atlantique Nord-Ouest***

Title of Treaty

Amendment to the Convention on Future Multilateral Cooperation in the Northwest Atlantic Fisheries, adopted by the General Council of the Northwest Atlantic Fisheries Organization (the "Amendment")

Subject Matter

The current Convention on Future Multilateral Cooperation in the Northwest Atlantic Fisheries was signed on 24 October 1978 in Ottawa. It establishes the Northwest Atlantic Fisheries Organization (NAFO). Its philosophy and management is reflective of the fishing practices and the fish abundance of that time period. The Convention came into force in 1979, prior to the adoption of two key international instruments for modern oceans and fisheries governance: the *United Nations Convention on the Law of the Sea* (UNCLOS) in 1982 and the *United Nations Fish Stocks Agreement* (UNFSA) in 1995. Canada ratified UNCLOS in 2003 and UNFSA in 1999.

Structural weaknesses in the existing NAFO Convention include the absence of limits on the use of the "objection procedure" and the lack of a dispute settlement procedure to address concerns of Parties. As a result management decisions were often not effective and conservation of stocks was undermined.

Titre du traité

Amendement à la Convention sur la future coopération multilatérale dans les pêches de l'Atlantique Nord-Ouest, adopté par le Conseil général de l'Organisation des pêches de l'Atlantique du Nord-Ouest (ci-après l'« Amendement »)

Objet

La Convention actuelle sur la future coopération multilatérale dans les pêches de l'Atlantique Nord-Ouest a été signée le 24 octobre 1978, et a entraîné la création de l'Organisation des pêches de l'Atlantique Nord-Ouest (OPANO). La philosophie et le mode de gestion mis de l'avant par cette convention reflètent les pratiques de pêche et l'abondance en poissons de l'époque. Cette convention est entrée en vigueur en 1979, soit avant l'adoption de deux instruments internationaux phares dans la gouvernance moderne des pêches et des océans : la *Convention des Nations Unies sur le droit de la mer* (UNCLOS) de 1982 et l'*Accord des Nations Unies sur les stocks de poissons* (ANUP) de 1995, ratifiés par le Canada en 2003 et en 1999 respectivement.

La Convention actuelle de l'OPANO comporte diverses faiblesses structurelles, notamment le manque de limites à l'utilisation de la « procédure d'objection » et l'absence de procédures de résolution de conflits en cas de différend entre les Parties. Cela étant, les décisions de gestions étaient souvent inefficace et la conservation des stocks compromise.

The Amendment that has been negotiated among Contracting Parties addresses the structural weaknesses of the NAFO Convention and results in a new Convention that provides for a more effective decision-making process.

The new objection procedure limits objections to narrow grounds and requires an objector to provide an explanation for the objection and to describe the alternative measures it intends to put in place. A dispute settlement mechanism will provide for resolution of disputes among NAFO parties however should a settlement not be accomplished the dispute shall at the request of one of them, be submitted to compulsory proceedings entailing a binding decision pursuant to UNCLOS or UNFSA.

In August 2007, the Government directed a Canadian delegation to strengthen NAFO and ensure that the Amendment did not encroach on Canada's sovereignty and uphold Canada's port access and inspection policies and measures targeted at flag of convenience vessels that fish in the NAFO Regulatory Area (NRA), as implemented in the *Coastal Fisheries Protection Act* and regulations. At the NAFO annual meeting of September 24-28, 2007, Canada resolved these issues and supported the adoption of the Amendment by consensus. A proposal to adopt the Amendment in the French language was approved at the NAFO annual meeting of September 22-26, 2008.

L'Amendement négocié par les Parties contractantes cherche à corriger ces lacunes dans la structure de la Convention de l'OPANO afin de produire une nouvelle Convention qui garantirait un processus décisionnel plus efficace.

La nouvelle procédure d'objection améliorerait nettement la procédure actuelle, qui ne pose aucune entrave. Seuls des motifs très restreints seraient acceptés en cas d'objection, et il faudrait les expliquer en détail, en plus de proposer des mesures de rechange. Un mécanisme de résolution des différends permettrait de résoudre les disputes entre les parties à l'OPANO. Dans l'éventualité où les parties ne pourraient en venir à une résolution, le différent pourrait, à la demande d'une des parties, être soumis à des procédures obligatoires impliquant une décision contraignante en vertu d'UNCLOS ou UNFSA.

En août 2007, le gouvernement du Canada a enjoint à la délégation canadienne de renforcer l'OPANO et de veiller à ce que l'Amendement ne transgresse pas la souveraineté du Canada et maintienne les politiques d'accès aux ports et mesures d'inspection sur les navires portant pavillon de complaisance qui pêchent dans la zone de réglementation de l'OPANO, telles que prévues par la *Loi sur la protection des pêches côtières* ainsi que la réglementation connexe. Le Canada a réglé ces questions à la réunion annuelle de l'OPANO qui s'est tenue du 24 au 28 septembre 2007 et a appuyé l'adoption par consensus de l'Amendement. La proposition d'adoption de la version française de l'Amendement a été adoptée lors de la réunion annuelle de l'OPANO qui s'est tenue du 22 au 26 septembre 2008.

Main Obligations

The Amendment requires Contracting Parties to adopt measures based on the best scientific advice available to ensure that fishery resources are maintained at or restored to levels capable of producing maximum sustainable yield. Furthermore, Contracting Parties shall prevent or eliminate overfishing and excess fishing capacity, and ensure that levels of fishing effort do not exceed those commensurate with the sustainable use of the fishery resources.

Each Contracting Party shall implement the NAFO Convention and any conservation and management measures or other obligations binding on it and regularly submit to NAFO a description of the steps that it has taken to implement and comply with such measures or obligations. All necessary actions should be taken to ensure the effectiveness of and to enforce the conservation and management measures adopted by NAFO.

National Interest Summary

Canada's ratification of the Amendment would serve to consolidate the efforts to date to improve the international fisheries governance regime. It would also be in fulfillment of the mandate from the Prime Minister to the Minister of Fisheries and Oceans provided in January 2006 to address the overfishing of "straddling" fish stocks – those that move across the boundaries of one or more EEZs into the high seas waters adjacent to the EEZs of the same coastal States.

Ministerial Responsibility

The Minister of Foreign Affairs is responsible for Canada's relations with NAFO.

Principales obligations

L'Amendement oblige les Parties contractantes à adopter des mesures fondées sur les avis scientifiques disponibles les plus fiables afin d'assurer le maintien ou le rétablissement des ressources halieutiques aux niveaux de rendement équilibré maximal. Les Parties contractantes doivent par ailleurs prendre les mesures nécessaires pour prévenir ou éliminer la surpêche et le dépassement des capacités de pêche et veiller à ce que le niveau des efforts de pêche n'excède pas le niveau jugé viable pour les ressources halieutiques.

Chaque Partie contractante doit mettre en œuvre la Convention de l'OPANO ainsi que toute mesure ou obligation de gestion ou de conservation découlant de cette Convention; une description des démarches entreprises pour mettre en œuvre et respecter ces mesures et obligations devra être envoyée à intervalles réguliers à l'OPANO. Des mesures adéquates doivent être prises pour garantir l'efficacité et le respect des mesures de gestion et de conservation adoptées par l'OPANO.

Sommaire de l'intérêt national

La ratification par le Canada de l'Amendement permettra de consolider les efforts entrepris à ce jour pour améliorer le régime international de gouvernance des pêches. La ratification contribuerait également à la réalisation du mandat que le Premier ministre a confié au ministre des Pêches et des Océans en janvier 2006 et qui consistait à régler le problème de surpêche des stocks de poissons « chevauchants » (qui traversent les frontières d'une ou plusieurs ZEE en haute mer adjacentes aux ZEE d'un même État côtier).

Responsabilité ministérielle

Le ministre des Affaires étrangères est responsable des relations Canada-OPANO.

The Minister of Fisheries and Oceans is responsible for the overall implementation and management of Canada's participation with NAFO.

Policy Considerations

(a) General

Canada has placed a high priority on effectively managing and conserving fish stocks in the Northwest Atlantic, in particular the straddling fish stocks. The Government also continues to undertake significant efforts to strengthen the international governance of fisheries, primarily through its International Governance Strategy (IGS).

(b) Financial

There are no financial implications or other impacts on Canada associated with the ratification of the Amendment. Canada will gain additional value from its current financial contribution to NAFO as a result of the expected improved fisheries governance of NAFO through the Amendment.

Federal-Provincial-Territorial Implications

Representatives of the Government of Newfoundland and Labrador have been party to all negotiations and adoption of this amendment.

NIL

Time Considerations

Canada's ratification of the Amendment in 2009 would demonstrate Canada's leadership role in the NAFO reform and in strengthening fisheries governance across international fora.

Le ministre des Pêches et des Océans est responsable de la mise en œuvre et de la gestion dans son ensemble de la participation du Canada à l'OPANO.

Incidences sur les politiques

a) Généralités

Canada a accordé une grande importance à la gestion efficace et à la conservation des stocks de poissons de l'Atlantique Nord-Ouest, en particulier les stocks chevauchants. Le gouvernement continue de déployer de grands efforts pour renforcer la gouvernance internationale des pêches au moyen, principalement, de sa Stratégie de gouvernance internationale (SGI).

b) Données financières

La ratification de l'Amendement n'a pas à proprement parler d'incidences financières ou autres sur le Canada. La contribution financière actuelle du Canada à l'OPANO sera même plus rentable puisque la gouvernance de l'OPANO à l'égard des pêches sera bonifiée par l'adoption de l'Amendement.

Répercussions fédérales, provinciales et territoriales

Des représentants du gouvernement de Terre-Neuve et du Labrador ont participé à toutes les négociations et à l'adoption de cet amendement

S.O.

Échéancier

La ratification en 2009 de l'Amendement par le Canada affirmerait le statut de leader du Canada dans le cadre de la réforme de l'OPANO et dans le renforcement de la gouvernance des pêches dans les forums internationaux.

Implementation

The Amendment shall take effect for all Contracting Parties one hundred and twenty days following the date of transmittal specified in the notification by the Depositary (Canada) of receipt of written notification of approval by three-fourths of all Contracting Parties. If any Contracting Party notifies the Depositary that it objects to the Amendment within ninety days of the date of transmittal specified in the notification by the Depositary of such receipt, the Amendment shall not take effect for any Contracting Party. Any Contracting Party which has objected to an Amendment may at any time withdraw that objection. If all objections to an Amendment are withdrawn, the Amendment shall take effect for all Contracting Parties one hundred and twenty days following the date of transmittal specified in the notification by the Depositary of receipt of the last withdrawal.

No additional legislation is required at this stage.

Associated Instruments

Canada is Party to UNCLOS, which recognizes the special interest of the coastal state and places a duty on States to cooperate for the conservation of living resources of the high seas. Canada is also Party to UNFSA, which supplements the UNCLOS provisions with respect to the conservation and management of straddling fish stocks and highly migratory fish stocks.

Reservations/Declarations

There are no reservations or declarations associated with the Amendment.

Mise en œuvre

Toute modification entre en vigueur pour toutes les Parties contractantes cent vingt jours après la date de transmission spécifiée dans la notification par laquelle le Dépositaire (le Canada) accuse réception d'un avis écrit de l'approbation de la modification par les trois quarts de toutes les Parties contractantes, à moins qu'une autre Partie contractante ne notifie au Dépositaire son objection à la modification dans les quatre-vingt-dix jours suivant la date de transmission spécifiée dans l'accusé de réception du Dépositaire, auquel cas la modification n'entre en vigueur pour aucune Partie contractante. Toute Partie contractante ayant présenté une objection à une modification peut la retirer en tout temps. Si toutes les objections sont retirées, la modification entre en vigueur pour toutes les Parties contractantes cent vingt jours après la date de transmission spécifiée dans la notification par laquelle le Dépositaire accuse réception du dernier retrait.

Aucune autre disposition législative n'est nécessaire à l'heure actuelle.

Instruments connexes

Le Canada est partie à UNCLOS, qui reconnaît l'intérêt particulier de l'État côtier et exige des États qu'ils collaborent à la conservation des ressources biologiques hauturières. Le Canada est également partie à ANUP, qui complète les dispositions de l'UNCLOS en ce qui a trait aux pêches, et exige des États qu'ils participent aux activités de gestion et de conservation des stocks de poissons chevauchants et des stocks de poissons grands migrateurs par l'intermédiaire d'organismes régionaux de gestion des pêches.

Réserves et déclarations

Aucune réserve ni déclaration n'a été émise à l'égard de l'Amendement.

Withdrawal or Denunciation

Any Contracting Party may withdraw from the Convention on 31 December of any year by giving notice on or before the preceding 30 June to the Depositary, which shall communicate copies of such notice to other Contracting Parties. Any other Contracting Party may thereupon withdraw from the Convention on the same 31 December by giving notice to the Depositary within one month of the receipt of a copy of a notice of withdrawal.

Consultations

In recent years, the Government of Canada has consulted extensively with industry and the Government of Newfoundland and Labrador, which fully supported Canada's ratification of the Amendment.

Policy on Tabling of Treaties in Parliament

The Government's Policy on Tabling of Treaties in Parliament requires that the Treaty, accompanied by an Explanatory Memorandum, be tabled in the House of Commons, and that the Government will observe a waiting period of at least 21 sitting days before taking legal steps to bring the Treaty into force.

Tabled before the House of Commons

June 2009

Retrait ou dénonciation

Toute Partie contractante peut se retirer de la Convention le 31 décembre de n'importe quelle année en signifiant, le ou avant le 30 juin de la même année, un avis à cet effet au Dépositaire, lequel en fait tenir copie aux autres Parties contractantes. Toute autre Partie peut dès lors se retirer de la Convention le même 31 décembre en signifiant au Dépositaire un avis à cet effet au plus tard un mois après avoir reçu copie d'un avis de retrait.

Consultations

Au cours des dernières années, le gouvernement du Canada a consulté des intervenants de l'industrie de même que le gouvernement de Terre-Neuve-et-Labrador, qui appuie sans réserve la ratification de l'Amendement par le Canada.

Politique de dépôt des traités devant Parlement

Aux termes de la politique du gouvernement sur le dépôt des traités au Parlement, les traités sont déposés, avec une note explicative, à la Chambre des communes, et le gouvernement respectera une période d'attente d'au moins vingt et un jours de séance avant d'entreprendre des démarches juridiques en vue de l'entrée en vigueur du traité.

Déposé à la Chambre des communes

Juin 2009

