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The South Pacific Nuclear Free Zone Treaty

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THE SOUTH PACIFIC NUCLEAR FREE ZONE TREATY

BY

SUSAN WARE

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Abstract

The South Pacific Nuclear Free Zone Treaty was opened for signature on August 5, 1985, on the 40th Anniversary of the Bombing of Hiroshima. The Treaty prohibits Party states from controlling or assisting in the manufacture of nuclear explosive devices and from allowing devices not in their control stationing within their territory or land space. The Protocols to the Treaty enjoin the nuclear weapon states and the states with territories within the Zone to adhere to the principles of the Treaty and to refrain from control or use of any nuclear explosive devices within the Zone. The principle concern of nuclear weapon states with regard to the implications of the provisions of the Treaty and the Protocols is the prohibition of testing of nuclear explosive devices and the possible restriction of passage through the ocean space encompassed by the Treaty. This is a study of the forces which led to the development of the Treaty, a discussion of the provisions of the Treaty and the Protocols, and an analysis of the implications of these provisions and international reaction to them.

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The South Pacific Nuclear Free Zone Treaty

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Chapter 1: Introduction

In August 1985, the independent nations of the South Pacific signed the South Pacific Nuclear Free Zone Treaty, also known as the Treaty of Rarotonga. This thesis is a study of the development of the Treaty and its Protocols and of their implications for the regime of ocean jurisdiction in the South Pacific. The Treaty was developed from a strong background of anti-nuclear sentiment in the South Pacific region and has its most pronounced effects upon the strategic balance of the region. This is due in part to the fact that the Treaty Zone encompasses ocean space and territory which is used by the maritime nations of the world. This study attempts to identify the ramifications of the Treaty and to discuss them in the context of the background from which it was developed and of the international reaction to the Treaty and the Protocols.

This Treaty has created a nuclear free zone in the area north of the Antarctic Treaty area, west of the Latin American Nuclear Weapon Free Zone, south of the equator (with some few exceptions), and east of the westernmost extent of the national jurisdiction of Australia (see accompanying map). As is made clear by the map, this area encompasses a large area of the world's surface, an area primarily composed of ocean space.

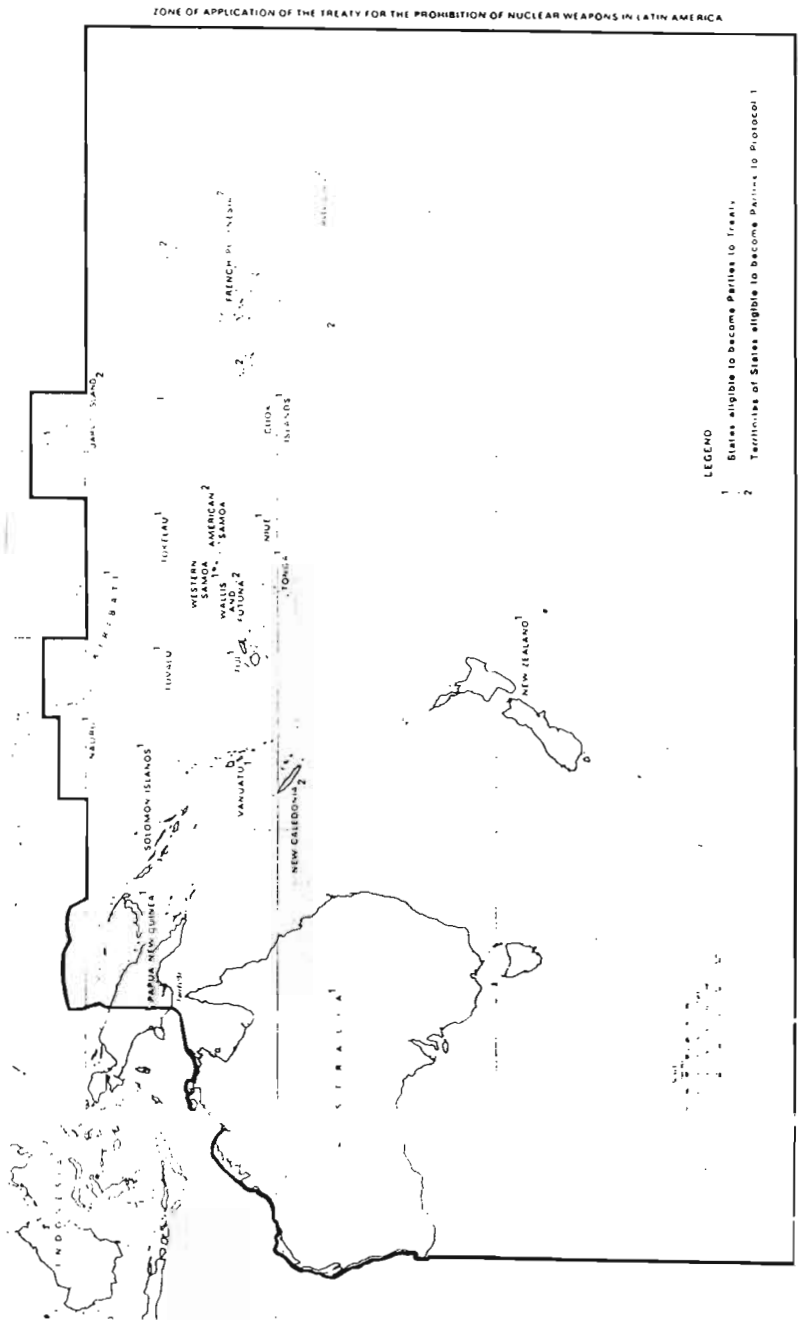
The expanse of the Zone raises concerns as to the possibility of changes in the jurisdiction imposed upon the ocean space of the South Pacific and the accompanying possibility of an end to the rights of free and innocent passage through the region. It is the intention of this study to explore and explain the implications of the Treaty of Rarotonga and to determine the extent to which the regime of ocean jurisdiction and the associated freedoms and responsibilities will be affected.

The nations of the South Pacific and those with interests in the South Pacific have created several regional organizations. The South Pacific Forum's membership consists of the independent nations of the South Pacific, while that of the South Pacific Commission consists of the colonial metropolitan nations and the independent nations. Of these two, the South Pacific Forum handles the political issues of the region and acts as the voice of the

independent nations of the South Pacific in international relations. Chapter 2 and Appendix 3 deal with the memberships and purposes of these organizations in more detail. One of the primary issues which prompted the creation of the South Pacific Forum and the single issue which has focused the actions of the Forum is that of continued testing of nuclear explosive devices in the South Pacific by the French. The French maintain a test site at Moruroa Atoll in French Polynesia and continue to conduct underground tests. The South Pacific Forum has thus continuously protested this testing, and has become active in the prevention of pollution by nuclear weapons testing and disposal of radioactive waste in the South Pacific. In addition to these actions, the Forum, led by Australia and New Zealand, has forwarded the ideal of a completely nuclear free region. These efforts have culminated in the creation of the South Pacific Nuclear Free Zone Treaty, (the Treaty of Rarotonga), and the Convention for the Protection of the Natural Resources and Environment of the South Pacific Region as vehicles by which to remove the threat of nuclear weapons and radioactive pollution from the region. This study will focus on the SPNFZ Treaty and the effects which this Treaty may have on the regime of ocean jurisdiction imposed upon the ocean space of the region.

The South Pacific Nuclear Free Zone (SPNFZ) is created by the Treaty of Rarotonga and its Protocols. The Treaty is open to signature by the South Pacific Forum nations, the independent nations of the region, while the Protocols are open only to the five designated nuclear weapon states: the United States, Great Britain, the Soviet Union, France, and the People's Republic of China. The combination of the Treaty and the Protocols seeks to free the entire region of the burden of nuclear weapons.

In very general terms, the Treaty requires Party states to refrain from control of nuclear explosive devices within their territories. It also prohibits the disposal of radioactive materials by anyone, anywhere within the zone. The Protocols require that the Protocol states maintain the nuclear free status of the zone by voluntarily refraining from testing, use, disposal, or stationing of nuclear weaponry within the zone. For the purposes



The South Pacific Nuclear Free Zone
From Annex 1 to the Treaty of Rarotonga

of this study, the term nuclear materials will refer to nuclear explosive devices as defined by the Treaty and as encompassed in the term nuclear weaponry, and to radioactive waste materials. Nothing in this study should be interpreted to mean that radioactive materials for medical use or for use in everyday life are prohibited by this Treaty.

The large amount of ocean space and the extent of territorial sovereignty over ocean space in the zone creates a system whereby the provisions of the Treaty and Protocols are extended to include ocean space jurisdiction. There exists a regime of ocean jurisdiction as embodied in common practice, and the 1958 Convention on the High Seas, and the Territorial Sea and Contiguous Zone, and the 1982 UN Convention on the Law of the Sea. This regime delineates the zones of jurisdiction surrounding coastal states and identifies the extent of the coastal state's jurisdiction with regard to freedom of passage, among other things, within each of these zones. The South Pacific Nuclear Free Zone Treaty creates a series of prohibitions on activities within the jurisdiction of the Party state. Where the Party state is also a coastal state (every state in the South Pacific), these prohibitions extend to ocean areas. In this way, the carriage of nuclear weapons aboard vessels and the passage of these vessels in the Zone may be affected by the Treaty.

The extent to which access to ocean space in the region is affected by the Treaty is the single issue upon which the success of the Treaty hinges. By affecting the reactions of the Protocol states to the Treaty, this issue can be considered the critical issue of the Treaty. The primary focus of this study will therefore be to determine the changes which will occur subsequent to the enactment of the Treaty provisions. It will also describe those changes which are the result of the Treaty provisions and those which are the result of associated national legislation.

The South Pacific is an area of strategic importance to the world's nuclear weapon states, due to its location and to its potential use by the nuclear weapon states. The United States relies on port access associated close relations with the independent nations of the South Pacific. The US also relies on the freedom of passage through the region as a

secondary path through the Pacific to the Indian Ocean. Another important consideration is the possibility for a secondary military base for the US in the West Central Pacific to be located in the former Trust Territory of Palau. This option is considered an alternative to the base in the Phillipines. Western states, the United States, France and Great Britain, have traditionally maintained port access throughout the region through continued relations with the individual states and territories. For the USSR and China, the region is of direct importance and is sought after as an avenue of expansion of influence into the Pacific; into a traditionally western oriented region. The cessation of nuclear testing, the disposal of waste, and the possible inhibition of the rights of free passage through the region will therefore directly affect the presence and policies of these five nuclear weapon states in the South Pacific.

Primary in the concerns of these nuclear weapon states is the possibility that the Treaty or the states Party to the Treaty will be denied access to the ocean spaces within the Zone, and more importantly, access to the ports of the Party states. The question of port access to nations in the zone is an important one. Particular attention is paid in this study to the implications of the Treaty with regard to port visits, and to the situation created by the Treaty as opposed to the actions of Party states.

Coinciding with the development of the Treaty and Protocols was the rise to power of the Labour Party government in New Zealand and the creation of a national nuclear free zone. This national legislation created a zone which in addition to enacting the SPNFZ Treaty provisions, prohibits port visits for vessels which cannot be proven to be non-nuclear.¹ This, in addition to the nuclear free policies of Vanuatu and Palau, sparked the controversy which has since affected the status of the ANZUS Alliance (the defense alliance between Australia, New Zealand and the United States). The policies of the South Pacific Forum states differ greatly from that of the US with regard to defence and

¹ The term non-nuclear will be used to denote vessels which are not nuclear powered, not nuclear weapon capable, or that can be proven to be free of nuclear weapons.

international relations and arms control. The conflict which this difference creates has proven unsolvable to this date, and the future of the ANZUS Alliance as a Tripartite defense agreement is in question. The ANZUS Alliance is discussed both in Chapter 6 and in Appendix 1.

This study is accomplished in three parts: a study of the regional background for a nuclear free zone; a discussion of the basis of legitimacy of nuclear free zones; and a discussion of the Treaty provisions and their strategic and jurisdictional implications. Much attention is paid to the regime of ocean jurisdiction and the implications to this regime of the Treaty. This study will endeavor to clarify the ramifications of the Treaty and Protocols and to identify those prohibitions which are the result of the Treaty regime and those which are the result of national legislation. This will include a discussion of the future implications of national legislation against the background of a regionally enacted nuclear free zone.

This study will focus on the development of the Treaty of Rarotonga as a direct result of regional activity and arms control theory. Chapter 2 develops the character of the region and its role in the creation of the SPNFZ Treaty. Chapter 3 identifies the international agreements which serve as a basis for the SPNFZ Treaty and the development of the nuclear free zone concept and the role it plays in arms control. Chapters 4 and 5 study the history of the Treaty and the success of the concept in terms of the states which have signed and ratified the Treaty and the Protocols. Chapter 4 focuses on the progression of the Treaty from concept to discussion groups to final drafts and signature. Chapter 6 is a discussion of the effects of the Treaty and Protocol provisions and the ramifications of their enactment and potential enforcement. Primary to this study are the responses to the Treaty and Protocols and the resulting impacts their provisions will have on the ocean space of the region and thus the strategic importance and availability of the region.

The SPNFZ Treaty is the latest development of the nuclear weapon free zone concept. As such, it will be used as a model for future nuclear free zones. The determination of its success as a nuclear free zone will be based on the existing models for nuclear free zones and on the response to the Treaty and Protocols by the nations of the world. The success of the South Pacific Nuclear Free Zone Treaty as a step in the development of the nuclear free zone concept and the acceptance of those principles embodied in the Treaty and Protocols will affect the form of future zones in their inclusion of certain provisions. Its success or failure is crucial to the development and resulting form of future nuclear free zones and to the use of regional action to promote arms control, disarmament and denuclearization.

The Treaty of Rarotonga, the SPNFZ Treaty, forwards the cause of the removal of nuclear weapons from the arsenal of mankind. In doing so, it identifies the issues which may slow the progress of nuclear free zones: changes in ocean jurisdiction and access to the seas within the area of a nuclear free zone. These issues are important to both the nuclear weapon states of the world and to the states within the nuclear free zone. The concerns of these states, and the decisions which were made and which will determine the future for the South Pacific Nuclear Free Zone will determine the future relationships of the South Pacific with the nuclear power nations and the status of the South Pacific states with the world. The South Pacific is a region which is just beginning to assert itself in world wide politics. The method which it has chosen to make its appearance has certainly marked its entrance with force. The implications of the development of this Treaty and the accompanying Protocols will mark the region as an international actor of note.

CHAPTER 2: The South Pacific Region

The South Pacific basin is dotted with small groups of islands, some independent and some in various degrees of dependency or territorial relationship with metropolitan powers. These islands, including Australia and New Zealand, and the metropolitan powers with territorial interest in the area, form the geo-political grouping known as the South-West Pacific¹. This area is also known as Oceania, the South Pacific and the Pacific Islands. It is that region or group of nations which is neither South East Asia, South America, nor the Antarctic. For the purpose of this study, the term South Pacific will refer to the group of independent nations and dependencies in the South West Pacific, and will include the newly independent nations of the Central West Pacific which are involved in the politics and regional organization of the South Pacific².

The region is a group composed of nations which share some concerns and disagree on others. This group of nations has adopted a regional approach to resource management and environmental issues as well as to international relations. It is normal for a South Pacific regional organization to report consensus rather than elaborate on the dissension which may or may not have taken place at negotiations. These organizations put forward a common front in order to gain international acceptance of their ideas and ideals. The South Pacific nations have worked together in this way to create regional bodies to handle inter- and intra-regional issues.

When the United Nations was founded, in 1945, following World War II, it incorporated into its charter the recognition of the usefulness of regional organization and

¹A definition for the region of concern can be found in "The South Pacific", in Australian Foreign Affairs Record, vol 54, no. 8, August 1983, page 379.

²The independent nations are Australia, New Zealand, Fiji, Kiribati, Tonga, Papua New Guinea, Nauru, the Solomon Islands, Tuvalu, Vanuatu, and Western Samoa, the Cook Islands, Niue (the Cook Islands and Niue have Associated Statehood with New Zealand but act independently). The islands and island groups dependent upon foreign governments in the South and Central West Pacific are, American Samoa (US), Guam (US), Jarvis Island (US), Palmyra Island (US), New Caledonia (France), French Polynesia (France), Wallis and Futuna (France), Tokelau Islands (NZ), and Pitcairn Island (Britain). The Federated States of Micronesia, the Marshall Islands, the Northern Mariana Islands, and Palau were formerly part of the Trust Territory of the Pacific Islands and are located north of the Equator. These last are included in the study as they are involved in SPNFZ and other regional activities.

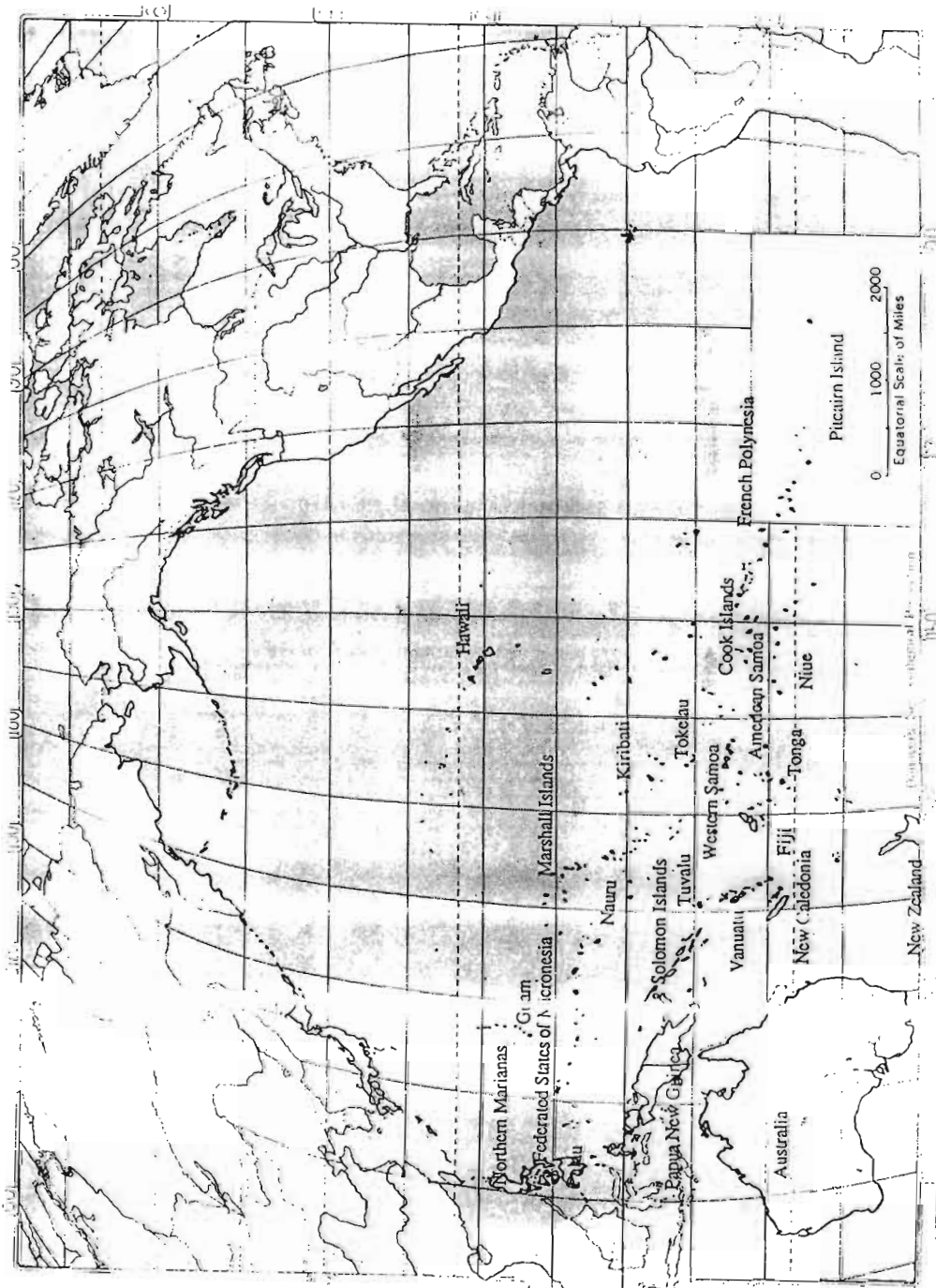
cooperation to maintain world peace. Article 52(1) of the Charter of the United Nations states that "nothing in the present Charter precludes the existence of regional arrangements or agencies for dealing with such matters relating to the maintenance of international peace and security as are appropriate for regional action." Environmental issues were not as prominent then as at present, but the effectiveness of regional management for environmental issues proves the wisdom of the founders of the UN in promoting regional cooperation in addition to bilateral agreement and warning against the effects of unilateral action.

There is some distinction between regionalism and regional action and agreements, but in order to discuss the South Pacific in terms of a region it is necessary to first determine whether it qualifies as a region. L. M. Alexander cites two definitions and establishes two elements which must be satisfied in order to distinguish a region. One definition of a region is "an area on the earth's surface homogeneous with respect to announced criteria"³, and the other is "an area uninterrupted and too large and varied to be readily identified as uniform throughout"⁴. This suggests that it have some overriding similarity but not be uniform in nature. The two criteria which Alexander establishes are "first, that there exist within it some distinguishing feature or group of features; and second, that with respect to these criteria, the region be somehow distinguishable from surrounding areas."⁵ In applying these criteria to the South Pacific, one must identify and

³Preston, James, "Toward a Further Understanding of the Regional Concept," *Annals of the Association of American Geographers*, vol. XLII (September 1952), p. 197. quoted in Alexander, Regional Arrangements in Marine Affairs, May 1977. p. 11.

⁴Derwent, Whittlesey, "The Regional Concept and the Regional Method" in P.E. James and C.F. Jones, eds., *American Geography: Inventory and Prospect*, Syracuse University Press, 1954, p. 21, in Alexander p. 11.

⁵Alexander p. 11.



The Pacific Rim

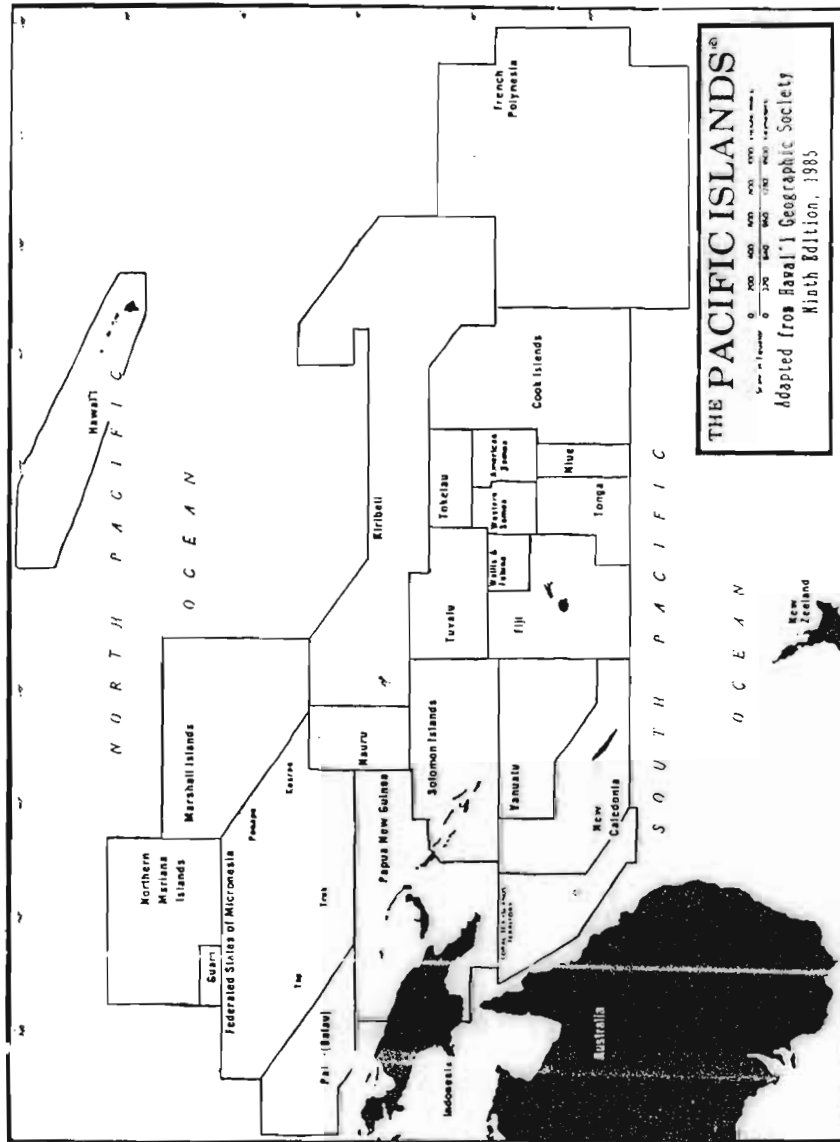
recognize its geographical position, and cultural and historical government patterns and activities.

The area is readily recognizable in its position on the map. It is that area, primarily below the equator and between the three largest land masses: Asia, South America and Antarctica- the Southwest and Central Pacific area. This area includes the continent of Australia, separated from Asia by the archipelagic Southeast Asian states of the Phillipines and Indonesia. It also includes Papua New Guinea which shares the island of New Guinea with Indonesia. It does not include the solitary islands of the Eastern Pacific which are fairly distant from each other and from the islands found in clusters in the Southwest and Central Pacific. These Eastern Pacific islands are territories of the South American nations, and do not share the colonial history of the region.

The distinguishing features of the region are the cultural ties, the geographical proximity and similarity of the islands, as well as a common history.⁶ There are native and colonially imposed cultural and social features which prevail throughout the region, due to inter-island travel and a shared colonial past, and which serve to distinguish this area from the surrounding areas. Similarities have been shown to prevail between the island peoples of Polynesia, Melanesia, Micronesia, the Maoris, and the aborigines.

When Captain Cook sailed the South Pacific in search of new routes and resources, claiming and naming islands, he found the region populated by native peoples with similarities even between islands far apart. Culturally, the region is divided into three population regions: Polynesian, Melanesian and Micronesian. The term "nesian" refers to an island people, therefore the prefixes refer to the distinctions among the island groups of origin.

⁶ A discussion of the geopolitical aspects of Pacific region can be found in Gomane, Jean-Pierre, "La France dans le Pacifique: Aspects geopolitiques", pages 17-22, in défense nationale: problèmes politiques, économiques, scientifiques, militaires, vol. 44, March 1988, (Published by the Comite d'Etudes de Defense Nationale, Paris)



The South Pacific Islands

Not much is known about the manner in which the islanders were able to travel between island groups and intermingle but proof of this travel is evident. It is assumed that the knowledge and tradition of inter-island travel without the benefit of modern technology have been lost to time. The theory of travel between island groups suggests a commonality among the island peoples, a sharing of common pasts and cultures as well as an individual identity obtained from years of relative isolation. Ironically, it is the ocean which separates them from other regions, that also serves to inter-connect the island nations.

It is difficult to draw similarities between the history and culture of Southeast Asia and those of the South Pacific. Even Hawaii, which shares the ethnicity of native populations and much of the cultural history, is different in that it is located north of the equator, is central to most crossings of the Pacific Ocean and has been colonized by European and American travelers and developers. In the age of modern travel, it does not share the remoteness of the South Pacific region⁷.

The characteristics which distinguish the South Pacific area from the rest of the world are much the same as those that tie the region together; cultural and historical differences from surrounding areas. This in addition to the almost overwhelming distance between the South Pacific land masses and the European center, creates a communications and trade gap as large as or larger than the distances involved. It is this sense of remoteness which both draws the region together and sets it apart.

Thus in establishing the South Pacific as a region, it is clear that the area fits the definitions and criteria established by Alexander. It is a homogenous area in that it is composed of a large number of small island nations and larger continental nations spread across the expanse of the South Pacific Ocean, and yet each of the island groups maintains individual resources and political and cultural identities. It can be distinguished from

⁷ Histories of the region can be found in several sources, among them: Grattan, C. H., The Southwest Pacific since 1900: a modern history.

surrounding regions by political and cultural history and by geographic identity. The region has itself created forums for regional decision making and for international relations. In doing so it has identified its own regional identity and has developed this capability in order to become a credible international actor. The region has also begun to establish an agenda for regional and international action. These regional organizations give the independent nations of the region a base from which to develop independent actions. The growing strength of regional organizations and the subsequent growth of national identity and therefore national policy, is the starting point for this region to become an important area of concern and attention for the rest of the world.

Overview of the South Pacific

The South Pacific region has been largely ignored by world powers when discussing the world in terms of regions of importance. It encompasses an enormous amount of the world's surface and ocean area and yet, the political and strategic importance of the region comes to mind only in terms of the world wars which were fought in and among the island nations of the region, the history of world exploration, marine mammal and other living resource exploitation, and the experimentation with disposal and testing of nuclear materials. Beyond these activities, the region is perceived as neither an industrial strong point nor the object of political unrest and upheaval; it is a remote playground for the rich, and an unreachable paradise for the rest.

Since World War II, United States attention has been directed toward the Atlantic, and the more traditional European powers. During World War II, this attention was shared with the war in the Pacific. This was one of the first occurrences of recognition of the South Pacific region in a political context. When the World War II conflict was resolved, attention once again focused on European and North Pacific issues.

In recent years, the Pacific has been gaining the attention of the United States and the world. The Pacific Rim is fast becoming a unit by which to identify strategic and

economic concern. The "rim" nations include the United States (US), the Union of Soviet Socialist Republics (USSR), Japan, Canada, and China, among others. These nations are immediately identifiable as being very important to the political, economic and strategic interests of the United States. What the Pacific Rim approach forgets are the "other nations": those that are less powerful and less important in the primary and immediate analysis. These other nations include the states of western Central and South America, Southeast Asia, North and South Korea, Taiwan, Australia, New Zealand and the island nations of the south and central Pacific Ocean.

The secondary importance of these nations exemplifies the attitude of the more traditional "metropolitan powers" toward the lesser developed or developing states, and toward the industrial centers of Korea and Southeast Asia. Perhaps the least politically recognized of these areas is the South Pacific, an area of small scattered independent nations and trust territories, as well as the larger and stronger nations of Australia and New Zealand. The economies of the nations of this region range from undeveloped to emerging economies, as is true of Australia and New Zealand. Often associated with the emergence of economies is the increase of political importance and strength.

Perception of the region has been trapped in and hindered by the traditional North-South view of the world: the northern hemisphere is more developed and politically important; and the southern hemisphere is less developed and requires development aid, and is thus politically and strategically benign. This perception can be carried to its logical neo-colonialist end by stating that the southern hemisphere does not generate political or economic growth, or progress of its own, but relies on Northern aid and serves to provide the raw materials and workmanship necessary for Northern development.

This perception is changing. There is growing international recognition of the Southern Hemisphere as an important part of the world political, economic and strategic

system⁸. The issue is being forced by the emergence of countries such as Australia and New Zealand as resource rich nations with few international liabilities from the past.

International Perception of the Region and the Emergence of Independent States

Contributing to the lack of interest in the South Pacific by the general public and by many policy makers are the geographical realities of the region. The distance between this region and the traditional metropolitan powers of Europe is great. Australia is considered the land "down under" which itself creates a greater sense of distance. It is only recently that maps of the world land masses (as opposed to maps of the oceans) have centered on the Pacific and have made efforts to accommodate the land-area realities and emphasize the southern hemisphere. The development of the nations of the South Pacific has been hindered by the distance and the time requirements and inconvenience of travel. Due primarily to their size in relation to the ocean expanses, the island nations are usually only dots on world maps, often hidden by their names or those of their neighbors. These problems do not help to create world recognition for these nations or their importance in international relations.

The initial contact of metropolitan nations with the South Pacific islands, including the continent of Australia, as well as New Zealand, was in the context of colonial expansion and resource retrieval. Each of the colonies was of specific importance to the colonial power involved. While the nations have moved to independence, they have maintained ties with their respective colonial powers, politically and economically. In true colonial tradition, many cultural changes were effected or imposed upon these island nations during the period of trusteeship or colonial rule. There are many examples of the colonial or territorial heritage in the emerging structures of the governments. Many are

⁸ The issues involved in North South conflicts and the emergence of Southern Hemisphere economies are very complicated and are not dealt with in this paper.

Table 2:1

Status of Nations of the South Pacific

Independence

Fiji	1970
Kiribati	1979
Nauru	1978
Papua New Guinea	1975
Solomon Islands	1978
Tonga	1970
Tuvalu	1978
Vanuatu	1980
Western Samoa	1962

Associated Statehood

Niue (NZ)	1974
Cook Islands (NZ)	1965

Territories

French Polynesia	French 'overseas territory'
New Caledonia	French 'overseas territory'
Wallis and Futuna Islands	French 'overseas territory'
Pitcairn Island	British territory
Tokelau Islands	New Zealand territories
Guam	'Unincorporated' territory of the US
American Samoa	US territory

UN Trust Territories (currently in transition, see Chapter 3)

Federated States of Micronesia
Palau
Marshall Islands
Northern Mariana Islands

From Fry, Greg, "A Nuclear-Weapon-Free-Zone for the Southwest Pacific: Prospects and Significance", Working Paper no. 75, The Strategic and Defence Studies Centre, the Research School of Pacific Studies, The Australian National University, Canberra, 1983. Table 2, page 10: "Pacific Island States and Territories: Constitutional Status and Population".

parliamentary, or federal in design. Only one nation, Tonga, has remained a monarchy throughout.

Many of the former colonies of the South Pacific have become independent states in recent years and are presently developing individual identities and agendas for regional and international actions. Table 2:1 shows the dates of independence of the independent islands and the relationships of dependent territories with their sponsor nations. This helps to establish the status of relationships within the South Pacific region.

Colonization by European powers and by Japan in its expansionist rule of the Pacific was rampant from 1800 to the end of World War II, with the organization of the Trust Territories of the Pacific Islands under the auspices of the United States. Australia and New Zealand gained control over some small island groups⁹ and were also given oversight of some island groups which were previously under Japanese control. France and Great Britain maintained control of their colonies in the region during this time.

Australia and New Zealand were colonized by the United Kingdom. These two nations have maintained strong ties with Great Britain are members of the Commonwealth of Nations, along with some of the other island nations¹⁰. For many years the economies of these nations were dependent upon trade with Great Britain. The amount of trade with Great Britain overshadowed trade with the regional trading partners, which are dependent on the resources of the larger nations for subsistence. Only in relatively recent years have the nations of the region begun to open up substantial markets for finished products, rather than raw materials, with the rest of the world. The development of these resources will necessitate and expand the need for intra-regional trade and travel facilities and thus create a larger base for economic expansion.

⁹ Australia had control over Papua New Guinea, New Zealand over Niue and Cook Islands.

¹⁰ South Pacific members of the Commonwealth of Nations: the UK, Australia, New Zealand, Fiji, Papua New Guinea, Tuvalu (special status), Kiribati, Nauru (special status), Western Samoa, Tonga, and Vanuatu. from the World Almanac and Book of Facts 1988, (published by Pharos Books: Scripps-Howard) page 741.

Table 2.2

Areas and Populations¹

State	Area (square kilometers)	Population (thousands) ²	GNP (US \$ mil.) ³
Australia	7682300	15758	171170
American Samoa	197	36	190
Fiji	18274	715	1190
French Polynesia	4000	170	1370
Guam	197	36	190
Kiribati	861	64	30
Nauru	21	7	n.a.
New Caledonia	19058	145	860
New Zealand	269057	3307	23720
Cook Islands	237	17 (1986)	n.a.
Niue	259	2.5 (1986)	n.a.
Tokelau	1012 (ha)	1.7 (1986)	n.a.
Pacific Islands Trust Territory	1779	142	160
Papua New Guinea	461691	3329	2470
Pitcairn (UK)	4.5	62 (1986)	n.a.
Solomon Islands	28446	221	140
Tonga	699	97	70
Tuvalu	25	7	5
Vanuatu	14763	140	40
Western Samoa	2842	159	110
US External Territories ⁴			
American Samoa	195	36 (1986)	n.a.
Guam	541	130 (1986)	n.a.
Marshall Islands	180	35 (1986)	n.a.
Federated States of Micronesia (1987)			
Pohnpei	330	26	n.a.
Truk		43	n.a.
Yap		10	n.a.
Kosrae		6	n.a.
Northern Marianas	471	20 (1985)	n.a.
Palau			
Babelthuap	367	14 (1987)	n.a.
French Possessions ⁵			
French Polynesia	4000	170	1370
New Caledonia	19058	145	860
Wallis and Futuna	274	12.4 (1983)	n.a.

¹ All data is obtained from the Europa Yearbook 1988: A World Survey, Volumes I and II. (Published by Europa Publishing, Ltd.) c 1988.

² Mid 1985 figures, except where noted.

³ Estimates to be used only as a general guide. Conversion factors are based on the average exchange rates for the base period 1983 - 85.

⁴ American Samoa, Guam and the Pacific Islands Trust Territory are listed separately in the "international comparisons" section. They are then repeated individually as US external territories, pages 2958 - 3002.

⁵ French Polynesia and New Caledonia are listed separately in the "international comparisons" section. They are then repeated individually as French possessions, in addition to Wallis and Futuna Islands, pages 1099 - 1110.

The resources of the small islands are not as varied nor as great. The resources include tourism, the marine living resources of the region, such as tuna, the forest and lumber resources of Papua New Guinea, the nickel resources of New Caledonia and the phosphate resources of Nauru. Nauru is one of the few island nations able to support itself through the exploitation of its natural resources, and it does so at the expense of the very land by which it is supported. The majority of island groups rely on foreign and regional aid for support.

A common perception of these islands is that they are tropical vacation paradises, with little or no political importance or domestic and foreign policy problems. This perception is changing, with the help of the international attention paid to the political unrest in Fiji, for example, and the foreign policies of South Pacific Forum nations, eg: the South Pacific Nuclear Free Zone Treaty. The perceived contemporary importance of the region to the metropolitan nations of the world can be put into the following categories: vacation paradise; resource availability, both living and non-living; strategic importance for military access; and a remote area for use in disposal and testing of hazardous substances, including nuclear weapons and waste. This perception will change as the politics and policies of the South Pacific mature.

Some of the islands of the South Pacific which were under foreign control have been used for refuse and for nuclear testing: that which is too dangerous to have at home. Much of the testing was done prior to the recognition that the long-term effects are deadly. Unfortunately, this realization came only after the Bikini and Eniwetok islands had been made uninhabitable. Although the dangers of nuclear testing have been recognized and accepted by the nations of the world, the French continue to conduct tests on their island territories in the Pacific.¹¹ The French maintain close control over their territories and consider each an integral part of France and as such, maintain that of all their

¹¹ There are reports of tests done at the request of the French government which prove that there are no ill effects from the testing done at Mororua.

Table 2:3

Presence of Nuclear Weapons and History of Nuclear Testing in the South Pacific

<u>Place</u>	<u>Country Involved</u>	<u>Nature of Involvement</u>
PAST		
Bikini atoll, Marshall Islands	US	Atmospheric nuclear tests 1946-58 (23 tests)
Eniwetok, Marshall Islands	US	Atmospheric nuclear tests 1948-58 (43 tests)
Johnston Island	US	Atmospheric nuclear tests 1958-62 (12 tests)
Christmas Island, Line Islands (Kiribati)	Britain-US	Atmospheric nuclear tests 1957-62 (25 tests)
Monte Bello Island, Emu Field, Australia	Britain	Atmospheric nuclear tests 1952-57 (12 tests)
Moruroa and Fangataufa, French Polynesia	France	Atmospheric nuclear tests 1966-74 (41 tests)
PRESENT (as of 1983)		
Moruroa and Fangataufa, French Polynesia	France	Underground nuclear tests 1975-83 (57 tests)
Guam/Anderson Airforce Base, Apra Harbor Naval Base	US	Base for nuclear armed ships and aircraft, Nuclear weapon storage, Surveillance & Communications
Agna Naval Air Station Kwajalein atoll, Marshall Islands	US	Missile testing range, surveillance communications
North West Cape, Australia	US/Australia	Communications
Pine Gap, Australia	US/Australia	Surveillance
Nurrangar, Australia	US/Australia	Surveillance
Cockburn Sound, Australia submarines	US	Naval base used by US nuclear powered attack and hunter killer
East of Solomon Islands	PROC	Missile Testing

Table 2:3

Near Cook Islands	USSR	Missile Testing
Runit, Eniwetak Atoll, Marshall Islands	US	Nuclear wastes storage-from nuclear testing
All region (Except Vanuatu)	US	Transit of high seas and port calls by nuclear armed and nuclear powered American ships and submarines

(since 1983, and the signing of the South Pacific Nuclear Free Zone Treaty, this situation has changed)

POTENTIAL

Fry cites these as possible future bases for US nuclear armed ships and aircraft:

- Saipan, Commonwealth of the Northern Marianas
- Tinian, Commonwealth of the Northern Marianas
- Palau
- Darwin, Australia (RAAF base)

From Fry, Greg, "A Nuclear-Weapon-Free-Zone for the Southwest Pacific: Prospects and Significance", Working Paper no. 75, The Strategic and Defence Studies Centre, the Research School of Pacific Studies, The Australian National University, Canberra, 1983. Table 3, pages 22-23, Southwest Pacific: Presence of Nuclear Weapons and Weapons-Related Facilities.

territories, this area is the least harmful to the population of mainland France due to its distance from large population centers.

At present, the US, Australia and New Zealand maintain cooperative sovereignty over their territories, and agreements are being reached for more open and free associations. Each nation is negotiating separately for the terms of these agreements. France, however, has maintained more stringent control over its territories in the South Pacific, and is not presently considering granting their independence.¹²

The French overseas territories are New Caledonia and French Polynesia. The status of each French Territory is less than "department status"; citizens have somewhat less power in the French government, but enjoy more local autonomy, than the departments. Representation in the Government of the territory does not however extend equally to all inhabitants/citizens of the territories.

There is a large and influential movement in New Caledonia for independence. The Kanaks, the native New Caledonians (Kanaky), have formed the Kanak Socialist National Liberation Front (FLNKS) and are actively seeking the right to self-determination and independence. Other South Pacific nations and other groups from around the world have protested continued French testing in the South Pacific, and the lack of self determination of the native Kanaks, who hold the majority. These two issues have been joined into the Movement for a Nuclear Free *and* Independent Pacific (emphasis added) (NFIP)¹³. This joint movement has been adopted by many international and non-governmental groups; such as church groups, environmental groups, anti-nuclear groups, and by the United

¹² The new Rocard government of France is showing greater recognition of the problems in the South Pacific, its relations with Australia and New Zealand following the Rainbow Warrior incident, and is actively searching for a solution to the New Caledonia situation. This is discussed in Malik, Michael and Sarah Wallis, "French polishing: Paris outlines foreign policy initiatives", in *Far Eastern Economic Review*, August 31, 1989, published by the Review Publishing Co., Hong Kong, page 31.

¹³This term is found in many publications about the region. One example is "Update: Militarization in Asia and the Pacific" A Quarterly Newsletter of the Task Force on Militarization in Asia and the Pacific, The Interchurch Center, NY, NY.

Nations. The issues are thus tied, and yet have been dealt with separately in order to gain broader based support for each issue.

In November 1985, following much negotiation in the United States, the US developed the Compact of Free Association for the Trust Territory islands, a Compact which would dissolve the Trust Territory.¹⁴ The Micronesian entities have been involved in negotiations for independence for 19 years. The Compact of Free Association is the culmination of these negotiations. A crucial and not easily obtained step was the acceptance of the Compact of Free Association by the countries concerned.¹⁵

The Compact of Free Association as written by the US would allow the US access to these countries for defense purposes. However, the Constitution of Palau provides for a non-nuclear Palau, a situation which is not consistent with US defense policy. The Constitution also requires a 75% vote to approve nuclear policy changes¹⁶ and as such override a provision of the Constitution. Three attempts were made to reach the 75% vote goal in open elections in Palau. The consensus did not reach 75%.¹⁷ The Australian Foreign Affairs Record reports that in the plebiscite on October 20, 1987, the vote reached 73% approval of the Compact and that the Constitution had been amended to allow a simple majority to carry the issue. It was also noted that the Constitutionality of this action should be left to Palauans.¹⁸

The Federated States of Micronesia and the Marshall Islands accepted the Compact of Free Association with the US in 1983 in the second of two plebiscites on the subject. Palau's recent acceptance of the Compact, with its military provisions, makes the effort

¹⁴ These countries are the Federated States of Micronesia, the Marshall Islands and Palau. The Northern Marianas approved commonwealth status with the US in 1975. Van Dorn, W. G. Jr., "The Compact of Free Association: an End to the Trust Territory of the Pacific Islands", in Boston University International Law Journal, Vol. 5, No. 1, Spring 1987, page 216.

¹⁵ It was submitted to the UN Trusteeship Council for approval, thus bypassing the Security Council, and the Compact was authorized.

¹⁶ Ibid., page 218.

¹⁷ Ibid., page 218, and Australian Foreign Affairs Record, Number 2, Volume 59, February 1988, page 47.

¹⁸ Statements in the Australian Foreign Affairs Record, Number 2, Volume 59, February 1988, page 47.

complete. The former Trust Territory of the Pacific is in the process of being dissolved and transformed into a series of independent nations with bilateral agreements for Free Association with the US.¹⁹

The independent island states themselves periodically experience unrest and political disturbances. The most prominent of the recent disturbances have been racial disagreements between ethnic segments of the populations in Fiji and New Caledonia. Both movements have had democracy and fair representation as a goal. In Fiji, fair representation would mean greater weight given to the decisions of the native populations rather than the Indian population present in Fiji, which controlled a majority in the Parliament. This imbalance prompted the military Coup of 1987 in which a faction of the Fijian military seized power. The balance was restored to the satisfaction of the Fijian factions in national elections held in 1988.²⁰ In New Caledonia, the native population, the Kanaks, want equal representation and self-determination with the European population and within the French territorial status which makes this difficult.²¹

In general, the independent nations of the South Pacific identify with the needs and policies of their former colonial governments and maintain a western alliance, as evidenced with the close ties with the Commonwealth and the US, as well as the overwhelming

19 For more information about the Compact of Free Association and the Trust Territory of the Pacific see: Van Dorn, "The Compact of Free Association", pages 213-223; "Free Association: A Formula for Development or for Defence" in "Update: Militarization in Asia and the Pacific" a Quarterly Newsletter of the Task Force on Militarization in Asia and the Pacific, January 1986, published by the Interchurch Council, NY, NY., and Louis, W. R. ed., National Security and International Trusteeship in the Pacific, Naval Institute Press, Annapolis MD, 1972.

20 See: "Mara Government Defeated" in Pacific Islands Monthly, vol. 58, No. 5, May 1987, page 10 - 18; "At the Political Crossroads", in Pacific Islands Monthly, vol. 58, No. 9, September 1987, pages 24 - 27; "Fiji Coup Leader Declares Republic", NYT October 7, 1987, page A16; "Queen, Expressing Sadness, Accepts End to Rule Over Fiji", NYT October 16, 1987, page A10; Rothwell, Nicholas, "Rabuka's Republic", in Pacific Islands Monthly, vol. 58, no. 11, November 1987, pages 10 - 15; "Fiji at Flashpoint", in Pacific Islands Monthly, pages 10 - 17; Also "Stop Press - Fiji Update" insert, in Pacific Islands Monthly, vol. 58, no. 10, October 1987; "Fiji Back From the Brink", in Pacific Islands Monthly, vol. 59, No. 1, January 1988, pages 10 - 12, among others.

21 "New Caledonia, the Tension Mounts" in Pacific Islands Monthly, vol. 58, no. 9, September 1987, pages 18 - 22; La France dans la Pacifique Sud, a dedicated issue of Defense Nationale, vo. 44, March 1988; La France et le Pacifique Sud, dedicated issue of Politique Etrangere, vol. 1, January 1987.

associations with Australia and New Zealand. Relationships with the Soviet Union are, however, becoming more common. The Soviet Union has expressed an interest in a greater presence in the Pacific.²² In many cases, open relationships with the Soviet Union have been used by the island nations to gain the attention of the US, or other western aligned nations. This was the case with the tuna issue in Kiribati. Kiribati opened the fishery to Soviet vessels subsequent to US refusal to pay for the right to use the resource. The US reconsidered the issue and agreed to pay for the use of the resource. Kiribati and the US reached an agreement for an amount less than that of the Soviet agreement. In this way, Kiribati used the threat of Soviet presence to achieve an agreement with the US.

Other nations have relations with the Soviet Union. The most notable of these is Vanuatu.²³ Vanuatu, unlike the other island nations of the South Pacific, has accepted embassies of both the Soviet Union and of Libya. This is notable because Vanuatu is a small nation with close ties to Australia and is an unlikely candidate for attention by either the Soviet Union or Libya. Vanuatu is considered leftist-neutral in terms of foreign policy, and has been a leader in a more radical movement toward a Nuclear Free and Independent Pacific. In many respects, Vanuatu acts outside the regional norm, and as the most recently independent nation, seems to be exploring the possibilities for developing its own individual identity beyond the South Pacific.

22 Kristof, Nicholas, "Fishing Yields Soviet a South Pacific Toehold", in NYT, May 17, 1987, page 22; Crossette, Barbara, "US Fishing Pact with Pacific Island Paradise", NYT, January 7, 1987, page 12; Sutter, Robert G., "Trade-offs in US Policy Toward the South Pacific", in Journal of Northeast Asian Studies, vol. 7, no. 4, Winter 1988, pages 3 - 15; "Can the US Recover in the South Pacific", in the Pacific Islands Monthly, vol. 58, no. 5, May 1987, page 15 - 19, (A discussion of the Hoover Institute Conference, "The Red Orchestra: Instruments of Soviet Policy in the South West Pacific", March 3-4, 1987, Washington, DC), Young, Peter, "Gorbachev's Pacific Ambitions: The Soviets are Here to Stay" in Pacific Islands Monthly, vol. 58, no. 11, November 1987, pages 42-44. Discussion of implications of Gorbachev's Pacific Seafarers Speech in Vladivostok, Fall 1986, "'Pacific vulnerable to Soviets, But only if US errs': the Kiste-Herre Report", in Pacific Islands Monthly, vol. 57, no. 2, february 1986, page 10 - 12.

23 Sutter, Robert G., "Trade-offs in US Policy Toward the South Pacific", in Journal of Northeast Asian Studies, vol. 7, no. 4, Winter 1988, pages 3 - 15, Ashbrook, Tom, "Tiny Vanuatu dares steer course of nonalignment: Pact with Soviets has risk, benefits", in the Boston Globe, September 30, 1986, page 1 and 8.

The independent nations are establishing their own relationships in the international realm. These nations have very strong views and beliefs in regional organization and action. The size and relative lack of attention paid to the region have made concerted efforts a necessity in acting as a credible international opinion. In order to promote regional importance and action, many regional organizations have been formed. Within these organizations, it is rare for an individual nation to take a stand. The organization must show full consensus in order for the action taken to maintain credibility. Regional organizations have been formed to handle the many international and intra-regional situations.

Regional Organizations for Economic and Political Relations

The South Pacific has a relatively well developed set of regional organizations. Each is set up to address specific problems within the region. These issues include development, environmental protection and resource management. Overseeing these topic specific regional organizations are two broad based organizations: the South Pacific Commission (SPC) and the South Pacific Forum (SPF). Their memberships and mandates differ in part, but both are important actors in regional decision-making.

South Pacific Commission (SPC)

The South Pacific Commission was established following World War II, in which the region served as a battleground for the war in the Pacific. The names of the battles reflect the names of the islands in the region. In this period, the trust territories were formed, and administered by the United Nations. In this way, the European traditional colonial powers and the United States gained post-colonial control of the islands. The SPC was formed in 1947 by the nations with territorial interest in the region. It thus includes Great Britain, France, the Netherlands, Australia, New Zealand and the United

States. The SPC was established to ensure the economic and social development of the region, and not its political development. Control of the Commission's activities "rested firmly with the twelve Commissioners who represented the metropolitan governments". The island nations were granted advisory powers only.²⁴ In this way, the agenda for the South Pacific nations, as represented by the SPC, reflected the needs of the metropolitan states, the former colonial powers.

The South Pacific Commission is still active in the South Pacific, but, by definition, it does not involve itself with political matters. The primary concern of the SPC is the economic and social development of the region. The changing face of the region and the emergence of newly independent nations may well signal the end of the usefulness of the SPC. Regional matters are being handled more frequently by the South Pacific Forum, and organizations developed to deal with economic and social matters are set up under the auspices of the SPF, using its administrative structure.

One of the more important differences between the memberships of the SPC and the SPF is the status of France. In the SPC, France is a voting member as one of the metropolitan nations. France is not a member of the SPF. French control over the islands of New Caledonia and French Polynesia makes it the subject of much dispute in the topic of a nuclear free and independent Pacific. It therefore has no input into the decision making process of the SPF, from which regional protests of French policy in their South Pacific territories are voiced. In other words, France is the object of many SPF protests and calls for policy changes in the South Pacific, whereas, in the SPC, France is able to diffuse the effect of South Pacific concern over these issues.

²⁴ Fry, Gregory, E., "Regionalism and International Politics of the South Pacific", in *Pacific Affairs*, vol 54, no. 3, Fall 1981, pages 455-484.

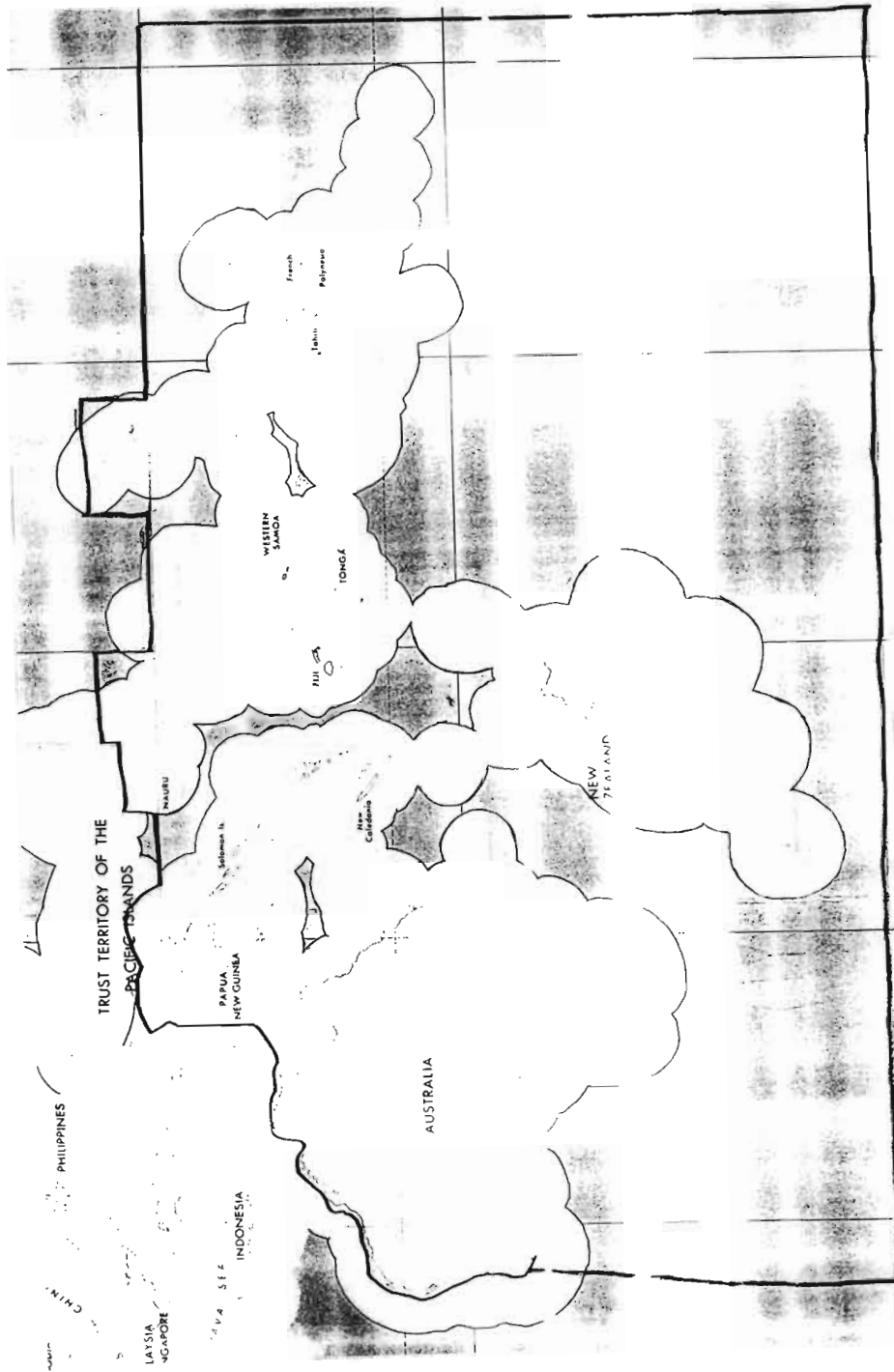
The South Pacific Forum

Australia
New Zealand
Cook Islands
Nauru
Fiji
Western Samoa
Tonga
Niue
Papua New Guinea
Kiribati
Tuvalu
Solomon Islands
Vanuatu
Federated States of Micronesia

The South Pacific Commission

Australia
France
Netherlands (no longer)
New Zealand
Britain
United States

Western Samoa
Nauru
Papua New Guinea
Solomon Islands
Tuvalu
Niue
Cook Islands
Federated States of Micronesia
Palau
Marshall Islands



Possible Extent of Maritime Claims Superimposed on the South Pacific Nuclear Free Zone Treaty

Nuclear Weapon Free Zones

Theoretically, nuclear free zones prohibit all nuclear activities within and affecting the zone, including radioactive materials used for other than strictly peaceful purposes; nuclear weapon free zones prohibit only nuclear weapons within and affecting the zone; and zones of peace prohibit all non-peaceful activities within the zone. In this case non-peaceful activities may include military exercises, and emplantation, stationing or defense agreements. Here again, it depends on the nature of the agreement which forms the zone. The nature and extent of each agreement depends on the intent of the framers of the agreement and on the reaction of the nations which it may affect. Each agreement is thus unique in its form and function.

On December 9, 1974, the UN General Assembly undertook to make a comprehensive study of the question of nuclear-weapon-free zones to be carried out by the a Group of Experts under the auspices of the Conference of the Committee on Disarmament.¹ Its purpose was to identify the legal bases for these treaties, identify those proposals for such zones to date, and to clarify and identify the objectives and principles for the establishment of such zones. It also undertook to identify the problems inherent in the establishment of these zones while promoting the concept of the nuclear weapon free zone.

The most common and successful approach to the development of these zones is to do so on the regional level. This point is made in the UN study², and is stressed as a goal of many of the treaties establishing international agreements and nuclear weapons control.

¹ UNGA Resolution 3261 F (XXIX) of 9 December 1974.

² Comprehensive Study of the Question of Nuclear-Weapon-Free Zones in All its Aspects, a Special Report of the Conference of the Committee on Disarmament, (United Nations, New York, 1976), A/10027/Add.1, p 31.

The UN charter promotes regional action.³ The Non-Proliferation Treaty establishes regional action as primary to the continued goal of general and complete disarmament.⁴

The Comprehensive Study of the Question of Nuclear-Weapon-Free Zones in All Its Aspects, identifies fourteen principles for the establishment of zones and the relevance of regional consideration. These principles, along with other developed models for the establishment of new nuclear weapon free zones can be found in Table 3:4. These fourteen principles serve as guideline for the establishment of new nuclear weapon free zones. Modifications are made to these principles as are warranted by the situation present in the region of the zone. In the South Pacific, for example, the framers of the treaty chose to prohibit other nuclear activities and the presence of radioactive materials.

Many other zones have been proposed, and are frequently brought forward as a pending discussion. A few have entered into force and been recognized, among them the Antarctic Treaty⁵, and the Treaty of Tlatelolco, (The Treaty of Prohibition of Nuclear Weapons in Latin America)⁶. Others which have been put forward for discussion would affect the regions of Central Europe, the Balkans, the Adriatic, the Mediterranean, Africa, Northern Europe, the Middle East, South Asia, and the Indian Ocean as a Zone of Peace, which was supported by UN Resolution⁷.

Due to the nature of the threat of nuclear war, arms control and disarmament actions and discussions naturally fall into the realm of international relations and international treaty law. There have been a number of international treaties aimed at reducing the risk of nuclear incident by reducing the number of weapons or the areas in which nuclear weapons can be placed. The preambles, or introductions, of these treaties state as the general

³ Charter of the United Nations, June 26, 1945, 59 Stat. 1031, TS No. 993, 3 Bevens 1153, 1976 YBUN 1043., Chapter VIII, Article 52(1).

⁴ Treaty on the Non-Proliferation of Nuclear Weapons, (NPT), 21 UST483, TIAS No. 6839, 729 UNTS 161, reprinted at 7 ILM 811, (1968), Article VII.

⁵ The Antarctic Treaty, 12 UST 794; TIAS 4780; 131 UNTS 71.

⁶ Treaty of Prohibition of Nuclear Weapons in Latin America, 22 UST 762; TIAS 7137; UNTS vol. 634, no. 9068, p. 326.

⁷ Comprehensive Study, section E, pages 19 - 28.

Table 3:1

South Pacific Membership in the United Nations

Members	Sovereign Countries not in the UN (oct 87)
Australia	Kiribati
Fiji	Nauru
New Zealand	Tonga
Papua New Guinea	Tuvalu
Solomon Islands	
Vanuatu	
Western Samoa	
United States of America	
Great Britain	
France	
Peoples Republic of China	
United Soviet Socialist Republic	

principle of international law the " general and complete" disarmament of nuclear weaponry. To this end, the treaties focus on one of two methods of arms control: the removal of a type or class of nuclear weapon; or the restriction of use, testing, stationing, or transportation of materials within a specific area or region. It is the latter with which this study is concerned.

Treaties Limiting Nuclear Weaponry

To date, there have been six (6) international agreements limiting the use of nuclear weapons within specific regions of the world or space. They are, in order of entry into force, the Antarctic Treaty of 1959, the Treaty Banning Nuclear Weapon Tests in the Atmosphere, in Outer Space, and Under Water of 5 August 1963 (the Outer Space Treaty)⁸, the Treaty on the Non-Proliferation of Nuclear Weapons of 1 July 1968 (the Non-Proliferation Treaty)⁹, the Treaty on the Prohibition of the Emplacement of Nuclear Weapons and Other Weapons of Mass Destruction on the Sea-bed and the Ocean Floor and in the Subsoil Thereof of 11 February 1971 (the Seabed Treaty)¹⁰, the Treaty of Prohibition of Nuclear Weapons in Latin America of 14 February 1967 (the Treaty of Tlatelolco)¹¹ and the South Pacific Nuclear Free Zone Treaty of 6 August 1985 (the Treaty of Rarotonga). There are basically two other agreements or international practice which have affected the development of the SPNFZ Treaty: the UN Convention on the Law of the Sea, both the 1958¹² and the 1982 treaties, (the latter has not entered into force), and related international practice, and the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter of 1972 (the London Dumping Convention)¹³.

⁸ The Outer Space Treaty, 14 UST 1313; TIAS 5433; 480 UNTS 43.

⁹ See note 4.

¹⁰ The Seabed Treaty, 23 UST 701; TIAS 7337; 955 UNTS 115.

¹¹ See note 7.

¹² Convention on the High Seas, Geneva 1958, 13 UST 2312; TIAS 5200; 450 UNTS 82, Convention on the Territorial Sea and Contiguous Zone, Geneva 1958, 15 UST 1606; TIAS 5639; 516 UNTS 205.

¹³ The London Dumping Convention, 26 UST 2403; TIAS 8165.

The effects of these agreements are far reaching. The provisions of these eight treaties, as a whole, prohibit the use or emplantation of nuclear weapons in large areas of the earth. Table 3:2 shows those nations which are party to the Non-Proliferation treaty in the category of non-nuclear weapons states. According to the provisions of the treaty, these nations "undertake not to receive the transfer ...of nuclear weapons or other nuclear explosive devices; ...not to manufacture or aquire nuclear weapons or nuclear explosive devices...and not to seek or receive any assistance in the manufacture of nuclear weapons or other nuclear explosive devices."¹⁴ These states also agree to "accept " International Atomic Energy Agency (IAEA) "safeguards" with respect to the peaceful uses of nuclear energy.¹⁵ The non-proliferation treaty further supports regional action, and recognizes the rights of any group of states to conclude "regional treaties in order to assure the total absence of nuclear weapons in their respective territories."¹⁶ The system created by these treaties was used by the South Pacific Forum as a framework from which to develop the Nuclear Free Zone Treaty and the associated Protocols.

The Treaty of Tlatelolco, also known as the Treaty for the Prohibition of Nuclear Weapons in Latin America, was used as a direct example from which to develop a treaty for the South Pacific. This treaty, opened for signature in 1967, has yet to be signed by all the players in Latin America: Argentina, Chile and Cuba have not ratified the treaty, and Brazil's ratification is conditional.¹⁷ It does stand, however, as the oldest nuclear free zone concerning inhabited land areas. It consists of a body which was opened for signature by the nations of Latin America, and a series of protocols which has been opened to nuclear weapon states. It prohibits the expansion of nuclear weapons to Latin America

¹⁴ NPT Article II.

¹⁵ NPT Article III.

¹⁶ NPT Article VII.

¹⁷ Donnelly, Warren H., "Two Approaches to Establishing Nuclear Weapons Free Zones: A Comparison of the Treaties of Tlatelolco and Rarotonga" Prepared for the House Committee on Foreign Affairs, Subcommittee on Asia and Pacific Affairs by the Congressional Research Service of the Library of Congress, May 7, 1987., p 3.

South Pacific States Party to the Nuclear Non-Proliferation Treaty

Australia
Fiji
Kiribati
Nauru
New Zealand
Papua New Guinea
Solomon Islands
Tonga
Tuvalu
Western Samoa

Potential Protocol States Party to the Nuclear Non-Proliferation Treaty

Union of Soviet Socialist Republics
United Kingdom
United States

From *Treaties in Force: a List of Treaties and Other International Agreements of the United States In Force on January 1, 1988*, Published by the US Department of State, US Government Printing Office, 1988.

and calls for the support of this prohibition by the other nations of the world. In form, it is consistent with international law. This is the format from which the developers of the South Pacific Nuclear Free Zone built their Treaty and the regime for the protection of the South Pacific. The framers of the South Pacific Treaty made some specific changes and expanded upon some of the provisions of the Treaty of Tlatelolco.

These changes took specific form. The framers made the South Pacific Treaty more stringent. Parties to the Protocols of Tlatelolco are permitted to withdraw, while those Party to Rarotonga are not. The Treaty of Rarotonga also prohibits reservations. Although the Treaty of Tlatelolco was created prior to the establishment of the NPT, it incorporates the basic ideals of that treaty. The Treaty of Tlatelolco was also developed prior to the acceptance of the concept of the EEZ. (Some Latin American countries did claim large ocean areas at the time of the writing of the Treaty of Tlatelolco, but this practice had not been accepted internationally, and as such, the Treaty focuses on the land areas of Latin America, and not the full territorial claims of Latin American nations.) Both treaties explicitly recognize the rights of nations to freedom of the seas.

The primary difference between the two treaties lies in the definition of the basic exclusion of nuclear materials. The Treaty of Tlatelolco limits this exclusion to nuclear weapons, while the Treaty of Rarotonga builds upon this to exclude use, testing and disposal of all nuclear explosive devices and waste, and to provide for the application of the strict IAEA standards for the trade of these nuclear materials as well as the raw materials with which to develop nuclear weapons such as uranium. In general, the Treaty of Rarotonga is more expansive than the Treaty of Tlatelolco; it has expanded upon the basis provided by the Latin American treaty.

The Law of the Sea

The Law of the Sea (LOS) and the London Dumping Convention (LDC) treaties serve separate purposes. The Law of the Sea treaty establishes international practice for freedom of passage over and beneath the sea, as well as definitions for the extent of

sovereign jurisdiction for the areas of sea which have eventually been encompassed by the nuclear free zone. In drafting the treaty, preserving these provisions of international practice as codified by the LOS treaty were given high priority, and although the rights of passage of nuclear armed vessels were debated, they were ultimately protected and preserved.

The provisions of the LOS treaties are important to the study of the South Pacific Nuclear Free Zone Treaty in that the nature of the zone encompassed by the SPNFZ treaty is largely ocean space. The LOS treaty creates an entirely new and expanded regime of jurisdiction for the island nations of the South Pacific, by enclosing much of the high seas into the newly expanded territorial sea and newly created exclusive economic zones and archipelagic sea areas. The SPNFZ treaty itself encompasses an even larger area than that enclosed by the provisions of the LOS treaty. The implications of the SPNFZ with regard to freedom of passage of warships which carry nuclear weapons is therefore of the utmost importance to nuclear weapon states and the states of the South Pacific.

International law for ocean use, jurisdiction and practice exists in a dual regime. The 1958 Geneva Conventions on the High Seas, and the Territorial Sea and Contiguous Zone were successful in that the Conventions were signed and had entered into force with the support of most of the world's nations. The 1982 UN Convention on the Law of the Sea, the updated version of international law of the sea, has not yet received the requisite number of ratifications to enter into force, and suffers from rejection by some of the world's maritime and coastal nations, including the United States. The 1982 Convention is an expansion of the regime created by the 1958 Conventions. It includes a philosophy of future world cooperation and sharing in addition to the codification of international practice and ocean jurisdiction.

International practice need not be codified to be upheld and juridicable, even to those nations not party to the treaty. Provisions of the 1982 Convention which are in common international practice may eventually be considered customary international law

and as such applicable to all nations of the world. This may not hold true where benefits from shared resources are concerned. Among the provisions which are rapidly being accepted internationally as codified by the 1982 Convention are the 12 nm territorial sea, the Exclusive Economic Zone (EEZ), archipelagic waters, and associated innocent and transit passage regimes. The effects of these provisions are especially important in the South Pacific: Oceania. The combined applications of the archipelagic baselines and ensuing archipelagic waters, expanded territorial sea, and the EEZ, extend the national jurisdiction of these island nations to an area much larger than the associated land area. The 1982 Convention speaks to the extent of national jurisdiction and regulation allowed in each of these areas. Rights to free passage are protected as far as can be and still protect the rights of the coastal State. It is a precarious balance that must be maintained. In whole, the maritime nations were able to maintain the level of passage necessary to continue international trade and defence.

The rights to freedom of passage in each of the above mentioned zones are set out in the 1982 Convention. Innocent passage has been adopted and adapted from the 1958 Convention, where it was applied to the territorial sea. Vessels on the high seas enjoy the rights of freedom of passage. The 1958 Convention on the Territorial Sea and Contiguous Zone defines innocent passage and devotes Section III to the Right of Innocent Passage, broken down by category of ship and character of its mission: all ships, merchant ships, warships and government ships other than warships. Passage is defined as innocent "so long as it is not prejudicial to the peace, good order or security of the coastal State."¹⁸

¹⁸1958 Convention on the TS and CZ, Article 14 (4)

Table 3:3

Maritime Claims in the South Pacific

EEZ's

Western Samoa	1977
Cook Islands, NZ	1977
Tokelau, NZ	1977
New Caledonia, France	1978
French Polynesia, France	1978
Wallis and Futuna, France	1978
New Zealand	1978
Niue, NZ	1978
Vanuatu (UK/France)	1978
Solomon Islands	1979
Tonga	1979
Fiji	1981
Vanuatu	1982
United States	1983
Tuvalu	1984

Fisheries Zones

Papua New Guinea	1978
Kiribati	1978
Nauru	1978
Tuvalu	1979
Pitcairn, UK	1980

Archipelagic Baselines

Solomon Islands	1979
Tonga	1979
Fiji	1981
Vanuatu	1982
Kiribati	1983

The 1982 Law of the Sea Convention

Australia	1982	signed
Fiji	1982	signed and ratified
Nauru	1982	signed
New Zealand	1982	signed
Cook Islands	1982	signed
Papua New Guinea	1982	signed
Solomon Islands	1982	signed
Vanuatu	1982	signed

The 1982 Convention uses the same definition, applied to the territorial sea, but elaborates on what "shall be considered prejudicial to the peace, good order or security of the coastal State."¹⁹ This Convention goes on to elaborate on what regulations the coastal state may impose upon innocent passage,²⁰ and the rights and duties of the coastal state.²¹ Among these provisions that for "Foreign nuclear-powered ships and ships carrying nuclear or other inherently dangerous or noxious substances".²² These ships "shall, when exercising the right of innocent passage through the territorial sea, carry documents and observe special precautionary measures established for such ships by international agreements."²³ While this is applicable to all ships, and not specifically warships, these provisions may be used to support the regulation of passage of such ships in the territorial sea. Robert Philp argues that some actions and characteristics of nuclear armed warships would suggest that their passage cannot be considered innocent, especially against the backdrop of a nuclear weapon free zone. ²⁴

Also among the rights of the coastal state is the right to "adopt laws and regulations...in respect of... f) the preservation of the environment of the coastal state and

¹⁹1982 Convention, Article 19 (2) (a-l)

a) any threat or use of force against the sovereignty, territorial integrity or political independence of the coastal state, or in any other manner in violation of the principles of international law embodied in the Charter of the United Nations;

b) any exercise or practice with weapons of any kind;

...

f) the launching, landing, or taking on board of any military device;...

²⁰1982 Convention Article 21

²¹1982 Convention Articles 22-26

²² 1982 Convention Article 23

²³ Ibid.

²⁴ Philp, P. Robert, Jr., "The South Pacific Nuclear-Weapon-Free Zone, the Law of the Sea, and the ANZUS Alliance: an Exploration of Conflicts, a Step toward World Peace", in the California Western International Law Journal, vol. 16, no. 1, Winter 1986, pages 158-160.

the prevention, reduction, and control of pollution thereof..."²⁵ This provision lends itself directly to the environmental protection provisions of SPNFZ.

The EEZ, as established by the 1982 Convention, retains the navigational and overflight rights to which vessels were entitled under the previous regime of high seas, as tempered by provisions on environmental protection, and other such provisions established for the EEZ.²⁶ In other words, the 1982 Convention does not apply the regime of innocent passage to the areas enclosed by the EEZ. High seas rights to freedom of passage are maintained for continuous passage through the EEZ.

Important to the South Pacific region are the sovereign rights to management jurisdiction acquired by the coastal state to manage the marine resources found within this Zone. In the case of many of the South Pacific island nations, the marine resources out-value the land based resources.

The 1982 Convention establishes another new type of zone which can be applied to island nations. The Convention allows the designation of archipelagic states: island nations which meet the criteria of ratios of sea to land area, as established by Article 47 of that Convention²⁷, to "establish straight baselines joining the outermost points of the outermost islands and drying reefs of the archipelago". The ensuing provisions create limits and criteria for the establishment of baselines.²⁸ One provision allows these nations to measure their territorial seas and EEZ's from these new baselines, and thus encompass a greater amount of ocean space. Within the baselines are the newly created archipelagic waters. The state may establish "closing lines for the delimitation of internal waters."²⁹ This suggests that archipelagic waters are not considered completely internal waters, and as such must sustain a different designation. Within archipelagic waters, "ships of all States

²⁵ 1982 Convention Article 21 (f)

²⁶ 1982 Convention Article 58, as applied to Articles 87-115.

²⁷ 1982 Convention Article 47 (1), The ration of water to land shall be between 1 to 1 and 9 to 1.

²⁸ 1982 Convention Part IV: Archipelagic States, Articles 46-54.

²⁹ 1982 Convention Article 50.

enjoy the right of innocent passage"³⁰, subject to suspension by the archipelagic State if the suspension is "essential for the protection of its security."³¹

The privilege of greater ocean jurisdiction carries with it a burden similar to the concepts of transit passage and innocent passage: archipelagic sea lanes passage. "An archipelagic State may designate sea lanes...suitable for the continuous and expeditious passage of foreign ships...through its archipelagic waters and the adjacent territorial sea."³² In the established archipelagic sea lanes, there exists archipelagic sea lanes passage, which means "the exercise...of continuous, expeditious and unobstructed transit between one part of the high seas or EEZ and another..."³³, and which is enjoyed by all ships in such sea lanes.³⁴

Established above is a regime of ocean jurisdiction which is created by international practice. The application of different levels of freedoms, rights and obligations to the zones created by these Conventions, particularly the 1982 Convention, creates a regime of ocean jurisdiction which encloses large areas of ocean space.

Superimposed upon this is a regime of differentiation between types of vessels and the applicability of coastal State jurisdiction to these vessels. Both the 1958 Conventions and the 1982 UNCLOS differentiate between warships and other ships.³⁵ Warships are generally subject only to the jurisdiction of the flag State. There is less coastal State input into the operation of warships within coastal waters than there is for other vessels. Specific regulations with regard to environmental concerns, waste dumping, and operating procedures at both the international and national levels as implemented by the coastal State are not applied directly to warships because warships are subject only to the jurisdiction of

³⁰1982 Convention Article 52 (1)

³¹1982 Convention Article 52 (2), there is no mention of a time limit applied to the suspension of innocent passage, in this section.

³² 1982 Convention Article 53 (1).

³³ 1982 Convention Article 53 (3).

³⁴ 1982 Convention Article 53 (2)

³⁵ 1958 TS and CZ Article XVI, and 1982 Convention Articles 27-32.

the flag State. This makes enforcement of coastal State's practice within its ocean areas more difficult when applied to warships.

Under the 1958 Convention on the Territorial Sea and Contiguous Zone, the general rules of innocent passage apply to all ships; the Convention goes on to explain the rules as applied to merchant ships, government ships other than warships, and warships. Warships are simply provided for in Article 23: "If any warship does not comply with the regulations of the coastal State concerning passage through the territorial sea and disregards any request for compliance which is made to it, the coastal State may require the warship to leave the territorial sea."³⁶ The coastal State may "prevent passage which is not innocent"³⁷, and suspend passage rights for the purpose of protecting its security³⁸ in the case of all ships.

The London Dumping Convention and Environmental Protection Actions

The LDC is the international agreement which regulates the dumping of wastes and other materials in the ocean, including radioactive nuclear wastes. The dumping of radioactive waste in the ocean has been incorporated into the concepts for the nuclear free zone, and for the protection of the environment. Early actions of the South Pacific region in international affairs were primarily concerned with the protection of the fragile environment of the region by wastes generated outside the region and the effects of nuclear testing within the region. Under the auspices of the UNEP, the region began work on a regional environment plan. The nations of the region also began to act on environmental issues at international forums such as the LDC. SPF nations, particularly Kiribati and Nauru, have been instrumental in stopping the dumping of highly radioactive material under the auspices of the LDC, and are presently active in passing a moratorium on the dumping of low-level radioactive material, also under the auspices of the LDC. Provisions

³⁶ 1958 TS and CZ Article XXIII

³⁷ 1958 TS and CZ Article XVI (1)

³⁸ 1958 TS and CZ Article XVI (3)

to prevent dumping of these materials have been included in the regional agreements which have been reached to protect the environment of the South Pacific: the Convention for the Protection of the Natural Resources and Environment of the South Pacific Region³⁹ and in the SPNFZ Treaty.⁴⁰

The SPNFZ Treaty as a Nuclear Free Zone

These international treaties serve to establish a framework for denuclearization and for controlled use of nuclear materials in regions of the earth. The South Pacific Nuclear Free Zone expands upon this framework to explicitly prohibit the use and emplantation of nuclear materials in the entire region of the South Pacific, a larger area than that encompassed by the EEZ'z of the party nations. It is an agreement which is more stringent and more inclusive than its predecessor, the Treaty of Tlatelolco. The SPNFZ is an example of the next step in the process of the removal of the threat of nuclear weapons and nuclear conflict from the world. Its success or failure will influence the future of regional agreements yet to be concluded on the problem of deterrence v. denuclearization.

The South Pacific Nuclear Free Zone is an example of the nuclear free zone concept as defined by these international agreements. The nuclear free zone concept is an accepted and important step in the process of disarmament and arms control on a world-wide scale. Robert Philp cites seven principles as a basis of the legitimacy of the Zone: "the multilateral treaty which created a nuclear-weapon-free regional arrangement by the mutual consent of the States involved (regional action),...UN Declarations supporting the South Pacific proposal, the customary right of self-defense, the principle of territorial sovereignty, the

³⁹ Convention for the Protection of the Natural Resources and Environment of the South Pacific Region, Protocol for the Prohibition of Pollution of the Region by Dumping.

⁴⁰ SPNFZ Article 7.

UN Charter, the Non-Proliferation Treaty, and the argument for the international illegality of nuclear weapons.⁴¹

The international agreements, in addition to the UN Charter and the NPT, which establish nuclear free areas are also relevant to the judgment of the SPNFZ and should be considered models for nuclear free zones. Among these, the Treaty of Tlatelolco is the most pertinent. It is the first, and only other, nuclear weapon free zone established for a populated region.

There are several other criteria which are designated for nuclear weapon free zones. It is considered requisite that each nuclear weapon free zone meet these requirements in order to establish legitimacy and thus international acceptance. Table 3:4 contains the definitions and provisions of each of these models for the establishment of nuclear weapon free zones. These models share common criteria by which to judge a nuclear weapon free zone. They share the common basis of the UN Commission is established criteria, but identify different relevant principles. In an attempt to coordinate these models into a working model with which to compare the South Pacific Zone, these separate models have been mashed together with a smattering of realism gleaned from present day political reality. The following is the resulting collection of relevant and applicable principles to apply to the problem of SPNFZ. It is this model upon which this study will judge the success of the South Pacific Nuclear Free Zone.

A Model for Nuclear Free Zones

1. The initiative for the zone should come from within the region and be supported throughout the region. This support should be voluntary.
2. It should enjoy the support of all the militarily significant states within the region.

⁴¹Philp, P. Robert, "The South Pacific Nuclear-Weapon-Free Zone, the Law of the Sea, and the ANZUS Alliance: An Exploration of Conflicts, a Step Toward World Peace", in The California Western International Law Journal, vol. 16, no. 1, winter 1986, page 154-156. These principles are cited in Philp. The cites are a good source of further information.

3. It should ensure that the region remain effectively free of nuclear weapons.
4. There should be an effective verification system.
5. It should be of unlimited duration.
6. It should be in accordance with existing international law, including the provisions for freedom of passage, and innocent passage for vessels and aircraft.
7. It should not interfere with existing security arrangements.
8. It should enjoy the participation and support of the nuclear weapons states.

The justification for this model is as follows. Regional action is the method by which it is internationally acceptable to determine such sweeping changes in the characteristics and military/strategic determination of a region or zone. Acceptance of the principles embodied in the zone by all or most of the states of the region is required for legitimacy. In order for the region to be truly and verifiably nuclear weapon free, its provisions must clearly identify the definitions to be applied (these definitions should be strict and far-reaching) and an effective verification system must be established. It must have the support of the militarily significant states in the region, all those states which may, in other circumstances, have acquired or have access to nuclear weapons. The Treaty must also be of an unlimited duration, to provide for future safety from nuclear threat and to establish the sincerity with which the zone is created. The criteria that the Treaty not interfere with existing security arrangements exists to establish that all security arrangements to which parties to the Treaty are subject will remain or become nuclear free. This ensures that no conflict will arise as to the use of nuclear weapons in the protection of party states. Perhaps the most important criteria, and the most difficult to obtain and maintain, is that requiring the voluntary participation of nuclear weapon states. Without this participation, a zone which encompasses areas strategically important to these nations, areas which are outside of the realm of party state jurisdiction, will be subject to the presence of nuclear weapons. This will effectively undermine the purpose and effectiveness of the

Models for Nuclear Weapon Free Zones

nuclear-weapon-free zone: a zone "which a group of states may establish by a treaty whereby the status of total absence of nuclear weapons to which the zone shall be subject is defined, and a system of verification and control is set up to guarantee compliance."

"Armaments or Disarmament?" SIPRI, 1982, page 34. Quoted in Thakur, Ramesh, "A Nuclear Weapon Free South Pacific: A New Zealand Perspective" in Pacific Affairs: An International Review of Asia and the Pacific, vol. 58, no. 2, Summer 1985, page 217.

United Nations Committee on Disarmament

Principles for the establishment of zones; relevance of regional consideration

- a) Obligations relating to the establishment of nuclear-weapon-free zones may be assumed not only by groups of States, including entire continents or large geographical regions, but also by smaller groups of States and even individual countries;
- b) Nuclear-weapon-free (NWF) zone arrangements must ensure that the zone would be, and would remain, effectively free of all nuclear weapons;
- c) The initiative for the creation of a NWF zone should come from within the region concerned, and participation must be voluntary;
- d) Whenever a zone is intended to embrace a region the participation of all militarily significant States, and preferably all States, in that region would enhance the effectiveness of the zone;
- e) The zone arrangements must contain an effective system of verification to ensure full compliance with the agreed obligations;
- f) The arrangements should promote the economic, scientific, and technological development of the members of the zone through international co-operation on all peaceful uses of nuclear energy;
- g) The treaty establishing the zone should be of unlimited duration;
- h) It was maintained that States members of a zone should not exercise control over nuclear weapons outside the zone, though some experts felt that part of a State could also be included in a NWF zone and that, in this case, the NWF status would be applied only to the part of its territory which is situated within the boundary of the zone;
- i) Most experts noted as an essential principle that any arrangements for the establishment of a zone must provide for appropriate guarantee by the NW States not to use or threaten to use nuclear weapons against members of the zone. Other experts believed, however, that while such undertakings could contribute to the effectiveness of a zone, they should not be considered a prerequisite for the establishment of a NWF zone, but should instead be considered on a case-by-case basis;
- j) In the view of most experts, an essential principle in any NWF zone treaty is the effective prohibition of the development, aquisition, or possession by parties to it of any nuclear explosive device. This prohibition should, however, not preclude access to the potential benefits of peaceful nuclear explosions though international procedures consistent with article V of the Treaty on the Non-Proliferation of Nuclear Weapons as well as with other international underatkings entered into by the States concerned, in particular the Treaty establishing the zone. A few experts argued to the contrary and expressed the view that development by parties of nuclear explosive devices intended for peaceful purposes would not be inconsistent with the NWF zone concept and that, accordingly, treaties establishing such zones should not prohibit the development of such devices by the parties;

Table 3:4

k) Many experts noted an additional principle that wherever the functioning of a NWF zone so requires, States which are not members of the zone should establish a similar NWF status in territories within the zone which are under their jurisdiction. Other experts felt, however, that this principle could be applied only to those territories, which, being under the jurisdiction of extrazonal States, are within the zonal boundaries recognized by those States;

l) Some experts considered it a basic principle that the establishment of a NWF zone should not interfere with existing security arrangements to the detriment of regional and international security. The view was also expressed that participation of States situated within an intended NWF zone in a military alliance would not be conducive to the creation of the zone. Nevertheless, most experts maintained that if a State included in a NWF zone is a member of a security alliance, its membership of that alliance cannot justify any exceptions to the obligations deriving from the NWF zone treaty;

m) Many experts regard also as a basic principle that the boundaries and the provisions of NWF zones should be determined in accordance with international law, including the principle of freedom of navigation on the high seas and in straits used for international navigation and international air space. The view was also expressed that this basic principle applies as well to the right of innocent passage though the territorial sea. Some other experts, however, emphasized that the provision of a NWF zonal treaty should prohibit entry into ports situated there of vessels having nuclear weapons on board. Still some other experts pointed out that the matter should be referred to the individual NWF zonal treaty;

n) In the view of many experts another principle for the establishment of NWF zones should be that States which are expected to enter into undertakings vis-a-vis a zone, in particular, the nuclear weapons states, should be given the opportunity to participate in negotiations for the conclusion of agreements on the establishment of such zones. Other experts remarked, however, that it is for the prospective members of a zone to determine the opportunity and degree of participation of extrazonal States in the negotiations to establish such a zone."

"Comprehensive Study of the Question of Nuclear-Weapon-Free Zones in All Its Aspects" a Special Report of the Conference of the Committee on Disarmament, A/10027/Add. 1, United Nations, New York, 1976

Christopher Beeby and Nigel Fyfe

Summary of the "relevant principles" identified the the UN Commission

1. the zone must be effectively free of all nuclear weapons;
2. the initiative should come from states within the region;
3. the participation of all militarily significant states, and preferably all states, in the region would enhance the zones's effectiveness;
4. there must be an effective system of verification to ensure full compliance with the agreed obligations;
5. the treaty establishing the zone would be of unlimited duration.

Other principles were identified, though they were not agreed upon by consensus

Fyfe, Nigel and Christopher Beeby, "The South Pacific Nuclear Free Zone Treaty", in Victoria University of Wellington (NZ) Law Review, vol. 17, no. 1, February 1987, page 37.

Ramesh Thakur

Summary Outline of UN Criteria

1. the initiative should come from the countries of the region;
2. the specific provisions of the NWFZ should be negotiated between the regional members states in the form of a multilateral treaty establishing the zone in perpetuity;

Table 3:4

3. while adherence to the treaty should be voluntary, the NWFZ must nevertheless embrace all militarily significant states in the region;
4. existing treaty relationships within the zone should not be disturbed;
5. there should be an effective verification system;
6. peaceful nuclear development should be allowed;
7. the zone should have clearly defined and recognized boundaries;
8. in defining the territory of the zone, members must respect international law, including freedom of the high seas and straits used for international navigation and of international airspace;
9. the NWFZ should have the support of the nuclear-weapon states.

Thakur, Ramesh, page 222.

US Department of State

US Criteria for the Establishment of Nuclear Weapons Free Zones

- "1. The initiative for the creation of the nuclear weapons free zone should come from the states in the region concerned.
2. All states whose participation is deemed important should participate in the zone.
3. The zone arrangement should provide for adequate verification of compliance with its provisions.
4. The establishment of the zone should not disturb existing security arrangements to the detriment of regional and international security.
5. The zone arrangement should effectively prohibit its parties from developing or otherwise possessing any nuclear explosive device for whatever purpose.
6. The zone arrangement should not seek to impose restrictions on the exercise of maritime and aerial navigation rights and freedoms recognized under international law, particularly the freedoms of navigation and overflight of the high seas, archipelagic sea lanes passage, transit through straits used for international navigation, and the right of innocent passage through territorial seas and archipelagic waters.
7. The establishment of a zone should not affect the existing rights of its parties under international law to grant or deny to other states transit privileges, including port calls and overflights."

US Criteria for the Establishment of Nuclear Weapons Free Zones, obtained from the US Department of State, February 1987, Washington, DC.

established nuclear weapon free zone treaty. The provision which promotes compliance with international law will again ensure less conflict and make the acceptance of the treaty by nuclear weapons states, states which are also maritime nations, more attainable. It removes one of the major complaints of NWS's: that such a treaty will prohibit passage by military vessels and impinge upon one of the major tenets of international law, freedom of the seas.

The impetus for the creation for the SPNFZ was environmental concern for the region and distress over the continued testing of nuclear explosive devices by the French in French Polynesia. This grew to include the protest over the presence of any nuclear weapons in the region. For this reason, the Treaty includes stringent prohibitions against the dumping of nuclear waste, testing in the region, and the presence of any nuclear explosive device. This includes all nuclear explosive devices, including those which have been considered "peaceful uses of nuclear energy" in other contexts. The Treaty of Tlatelolco provides for the continuing use of nuclear devices for peaceful purposes. The peaceful use of nuclear energy is provided for in the UN Commission criteria for the nuclear weapon free zone, sections f and j.⁴² The peaceful use of nuclear energy is not recognized by the SPNFZ Treaty. In this it breaks from the UN and Tlatelolco models, but then, it does not purport to be only nuclear weapon free.

In applying the model to the SPNFZ Treaty, one must keep in mind the nature of the region to which the concept is applied. Most of the region is ocean space; and the region is comprised of both independent and non-independent nations. The zone itself encompasses far more ocean space than that within the national jurisdiction of the territorial sea, EEZ and the seabed, of the states Party to the Treaty, larger than that within the jurisdiction of all the states, independent and non-independent, in the region. This characteristic of the region makes the provisions for the maintenance of international law

⁴² See Table 3:4.

with regard to freedom of the seas of utmost importance. The non-independent nations are largely the territories of metropolitan powers/nuclear power states. This characteristic makes accession to the Treaty and its future performance a complicated issue. Without accession by these nations, the Zone will have "holes" in which the presence and testing of nuclear weapons is acceptable.

Regional Support

As explained in chapters 2 and 4, the Treaty emerged through the continued efforts of Australia and New Zealand, and with the support of the nations of the South Pacific Forum, which is comprised of the independent nations of the South Pacific. Nuclear free movements enjoy rigorous support in Australia, New Zealand, Fiji, Vanuatu, the Solomon Islands and to varying degrees the other islands of the SPF, and in non-SPF Melanesian islands such as Palau and the Federated States of Micronesia.⁴³ At different times in recent years, each of the above mentioned states, except Australia, has established a national nuclear free policy. New Zealand and Vanuatu maintain theirs at present. Vanuatu was a staunch supporter of the development of a NFZ for the South Pacific, and refused to sign the existing Treaty because of the compromises which were incorporated into the final draft.

The major military actors in the region are Australia and New Zealand, which support the creation of the nuclear free zone. This does not, however, include the military actors in the region which have legitimacy within the region due to their territorial possessions in the region. These nations are France, the United States and the United Kingdom, all nuclear power nations. The United States is also the third member of the tripartite defence alliance: the ANZUS Alliance. The SPNFZ only invites the independent nations of the region to be party to the Treaty itself. It leaves nuclear weapon state

⁴³ The Federated States of Micronesia is now a member of the SPF, and has signed the SPNFZ Treaty, when the Treaty was created and opened for signature, the FSM had observer status in the SPF.

involvement to the Protocols. In this way, all the major military nations of the region which are eligible for Party status are Party to the Treaty.

Effectiveness of Provisions

The Treaty is expansive in its prohibition not only of weapons but of all nuclear explosive devices and materials. The opportunities for the presence of nuclear explosive devices in the Zone occur in several ways, each dealt with by the Treaty: possession and control by the Party state; possession within the Zone by a non-party state (which includes stationing, manufacture and testing); and contribution by Party states to the development of devices.

States Party to the Treaty shall not enter into any situation which would give them control of such devices anywhere. Article 3 states that "each Party undertakes:

- a) not to manufacture or otherwise acquire, possess or have control over any nuclear explosive device by any means anywhere inside or outside the South Pacific Nuclear Free Zone;
- b) not to seek or receive any assistance in the manufacture or acquisition of any nuclear explosive device;
- c) not to take any action to assist or encourage the manufacture or acquisition of any nuclear explosive device by any State."⁴⁴

These states shall also adhere to the safeguard system established by the NPT and the IAEA for any transfer of "source or special fissionable material or equipment or material especially designed or prepared for the processing, use or production of special fissionable material for peaceful purposes".⁴⁵

Non-Party states are prohibited from controlling or possessing nuclear explosive devices by the provisions for "stationing"⁴⁶ and "testing"⁴⁷ of such materials in the territory of Party states. The Treaty recognizes the limitations of national jurisdiction and

⁴⁴ SPNFZ Article 3

⁴⁵ SPNFZ Article 4

⁴⁶ SPNFZ Article 5

⁴⁷ SPNFZ Article 6

limits these provisions to the territory and determination of the Party state, and subjects the prohibitions to the requirements of international law with regard to port visits and navigation in a manner consistent with the "rights of innocent passage, archipelagic sea lanes passage or transit passage of straits."⁴⁸ This means that where Party states designate their territory as non-nuclear, non-Party states may only possess, station or test these devices outside the territorial jurisdiction of Party states. Warships and aircraft carrying nuclear explosive devices are not directly prohibited from passage in or over the territorial sea due to the innocent passage provision of Article 5, but neither is innocent passage defined to require allowing passage for nuclear capable vessels and aircraft.

These prohibitions are only as effective as the verification procedure. In this the SPNFZ is more stringent than Tlatelolco. SPNFZ provides for a Control system which shall comprise:

- a) reports and exchange of information...;
- b) consultations...;
- c) the application to peaceful nuclear activities of safeguards by the IAEA...;
- d) a complaints procedure....

Tlatelolco does not include a complaints procedure but rather relies on a challenge system of inspection. The complaint is made to the Director who, if the matter is not resolved, shall convene the Consultative Committee. The process involves special inspectors who are to be given full and free access to any necessary information and places within the relevant territory.⁴⁹

"The Treaty is of a permanent nature and shall remain in force indefinitely." This satisfies the requirement that the treaty be of unlimited duration. Parties to the Treaty may, however, withdraw, "provided that in the event of a violation by any Party of a provision of the Treaty essential to the achievement of the objectives of the Treaty or of the spirit of

⁴⁸ SPNFZ Article 5

⁴⁹ SPNFZ Appendix 4.

the Treaty, every other Party shall have the right to withdraw from the Treaty. Withdrawal is accomplished twelve months after notifying the Director.⁵⁰

The SPNFZ Treaty thus seems to be capable of prohibiting the presence and verifying the absence of nuclear weapons and other nuclear material up to and including the limit of the jurisdiction of the Party states, and it is of unlimited duration, thus satisfying criteria 3,4 and 5.

Compliance with International Law

One of the strengths of this treaty is its firm basis in international law. It is the direct result of international efforts at disarmament through nuclear free zones which are based on the call for regional action by the UN and the NPT. It is the most recent action taken to establish a non-nuclearized zone on the surface of the earth. With its completion, almost the entire southern hemisphere can be considered free of stationed nuclear weapons (barring the Indian Ocean Zone of Peace).

The Treaty is clear that it does not extend the rights and freedoms guaranteed by international law with regard to freedom of passage throughout the zone. The Treaty leaves to the sovereign nation the determination of the nuclear status of its territory, but establishes that this jurisdiction is limited itself by the burden created by the rights of innocent passage, archipelagic sea lanes passage, and transit passage. In this way, the Treaty carefully conforms to international law.

Existing Security Arrangements

The primary security arrangement in the region is the ANZUS Alliance which is the defence agreement between Australia, New Zealand and the United States. Australia and New Zealand maintain security arrangements with the independent island nations of the region, but as these arrangements are presently non-nuclear, they are not affected by the SPNFZ Treaty. Should the nations which are presently under the control of metropolitan

⁵⁰ SPNFZ Article 13.

nations become independent and Party to the Treaty, and maintain security arrangements with these nations, a conflict may arise. The primary example of this situation is the conflict concerning the Compact of Free Association between the US and the Trust Territory states. The Federated States of Micronesia has signed both agreements and may find itself in conflicting provision.

The most worrisome situation is that of the future of ANZUS. In meeting the criteria for nuclear weapon free zones, the SPNFZ Treaty contains no provisions that should interfere with the continuation of the ANZUS defense structure. The Treaty itself provides for the determination of non-nuclear status of areas which may affect the passage of vessels and aircraft necessary to the defence of a nation to be determined by the coastal state. The Treaty does not inhibit passage. The issue which broke down the ANZUS relationship was the unilateral action by New Zealand to declare a national nuclear free zone and close its ports to nuclear vessels. In this way, the Treaty preserves the existing security arrangements.

Support of Nuclear Weapon States

The Protocols have failed to obtain the signatures of all the nuclear weapon states. The primary objections have been the possible limitations on passage and the probability for the Treaty to set precedents for other regions to follow and thus further confuse the freedoms of the seas and access to ports. As stated above, this is not based on the word of the Treaty but on the possible interpretations of the Treaty. The French have merely found the entire concept to be antithetical to their policy and needs in the region. Both the Soviet Union and China have signed but with reservations⁵¹ which would allow them to withdraw on a whim, thus weakening the effect of their signature and ratification.

Strong support by the nuclear weapon states would ensure that the Zone would be free from outside nuclear influence, especially testing. The lack of support leaves the

⁵¹ For further discussion of these reservations, see Chapters 5 and 6.

Treaty with holes. The Party states promise not to become involved with any nuclear activity. At present, none of these nations are involved with any nuclear activity. Nuclear presence in the region is maintained by the Nuclear Weapon States, and this presence is not prohibited by the Treaty, only by accession to the Protocols.

Although the Treaty itself demands a greater degree of anti-nuclearism than previous zones, and extends itself to include prohibitions against dumping and peaceful uses of nuclear material, it does not explicitly prohibit non-Party state possession of materials throughout the zone. Without voluntary cooperation by nuclear weapon states, the possibility exists that nuclear weapons and nuclear powered vessels may be present within the nuclear free zone at any given time. The nuclear free zone may thus not be nuclear free at all.

The South Pacific Nuclear Free Zone does not, however, fail as a nuclear free zone. The Treaty of Tlatelolco establishes the precedent for this unwieldy dichotomy. The Treaty of Tlatelolco has obtained the ratifications of most of the nuclear weapon states to Protocol 2, including the US, France, the Netherlands, and the Peoples Republic of China, and is considered a standing nuclear weapon free zone. And yet, during the Falklands war, nuclear powered submarines and nuclear capable vessels and aircraft were indeed present and active. This may be considered a breach of the Treaty, but it will not be its downfall. The Treaty of Tlatelolco remains the model for nuclear weapon free zones.

The SPNFZ Treaty does establish a regime in which nuclear explosive devices may only be in the control of non-Party states, and may be admitted to the territory of Party states up to the limit deemed necessary by the Party state to maintain its nuclear free status. The only option for entry into the territory of a Party state is access by vessel for the duration of a port visit which is to be defined by the coastal state, or access by vessel to the territorial sea via innocent passage.

Chapter 4: The South Pacific Nuclear Free Zone Treaty

History of Nuclear Activities in the South Pacific

The South Pacific has been actively used by many nations as a place to test new weapon systems, delivery systems, and as a place to dump the waste produced within their own boundaries. The nuclear age began in the Pacific with the dropping of the first Atomic bomb on Hiroshima, and the second on Nagasaki. This action ended the war in the Pacific, but signalled the beginning of an age of tension and stockpiling of nuclear weapons. Metropolitan control of the region provided the colonial powers with an area far from their own population centers and land areas in which to test and to dispose of waste. In this way the South Pacific has become the focus of nuclear weapon testing and the strategic military center of attention to the testing of delivery systems.

The United States, Great Britain, and France have been active in testing nuclear weapons in the South Pacific. In the years following the first use of weapons of mass destruction many tests have been conducted. The British and the United States ended their testing practices in 1962.¹

US presence in the Pacific is extensive. Recent developments in the Trust Territories of the Pacific have led to the creation of a system of Freely Associated States, and to the development of the Commonwealth of the Northern Marianas. American Samoa and Guam also maintain territorial status with the US. The US military maintains control over Midway Island. The provisions of the agreement for Free Association, as well as the relationship with the other islands require access for the US military, and as such, the region is important to the strategic interests of the US. In addition, the US is bound by a defense agreement with Australia and New Zealand, the ANZUS Alliance.² This Alliance

¹ See Table 2:3.

²A discussion of the development and provisions of the ANZUS Agreement are to be found in Appendix 1.

is threatened by the policies of New Zealand and by US reaction to the policies of New Zealand associated with the development of the nuclear free zone.

The French maintain a strong presence in the Pacific. They continue to test nuclear weapons at the Moruroa test site and have recently developed the Centre d'Essaie³. Weapons destined for testing in French Polynesia are first sent to New Caledonia and from there to the test site at Mororua Atoll. French Polynesia and New Caledonia enjoy territorial status in the French system which means that the citizens enjoy status equal to those of mainland France, theoretically. It also means that the island territories are subject to the policies determined by Paris, for the good of France. In this, the needs and desires of the island nations and of the the South Pacific as a whole are largely ignored by France.

French testing in the South Pacific territory began as France lost its colonies in Africa, and with them, the test sites in the Sahara. The next best area for testing over which the French have authority is the South Pacific. Of the five nuclear weapon states designated by the Treaty of Rarotonga, the Soviet Union and China have always tested within their own territories (but maintain missile testing sites in the South Pacific), the US and Great Britain have moved their testing to the Nevada underground test site, and France remains the only nation to actively test nuclear weapons in the South Pacific. See Table 2:3.

Nuclear waste has been both stored and disposed of in the South Pacific area. The fallout from the above-ground and undersea testing has contaminated many islands, primarily those in the Marianas and Micronesian chains, and affected the populations of these islands for generations to come. In attempts to restore the damage done to the islands, contaminated earth has been placed in under-ground storage facilities and capped with concrete. A proposed Japanese dumping site for radioactive waste in the northern Pacific, near the Marianas, has been stopped, due to the moratorium on low-level

³ This is the 'center for testing' and underground test site developed by France at Mororua Atoll.

radioactive waste, in addition to the prohibition on the dumping of high-level radioactive waste, which was adopted prior to its start⁴. The practice of ocean dumping has been allowed in the past under the auspices of the London Dumping Convention. Presently, the dumping of both high-level and low-level radioactive waste is prohibited by the London Dumping Convention, in part through the work of the South Pacific nations of Nauru and Kiribati⁵, and by the Convention for the Protection of the Natural Resources and Environment of the South Pacific Region, which prohibits the dumping of radioactive waste.

History of a Nuclear Free Zone for the South Pacific

The movement for a Nuclear Free Zone (NFZ) for the South Pacific was conducted primarily in two parts: the first initiated by New Zealand and the second by Australia.

The concept of a nuclear free zone for the South Pacific first began to appear in resolutions of the Labour Parties in Australia and New Zealand in the 1960's, when both were in opposition.⁶ These ideas were popular in part due to the recent international agreements establishing the Antarctic Treaty Area, and the Latin American Nuclear Weapons Free Zone (the Treaty of Tlatelolco), and in part due to regional concern over the effects of nuclear weapons testing by the French. Since the 1960's, "there have been...many such proposals put forward by various Pacific governments, political parties, peace groups, church organisations and trade unions"⁷.

⁴ This process is documented in the working reports of the LDC from 1983 - 1986, which are held by the IMO in London.

⁵ Nauru and Kiribati proposed an amendment to the LDC to ban the dumping of low-level radioactive wastes in the ocean at the 1983 meeting of the LDC. This motion failed, but a compromise motion for further study and a temporary moratorium was passed. In the working reports of the LDC, and cited in Fry, Greg, "A Nuclear Free Zone for the Southwest Pacific: Prospects and Significance", Working Paper number 75, The Strategic and Defence Studies Centre, The Research School of Pacific Studies, The Australian National University, Canberra, September 1983. page 21.

⁶ Beeby, Cristopher and Nigel Fyfe, "The South Pacific Nuclear Free Zone Treaty" in Victoria University of Wellington Law Review, Vol 17, No. 1, February 1987, (Published by VUW and Victoria University Press, Australia), page 34.

⁷ Fry, Greg, Ibid., page 24. Fry cites some of the many declarations of these groups.

The Labour Party in New Zealand included a "specific proposal to create a South Pacific zone" in its winning platform in the 1972 election.⁸ The first proposal which "gained serious support from nearly all states in the region"⁹ was the New Zealand Proposal of 1975. In the meanwhile, Australia and New Zealand "secured an interim order from the International Court of Justice in mid-1973 to protect them against French testing."¹⁰ The French, however, continued to test nuclear weapons in the South Pacific.

In early 1975, Bill Rowling, New Zealand Labour Prime Minister, began seeking support for "his NFZ proposal" ¹¹, first from Australian Prime Minister, Gough Whitlam. By gaining Australian support, Rowling sought to create greater interest in and support for the proposal. Rowling proposed Australian co-sponsorship of the proposal for its presentation to the United Nations General Assembly later in 1975. "Whitlam had 'misgivings' about the Rowling initiative. He would not agree to co-sponsorship but indicated that Australia would vote for the resolution."¹² Fry suggests that the response by Whitlam may have been affected by US concern over the New Zealand initiative. The US "was worried about the security implications of a South Pacific NFZ and in particular about the effect it might have on US naval and air passage including port calls and use of facilities in the region"¹³. Australia and the US believed that the American "strategic interests and its security arrangements in the South Pacific" would be disadvantaged "more directly than those of any other power"¹⁴. Australia's concern for US opposition stems in least in part from Australian reliance on the US and the ANZUS Alliance.

⁸ Beeby, page 34.

⁹ Fry, page 25.

¹⁰ Power, Paul F., "The South Pacific Nuclear-Weapon-Free Zone" in Pacific Affairs, vol. 5, no. 3, Fall 1986, page 461. The French began atmospheric testing in the South Pacific in 1966, which it stopped in 1974, and underground testing in 1975. The US and UK stopped in 1963.

¹¹ Ibid.

¹² Ibid.

¹³ From an Aid Memoire for the Department of Foreign Affairs from US Embassy, 12 June 1975, in Fry, page 25.

¹⁴ From a letter by Gough Whitlam, Australian Prime Minister, to New Zealand Prime Minister Wallace Rowling, 7 Oct 1975. Quoted in R. Wake and G. Munster Documents on Australian Defence and Foreign Policy 1968-1975, in Beeby page 34.

The US position was made clear prior to the meeting of the South Pacific Forum meeting in July, but did not seem to affect the outcome of the initiative greatly at this point. While Australia had misgivings, it "went along with the rest of the Forum in supporting the initiative"¹⁵. The communique of the Forum meeting stated that the Forum "commended the idea of establishing a nuclear weapons free zone in the South Pacific" and "that it would be desirable for a wider endorsement of the idea to be sought through the adoption of a resolution by the General Assembly of the United Nations and for a study of the ways and means of establishing such a zone to be undertaken"¹⁶. Australian reservations proved to instill doubt in the minds of the states from which New Zealand was trying to gain support. The Resolution was finally brought to the UNGA by New Zealand and co-sponsored by Fiji, and was passed in December 1975.¹⁷

Also in December 1975, the Labour Party Governments in both Australia and New Zealand lost elections. The new Conservative Governments led by Fraser and Muldoon, respectively, "moved to halt any further development of the NFZ concept."¹⁸ At the February 1976 meeting of the Forum, "they persuaded the Pacific Island leaders to adopt their position."¹⁹ The NFZ concept was mentioned in the Forum communique from this meeting, but it was "carefully worded and ambiguous" and did not push the initiative further or provide for future action.²⁰ The failure of the initiative thus lies partially within the nature of the party systems in Australia and New Zealand. The movement for a nuclear free zone was supported almost solely by the Labour Parties. When the Labour Party lost

¹⁵ Fry, page 25.

¹⁶ From the Sixth South Pacific Forum: Press Communique, Nuku'alofa, July 1975, in Fry, page 25.

¹⁷ UNGA Resolution No. 3477(XXX): Establishment of a nuclear weapons free zone in the South Pacific, Thirtieth Session of the United Nations General Assembly, 11 December 1975. Fry states that the resolution was co-sponsored by New Zealand and Fiji, page 25., Beeby states that it was Fiji, New Zealand and Papua New Guinea, page 34., in addition to other nations. Thakur points out that this was PNG's first act as a new member of the UN. page 219.

¹⁸ Fry, page 25.

¹⁹ Ibid.

²⁰ Ibid.

control, the support for the NFZ died. This stopped the initiative dead in its tracks. It would not be mentioned in Forum communiqués until 1983.

The demise of the 1975 New Zealand initiative can be linked directly to US opposition to the initiative and concerns over continued access and defense agreements. The lack of full support for the initiative by Australia, sparked by US concern, added to its failure. The 1975 initiative did not specifically define the terms of the nuclear free zone. Its goals were general. It was aimed primarily at stopping French nuclear testing in the South Pacific and did not delineate the specific area or requirements for the proposed ban of nuclear weapons. Fry has identified the "specific nature of US concern" as "the effect that such a zone might have on the movement of its naval vessels and aircraft through the region."²¹ The generality of the initiative may also have sparked US concern over the possible inclusion of the Trust Territories in the area and thus have upset US defense plans. These concerns have remained the primary concerns of the US and other nuclear weapon states to the present day.

The 1975 initiative has provided the framers of the recent initiative with a framework within which to work. The problems and concerns identified by the 1975 initiative can be dealt with and presumably corrected prior to the presentation of the finished product. In 1975, "all Pacific states were prepared to support the proposal".²² Should the problems of the 1975 initiative be solved, it is probable that these states would again support the concept of a nuclear free zone for the South Pacific.

In the years that followed, five more Pacific nations became independent: Papua New Guinea, the Solomon Islands, Tuvalu, Kiribati, and Vanuatu. Some of these nations tend to take a more radical stand on nuclear issues than the older Pacific states.²³ Worldwide, more attention was being paid to peace movements and disarmament issues, as

²¹ Ibid., page 26

²² Ibid. page 26

²³ Ibid. page 27

well as to the possibility for the creation of nuclear free zones. Meetings were being held for the denuclearisation of entire regions. French testing continued in the South Pacific and the issue of the disposal of nuclear waste was becoming ever more pressing, with the possible solution of dumping in the ocean surrounding the South Pacific. It is within this framework that the second initiative for a nuclear free zone for the South Pacific was born.

The topic of a nuclear free zone was not mentioned again until 1983, when the Labour Party government of Robert Hawke was elected in Australia. Support for the nuclear free zone was growing in Australia, sparked by pressure from "union leftists, church groups, and other lobbies seeking disarmament and an independent Australian foreign policy." The Hawke government, in its support of the nuclear free zone, did not abandon its awareness of the importance of US opinion and acceptance of the proposed policies.²⁴ It did, however, upgrade Australia's involvement in international anti-nuclear and disarmament issues.

Australia attempted to revitalize the effort for a South Pacific nuclear free zone but was met with little support at the 1983 SPF meeting. This meeting did "no more than define the limits within which further studies might be made." At this time New Zealand, as well as the other members of the Forum remained sceptical about the merits of the proposal. Both Beeby and Power state that this scepticism was fueled by the fate of the 1975 initiative and by the lull created by lack of attention or support from 1976-1983. The only Pacific state to continue to support the nuclear free zone concept was Fiji, which was active both in establishing national legislation and at the UN.²⁵

The turning point of the Australian initiative occurred in 1984. Australia had spent an entire year nurturing and trying to secure support for the concept and, perhaps more importantly, a Labour Party government was elected in New Zealand, led by Prime

²⁴ Ibid. pages 27 - 30.

²⁵ Ibid. page 30-31.

Minister David Lange. Once again, the New Zealand Labour Party platform had included support for a nuclear free Pacific.

The initiative in support of a nuclear free zone had achieved sufficient support within the Forum nations for the 1984 Forum held in Tuvalu in August, to agree to establish a working group of officials to "undertake an examination of the substantive legal and other issues involved with a view to preparing a draft of a treaty for consideration by the Forum meeting in 1985."²⁶ It is important to note that the mandate for the working group included a study of the topic of dumping and the preservation of the environment and natural resources of the region. The working group met five times, and a treaty drafting group only once, before presenting a draft Treaty at the 1985 Forum meeting in Rarotonga.²⁷

Throughout these initiatives to create a formal regional Zone, topics associated with a nuclear free zone have been developed and enacted through the national legislation of the states of the South Pacific . This legislation has been aimed primarily at access to ports and territory by vessels and craft which are nuclear powered or are carrying nuclear material. In 1982, Vanuatu's parliament adopted a resolution which comprehensively banned materials associated with nuclear weaponry and waste from its territory.²⁸ Fiji had a policy of banning nuclear armed ships in 1982, but reversed that policy in 1983.²⁹ This policy required that the requesting ship disclose whether it was carrying nuclear weapons, if refused "it will be presumed that nuclear weapons are being carried and entry will automatically be refused." This issue was raised again in the 1987 elections in Fiji, the results of which were overturned by the military coup of that year. The present government of Fiji does not ban nuclear ship visits, but supports a regional nuclear free

²⁶ Working Group, page 1, paragraph 1.

²⁷ All Forum members attended the working group meetings, including the Federated States of Micronesia which had observer status, except Tonga.

²⁸ Thakur, Ramesh, "A Nuclear-Weapon Free South Pacific: A New Zealand Perspective", in Pacific Affairs, vol. 58, no. 2, summer 1985, page 221.

²⁹ Fry, pages 17, and 31.

zone.³⁰ Both Papua New Guinea and Palau adopted nuclear free territories when they developed their constitutions following independence. Since 1972, New Zealand has periodically declared its territory free of nuclear weapons.³¹ The 1973-74 Kirk Government in New Zealand adopted a policy of excluding nuclear propelled vessels from visiting its ports.³² The most recent action by New Zealand was the 1984 policy and 1987 enabling legislation effectively closing New Zealand's ports to vessels which refused to confirm their non-nuclear status.³³

The basic principles with which the working group was to work, as summarized by Beeby, are "to reflect Forum members' aspirations to enjoy peaceful development free from the threat of environmental pollution; their acknowledgement of existing relevant treaties; their willingness to undertake commitments not to acquire or test nuclear explosives, and their wish that nobody should test, use or station such explosives in the South Pacific"...but that each member should maintain the sovereign rights to determine their own security arrangements, which would include port access, and yet reflect the importance of freedom of navigation and overflight.³⁴

These principles are better set out in the Report of the Working Group:³⁵

- "i. South Pacific countries should be free to live in peace and independence and to run their own affairs in accordance with the wishes and traditions of their people;
- ii. South Pacific countries should enjoy peaceful, social and economic development

³⁰ "Fiji's Stand on Nuclear Ships, Fiji, vol. 5, no. 1, January February 1982, page 20, in Fry, page 31, "Foes US A-Vessels Victors in Fiji Election" in the NYT, April 13, 1987, page 16, and Kristoff, Nicholas, "Fiji's Leaders Weigh Curbs on Nuclear Ships", in the NYT, April 30, 1987, page A16, "Inside Rabuka's Republic" in Pacific Islands Monthly, vol. 58, No. 11, November 1987, and "Fiji at the Crossroads" in Pacific Islands Monthly, Vol. 58, No. 9, September 1987.

³¹ Philp, P. Robert Jr., "The South Pacific Nuclear Weapon Free Zone, the Law of the Sea, and the ANZUS Alliance: An Exploration of Conflicts, a Step Toward World Peace" in California Western International Law Journal, vol 16, no. 1, winter 1986, page 138.

³² Power, page 462.

³³ Lange, David, "New Zealand's Security Policy", in Foreign Affairs, vol. 63, no. 5, summer 1985 and the New Zealand Nuclear Free Zone, Disarmament, and Arms Control Act of 1987, NZ, 1987, No. 86, see Chapter 6.

³⁴ Beeby page 37.

³⁵ "Report by the Chair of the Working Group on a South Pacific Nuclear Free Zone", submitted to the South Pacific Forum, 14 June 1985.

free from the threat of environmental pollution;

- iii. South Pacific countries acknowledge existing international treaties, organisations and regional agreements, such as the Charter of the United Nations, the Nuclear Non-Proliferation Treaty, and the Law of the Sea Convention, which contribute to these objectives;
- iv. There should be no use, testing, or stationing of nuclear explosive devices in the South Pacific;
- v. No South Pacific country would develop or manufacture, or receive from others, or acquire or test any nuclear explosive device;
- vi. Nuclear activities of South Pacific countries should be in accordance with applicable international principles and treaties, notably the Non-Proliferation Treaty and take into account regional arrangements;
- vii. South Pacific countries retain their unqualified sovereign rights to decide for themselves, consistent with their support for these objectives, their security arrangements, and such questions as the access to their ports and airfields by vessels and aircraft of other countries;
- viii. The particular importance of the principle of freedom of navigation and overflight and the treaty obligations of Forum members."³⁶

The challenge for the working group was to draft a treaty which would be effective and would not overstep the limitations created by international law and the capabilities of the nations of the region. This includes a recognition of the rights of freedom of passage and the realization that the states of the South Pacific do not presently have the capability to monitor activities on the vast areas of high seas in the region and thus would have little enforcement capability.³⁷

The working group was able to draw from the experience of the 1975 initiative and to clarify the issues which had led to its failure. Primary among these issues were the specification of the boundaries of the zone, and of the limitations and prohibitions placed upon it. In clarifying these issues and defining exactly what the Treaty would affect and what it would not, the working group acknowledged the importance of the international acceptance of the Treaty, particularly by the US. The discussions of the working groups

³⁶Ibid., pages 3-4.

³⁷ Ibid. page 7-8, paragraph 15.

and the resulting Treaty are careful not to alienate the nuclear weapon states whose acceptance of the Treaty and the Protocols will determine the success of the initiative.³⁸

Of utmost concern to the nuclear weapon states, primarily the US, are the definitions applied to the prohibition on the stationing of nuclear explosive devices. "It was accepted that the definition should be rigorous and should cover the emplantation, emplacement, transport on land or on internal waters, stockpiling, storage, installation, and deployment of nuclear explosive devices in the territories of the parties."³⁹ This must be considered in the context of the principle adopted by the Forum Heads of Government in their mandate for the drafting of a Treaty that "nothing in the draft Treaty should in any way affect the sovereign right of each Forum member to decide for itself whether to allow visits by foreign ships and aircraft to its ports and airfields, transit of its airspace by foreign aircraft and navigation of foreign ships in its territorial sea not covered by the right of innocent passage."⁴⁰ The working group addressed the issues of the definition of stationing to cover the duration or pattern of port visits. It was decided that this was up to the sovereign nation's right to decide on port access.⁴¹ Vanuatu and Papua New Guinea registered their interest in the duration of port visits, and Papua New Guinea "suggested that ship visits should be made subject to a requirement for prior warning."⁴² It is important that the Treaty does not attempt to determine national policy with regard to port visits. The sovereign rights of the coastal state to determine access to its territory is primary.

Much discussion was held as to the boundaries of the Zone. It was decided to use a diagrammatic approach as opposed to a jurisdictional approach which would include only

³⁸ Ibid., pages 7-8, paragraph 15, page 9, paragraph 18, page 15-16, paragraphs 34-37, page 27, paragraphs 65-66.

³⁹ Ibid., page 15, paragraph 35.

⁴⁰ Ibid., page 15, paragraph 34.

⁴¹ Ibid., page 16, paragraph 36.

⁴² Ibid., page 16, paragraph 37.

the territories of the member states: a zonal approach instead of a patchwork approach.⁴³ This would effectively join the nuclear free zones of Latin America, the Indian Ocean and Antarctica. The northern border of the Zone created a more difficult problem. Although the Zone was to encompass the South Pacific, two SPF member nations, Nauru and Kiribati, have territory above the equator, and there exists the possibility that the newly independent nations of the former Trust Territory may choose to sign the Treaty. It was decided that the equator should not be a limiting feature of the Zone.⁴⁴ This raised questions as to the title of the Zone: could it be called the South Pacific Nuclear Free Zone if it encompassed areas above the equator? It was decided to remain consistent with international usage of the term South Pacific for the region, as in the SPF, SPC and SPEC. Vanuatu and Papua New Guinea registered their support for the term Pacific instead of South Pacific.⁴⁵

The breadth of the Treaty with regard to the prohibitions placed upon nuclear material within the region is carefully defined. It was decided that the Treaty would handle the issues of the peaceful uses of nuclear materials as well as the disposal and dumping of nuclear material.⁴⁶ For this reason, and because of popular usage of the term in the region, the draft Treaty called for the creation of a nuclear free zone rather than a nuclear weapon free zone.⁴⁷

The specific prohibitions of the Treaty are explained below. The working group carefully explains the limits of the capability of a Treaty to affect the action of other nations. The states party to the Treaty can only agree to limit their own activity and not that of

⁴³ The term 'diagrammatic' is used to describe the application of the Treaty to the entire area of the South Pacific and thus to create a Zone of application. A 'jurisdictional' approach would apply the provisions of the Treaty only to the areas of national jurisdiction of Party states in the region and would create a patchwork of Treaty application. The Zone created by the Treaty's diagrammatic approach is pictured in Chart 1:1 of this study.

⁴⁴ Ibid., pages 8-11, paragraphs 17-22.

⁴⁵ Ibid., pages 11-12, paragraphs 22-24.

⁴⁶ Ibid., Peaceful uses: page 14-15, paragraphs 29-32, and Dumping and disposal, pages 17-23, paragraphs 41-55.

⁴⁷ Ibid., page 12, paragraph 25.

others. They do however, undertake not to "manufacture, acquire, possess or have control over any nuclear explosive device", nor to cooperate in "the testing of nuclear explosive devices, dumping at sea of radioactive wastes and other radioactive material and the manufacture of nuclear explosive devices".⁴⁸ The working group reiterated the firm opposition to testing of nuclear explosive devices in the region, and expressed the hope for a Comprehensive Test Ban Treaty and that France would sign the Protocols and agree to stop testing.⁴⁹

The inclusion of the issue of missile tests in the region was discussed, and rejected. It was recognised that the Forum members did not have legal capability to ban missile tests as they are generally conducted over and into areas of international jurisdiction; namely, the high seas. The working group also "discussed the likely reactions of the nuclear weapon states if the Treaty were to cover missile tests. It was noted that such a provision could jeopardise acceptance of the Protocols to the Treaty...which were likely to regard it as an attempt to restrict their rights in international law." Vanuatu, the Solomon Islands, Nauru and PNG registered their concern over continued missile testing.⁵⁰

The Resulting Treaty

The resulting treaty was negotiated and completed in two parts: the body and the protocols. The body was adopted and opened for signature at the 1985 meeting of the South Pacific Forum (SPF) in Rarotonga in the Cook Islands, on the 40th Anniversary of the bombing of Hiroshima. The protocols were completed and adopted at the 1986 meeting of the SPF. The treaty itself is modeled after the Treaty of Tlatelolco, but incorporates provisions which are more strict. It also incorporates the goals and ideals of the treaties and agreements which make up the international regime of arms control and disarmament.

⁴⁸ Ibid., page 13, paragraphs 27-28.

⁴⁹ Ibid., pages 16-17, paragraph 39.

⁵⁰ Ibid., page 27, paragraphs 65-66.

The Treaty of Rarotonga begins with a preamble, as most international treaties do, to describe the purpose and set the tone of the treaty. This preamble focuses on the goals of peace and on the threat of nuclear weapons. The nations party to the treaty are committed to "a world at peace"⁵¹. Beyond this statement, the parties go on to denounce nuclear weapons and stress their "grave concern" with the nuclear arms race which "presents the risk of nuclear war."⁵² "All countries have an obligation to make every effort to achieve the goal of eliminating nuclear weapons, the terror which they hold for humankind and the threat which they pose to life on earth."⁵³

In keeping with the trend toward regional action and to strengthen the forum from which this treaty was created, the preamble stresses the need for "regional arms control measures" as they "contribute to global efforts to reverse the nuclear arms race and promote the national security of each country in the region and the common security of all."⁵⁴ The preamble thus stresses the belief that stockpiles of nuclear weapons do not necessarily promote the national security of the nations in the region. This is contrary to the belief that is basic to superpower relations, that nuclear weapons and deterrence lead to stability and thus to international security, that superpower weaponry destabilizes regional situations and creates a very real threat of nuclear war to which the region has not contributed.

Environmental concerns are dealt with in two paragraphs of the preamble. The first states the region's efforts and determination to "ensure...that the bounty and beauty of the land and sea in their region shall remain the heritage of their peoples and their descendants in perpetuity to be enjoyed by all in peace".⁵⁵ In this, the framers of the treaty state their dedication not only to the environment but to the peoples and ways of life of the region, and the far-reaching effects that the disturbance of this environment would have on these

⁵¹ SPNFZ Preamble.

⁵² Ibid

⁵³ Ibid

⁵⁴ Ibid

⁵⁵ Ibid

peoples. They are "determined to ensure" the "bounty and beauty" of the region "in perpetuity" to "be enjoyed by all in peace".⁵⁶ These are very strong sentiments and determinations. The Preamble further dedicates the treaty to keeping "the region free of environmental pollution by radioactive wastes and other radioactive matter"⁵⁷ This follows the section of the treaty which reaffirms other international arms control and limitations agreements, and specifically dedicates the nations party to the treaty to protect the regional environment from radioactive waste. This is specific in its aim. In addition to the general protection of the environment, the region affirms its determination to keep radioactive material out of the region.

The preamble further affirms the place of the Treaty of Rarotonga in the growing list of arms control and disarmament agreements. It reaffirms the applicability of the provisions of the Non-proliferation Treaty, the Seabed Treaty, and the Outer Space Treaty. It particularly notes Article VII of the NPT which recognises the "right of any group of States to conclude regional treaties in order to assure the total absence of nuclear weapons in their respective territories."⁵⁸ By specifically citing this article, the Treaty ties in to the regional aims of the NPT and of the Charter of the United Nations, and further emphasizes the limits of jurisdiction to assure a nuclear free region to "their respective territories." This is an important limitation in that, by being placed in the preamble, it defines the purpose and jurisdiction of the treaty and limits these to the "territories" of the nations party to the treaty.

As in most international agreements, the preamble to the treaty serves to set the tone and state the objectives of the framers of the treaty. This treaty has thus stated its purpose to be the protection of the security and environment of the region, to be the next step in the continuum of international arms control efforts in the form of international agreement, and

⁵⁶ Ibid

⁵³ Ibid

⁵⁸ NPT Article VII

to emphasize the role of the regional organization in arms control efforts. Primary in all of this is "their committment to a world at peace."⁵⁹

The provisions of the treaty enumerate the requirements applied to states party to the treaty. They only apply to party states. The protocols enumerate the requirements for nuclear weapon states which become party to the protocols. The treaty contains little which applies to other states, except in that it establishes a zone which encompasses a large ocean area and gives the party states, and other states in the region, guidelines from which to develop national practice and legislation.

The treaty follows the form of most international treaties and of the Treaty of Tlatelolco. Article 1 defines the terms used in the treaty: South Pacific Nuclear Free Zone; territory; nuclear explosive device; and stationing. The Zone is defined further in Annex 1 and is, generally, that area north of the Antarctic Treaty area, west of the zone of application of the Treaty of Tlatelolco, south of the equator, except where the jurisdiciton of SPF nations extend beyond the equator, and to the western extent of Australian jurisdiction, including the islands in the Indian Ocean.⁶⁰ This creates a large block of ocean space with "bumps" extending above the equator, as shown on the chart included as an Attachment to Annex 1.

Territory is that defined by common international law: "internal waters, territorial sea and archipelagic waters, the seabed and subsoil beneath, the land territory and the airspace above them."⁶¹ It is careful not to include the entire area of the Zone.

Nuclear explosive device is a term used to include "any nuclear weapon" and "other explosive device capable of releasing nuclear energy, irrespective of the purpose for which it could be used", and these devices in "unassembled and partly assembled forms". This does not, however, include " the means of transport or delivery of such a weapon" if it is

⁵⁹ SPNFZ Preamble

⁶⁰ Annex I to the SPNFZ

⁶¹ Article I(b) of SPNFZ

separable.⁶² This is more encompassing than the Treaty of Tlatelolco. It does not limit the treaty to prohibiting nuclear weapons, but expands the prohibition to include all nuclear devices, which thus includes devices used to produce nuclear energy. This makes the region truly nuclear free, which may make the treaty more enforceable, and certainly makes the determination of the nations of the region more credible.

Article 3 expounds upon the "Renunciation of Nuclear Explosive Devices".

Renunciation is a term chosen carefully and is very strong. "Each party undertakes:

- (a) not to manufacture or otherwise acquire, possess or have control over any nuclear explosive device by any means anywhere inside or outside the South Pacific Nuclear Free Zone;
- (b) not to seek or receive any assistance in the manufacture or acquisition of any nuclear explosive device;
- (c) not to take any action to assist or encourage the manufacture or acquisition of any nuclear explosive device by any State."⁶³

This phraseology is taken directly from the text of the Non-Proliferation Treaty. Article II of the NPT calls for "each non-nuclear weapon State Party to the Treaty" to undertake "not to receive the transfer...of...nuclear weapons or other nuclear explosive devices, or of control over such weapons...", nor to "manufacture or to seek or receive assistance in the manufacture of nuclear weapons or other nuclear explosive devices."⁶⁴ Here however, the SPNFZ Treaty does not differentiate between nuclear weapons and nuclear explosive devices. As shown in Chapter 3, at chart 2, ten of the states which are members of the SPF and (allowed) to be party to the SPNFZ Treaty are also Party to the NPT. Of these states, all are party to the NPT as non-nuclear weapon states, which thus makes them subject to the above provision of the NPT. In effect, therefore, the South Pacific Nuclear Free Zone Treaty is reemphasizing what the nations of the South Pacific already practice.

By definition, "stationing" encompasses a very broad spectrum of activities.

"'Stationing' means emplantation, emplacement, transportation on land or inland water,

⁶² Article 1(c) of SPNFZ

⁶³ Article 3 of SPNFZ

⁶⁴ NPT Article II

stockpiling, storage, installation and deployment."⁶⁵ This severely limits the military activities which can be practiced within the territories of the party nations. This is the basis of the provision which has made the US and other nuclear weapon states with military activities and agreements in the region nervous as to the future of their involvement. The treaty does carefully state that the transport of nuclear explosive devices as defined by stationing only applies to transport "on land or inland water". This does not extend to the territorial sea, at least as defined by "stationing". Article 5 states that "each Party undertakes to prevent in its territory the stationing of any nuclear explosive device".⁶⁶ This article goes on to clarify that this statement does not suggest that the Treaty prohibits passage and transport throughout the zone and territory.

"Each Party in the exercise of its sovereign rights remains free to decide for itself whether to allow visits by foreign ships and aircraft to its ports and airfields, transit of its airspace by foreign aircraft, and navigation by foreign ships in its territorial sea or archipelagic waters in a manner not covered by the rights of innocent passage, archipelagic sea lanes passage or transit passage of straits."⁶⁷

In this way, the SPNFZ Treaty has allowed each Party the right to determine its own policy within its own territory, without designating rights and freedoms in the treaty itself. It defines the area affected and the nature of the uses which are to be considered, but leaves the policy decisions up to the individual State. The South Pacific Nuclear Free Zone Treaty itself does nothing to inhibit the freedoms of passage, innocent passage, archipelagic sea lanes passage, or transit passage, as considered in international law. Nor does this Treaty suggest a course of action different than that already accepted by international law. It does however, establish a background of definitions and restrictions upon which to base national legislation.

⁶⁵ Article 1(d) of SPNFZ

⁶⁶ Article 5(a) of SPNFZ

⁶⁷ Article 5 (b) of SPNFZ

The provisions in the SPNFZ Treaty are much less ambiguous with regard to testing. Article 6 is entitled "Prevention of Testing of Nuclear Explosive Devices" and calls for each party to:

- (a) prevent in its territory the testing of any nuclear explosive device;
- (b) not to take any action to assist or encourage the testing of any nuclear explosive device by any State.⁶⁸

Testing is to be prevented to the extent any State may take action, within its territory, and is not to be assisted or encouraged at all. "Forum members (like other countries) are only able, in relation to their own territories and, to a much more limited extent, in areas of jurisdiction outside their territory, to undertake Treaty obligations affecting the actions of other States. Beyond that, Forum members can only undertake treaty obligations in relation to their own actions, and activities on their own ships and aircraft."⁶⁹

Dumping is treated with the same respect for the limits of action available to any State. A State may only act or legislate action within its territory. It may only object to activities which take place outside of its jurisdiction. This Treaty recognizes the difficulty involved in applying these restrictions to the area of the Exclusive Economic Zone. The Exclusive Economic Zone is not mentioned in the Treaty with regard to prohibitions on nuclear explosive devices. In the area of dumping, the Treaty remains silent with regard to the EEZ and the protection of marine living resources by the prohibitions on dumping of radioactive wastes and materials: it refers to the Convention of the Protection of the Natural Resources and Environment of the South Pacific Region. The SPNFZ Treaty provides that:

Each Party undertakes:

- (a) not to dump radioactive wastes and other radioactive matter at sea anywhere within the SPNFZ;
- (b) to prevent the dumping of radioactive wastes and other radioactive wastes at sea by anyone in its territorial sea;

⁶⁸ Article 6 of SPNFZ

⁶⁹ Report to the SPF of a Working Group of Officials on a Nuclear Free Zone, of 14 June 1985., page 9 Paragraph 18.

(c) not to take any action to assist or encourage the dumping by anyone of radioactive wastes and other radioactive matter at sea anywhere within the SPNFZ;

(d) to support the conclusion as soon as possible of the proposed Convention relating to the protection of the natural resources and environment of the South Pacific region and its Protocol for the prevention of pollution of the South Pacific region by dumping, with the aim of precluding dumping at sea of radioactive wastes and other radioactive material by anyone anywhere in the region."⁷⁰

The second section of this Article makes sections 1(a) and 1(b) of this Article subject to the entry into force of the Convention for the Protection of the Natural Resources and Environment of the South Pacific Region and the Protocol to Prevent Pollution of the South Pacific Region by Dumping: "Paragraph 1(a) and 1(b) of this Article shall not apply to areas of the SPNFZ in respect of which such a Convention and Protocol have entered into force."⁷¹ This Convention was signed in Noumea, New Caledonia on November 24, 1986, and pertains to all environmental protection of the region, especially with regard to the disposal of wastes. One of the provisions which therefore supersedes paragraphs 1(a) and 1(b) is the definition of the "Convention Area" to include only those areas encompassed by the 200 NM EEZ's as established by the nations of the South Pacific, and those areas of high seas "enclosed from all sides" by these EEZ's, and other areas under the jurisdiction of Party nations which have been added pursuant to Article 3.⁷²

In addition to the definition of the Convention Area, the Convention states that "the Parties shall take all appropriate measures to prevent, reduce, and control pollution in the Convention Area caused by dumping...the parties agree to prohibit dumping of radioactive wastes or other radioactive matter in the Convention Area, ... and "to prohibit the disposal into the seabed and subsoil of the Convention Area of radioactive waste or other radioactive matter." This is also extended to the Continental Shelf over which the State has

⁷⁰ Article 7 (1) of SPNFZ

⁷¹ Article 7 (2) of SPNFZ

⁷² Convention for the Protection of the Natural Resources and Environment of the South Pacific Region, Article 2 (a) and Article 3.

jurisdiction.⁷³ This Convention goes on to "prohibit the storage of radioactive wastes or other radioactive matter in the Convention Area",⁷⁴ and to state that Parties "shall take all appropriate measures to prevent, reduce and control pollution in the Convention Area which might result from the testing of nuclear devices". While not as strong as the SPNFZ Treaty provision, these serve to emphasize the states' resolve to protect the environment and the region from nuclear materials and activities.

The Protocol for the Prevention of Pollution of the South Pacific Region by Dumping has not yet been signed. The Draft Protocol generally reiterates the provisions for the protection of the marine environment from dumping and refers its authority to the London Dumping Convention. Here the dumping of radioactive materials is included in the general provisions against dumping.

The combination of the two regional agreements creates a regime within the SPNFZ Treaty provisions that prohibits the dumping of radioactive wastes and materials within the Convention Area: that area encompassed by the EEZ's of the party States, and other areas of Party jurisdiction including the area from the Tropic of Capricorn to the Antarctic Treaty area, and between 130 degrees East Longitude and 120 degrees West Longitude.⁷⁵ Dumping will therefore be generally in accordance with the LDC regulations except that all disposal of radioactive wastes and material shall be prohibited within the Convention Area.

The SPNFZ Treaty does recognize that there exists peaceful uses of nuclear materials and makes provisions for the export of radioactive or "fissionable material" or "equipment" for peaceful purposes. Article 4 states that Parties are "not to provide" material "for peaceful purposes to:

- (i) any non-nuclear weapon State unless subject to the safeguards required by Article III (1) of the NPT, or

⁷³ Ibid Article 10 (1) and 10(2)

⁷⁴ Ibid Article 11

⁷⁵ Ibid Article 3

(ii) any nuclear-weapon state unless subject to applicable safeguards agreements with the International Atomic Energy Agency. Any such provision shall be in strict accordance with strict non-proliferation measures to provide assurance of exclusively peaceful non-explosive use."⁷⁶

These provisions allow the continued export of Australian uranium to the rest of the world through the assurances provided by the IAEA Safeguard system. These provisions are more stringent than those found in the NPT. Great trust is placed in the hands of the IAEA safeguard system by all parties to the NPT and now by the parties to the SPNFZ Treaty. The system allows for the transfer of materials for peaceful and necessary purposes, which do not contradict the purpose of these two arms control agreements.

Articles 8 and 9 of the SPNFZ Treaty establish a system for the exchange of information and control in an attempt to create a system of verification. The control system "shall shall comprise:

- (a) reports and exchange of information...;
- (b) consultations...;
- (c) the application to peaceful nuclear activities of safeguards by the IAEA...; and
- (d) a complaints procedure..."⁷⁷

This verification system has been developed "so as to provide assurances that the Treaty (has not been) breached, and to constitute a good precedent for any future nuclear free zone treaties in other parts of the world."⁷⁸ The complaints procedure carries with it a method for "challenge" of activities in the Zone. It was agreed however, that "the 'challenge' on-site inspections would only be used in exceptional circumstances."⁷⁹ These reports and exchanges of information shall be directed through the South Pacific Bureau for Economic Co-operation (SPEC) which will act as Secretariat for the Treaty organization. The Director of the SPEC will "circulate" all reports "promptly to all Parties."⁸⁰ The Director will also report directly to the South Pacific Forum annually on the "status of the

⁷⁶ Article 4 of SPNFZ

⁷⁷ Article 8 of SPNFZ

⁷⁸ WG Report page 24, paragraph 56.

⁷⁹ WG Report page 24, paragraph 58.

⁸⁰ Article 9 of SPNFZ

Treaty".⁸¹ In this way, the nations Party to the Treaty will remain informed of problems arising from the enactment of the Treaty and the workings of the Treaty, and the transfer of information between nations will be enhanced. "The provision that Parties are required to meet promptly at a meeting of the Forum in specified circumstances recognises the role of the Forum as the supreme political body in the region."⁸²

Administrative detail of any Treaty can often be the most time consuming and dull but very important to the success of the Treaty and its purpose. The SPNFZ Treaty deals with the issues of Consultation and Review, Amendment, Signature and Ratifications, Withdrawal, Reservations, Entry into Force, and Depositary Functions.⁸³

The interesting features of the administrative provisions are those for withdrawal and for reservations. The latter, reservation, is simple: "this Treaty shall not be subject to reservations."⁸⁴ Like the Treaty of Tlatelolco, the SPNFZ Treaty does allow for the withdrawal of nations party to the Treaty. Withdrawal will not, however, affect the standing of the Treaty. "This Treaty is of a

permanent nature and shall remain in force indefinitely, provided that in the event of a violation by any Party of a provision of this Treaty essential to the achievement of the objectives of the Treaty or of the spirit of the Treaty, every other Party shall have the right to withdraw from the Treaty.

(2) Withdrawal shall be effected by giving notice twelve months in advance to the director who shall circulate such notice to all other Parties."⁸⁵

The Treaty's preamble sets the tone, and the body creates a series of provisions to uphold the principles set forth in the preamble. The body incorporates the provisions of other recognized treaties which support the provisions of the Treaty. Also included are provisions for dispute settlement and signature, etc.; all the administrative details which

81 Ibid

82 WG Report page 24-25, paragraph 59

83 See Appendix 5 for the Text of the Treaty.

84 Article 14 of SPNFZ

85 Article 13 of SPNFZ

make the Treaty system work and set up a regime for future legislation and treaty to follow. The South Pacific Nuclear Free Zone Treaty is complete for the designation of a new regime to be followed by regional nations available for signature and ratification. It is not so restrictive as to overstep realistic goals and objectives for the region. It is a compromise that has the ability to make all those involved accepting of its principles and provisions.

The Treaty was both presented and opened for signature at the August 1985 Forum meeting. It was initially signed by Australia, New Zealand, the Cook Islands, Fiji, Kiribati, Niue, Tuvalu and Western Samoa, and endorsed by Nauru, Papua New Guinea, Tonga and the Solomon Islands.⁸⁶ Vanuatu also initially endorsed the Treaty as written, but "immediately (Walter Lini, Vanuatu's leader) said that he was dissatisfied with the accord and would seek a stronger treaty at the 1986 Forum meeting in Fiji."⁸⁷ As of the February 1987, ten Forum members had signed the Treaty, and four had ratified, the Cook Islands, Fiji, Niue and Tuvalu.⁸⁸ Since then, the Treaty has acquired the required eight ratifications⁸⁹ and has entered into force.

Support for this Treaty is widespread in the region, as evidenced by the relatively quick signature, ratification and entry into force. Nuclear policies of the independent nations do however vary, and it is these policies which will affect the nuclear free future of the region. There are two extremes within which the island nations' policies fall. Vanuatu is at the far extreme of opposing any US military involvement in the region and refusing any port visits by potentially nuclear armed ships. It is representative of the stances of other states such as, New Zealand, Papua New Guinea, Kiribati, and the Solomon

⁸⁶ Dobbyn, Tim "N-Treaty 'would end ANZUS'", in the Press, New Zealand, May 22, 1986, in the New Zealand Airmail Bulletin, Ministry of Foreign Affairs, Wellington, 3 June 1986.

⁸⁷ Power, page 461.

⁸⁸ Beeby, page 33.

⁸⁹ By August of 1989, the Treaty had received 10 ratifications, and 11 signatures. These ratifications are submitted by Australia, New Zealand, the Cook Islands, Fiji, Niue, Tuvalu, Solomon Islands, Kiribati, Western Samoa, and Nauru. Of these, Papua New Guinea has signed but not yet ratified. Information from conversation with Kathy Graham, Australian Embassy, Washington DC, in charge of South Pacific Affairs. See Table 4:1.

Islands, which have taken a more radical view of strategic interests in the region, and worried that the Treaty was too weak,⁹⁰ and have not however, adopted policies as radical as those of Vanuatu.⁹¹ At the other end of the spectrum are Fiji and Tonga, which welcome port visits, and are "concerned that the United States retain the option of stationing its ships at a South Pacific base."⁹² In spite of their signature of the Treaty, the Cook Islands and Tonga expressed concern that the entry into force of the Treaty would end the ANZUS Alliance, and thus the protection of the South Pacific by the US in case of war.⁹³ The other island nations fall within these extremes. Gibbs notes that the "range of opinion among the Pacific Island countries tends to reflect the Melanesian/Polynesia division within the region", Melanesia being more radical, and Polynesia being more accommodating.⁹⁴

Australia fully supports the SPNFZ Treaty, which very closely reflects its policies of non-acquisition of nuclear weapons but of maintaining defence agreements with the US. Australia allows port visits and maintains joint military facilities at North West Cape, Nurungar and Pine Gap. New Zealand, on the other hand, has adopted legislation, which is tied to the ratification and implementation of the SPNFZ Treaty, which prohibits port visits by potentially nuclear armed or nuclear powered vessels. Ironically, it is this policy of refusing port visits which is associated with the Treaty. The declaration by New Zealand of a nuclear free territory, and the Rainbow Warrior incident, focused world and media attention on the New Zealand point of view and efforts to establish a nuclear free zone, thus blocking the more accommodating and mediative efforts of the Forum in establishing a Treaty for the entire South Pacific region.

⁹⁰ Dobbyn, *supra*.

⁹¹ Gibbs, pages 397-398 and Power, page 465.

⁹² Gibbs, page 398.

⁹³ Dobbyn, *supra*.

⁹⁴ Gibbs, pages 397-398.

TREATY OF RAROTONGA
DATES OF SIGNATURES AND RATIFICATIONS

	<u>SIGNATURE</u>	<u>RATIFICATION</u>
Fiji	6.8.85	4.10.85
Cook Islands	6.8.85	28.10.85
Tuvalu	6.8.85	16.1.86
Niue	6.8.85	12.5.86
Western Samoa	6.8.85	20.10.86
Kiribati	6.8.85	28.10.86
New Zealand	6.8.85	13.11.86
Australia	6.8.85	11.12.86
Nauru	17.7.86	13.4.87
Solomon Islands		27.1.89
Papua New Guinea	16.9.85	15.9.89

The Treaty came into effect with the deposit of the eighth ratification on 11 December 1986.

PROTOCOLS

To date, Protocols 2 and 3 have been signed and ratified by the Soviet Union and China.

	<u>SIGNATURE</u>	<u>RATIFICATION</u>
USSR	15.12.86	21.4.88
China	10.2.87	21.10.88

List of Signatories to the SPNFZ Treaty

Chapter 5: The Protocols and International Response to the Treaty and the Protocols

The Protocols

The second part of the Treaty regime being established is embodied in the Protocols. The Protocols to SPNFZ were finished a year later than the Treaty itself. The draft Protocols were included in the original draft Treaty presented to and accepted by the South Pacific Forum. Keeping in mind that the "Protocols would involve countries outside the region and ... that consultations should be held with all the countries which would be eligible to sign,"¹ the working group was again convened², and commissioned to organize the consultation and make recommendations to be presented at the Forum meeting in 1986, if practicable,³ in order for the Forum to develop a final draft of the Protocols to be opened for signature. This is a good example of the degree of concern with which the Forum nations viewed the response of the prospective Protocol States. In effect, the Forum was asking for direct input from the nuclear weapon states in the development of the Protocols in order to gain the widest possible acceptance and greatest effect of the Protocols and of the goals of the Treaty.

At the first meeting, it was noted that the task of the working group was to "carry out consultations and not negotiations on the draft Protocols" and that seeking the views of the prospective Protocol states could best be accomplished by a visit by a delegation of the working group to be comprised of any state which is eligible to sign the Treaty.⁴ Letters were written to each of the prospective Protocol states requesting them "to receive the representative delegation, describing the projected purpose of its visit and formally

¹ Recommendations on the adoption of the protocols to the Treaty on a South Pacific Nuclear Free Zone (the Treaty of Rarotonga), Report to the South Pacific Forum by the Chair of the Working Group of Officials on a South Pacific Nuclear Free Zone, 30 April 1986., page1.

² The working group consisted of delegates from Australia, Cook Islands, Fiji, Nauru, New Zealand, Niue, Papua New Guinea, Solomon Islands, Tuvalu, and Western Samoa.

³ Supra note 1.

⁴ Ibid., pages 1-2.

conveying the texts of the Treaty and the draft Protocols" written by the Chairman of the sixteenth Forum, Sir Thomas Davis, KBE, the Prime Minister of the Cook Islands.⁵

These letters were well received and the requests for consultative visits were granted. The visits took place between January 28 - February 14, 1986.

The results of the consultations were reported to the Forum on April 30, 1986.⁶

Six issues of importance were identified as the result of the consultations:

- a withdrawal clause
- the deletion or amendment of Article I of draft Protocol 2
- the amendment of Article II of draft Protocol 2 to allow suspension of the provision of that Protocol not to use or threaten to use nuclear weapons against a Party to the Treaty in the event of an armed attack by a Party to the Treaty in alliance with a nuclear weapon State
- provisions for consultations between Parties to the Treaty and Parties to the Protocol on the future implementation of or amendment to the Treaty
- a proposal by France for continuing dialogue with Forum countries on disarmament issues
- procedures for handling further questions or comments by potential Protocol states before the next Forum meeting.⁷

These issues were discussed by the working group and, as far as the working group felt that the issues were consistent with the purpose and goals of the Treaty and the Protocols, the concerns of the nuclear weapon states were incorporated in the final draft of the Protocols.

The first three issues are discussed in following paragraphs. The last three issues were considered by the working group for inclusion in the final draft text of the Protocols. Three potential Protocol states suggested the need for prior consultation, but not veto, for Protocol nations prior to amendment of the Protocols. The working group did not recommend the addition of a provision for this purpose, but recognizes the possibility of informal consultation as requested by Parties to the Treaty.⁸ On the issue of a dialogue

⁵ Ibid., page 2.

⁶ This report is not available to the public. "It is recommended that the report remains confidential to member Governments of the Forum since it includes detailed summaries of the consultation with each of the five States which were... conducted in confidence." The information contained in this report is obtained from the Report of the Working Group of Officials, Ibid., page 3-4.

⁷ Ibid., pages 4-5. paraphrased by the author.

⁸ Ibid., page 11, paragraphs 30-31.

with France on disarmament matters, the working group recognized the importance of the issue, but "makes no recommendation since this matter is beyond the working group's terms of reference."⁹ The working group thus drew the French proposal for further discussion to the attention of the South Pacific Forum leaders. Deadline for submission of provisions for further comment by potential Protocol states were identified by the delegations to the nuclear weapon states as being April 7, 1986. If further comments were required, provisions for dissemination of recommendations and comments would be made.¹⁰

The resulting Protocols are open to signature only by the five nuclear weapon states invited explicitly in each of the Protocols: the United States, the Soviet Union, Great Britain, France and the Peoples Republic of China. Each Protocol has a specific goal with which it asks Party states to comply. They are open to signature by the states which are listed in the introduction of each of the Protocols. All are from the above group of nuclear weapon states, but not all are represented in each Protocol.

The first Protocol calls for signature by nations which have territories "for which it is internationally responsible situated within the South Pacific Nuclear Free Zone."¹¹ This includes France, the United States and Great Britain.¹² The Protocol specifically asks these nations to apply the principles and prohibitions contained in Article 3, 5, 6 and 8(2)(c) and Annex 2 of the SPNFZ Treaty.¹³ These articles relate to the manufacture, stationing and testing of nuclear explosive devices, and to the application of IAEA safeguards. In effect, this Protocol asks that nations from outside the region become party to the prime purpose of the Treaty for those territories which are located within the SPNFZ.

⁹ Ibid., page 11, paragraph 32. (emphasis in original).

¹⁰ Ibid., page 12, paragraph 33-34.

¹¹ Protocols to the Treaty on a South Pacific Nuclear Free Zone (the Treaty of Rarotonga), Protocol 1, Article 1

¹² Protocol 1, Article 4

¹³ Protocol 1, Article 1

The second Protocol is open to signature by France, the People's Republic of China, the Soviet Union, Great Britain, and the United States. This Protocol asks that the nuclear weapons states remove the Treaty area from its list of possible targets. "Each Party undertakes not to use or threaten to use any nuclear explosive device against:

- (a) Parties to the Treaty; or
- (b) any territory within the South Pacific Nuclear Free Zone for which a State that has become a Party to Protocol 1 is internationally responsible."¹⁴

This does not apply to those nations or territories within the South Pacific Nuclear Free Zone Treaty which are not Party to the Treaty or the Protocol. It acts the part of a non-aggression pact for the Treaty and thus accomplishes one of the primary goals of the Treaty: to remove the South Pacific region from the threat of nuclear attack. Not all nations in the South Pacific have defense agreements outside of the region, but depend on the protection of Australia and New Zealand. This provision would assure, at least in name, the safety of the Party states from nuclear attack.

In the consultation process, each of the potential Protocol states raised questions about the expression of reservations to the Protocols. Two of them specifically asked about the possibility of entering an understanding or reservation in the circumstance of an "armed attack on a Protocol state by a Party to the Rarotonga Treaty in alliance with a nuclear weapon state."¹⁵ The working group discussed the possibility of amending Article 2 of draft Protocol 2 to accommodate but, "does not, however, recommend such an agreement. Moreover, it considers as very remote the contingency that a Party to the Rarotonga Treaty would, in alliance with a nuclear weapon state, attack a Party to the Protocols."¹⁶

¹⁴ Protocol 2, Article 1

¹⁵ Recommendations on the adoption of the Protocols, page 10, paragraph 27-29.

¹⁶ Ibid., page 10, paragraph 29.

Protocol 2 also requires signatory nations to undertake "not to contribute to any act of a Party to the Treaty which constitutes a violation of the Treaty" or a Protocol.¹⁷ This prohibits the nuclear weapon nations from transferring nuclear materials and nuclear explosive devices except where the safeguards are in place, among other things. These prohibitions are already included in the Non-Proliferation Treaty to which ten SPF nations are already party. This provision, Article 2 of Protocol 2, was one of the issues identified by the consultations of the working group. The original wording of this provision raised questions as to the extent of the obligations implied. "The article might oblige (the Parties to the Protocol) to endorse and accept in their entirety the obligations contained in the Treaty as well as in the other two Protocols."¹⁸ The working group agreed that the issue deserved attention and decided to redraft the article to "put its intended meaning beyond doubt."¹⁹ The reworded provision changes the original: "Each Party undertakes not to contribute to any act which constitutes a violation of the Treaty or its Protocols by Parties to them" by replacing the general phrase "any act" to "any act of a Party to the Treaty" and adds the same prohibition to "any act of another Party to a Protocol which constitutes a violation of a Protocol."²⁰ This clarifies the intent of the provision and specifies the responsibility of the Parties to this provision.

Protocol 3 contains perhaps the most important of the provisions of the Treaty and of the Protocols. Very simply: "Each Party (to this Protocol) undertakes not to test any nuclear explosive device anywhere within the South Pacific Nuclear Free Zone."²¹ This is the culmination of the initial purpose of the independent nations of the South Pacific Region. As above, among the first situations to which the nations responded was the

¹⁷ Protocol 2, Article 2, this was previously Article 1 of the draft Protocol and was changed subsequent to the consultations of the working group., Recommendations on the adoption of the Protocols, page 9, paragraphs 25-26.

¹⁸ Ibid., page 8, paragraph 21.

¹⁹ Ibid., page 9, paragraph 22-23.

²⁰ Protocol 2, Article 2 and draft Protocol 2, Article 1

²¹ Protocol 3, Article 3

continued testing of nuclear weapons in the region by nations which were in control of territories in the region. This provision directly addresses the problem of testing in the region by powers from without, by requiring all testing to stop. France, the People's Republic of China, the Union of Soviet Socialist Republics, Great Britain, and the United States have been invited to sign this provision.²²

Protocols 2 and 3 provide for acceptance of changes in requirements created by amendment to the Treaty, and expansion of the Treaty area in accordance with Article 12 (3) of the Treaty,²³ and for withdrawal from the Protocol in accordance with the "exercise of national sovereignty" in the case of "extraordinary events" which have jeopardized its supreme interests. Protocol 1 does not provide for changes associated with the expansion of the Treaty area due to the nature of the Protocol. Expansion of the Treaty area will not change the requirements of the Protocol with respect to extra-regional nations.

The draft Protocols did not include a withdrawal clause. In consultation, four of the five potential Protocol states noted the absence, and two considered it a deficiency in the Protocols.²⁴ The working group was, however, "reluctant to recommend inclusion of any withdrawal clause in the draft Protocols."²⁵ It was noted that the Treaty itself contains a narrower withdrawal provision than that considered necessary by the nuclear weapon states, and that it would be preferable to include this type of provision in the Protocols, if it were not so important to the potential Protocol states. The acceptance of this Protocol would turn on the inclusion of a broad withdrawal clause. The working group therefore "agreed to recommend" the inclusion of the following withdrawal clause:

²² Protocol 3, Article 4

²³ Protocol 1, Article 2; Protocol 2, Article 3; and Protocol 3, Article 2

²⁴ Recommendation on the adoption of the Protocols, page 5, paragraph 11.

²⁵ Ibid., page 5, paragraph 12.

"Each Party shall, in exercising its national sovereignty, have the right to withdrawal from this Protocol if it decides that extraordinary events, related to the subject matter of this Protocol, have jeopardised its supreme interests..."²⁶

Notice of withdrawal shall be given to the depository "three months in advance" and "shall include a statement of the extraordinary events."²⁷ This is an attempt to require the commitments of the party States to be genuine prior to signature and ratification. The working group did however recommend that the Forum decide whether or not to include a withdrawal clause in the final Protocols since it calls for "fine political judgement."²⁸ The Forum chose not to include a withdrawal clause in the final form of the Protocols.

No attempt is made by the Protocols to allow accession by nations which are not explicitly named in the Protocols; in this it is unlike the Treaty. It seems that the invited nations are considered the only threat to the safety of the region by means of nuclear explosive devices. It is not clear whether other nations were discussed for invitation to sign the Protocols. The five invited states are the self-proclaimed nuclear weapon capable states.

The Response

The South Pacific Nuclear Free Zone Treaty was completed and opened for signature on August 6, 1985 and the Protocols to the Treaty were opened for signature the following year at the annual meeting of the South Pacific Forum. Initial reaction to the Treaty was tentative. The nuclear weapon states were unsure of the ramifications of such a treaty for the strategic balance of the Pacific Ocean and the freedoms of passage of the sea which might be curtailed. Prior to the completion of the Treaty, in 1984, New Zealand closed its ports to visits by foreign vessels which were not able to prove that they were nuclear free. This put a great deal of pressure on the ANZUS Alliance: the defense alliance

²⁶ Ibid., page 6, paragraphs 14-16.

²⁷ Protocol 1, Article 3; Protocol 2, Article 4; and Protocol 3, Article 3

²⁸ The issues for discussion are enumerated in the Recommendations on the adoption of the Protocols, pages 6-8, paragraphs 17-20.

between Australia, the United States, and New Zealand. Close attention was therefore paid to the provisions of the emerging SPNFZ Treaty. Many of the decisions made by states on whether to become party to the Treaty were made with the precedent of the New Zealand port closings in mind.

The responses of states to the Treaty and Protocols are distinguished by their position and affiliations in the region and outside of the region. For instance, only Forum states may become party to the body of the Treaty, while only the states designated in each of the Protocols may become party to the Protocols. Outside this system are the nations of the former Trust Territories which have subsequently become or are becoming independent, other nuclear capable nations, and both aligned and non-aligned nations.

Alliances within the South Pacific Forum are difficult to identify due to the practice of Pacific nations not to publicize differences of opinion and policy. Most SPF publications and communiqués report only consensus. Such is the case with the reports of the Working Groups on the Treaty and on the Protocols. In only a very few instances are individual nation's opinions and objectives noted. The same is not true of the nuclear weapon nations. The objections of the nuclear weapon states were issued as comprehensive statements in review of the Treaty and Protocols. These did not however always disclose the agenda which made these decisions necessary.

The individual states invited to become party to the Protocols to the Treaty of Rarotonga have responded to the invitation. At present, only the People's Republic of China (PRC) and the Union of Soviet Socialist Republics (USSR) have signed and ratified the Protocols. The United States, France and Great Britain have refused to sign. Perhaps the best way to discuss the responses to the Protocols, and to the Treaty in general, is to handle those nations which responded positively and those which responded negatively as separate groups of responses.

Positive Responses

Only China and the Soviet Union have responded positively to the Protocols, despite the promising response met by the representative delegation to each of the nuclear weapon states. Neither state presently has close ties with the island nations of the South Pacific; however, both are directing increased attention to the region. China has used the international waters east of the Solomon Islands, and the Soviet Union has used an area near the Cook Islands for missile testing.²⁹ The Soviet Union has offered aid to states in the region, but all of these offers, with the exception of a short lived fishing agreement with Kiribati, have been rejected.³⁰ China supported the 1975 United Nations proposal for a South Pacific Nuclear Free Zone.³¹ Neither nation has a set policy regarding the acceptance and approval of regional nuclear free zones. Each has, however, asserted their views as to the applicability of the SPNFZ Treaty and Protocols.

Both states transmitted their notices of signature and of ratification under separate cover. Each notice of signature was accompanied by a statement noting their full support for the nuclear free zone and for the denuclearization of the region as a positive step in the direction of total nuclear disarmament. These statements also included references to the possibility of reservations to the provisions of the Treaty and Protocols.

On January 17, 1987, China transmitted its notice of signature to the Prime Minister of Fiji, Ratu Sir Kamisese Mara, as Chairman of the Seventeenth South Pacific Forum in Fiji, and formally signed the Protocols on February 10, 1987.³² These statements commend the efforts of the South Pacific Forum and restate the support of China in the effort to establish the nuclear free zone. They also stress China's "consistent stand not to

²⁹ Gibbs, page 398, and Fry, NFZ, pages 22-23. Both areas are listed as current test sites in Fry's 1983 article.

³⁰ Gibbs, page 400, footnote 78.

³¹ *Ibid*, page 398.

³² Statement of Wu Xuequian, State Councillor and Minister of Foreign Affairs of the People's Republic of China, January 17, 1987, and statement of Ambassador Ji Chaozhu, Ambassador of China to Fiji, February 10, 1987. Copies of the Statements, as transmitted to the South Pacific Forum, obtained from the Australian Embassy, Washington, DC.

use or threaten to use nuclear weapons against non-nuclear weapons states or nuclear free zones".³³ "China is ready to join the South Pacific countries and all the other peace-loving countries in an unremitting effort for the complete prohibition and thorough destruction of nuclear weapons."³⁴

The statement of the Chinese Ambassador to the Forum at the time of signature reiterates these commitments and ideals, and yet, points out two important notes, which resemble reservations to the Treaty and the Protocols. The first reemphasizes China's position on the Non-Proliferation Treaty and on the Partial Test Ban Treaty. The second states that:

"China will fulfill its obligations assumed under Protocols 2 and 3 attached to the South Pacific Nuclear Free Zone Treaty. However, the Chinese Government reserves its right to reconsider these obligations if other nuclear weapon states or the contracting parties to the Treaty take any action in gross violation of the Treaty and its attached Protocols, thus changing the status of the nuclear free zone and endangering the security interests of China."³⁵

This type of reservation was brought out in the discussions of nuclear weapons states with the representative delegations from the working group, and was discussed by the working group. The working groups chose not to suggest that this provision be included in the final draft of the Protocols. Such a reservation is tantamount to a withdrawal clause, which the South Pacific Forum chose not to include in the provisions of the Protocols.

The statement accompanying the notice of signature of the Soviet Union is somewhat different in tone. The Soviet position in the Pacific is different from that of China. The Soviet Navy maintains a strong and visible presence in the Pacific, but does not enjoy defense agreements with the countries of the South Pacific. These nations are traditionally allied with the US and with western powers. Like the Chinese statement, this statement emphasizes the support of the Soviet Union for the establishment of nuclear free

³³ Wu Xueqian, January 17, 1987, *supra*.

³⁴ *Ibid*.

³⁵ Ambassador Ji Chaozhu, February 10, 1987, *supra* note 32.

zones in various parts of the world, and recognizes the nuclear free zone in the South Pacific as "an important contribution to the formation of an effective system of security in the Asian Pacific Region, [which] will strengthen the international nuclear non-proliferation regime and [which] will contribute to the realization of the task of doing away with nuclear armaments on the earth."³⁶

The unofficial translation of this statement uses such phrases as recognizing the nuclear free zone as "an important measure in the struggle for the elimination of nuclear weapons" and "guided by a desire to assist the efforts of the South Pacific Forum countries in this direction"³⁷ The Soviet Union goes further to express to the Forum its "readiness to become a guarantor of the South Pacific Nuclear Free Zone"³⁸ These follow a recent initiative and rededication of the Soviet Union to establishing a stronger presence in the Pacific.³⁹

The reservations declared by the Soviet Union are more extensive than those of China.

"1. The Soviet Union proceeds from the fact, that transportation of nuclear explosive devices by the parties to the Treaty anywhere inside or outside the South Pacific Nuclear Free Zone is covered by prohibitions provided by Point A of Article 3 of the Treaty, in which the Parties undertake " not to have control over any nuclear explosive device by any means anywhere inside or outside the South Pacific Nuclear Free Zone".

This is a clarification of the interpretation of the above Article by the Soviet Union.

2. Point 2 of Article 5 of the Treaty admits that each Party to the Treaty remains free to decide for itself whether to allow visits by foreign ships and aircraft with nuclear explosive device to its ports and airfields, their transit via its territorial sea, archipelagic waters or airspace. In this connection the Soviet Union reaffirms its position that the admission of transit of nuclear weapons or other nuclear explosive devices by any means, as well as of visits by foreign military ships and aircraft with nuclear explosive devices on board to the ports

³⁶ Unofficial translation of the Statement of the Soviet Government on the Occasion of Signing Protocols 2 and 3 to the South Pacific Nuclear Free Zone Treaty, obtained from the Australian Embassy, Washington, DC.

³⁷ Ibid.

³⁸ Ibid.

³⁹ References to increased Soviet interest and involvement in the region can be found in chapter 2.

and airfields within the nuclear free zone would contradict the aims of the Treaty and would be inconsistent with the nuclear free status of the zone.

This claims that the admission of nuclear armed vessels or aircraft into the territorial sea or airspace of a state Party to the Treaty would be inconsistent with the Treaty, although the Treaty makes it very clear that such decisions are not within the realm of the Treaty provisions but are determinations that should be made by the Party state. This raises the question: if a Party state establishes a practice which is inconsistent with the Treaty, is the Party state in violation of the Treaty? and has this then nullified the Treaty?

3. In case of any actions undertaken by a state or states - Parties to the Treaty of Rarotonga violating their major commitments to the Treaty, connected with the nuclear free status of the zone, as well as in case of committing by one or several states - Parties to the Treaty of an act of aggression supported by a state possessing nuclear weapons or, together with it, with the use by such a state of the territory, airspace, territorial sea or archipelagic waters of these countries for visits by military ships and aircraft with nuclear weapons on board or transit of nuclear weapons, the Soviet Union will have the right to consider itself free from its commitments assumed in accordance with Protocol 2 to the Treaty. In case of any other actions by the Parties to the Treaty, inconsistent with their nuclear free status, the Soviet Union retains the right to revise its commitments assumed in accordance with the mentioned Protocol.

Here, the Soviet Union establishes its own withdrawal provision, with regard to its commitments under Protocol 2, in the case of violation of the Treaty in the above mentioned circumstances. Such circumstances may include the admission of military ships or aircraft for visits to the territorial waters or archipelagic waters, "together with" an act of aggression. Here the wording is difficult to understand, and may carry meanings broader or more stringent than discussed. This is actually a provision for withdrawal from the Protocols.

4. The Soviet Union proceeds from the fact that its commitments assumed according to Protocol 2 to the Treaty of Rarotonga cover also the territories to which the nuclear free zone status is applied according to Protocol 1 to the Treaty. The Soviet Union reaffirms herewith its position in respect of granting independence to colonial countries and peoples according to the UN Declaration on this matter (the UN General Assembly Resolution 1514/XV of December 14th, 1960).

In keeping with the Soviet Union's policy of supporting newly independent and emerging former-colonial states, this provision is a statement in support of the purpose of Protocol 1

and the support of the remaining territories within the region. The provisions of this Protocol call for the territorial powers in the region to adhere to the provisions of the Treaty and the Protocols with regard to their territories.

5. The Soviet Government declares that the provisions of the Articles of Protocols 2 and 3 are applicable to the Text of the South Pacific Nuclear Free Zone in that version of the Treaty, in which it has been formulated by the moment of signing the Protocols by the Government of the USSR with taking into consideration its position, set forth in this statement. In this connection and amendment to the Treaty, which would come into force according to the provisions of Article 11, or any change of geographic boundaries of the nuclear free zone, defined in point A of Article 1 and described in Annex I to the Treaty without clearly expressed agreement with it on the part of the USSR will not be valid for the Soviet Union."⁴⁰

Basically, this statement says that any change in the area encompassed by the Zone which is made without the "clearly expressed agreement" of the Soviet Union will not be recognized by the Soviet Union.

Perhaps the most important point about these extensive statements of reservations to the Protocols to the Treaty of Rarotonga, is that they were not repeated upon ratification of the Protocols by either nation. The instruments of ratification were simple and to the point, but did not include reservations. This would suggest that upon ratification of the Protocols, both China and the Soviet Union had become satisfied with the provisions of the Protocols, or, conversely, that they felt that the statements accompanying signature were enough to state their intent and the extent of their acceptance of the Treaty and Protocols.

Negative Responses

The category of negative responses can again be broken into categories which directly comply with the individual states responding to the Protocols: the French negative response; the US negative response; and the response of the United Kingdom which takes into account the views of both France and the US.

France

⁴⁰ Ibid. pages 3-4.

France holds the distinction of being the country at which much of the Treaty and Protocols are aimed. The French practice of nuclear testing in the region serves as the impetus for regional organization against any nuclear presence in the region, particularly that of western states. As discussed above, the French position was carefully considered in the determination of the direction of the final Protocol provisions. Compromises were considered in an attempt to gain French ratification of the Protocols, and thus an end to testing of nuclear devices in the South Pacific. These efforts were unsuccessful. France refused to sign the Protocols.

The French position on its presence in the South Pacific, its policy and responsibility to the maintenance of stability and security within the region is straightforward: France maintains territorial sovereignty in the South Pacific and as a nuclear power, is responsible for maintaining nuclear stability through deterrence. The French position is that the concept of a nuclear free zone is destabilizing. These issues are better explained by G. Flosse, the Secretary of State in charge of the South Pacific, in "Sécurité du Pacifique Sud, Sécurité de la France."⁴¹

According to Guilhaudis, France is in favor of nuclear free zones, at least in principle, provided they meet certain criteria: that the concept for the zone is born from within the region, and that it accounts for the particular characteristics required by the countries of the region; that the security of the region is not affected by the lack of nuclear weapons; and that it not affect free passage in international areas, air or sea.⁴²

French presence is a part of the whole of Western presence in the South Pacific. Since World War II, western powers have maintained security and stability in the region and in the world. This has been accomplished both by military presence and by the

⁴¹ Flosse, Gaston, "Sécurité du Pacifique Sud, Sécurité de la France" in defense nationale, vol 44, March 1988, pages 9-14 (published by the Comité d'Études de Défense Nationale, Paris).

⁴² Guilhaudis, Jean François, "Le Traité sur la Zone Denucléarisée du Pacifique Sud", in La Course aux Armements et le Désarmement: Le Désarmement pour le Développement, J. F. Guilhaudis and J. Fontanil, eds., Ares, 1986.

research and testing of nuclear weapons. Testing of weapons gives credibility to national power and thus to deterrence. French testing, in particular, is seen as an exercise of national sovereignty, in furtherance of the French policy "not to let the world being [sic] divided by two Big Powers, but to act as an independent country, mostly on matters of national security"⁴³. Thus, the French government view is that French policy and practice, both historic and present, are legitimate and are important to the security of the region.

Flosse examines both the French and Forum states' points of view and points out the independent nations' mistakes in determining a nuclear free policy. The position that the countries of the region have taken seems to ignore the fact of previous devastating world wars and the probability of future conflict in the region.⁴⁴ The attitude toward French military and weapons presence suggests that the contribution of France to the stability of the region has been forgotten.⁴⁵ The single most important error in the logic of establishing a nuclear free zone is the belief that unilateral western disarmament is a viable alternative to deterrence.⁴⁶ It is recognized, however, that the independent nations of the South Pacific maintain separate national policies. These policies range from that of New Zealand with regard to port visits to that of Australia, which is commended for recognizing the strategic importance of continued western alliance.⁴⁷

Guilhaudis identifies three concerns raised by the Treaty: that of a nuclear free zone encompassing large expanses of ocean space, presumably areas of high seas; that there exists no reason for prevention of threat where no threat exists; and that the continuation of testing is clearly essential to the maintenance of French security.⁴⁸ Flosse identifies

⁴³ Gomane, Jean-Pierre, "A French Perspective", presented at the Conference on the International Implications of Extended Maritime Jurisdiction in the Pacific, sponsored by the Law of the Sea Institute and the East West Center, Honolulu, Hawaii, August, 1987.

⁴⁴ Flosse, page 10.

⁴⁵ Ibid. pages 10-11.

⁴⁶ Ibid. page 10.

⁴⁷ Ibid. page 9 and page 12.

⁴⁸ Guilhaudis, page 369.

possible future problems associated with the Treaty and its Protocols. First and foremost is the possible infringement of rights of passage through the region, as produced by the New Zealand position on port visits. Other problems include future relationships with French territories in the region, foreign aid relationships and the complications produced by the forthcoming European Economic Community.⁴⁹

What we have here is a basic conflict of principles: French policy requires nuclear weapons, and testing in support of these weapons, within its territorial boundaries, and recognizes the importance of nuclear strength in the furtherance of deterrence and therefore world stability and safety; the ideals of the nuclear free zone concept identify as unacceptable the threat of nuclear war and nuclear contamination of the environment and thus prohibits the presence of nuclear materials in any form. They exemplify the classic battle between deterrence and disarmament; destabilization and removal of threat.

The French will maintain a presence in the Pacific, both in order to maintain their territories and to fulfill their obligations to the region as a nuclear power and a world power. The future will bring problems to the South Pacific, and in its position, France will continue to protect the interests of the region from over development, Libyan intrusions into Vanuatu and New Caledonia, Soviet ambitions in the Pacific, as well as the illusions of denuclearization, and other future issues of concern to the region and the the future of the western world.⁵⁰

The United States

Despite tremendous efforts by the framers of the South Pacific Nuclear Free Zone Treaty to accommodate the needs and desires of the United States, the United States determined that it was in its best interests not to sign the Treaty. Much discussion was held on this topic, both in Congress and in the Department of Defense. Early indications

⁴⁹ Flosse, pages 10-14.

⁵⁰ Ibid. page 13.

showed that the US might have signed the Protocols to the Treaty. In 1984, shortly after the "free-zone norms became known, Admiral William J. Crowe, Jr., then American Pacific forces commander, said that the United States would probably not find anything objectionable in a South Pacific free-zone".⁵¹ In a discussion in late 1986, Senator Pell, chair of the Senate Foreign Relations Committee, saw no reason why the US should reject the Protocols.⁵² The ramifications of the Treaty were, however, eventually seen to pose some threat to continued US naval actions in the region.

On February 5, 1987, the United States issued a Statement to the Press and, without expressing support of the principles embodied in the Treaty, stated that "in view of our global security interests and responsibilities, we are not, under current circumstances, in a position to sign the Protocols."⁵³ The statement goes on to state that the US is "appreciative of the role of Australia and other parties to the Treaty...including their efforts to keep our and allied interests in mind as they managed the composition of the Treaty and Protocols"⁵⁴ The US only then expressed its appreciation of the "serious commitment on the Pacific Island States to non-proliferation."⁵⁵ Note that in acknowledging the role and efforts of the region, the US focuses its praise on Australia and leaves the rest as "other parties". Also note, that in recommending the commitment to non-proliferation, the statement acknowledges the "Pacific Island states", but does not include those states which cannot be considered island states, such as Australia and New Zealand. In this the US has thanked Australia and recognized the policy of the island nations, which is contrary to US interests, and ignoring New Zealand's input altogether.

⁵¹ Power, Paul F., "The South Pacific Nuclear-Weapon-Free Zone", in Pacific Affairs, vol. 59, no. 3, Fall 1986, page 471.

⁵² In response to a direct question by the author in a Question and Answer session following lecture to a seminar in the Graduate Program in Marine Affairs, University of Rhode Island, fall 1986.

⁵³ South Pacific Nuclear Free Zone Treaty (SPNFZ): Statement, Thursday February 5, 1987, from EAP Press Guidance, obtained from the Australian Embassy, Washington, DC., also from the Department of State Daily Press Briefing, Thursday February 5, 1987, 12:20 PM, DPC # 19, from the US Department of State.

⁵⁴ Ibid.

⁵⁵ Ibid.

Following a comprehensive study of US interests and responsibilities in the region, as well as congressional hearings in both the House of Representatives and Senate, the US determined that it was not in a position to sign. The primary reasons given for the non-signature were the criteria established for the US with regard to the establishment of nuclear weapon free zones.

These criteria are:

- "1. The initiative for the creation of the nuclear weapons free zone should come from the states in the region concerned.
2. All states whose participation is deemed important should participate in the zone.
3. The zone arrangement should provide for adequate verification of compliance with its provisions.
4. The establishment of the zone should not disturb existing security arrangements to the detriment of regional and international security.
5. The zone arrangement should effectively prohibit its parties from developing or otherwise possessing any nuclear explosive device for whatever purpose.
6. The zone arrangement should not seek to impose restrictions on the exercise of maritime and aerial navigation rights and freedoms recognized under international law, particularly the freedoms of navigation and overflight of the high seas, archipelagic sea lanes passage, transit through straits used for international navigation, and the right of innocent passage through territorial seas and archipelagic waters.
7. The establishment of a zone should not affect the existing rights of its parties under international law to grant or deny to other states transit privileges, including port calls and overflights."⁵⁶

These are the given reasons for the US refusal to sign the Treaty. There are many extenuating circumstances which make initial analysis superficial. The US has responsibilities which include the future of the ANZUS Alliance, and the future proliferation of nuclear free zones, as well as relations with France, and other powers which make US signature of the Treaty potentially uncomfortable.

⁵⁶ US Criteria for the Establishment of Nuclear Weapons Free Zones, obtained from the US Department of State, February 1987, Washington, DC.

At the time of the US response, primary concern about the effects of the Treaty and the future of the ANZUS alliance was focused on the actions of New Zealand to enact national legislation which was more inclusive than the Treaty itself.. The worries of the US and the reality of the requirements of the Treaty are the focus of this analysis.

US military involvement in the region is important. The US maintains a missile test site at Kwajalein in the Marshall Islands and maintains situations in which there exists a possible site for future testing, such as in Palau, the Marshall Islands, and the Northern Marianas.

The United Kingdom

The United Kingdoms' response is similar to that of the US. It did not, however, enumerate the criteria involved. The United Kingdom has a stronger relationship with Australia and New Zealand due to their membership in the Commonwealth. The primary concern for the United Kingdom, like that of the US, are the future ramifications of the New Zealand position with regard to port access,⁵⁷ and the possibility that this practice will spread and become commonplace. Secondary to this concern, is the future relationship of Australia, New Zealand and the independent nations of the South Pacific with Britain and the West. Of particular interest are the Commonwealth nations and their relationship with the European Economic Community which will come into being in 1992. The changing strategic system and defense alliance structure may affect future economic aid to the region.⁵⁸

⁵⁷ Gibbs, page 399, etc.

⁵⁸ Flosse, page 11.

Issues

The responses to the Protocols by the nuclear power nations allow us to identify several issues which are of primary importance to the future integrity of the Nuclear Free Zone and the possibility of future acceptance of the Protocols. These issues are:

1. withdrawal
2. freedom of passage
3. port calls
4. the future for the use of sovereign territory in a manner to be determined by the sovereign state (ie: the use of French Polynesia for testing of nuclear weapons by the French)

The question of withdrawal is one which was dealt with in both the Treaty and the Protocols. Compromises were reached in the Protocols following the discussions of the delegation of the Working Group to the nuclear weapon states. These compromises were apparently not acceptable to China or the Soviet Union. The statements accompanying signature to the Protocols included an elucidation of the views of each nation with regard to their policy for withdrawal from the provisions of the Protocols.

French policy with regard to sovereignty, especially with regard to testing, is very clear. The issue of testing is one of national security and is not one which will be determined by international agreement .

The issues of passage and port calls are more involved. Both issues were discussed throughout the Treaty process and are dealt with in the provisions of the Treaty. Passage of vessels and aircraft in the high seas and exclusive economic zone areas of the Nuclear Free Zone is not within the jurisdiction of the Treaty. The areas within the Territorial Seas of the sovereign nations party to the Treaty are subject to the regime of innocent passage, under international law and practice, and are within the jurisdiction of the coastal state, subject to the requirements to allow innocent passage. Internal waters are likewise under the jurisdiction of the coastal state. Port calls, being within the internal waters of the coastal states, are not within the jurisdiction of the Treaty and are left solely to the national policy of each sovereign state. The provisions of the Treaty of Rarotonga

emphasize that the Treaty does nothing to infringe upon the rights of maritime nations to innocent passage, or to determine national policy with regard to port calls. Article 5 (b) of the Treaty states that

"Each Party in the exercise of its sovereign rights remains free to decide for itself whether to allow visits by foreign ships and aircraft to its ports and airfields, transit of its airspace by foreign aircraft, and navigation by foreign ships in its territorial sea or archipelagic waters in a manner not covered by the rights of innocent passage, archipelagic sea lanes passage or transit passage of straits."⁵⁹

In this way, the Treaty forwards the responsibility for establishing policy in keeping with the purpose and ideals of the Treaty to the individual sovereign nations which are party to the Treaty. In doing so, the Treaty remains free of the onus of having disposed of internationally accepted rights of passage, thus making the Treaty and the Protocols more acceptable to potential party states.

While the Treaty delegates the issue of passage to the realm of national policy, it creates a regime within which national policy will be created. In addition to the pressure imparted to nations party to the Treaty by the above provision to create legislation in keeping with the principles of the Treaty, the Treaty specifically prohibits "stationing" of nuclear weapons in the territory of these nations. The definition of "stationing" must be dealt with in establishing policy on the port call problem. The implications of the establishment of the Nuclear Free Zone on passage and port visits, and thus on the future strategic importance and defense alliances will be discussed in subsequent chapters.

⁵⁹ SPNFZ Article 5(b).

Chapter 6: Effects of the Treaty of Rarotonga

The South Pacific Nuclear Free Zone Treaty has been created by the states of a region which is determined to rid itself of the threat of nuclear war and to make its presence known to the international community. In developing the Treaty and the Protocols, the framers have been careful to limit only that which is within their power as sovereign states to limit and not to encroach upon the rights of other states. This is not to say that the provisions of the Treaty and Protocols have no weight or no effect.

The effects of the Treaty regime are far reaching, and will change the status of the South Pacific in terms of ocean jurisdiction, strategic importance and availability, and the position of the countries of the region in international strategic, political and economic relations. These three realms of influence are created in direct logical progression. The Treaty directly affects the use of land and ocean space within the zone, thus establishing a new layer of ocean delineation and an extension of jurisdiction over the zone. The effects of this extension will change the availability of the region for strategic and defense purposes, which will then change the status of international relations for the region. Of primary concern to this analysis, therefore, is the extent to which the Treaty regime will actually affect ocean jurisdiction; the degree of change. Future action and reaction can be judged and determined from this analysis.

As the largest portion of the zone is made up of ocean space, the jurisdictional changes created by the SPNFZ Treaty are directed primarily at the regime of ocean space. The regime of ocean space, as established by international law and practice and embodied in the 1958 and the 1982 Conventions, establishes bands of jurisdiction known as internal waters, archipelagic waters, territorial sea, exclusive economic zone, and high seas. These are explained more fully in chapter 3.

Freedom of navigation and overflight of these ocean areas are of the utmost importance to maritime nations. Present defense and strategic practices rely on the ability

of vessels and aircraft to navigate freely over and through areas of the seas. Many of the vessels of these navies and air forces are capable of carrying and deploying nuclear weapons, and as such, the transport of these vessels may introduce nuclear explosive devices into the nuclear free zone. Most navies and air forces, including those of the United States, employ a policy of 'neither confirm nor deny' with regard to the presence of nuclear weapons on these vessels. This policy is in support of the continuance of deterrence, which relies on the threat of nuclear weapons and not on the actual weapons.

The 1958 and 1982 Conventions contain provisions which designate the freedoms and rights of passage accorded the coastal state and other states requiring passage within each of these bands.¹ Each is subject to a different degree of jurisdiction and rights of passage. The coastal state has sovereignty over the land, airspace and internal waters of the state.² An archipelagic state has sovereignty over its archipelagic waters, airspace, bed and subsoil, as well as the "resources contained therein"³, subject to the right of innocent passage.⁴ Sea lanes and air routes, which may be designated by the archipelagic state, are subject to the right of archipelagic sea lanes passage, as defined in the 1982 Convention Article 53.⁵ The coastal state also has sovereignty over the territorial sea,⁶ the airspace above the territorial sea, and its bed and subsoil,⁷ subject to the regime of innocent passage.⁸ In the Exclusive Economic Zone (EEZ), the coastal state has "sovereign rights" over the natural resources of the zone, and jurisdiction with regard to artificial islands,

¹ Archipelagic waters were developed in the 1982 Convention.

² 1958 Convention on the Territorial Sea and Contiguous Zone, Article I(1), 1982 UNCLOS, Part II, Section 1,

Article 2(1). The 1982 Convention Article, 8, stipulates that "where the establishment of a straight baseline in accordance with the method set forth in article 7 has the effect of enclosing as internal waters areas which had not previously been considered as such, a right of innocent passage as provided in this Convention shall exist in those waters."

³ 1982 Convention, Articles 49(1) and 49(2).

⁴ *Ibid.*, 1982 Article 52(1).

⁵ *Ibid.*, 1982 Article 53

⁶ *Ibid.*, 1958 Article I(1), 1982 Article 2(1).

⁷ *Ibid.*, 1958 Article II, 1982 Article 2(2).

⁸ *Ibid.*, 1958 Article XIV, 1982 Articles 17, 18, 19, 20.

marine scientific research, and the "protection and preservation of the marine environment."⁹ Other states have the rights of navigation and overflight accorded to the high seas for passage within the EEZ, as compatible with other provisions of this Convention.¹⁰ On the high seas, vessels and aircraft enjoy the freedoms of navigation and overflight, among other rights.¹¹ Vessels on the high seas are subject exclusively to the jurisdiction of the flag State.¹²

The SPNFZ Treaty preserves the freedom of the seas, as designated by international law, discussed above. The framers of the Treaty recognized the importance of these freedoms, especially to the maritime nations of the world. Any curtailment of these freedoms would sound a death knell for the success of the Treaty and for the denuclearization of the region. Article 2 (2) of the SPNFZ Treaty states: "Nothing in this Treaty shall prejudice or in any way affect the rights, or the exercise of the rights, of any State under international law with regard to freedom of the seas."¹³ In this way, the Treaty maintains and promulgates the system created by the Law of the Sea Convention: freedom of navigation and overflight on the high seas and EEZ, and free passage subject to the rights and duties of innocent passage in the territorial sea, and archipelagic sea lanes passage in archipelagic waters. Internal waters are subject to the laws and regulations of the coastal state.

This is further clarified by the fact that the Treaty and the Protocols apply only to the "territory within the South Pacific Nuclear Free Zone."¹⁴ By applying the definition of 'territory' found within the Usage of Terms for the Treaty: "internal waters, territorial sea and archipelagic waters, the seabed and subsoil beneath, the land territory and the airspace

⁹ Ibid., 1982 Article 56(1)(a,b).

¹⁰ Ibid., 1982 Article 58(1).

¹¹ Ibid., 1958 Convention on the High Seas Article 2, 1982 Article 87.

¹² Ibid., 1958 Article 6, 1982 Article 92(1).

¹³ Article 2(2) SPNFZ

¹⁴ Article 2(1) SPNFZ

above them"¹⁵, it is clear that the Treaty and Protocols do not apply to the area outside the territorial sea: the EEZ or high seas; it does not extend its influence to areas outside national jurisdiction with regard to passage. The states maintain the sovereign rights to determine access to their territory.

The policy of the coastal state with regard to passage is dealt with by Article 5(2) :

"Each Party in the exercise of its sovereign rights remains free to decide for itself whether to allow visits by foreign ships and aircraft to its ports and airfields, transit of its airspace by foreign aircraft, and navigation by foreign ships in its territorial sea or archipelagic waters in a manner not covered by the rights of innocent passage, archipelagic sea lane passage or transit passage of straits."¹⁶

This provision sets the responsibility for any limitations placed on rights of passage throughout the coastal states' area of jurisdiction upon the coastal state. Here again, the SPNFZ Treaty evades curtailing rights of passage and promoting the freedom of the seas. It is clearly the word and intention of the Treaty to relinquish the judgment with regards to passage to the coastal state and its national interests.

This provision raises another important question: can the transport of nuclear explosive devices be considered 'innocent', and thus be considered "covered by the rights of innocent passage, archipelagic sea lane passage or transit passage of straits"? It is the premise of this Treaty that the presence of nuclear explosive devices in the South Pacific are contrary to the interests, wishes and needs of the Parties to the Treaty. The definition of innocent passage as being "not prejudicial to the peace, good order or security of the coastal State"¹⁷, which is found in both the 1958 Convention on the Territorial Sea and Contiguous Zone and the 1982 Convention, may be used in the future to prohibit passage of vessels with such devices aboard. In order to do so, it must be accepted that the presence of nuclear weapons or nuclear explosive devices do prejudice the peace, good

¹⁵ Article 1(b) SPNFZ

¹⁶ Article 5(2) SPNFZ

¹⁷ 1958 Convention on the Territorial Sea and Contiguous Zone, Article XIV, and 1982 Convention Article 19(1).

order or security of a nation. One of the first claims for legitimacy of the nuclear free zone concept is that the presence of nuclear weapons are destabilizing and thus a threat to the security of a single nation or of a region. Any threat to the security of a nation or region is a threat to the peace.

The argument can be made that, especially within a nuclear free zone, where Party nations have no nuclear capabilities of their own, the presence of nuclear weapons, even those benignly aboard foreign vessels, creates a target within the region, and is thus a threat to the peace and security of the region. Passage by such vessels may thus be considered non-innocent and not allowable. This is just the argument made by Robert Philp:

"A warship armed with nuclear weapons arguable has no right of innocent passage through the territorial sea, if it is engaging in "exercise or practice" with nuclear weapons or if, by its presence, it could be perceived by the island State as maintaining a threat of force against its sovereignty and territorial integrity"...

The provision that

"Foreign nuclear powered ships and ships carrying nuclear ...substances shall, when exercising the right of innocent passage through the territorial sea, carry documents and observe special precautionary measures established for such ships by international agreement." (Article 23, UNCLOS III)

could be interpreted as allowing for innocent passage of a nuclear-armed ship through territorial water. The "more plausible interpretation" is that this refers to maritime transportation and not nuclear armed vessels. Philp goes on to identify that "the NWFZ Parties' position should be that nuclear-armed warships are "prejudicial to the peace, good order, and security" of the entire region in the form of a direct threat of massive destruction and thus are excluded by the UNCLOS III provision defining "innocent passage".¹⁸

Other arguments could rely on the environmental issues raised by the presence of nuclear weapons and as supported by the SPNFZ Treaty itself. The above argument centers on the application of the definition found in the 1982 Convention, which further

¹⁸ Philp, P. Robert, Jr., "The South Pacific Nuclear Weapon Free Zone, the Law of the Sea, and the ANZUS Alliance: An Exploration of conflicts, a Step Toward World Peace", in The California Western International Law Journal, vol. 16, no. 1, Winter 1986, pages 158-160.

elaborates on what activities are considered non-innocent.¹⁹ There are possibilities such as the prohibition of "taking on board of any military device",²⁰ of "any exercise or practice with weapons of any kind",²¹ and of "any threat or use of force against the sovereignty, territorial integrity or political independence of the coastal state, or in any other manner in violation of the principles of international law embodied in the Charter of the United Nations".²²

Innocent passage in archipelagic waters receives further definition. In archipelagic waters, as in the territorial sea, the right of innocent passage may be suspended temporarily "without discrimination in form or in fact among foreign ships", "in specified areas of its archipelagic waters...if such suspension is essential for the protection of its security".²³ Since the entry into force of the SPNFZ Treaty, it will be considered one of the "other rules of international law"²⁴ and may have some influence over the future interpretation of the rights of innocent passage.

The SPNFZ Treaty does not define the presence of nuclear explosive devices on ships or aircraft as a non-innocent use of the right of innocent passage. It relies on international law and practice to provide a definition by which Party states may determine their practice with regard to innocent passage.²⁵ The future interpretations of this right can only be guessed at.

With regard to activities within the territories of Party States, the Treaty directly addresses the issue of stationing of nuclear explosive devices in the territory of a Party. "Each Party undertakes to prevent in its territory the stationing of any nuclear explosive

¹⁹ 1982 Convention Article 19(2) This provision does not explicitly prohibit the presence of nuclear or military devices but may allow for some interpretation in the future.

²⁰ Ibid., 1982 Convention Article 19(2)(f).

²¹ Ibid., Article 19(2)(b) Can "exercise...of any kind" also include passage?

²² Ibid., Article 19(2)(a).

²³ Ibid., 1982 Article 52(2), The same is true for the territorial sea, Article 25, UNCLOS III.

²⁴ This phrase is found throughout the 1982 Convention with regard to compliance with international practice and law.

²⁵ Article 5(2) SPNFZ

devices."²⁶ Due to Article 3, the Renunciation of Nuclear Explosive Devices, it is assumed that no Party State has control over nuclear explosive devices. Therefore, the devices, the stationing of which is to be prevented, are under the control of a non-Party State and are transitory, and would have to be introduced into the territory of a Party State by vessel or aircraft. The issues of visits and transit, as opposed to 'stationing' are designated to be solely within the domain of national jurisdiction, subject to the above mentioned burdens.

The Treaty defines stationing as "implantation, emplacement, transportation on land or inland waters, stockpiling, storage, installation and deployment."²⁷ The phrase 'transportation on land or inland waters' would seem to prohibit the landing of aircraft containing nuclear explosive devices. The purpose of landing an aircraft within the zone, on land, could only be for transportation, as transferring control of these materials to anyone else is prohibited. Landing on an aircraft carrier in the territorial waters of a nation is considered non-innocent according to the 1982 Convention²⁸.

Vessels carrying nuclear explosive devices can avoid the stationing prohibitions only by avoiding activities which may be construed as implantation, emplacement, stockpiling, storage, installation or deployment. This can be accomplished by maintaining a status of 'visiting ship' whenever the vessel is within the jurisdiction of the Treaty. This would seem to mean that port visits must be constrained by a time limit. Beyond this time limit, a visit could be construed as implantation, emplacement, storage, or installation. The remaining definitions of stationing would require hostile action by the vessel. It is left to the coastal state to determine what constitutes a port visit.²⁹

In all cases, the presence and activities of vessels and aircraft carrying nuclear explosive devices are to be determined by the coastal state. The South Pacific Nuclear Free

²⁶ Article 5(1) SPNFZ

²⁷ Article 1(d) SPNFZ

²⁸ 1982 Convention Article 19(2)(e).

²⁹ Article 5(2) SPNFZ

Zone Treaty and its Protocols does not prohibit the presence or passage of vessels and aircraft with the capability of carrying nuclear explosive devices in the nuclear free zone. The Treaty establishes a series of principles and a regime for the protection of the region without encroaching upon the sovereign rights of the nations involved. Coastal state jurisdiction as developed through national legislation will determine the future for a nuclear free South Pacific.

Coastal states within the region began developing national legislation prohibiting nuclear materials as early as the 1970's. In some cases, the nuclear free concept has been embodied in the Constitutions of the newly independent states. This presents an obvious problem for maritime nations in areas which are targetted for possible port development or port visits. Palau's constitution establishes a nuclear free status for Palauan territory, which thus hinders its signature of the Compact of Free Association. Vanuatu has enacted legislation which prohibits port visits by nuclear powered and weapons capable vessels. In the 1970's both Australia and New Zealand closed their ports to visits by nuclear ships. It is, however, the recent actions of New Zealand which have focused world attention on the region and on the problems associated with nationally designated nuclear free zones.

Upon entry into power in 1984, the Labour Party Government, fulfilling a campaign platform provision, closed the ports of New Zealand to nuclear armed or nuclear powered vessels, leaving the burden of proving non-nuclear status on the vessel. This action culminated in the 'Buchanan Incident'. In February of 1985, the USS Buchanan requested port privileges, which were refused. The Buchanan, a conventionally powered vessel, following US policy of neither confirming or denying the presence of nuclear weapons, was unable to prove the absence of such materials.³⁰ New Zealand thus effectively denied port access to all US naval vessels.³¹

³⁰ Daughton, Thomas F., "The Incompatibility of ANZUS and a Nuclear-Free New Zealand", in The Virginia Journal of International Law, vol 26:2 1986, pages 455-484, and Lange, David, "New Zealand's Security Policy", in Foreign Affairs, vol. 63, number 5, Summer 1985, page 1011.

³¹ Daughton, page 455.

This New Zealand policy was codified in 1987 in the form of the New Zealand Nuclear Free Zone, Disarmament, and Arms Control Act of 1987.³² This act implements in New Zealand the South Pacific Nuclear Free Zone Treaty, among others³³. To this end, it applies the prohibitions on acquisition of nuclear explosive devices to its citizens and people ordinarily resident in New Zealand, within and beyond the NZ NFZ³⁴, and the prohibition on stationing and testing to all persons³⁵ within the New Zealand Nuclear Free Zone, which is defined as the land territory and inland waters, the internal waters, the territorial sea, and associated airspace.³⁶

Entry into the internal waters of New Zealand is to be granted by the approval of the Prime Minister. In considering whether to grant approval, the "Prime Minister shall have regard to all relevant information and advice that may be available to the Prime Minister including information and advice concerning the strategic and security interests of New Zealand".³⁷ "The Prime Minister may only grant approval ...if (he) is satisfied that the warships will not be carrying any nuclear explosive device upon their entry into the internal waters of New Zealand."³⁸ In addition, nuclear powered vessels are prohibited from

³² This is the short title of the Act (Article 1.). It is cited as New Zealand, 1987, Number 86. The long title is "An Act to establish in New Zealand a Nuclear Free Zone, to promote and encourage an active and effective contribution by New Zealand to the essential process of disarmament and international arms control, and to implement in New Zealand the following treaties:" SPNFZ, the Outer Space Treaty, the NPT, the Sea Bed Treaty and the Biological Weapons Treaty. It will be cited hereafter as NZ NFZA. In addition to the provisions regarding nuclear explosive devices, this Act amends the Marine Pollution Act of 1974 to prohibit the dumping of radioactive waste into New Zealand waters or by New Zealand ships (Article 23-25).

³³ The NZ NFZA also implements the Treaty Banning Nuclear Weapon Tests in the Atmosphere, in Outer Space and Under Water of 5 August 1963, the Treaty on the Non-Proliferation of Nuclear Weapons of 1 July 1968, and the Treaty on the Non-Proliferation of the Emplacement of Nuclear Weapons and Other Weapons of Mass Destruction on the Seabed and the Seafloor and in the Subsoil Thereof of 11 February 1971, and the Convention on the Prohibition of the Development, Production, and Stockpiling of Bacteriological and Toxin Weapons and on the Destruction of 10 April 1972. The texts of these appear in the Schedules appended to the Treaty of Rarotonga. Explanatory Note of the NZ NFZA.

³⁴ NZ NFZA, Article 5.

³⁵ Ibid. Articles 6 and 7.

³⁶ Ibid. Article 4.

³⁷ Ibid., Article 9(1).

³⁸ Ibid., Article 9(2).

entry into the internal waters.³⁹ Aircraft are dealt with separately, and while the Prime Minister has the authority to grant approval only to foreign military aircraft which are not carrying nuclear explosive devices, approval may be given for a period of time in special circumstances, including transport in support of research programs in Antarctica.⁴⁰

The provisions which prohibit entry into the internal waters of New Zealand by vessels which are nuclear armed or nuclear powered effectively prohibits ports visits by all US naval vessels, and the naval vessels of all nations which maintain a policy to neither confirm nor deny, like that of the US.

The savings section of this Act protects the rights of vessels and crews as provided by international law. The laws to which it refers are embodied in the law of the sea treaties as the rights of innocent passage and of the immunities of warships and their crews. The Act shall not apply to or limit the right of innocent passage through the New Zealand territorial sea, the right of transit passage through or over a strait used in international navigation, or any ship or aircraft in distress.⁴¹ Nor shall the act limit the immunities of "any foreign warship or other government ship operating for non-commercial purposes; or any foreign military aircraft; or " members of the crew of these vessels or aircraft.⁴²

In this way, the New Zealand government has maintained the freedoms of the sea which apply to the territorial sea and to warships and has closed its ports to all which cannot prove their non-nuclear status. The right of innocent passage through the territorial sea is subject to the definition of "innocent" which may possibly be applied to the nuclear status of a vessel, thus designating vessels carrying nuclear weapons as a threat to the "peace, good order, or security" of the coastal state. This Act does not, however, define "innocent passage" or apply any new definition to the nuclear vessels or the passage of

³⁹ Ibid., Article 11.

⁴⁰ Ibid., Article 10.

⁴¹ Ibid., Article 12.

⁴² Ibid., Article 13.

nuclear vessels. This Act does prohibit them from entry into the internal waters of New Zealand.

These actions, the 1984 prohibition and its 1987 codification, have resulted in much discussion and dispute over the future of New Zealand's Treaty obligations, particularly with regard to the ANZUS Alliance. As discussed in Appendix 1, the ANZUS Alliance is a defense agreement between Australia, New Zealand and the United States. The question which has been raised is: can New Zealand uphold its Treaty obligations in a defense alliance without allowing port visits by allied vessels?

This question has been answered in different ways by the US and New Zealand. The US point of view is that the New Zealand legislation is antithetical to the purpose and actual working of the ANZUS agreement and has subsequently suspended military interaction with New Zealand.⁴³ Initial US reaction was to exclude New Zealand from the 1985 meeting of the ANZUS partners, to cancel alliance military exercises, and to cut back on the information exchange between New Zealand and the US.⁴⁴ This action was eventually formalized, and all military preference and cooperation with New Zealand has ceased.⁴⁵

⁴³ US military preferences toward New Zealand were suspended pursuant to HR 85, (100th Congress, 1st session) "the New Zealand Military Preference Elimination Act, as amended. Economic and non-military relations remain in place between New Zealand and the US.

⁴⁴ Opening Remarks, ANZUS Ministerial meeting, Canberra, July 15, 1985, 85 Department of State Bulletin, Sept. 1985, at 30; Gwertzman, "US Cancelling Anti-Sub Exercise in its Dispute with New Zealand", NY Times, Feb. 17, 1985, section 1 at 1; and "US Again Punishes New Zealand in Port Dispute", NY Times, Feb. 27, 1985, section 1, at 8, cited in Daughton, page 456.

⁴⁵ This is pursuant to much discussion in the House of Representatives and the Senate on the issue of Australia and New Zealand. Among the hearings are: "Consideration of Miscellaneous Bills and Resolutions, Markup before the Committee on Foreign Affairs, House of Representatives, July 28, October 6, 14, November 5, 1987, "Security Treaty between Australia, New Zealand and the United States, Hearing before the Subcommittee on Asian and Pacific Affairs, of the Committee of the House of Representatives, March 18, 1985, "US Policy toward New Zealand and Australia, Hearing before the subcommittee on Asian and Pacific Affairs, of the Committee of the House of Representatives, September 25, 1986, and Regional Security Developments in the South Pacific, Report of a Minority staff study mission to Fiji, Vanuatu, Auckland and Wellington NZ, Sydney and Canberra Australia, November 28 - December 13, 1988.

New Zealand's view is, however, that the policy is "neither anti-American nor anti-alliance [but] simply anti-nuclear"⁴⁶. Prime Minister David Lange states that "US officials chose to see New Zealand's action as an affront, although the New Zealand government had taken pains to stress that there was no element of anti-Americanism in the policy."⁴⁷ He also points out that the previous government did not consider ANZUS a nuclear alliance⁴⁸, and that his government's action was not intended to suggest, nor does it imply, that New Zealand is "unwilling to pull (its) weight and contribute to the collective Western security effort, that (its) policies are in breach of ANZUS, or that (they) have deserted or weakened the Western alliance."⁴⁹ He points out that "New Zealand does not form part of a nuclear strategy, and ... nuclear weaponry is inappropriate to the security requirements of the South Pacific region"⁵⁰.

It is this point of view which pervades statements by New Zealand and South Pacific officials when discussing the nuclear free zone concept with a world audience. New Zealand's zone of influence is the South Pacific, and as such, the interests of that region are of primary importance in developing defense policy. Lange put this most eloquently when he said "Our geography is our destiny."⁵¹ Much effort has been put into explaining to the world, particularly those states involved in superpower defense efforts, that the South Pacific is unique and does not share the traditional bi-polar view of the world and defense.

"(T)he strategic circumstances of the South Pacific are entirely different from those of Western Europe or northeast Asia. The South Pacific is *not* an area of superpower rivalry or confrontation. The kinds of security threats faced by

⁴⁶ New Zealand Ministry of Foreign Affairs, Information Bulletin no. 11, March 1985, quoted in Daughton, page 456.

⁴⁷ Lange 1985, page 1015.

⁴⁸ Ibid., page 1011.

⁴⁹ Ibid., page 1013.

⁵⁰ Ibid.

⁵¹ Lange, David, Prime Minister of New Zealand, in a speech to the Yale Political Union, Yale University, New Haven, CT, April 23, 1989.

South Pacific countries are of a different order than those existing in Western Europe...."

"(T)he strategic environment in the South Pacific is such that nuclear weaponry is essentially irrelevant to the defense requirements of the region. The security threats most likely to arise in the South Pacific are those that could normally and best be handled in a low key manner."⁵²

Lange stresses New Zealand's role in the region as a "major and practical contribution to underpinning the peaceful, stable development and democratic orientation of the South Pacific."⁵³ "(New Zealand's) role (in the South Pacific) has been fundamental in maintaining the almost complete strategic denial of the region to Soviet penetration"⁵⁴. As late as April of 1989, Prime Minister Lange continued to try to explain to the US people that the actions of New Zealand are in the best interest of New Zealand and the region, and contribute to world disarmament. In order to understand and appreciate this point of view the US must realize that the South Pacific is not directly involved in bipolar politics, and does not want to be defended by nuclear weapons.⁵⁵ From this, it is clear that the non-nuclear policy of New Zealand is deeply imbedded.⁵⁶

At first, New Zealand maintained hope that the crisis in ANZUS could be remedied by US acceptance of New Zealand policy and recognition of the New Zealand point of view that the action did not affect the status of ANZUS or future defense arrangements. In the face of US refusal to cooperate, New Zealand has accepted that remodelling ANZUS to accommodate the changes associated with the NZ and US decisions will be impossible.⁵⁷

The ramifications of this breakdown of ANZUS are complicated. New Zealand has been ready to maintain its part of the ANZUS agreement, subject to its non-nuclear

⁵² Lange 1985, page 1016.

⁵³ Ibid., page 1014.

⁵⁴ Ibid.

⁵⁵ Lange, Yale speech, April 1989.

⁵⁶ Although there is broad based South Pacific support for the SPNFZ, there is evidence that New Zealand does not have full support for its unilateral action. The Cook Islands threatened to cut ties with New Zealand and declare neutrality in response to the New Zealand action. "Cooks aid goes if ties cut", in the Dominion, New Zealand, May 23, 1986. The Cook Islands remain a territory of New Zealand at this time.

⁵⁷ Lange, Yale speech, April 1989.

reservations. Australia, which is also party to the SPNFZ Treaty, has not enacted legislation which would prohibit port visits in the way that New Zealand has.⁵⁸ Its legislation prohibits Australian nuclear activity, which is not considered a breach of ANZUS responsibilities. The United States therefore considers New Zealand, but not Australia, in breach of the Treaty. The Joint Communique of Australia and the US, issued in June 1988, states that the "ANZUS Alliance continues to serve the

vital interests of both Governments by contributing to regional security and to the maintenance of a global balance essential to world peace. The two Governments noted that the ANZUS treaty remains in place and reaffirmed that the rights and obligations assumed by Australia and the US under the treaty remain constant and undiminished. In the view of both the US and Australia, unimpeded access for allied ships and aircraft is essential to the full effectiveness of the ANZUS alliance. The US confirmed that its security obligations to New Zealand under the treaty remain suspended pending adequate corrective measures by the New Zealand Government which would permit a return to normal patterns of alliance cooperation."⁵⁹

As such, the ANZUS Alliance remains in force, but the relationship between NZ and the US is suspended. Australia and the US maintain ANZUS obligations. "Australia maintains its bilateral security relationship with New Zealand."⁶⁰ The future of ANZUS has not yet been determined, but most certainly, its future is in danger without policy changes by either the US or New Zealand, neither of which seems likely with the present administrations. In its present state, it is neither in force nor extinct.⁶¹

⁵⁸ An Act to give effect to certain obligations that Australia has as a party to the South Pacific Nuclear Free Zone Treaty, and for related purposes, also cited as The South Pacific Nuclear Free Zone Act of 1986.

⁵⁹ "Australia-United States ministerial talks: Text of the Joint Communique issued in Washington on June 29." in Australian Foreign Affairs Record, vol. 59, no. 7, July 1988, page 284.

⁶⁰ Ibid.

⁶¹ There are many articles which focus specifically on the status of ANZUS, and which are outside of the scope of this study. For further information, in addition to the articles mentioned above, see also: Higgott, R andf A. Acharya, "Problems in Australian Foreign Policy, July-December 1985" in Australian Journal of Politics and History, vol 32, no. 2, 1986.; Hayden, Bill Australian PM, "The ANZUS Treaty: its value and relevance" in Australian Foreign Affairs Record (AFAR) vol. 55, no. 5 May 1988; Mediansky, F.A., "Australia's Security and the American Alliance", in Australian Outlook, vol. 37, no. 1, April 1983; Tow, William T., "ANZUS and American Security" in Survival, vol. 3, no. 6, Nov/Dec 1981; Couteau-Begarie, H. "La crise de l'ANZUS" in politique etrangere, April 1985; Harry, R.L. "Security Treaty between Australia, New Zealand, and the United States of America", in Australian Outlook, vol. 35, no. 2, August 1981; Brand, R.A., "Australia, New Zealand, and ANZUS", in The Atlantic Community Quarterly, Winter 1985; Mediansky, F.A., "Nuclear Weapons and Security in the South Pacific", in The Washington

Naval involvement in the region, as determined by the normal presence of vessels and support facilities in the South Pacific, is much less than that in the North Pacific. The US, the USSR, France, and China maintain large Pacific fleets. The US is primarily based in Honolulu, the USSR in Vladivostok. The US also maintains bases in the Philippines and Guam, and is negotiating with Palau to insure the availability of a base for the future. Under the ANZUS arrangement, Australia, New Zealand and the US held yearly meetings, military training, mutual support agreements, and periodic military and naval exercises, all non-nuclear. Thus the loss to New Zealand and the US (and Australia) from the suspension of New Zealand from the ANZUS agreement is in the direct military access between the US and New Zealand. The US still has access to the region through its continued relations with Australia. New Zealand has developed its own military training and exercise practices, and has upgraded its own conventional military readiness to compensate for the loss of US resources. In effect, the US and New Zealand no longer have access to the resources of the other state, and the tripartite agreement is left hanging.

There are two ways of looking at the changes to the military and strategic status of the region following the ratification of the SPNFZ Treaty, and the breakdown of the ANZUS alliance. The first is to recognize that the ANZUS alliance and the nations of the South Pacific were nuclear free prior to the establishment of the nuclear free zone concept. The second is to identify the nuclear activity already in the South Pacific region prior to these events and compare this to the present activity. Most of the military activity in the region is in the North Pacific. Certainly, the only stationing or testing of nuclear explosive devices in the South Pacific is done by France, and is outside the realm of both SPNFZ and ANZUS. The Treaty cannot affect military activity outside the territory of its Party states, and as such cannot affect the presence of nuclear armed or powered vessels in the rest of

Quarterly, vol. 9, no. 1, Winter 1986; and Manning, R. "Anzus's long shadow", in the Far Eastern Economic Review, September 6, 1984.

the Pacific. It seems that the Treaty and Protocols have had little or no effect on the level of nuclear activity in the region.

In reacting to the New Zealand action, one of the concerns of the US was the precedent setting effect of the action. If other nations were to adopt this type of prohibitive legislation, the US would lose access to many ports of the world, which would severely curtail its ability to maintain security in the traditional manner. As previously mentioned, many states and regions of the world have discussed nuclear free status. In reacting as it did, the US sent the message to all states which may contemplate such an action that all defense agreements would be considered breached in the event of prohibition of port visits by any vessel of the US Navy, resulting in an end to military aid to, and protection and defense agreements with that state. This is a very strong message.

The New Zealand legislation followed the initial action prohibiting port visits in 1984, and although the legislation enacted the SPNFZ Treaty in New Zealand, the two (the NZ NFZ and the SPNFZ) are separate. As established above, the SPNFZ Treaty does not require this type of legislation by Party states. It (the SPNFZ Treaty) requires that the rights and immunities established by international law be upheld, and leaves the determination of access to internal waters to the coastal state, in the exercise of its sovereignty. New Zealand has but fulfilled its obligation as a nation to determine access to its internal waters, land territory, and associated airspace.

The framers of the SPNFZ Treaty worked carefully to ensure that freedom of passage and other rights established by international law would not be curtailed by the Treaty. It did not obligate coastal states to prohibit any activity outside of its jurisdiction. In this way, SPNFZ does not infringe on much, except that which is readily entered into by states party to the Treaty or the Protocols. Its provisions are not very far reaching. The prohibitive aspects, which are seen as a threat to navigation and security by the US, are left to the determination of the coastal state, and are not prohibited by the Treaty itself.

Table 6:1

Naval Forces Present in the Pacific¹

South Pacific

Australia
6 submarines
11 surface warships

Indonesia
3 submarines
9 surface warships

France
1 nuclear attack submarine
4 surface warships

New Zealand
5 surface warships

North Pacific

United States
3rd Fleet- 3 aircraft carriers
25 nuclear powered submarines
30 nuclear attack submarines
47 surface warships

Bases-
Pearl Harbor, San Francisco, San Diego,
Whidbey Island, Long Beach, Adak

7th Fleet- 4 aircraft carriers
45 nuclear attack submarines
89 surface warships

Bases-
Okinawa, Yokusuka, (Japan) Subic Bay,
Clark Field, (Phillipines), Guam, Saipan,
Tinian, Wake, Midway

USSR
2 aircraft carriers
25 nuclear powered submarines
100 nuclear attack submarines
86 surface warships

China
43 surface warships
102 submarines

Japan
48 surface warships
15 submarines

Taiwan
36 surface warships
2 submarines

South Korea
19 surface warships

North Korea
4 surface warships
21 submarines

Phillipines
7 surface warships

¹Source: Annex to "La France et le Pacifique Sud", a dedicated issue of politique étrangere, vol. 1, 1987, page 106. Translated by the author.

Table 6:1

TOTALS

29 surface warships
1 nuclear attack submarine
9 submarines

9 aircraft carriers
379 surface warships
50 nuclear powered submarines
175 nuclear attack submarines
140 submarines

The framers of the Treaty are quick to point out the non-prohibitive nature of the Treaty itself. What is more difficult for them to admit is that the Treaty forms a basis for the establishment of national nuclear free zones. In discussion with the head of the New Zealand delegation to the Treaty Working Group, it was revealed that one of the strengths of the Treaty, is that it leaves open the determination of national policy, but identifies national policy with regard to port visits as an opportunity for nations to strengthen their own nuclear free stance. This was not a specific purpose of the Treaty provisions, in fact the Treaty framers intended these provisions to appease nuclear power nations by leaving open the determination of port visits. The point is that, in developing national policy, it is possible for regional states to base their own policy on the openings left by the SPNFZ Treaty. This opportunity is available for both Party states and for non-Party states. It is to be expected that the nations which regarded the Treaty as being too weak to sign, in some cases due to the lack of closure of ports and internal waters to nuclear vessels, will use this opportunity to establish strict national nuclear free zones. The US action with New Zealand upon the designation of their port visit policy is a message to these other nations of US policy on such port closures regardless of the basis.

The timing of the New Zealand action may have precipitated a response to the SPNFZ Treaty by the United States. The effects of the New Zealand action were revealed in February of 1985, just seven months prior to the signature of the SPNFZ Treaty in Rarotonga. This highlighted the possibility for national action in the region and left the US with harsh feelings toward nuclear free zones in general. Although the SPNFZ Treaty contains no such provisions, it is difficult for the people of the US, including policy makers, to separate the implications of two separate nuclear free zones which are established within the same region and within months of each other. It appears to the rest of the world that the two are associated and alike and will both affect the status of passage through the South Pacific. In effect it seems that if the New Zealand policy stops passage

and visits of US naval vessels in New Zealand, the South Pacific Nuclear Free Zone will impede passage through the South Pacific.

I believe that international acceptance of the South Pacific Nuclear Free Zone Treaty was hindered by its association with the New Zealand action. Had the timing of the enactment of the New Zealand policy been better, international attitude toward the SPNFZ Treaty may have been better, and obtaining ratification of the Protocols may have been easier. As it stands, the Protocols have only been ratified by China and the Soviet Union, both with reservations. The US, France and the UK have rejected the Protocols. The French rejection was based on the fundamental conflicts between the prohibitions of the Protocols and French testing and military policy in the region. The US and the UK expressed concern over the possible future ramifications for navigation and security obligations; issues which are not expressly addressed by the SPNFZ Treaty, but are picked up by national legislation, as exemplified by the New Zealand policy and legislation.

Chapter 7: Conclusions

The regime established by the South Pacific Nuclear Free Zone is a product of regional effort and cooperation. It is the culmination of many years of discussion and determination by the nations of a region to remove themselves from the realm of nuclear threat. In this, they have only been partially successful. The Treaty itself has entered into force, but the Protocols have only been ratified by two of the five nuclear nations, and these two have ratified with reservations. The regime thus established is not complete; its success or failure is not yet determined.

The success of any Treaty or international agreement rests upon the formal acceptance of the Treaty and the premises contained therein, as well as informal compliance with the provisions of that Treaty. Further, a Treaty which is successful in gaining the support of all affected parties can remain weak if its provisions are themselves weak or ineffective. In this way, a Treaty regime must pass two tests for success: the regional and international acceptance of the Treaty and its provisions, and the effectiveness of those provisions. The future effectiveness of the Treaty regime will depend on the ability of the Party states to win the accession and cooperation of the designated world powers, the effectiveness of its provisions, and the strength of its Parties to protect its intent.

Regional Acceptance

The Treaty itself has enjoyed almost complete acceptance by those states which are eligible to become Party to it. In this, the Treaty has attained regional success, and may be considered successful at establishing a voluntary regional nuclear free zone for the South Pacific. States Party to this Treaty have agreed to prohibit dumping of nuclear waste in the region and testing of weapons within national territory, and not to control, develop or manufacture any nuclear explosive device. They have effectively refuted any nuclear activity over which the state has control.

The determination of the states of the region to continue to support this Treaty is evident in the continued support of anti-nuclear platforms in national political elections. Since the Treaty was originally signed in 1985, issues have arisen and elections have occurred in several South Pacific states involving the nuclear free zone concept. The decisions made by the electorates have demonstrated continued support for the nuclear free zone concept. The government in Fiji, emerging from a series of coups, maintains support for the regional nuclear free zone, while allowing port visits by nuclear powered and nuclear capable vessels.¹ The status of the Republic of Palau, with regard to the Compact of Free Association, hinges on the issue of Palau's nuclear free constitution which has not attained the required electoral majority to be altered to accommodate the military requirements of the Compact.²

In Australia and New Zealand, Labour Party governments with regional nuclear free zone and environmental platforms have won the succeeding elections³, despite domestic economic difficulties which might have led to defeat. On August 7, 1989, the Treaty's leading spokesman, David Lange resigned from his position as Prime Minister of New Zealand, purportedly for health reasons, but accompanied by domestic political infighting and economic difficulties⁴. As PM, Lange was associated with the policy which effectively closed New Zealand's ports and led to a breakdown in the ANZUS Alliance. The new government of Prime Minister Geoffrey Palmer has not stated any plans to change

¹ See Chapter 2, note 19.

² See Chapter 2, note 18.

³ For examples see, Malik, Michael, "Greens set the Pace" in the Far Eastern Economic Review, 13 July 1989.

⁴ James, Colin, "Factional Furore: Lange survives another leadership challenge" in the Far Eastern Economic Review, 13 July 1989; "Premier to Quit New Zealand" in the Washington Post, August 7, 1989; "New Zealand Party Elects New Premier: Anti-Nuclear Policy Unlikely to Change" in the Washington Post, August 8, 1989; and James, Colin, "Lange's Goodbye: New Prime Minister inherits a ruling party behind in the polls" in the Far Eastern Economic Review, 17 August 1989. This change in government was not covered by the New York Times.

the port visit policy.⁵ In fact, the new Deputy Prime Minister, Helen Clark, was one of the architects of the port visit policy of the Lange administration.⁶ Continued support for the Labour Party and the lack of discussion and contention on the nuclear issue in New Zealand is evidence of continued support for the regional nuclear free zone as well as for New Zealand's own nuclear policies.

One of the most important aspects of this Treaty and its Protocols is its success as a device for regional action. The independent states of the South Pacific were able to set aside other differences and to focus on one issue of importance to the region as a whole. This was accomplished with such success that the finished product had sufficient force to awaken the interest and concerns of the nuclear weapon states. The Treaty raised concerns as to a threat to the continued practice of testing nuclear explosive devices by the French and of port visits by the military vessels of maritime nations. The development and furtherance of this Treaty regime has made the South Pacific region and each of the independent nations of the region readily recognizable and identifiable by the policy makers of the powers of the world. In this the Treaty is very much a success.

International Acceptance of the Treaty and Protocols

The Treaty and its Protocols have been accepted by the membership of the South Pacific Forum, which includes all of the independent political actors of the region, thus expressing wide regional support. These states are now in the process of implementing legislation in support of the Treaty regime. This support from throughout the region is evidence of the regional strength and success of the Treaty. The Treaty is but a portion of

⁵ The Washington Post uses Australian sources to identify the new government's intentions. in "New Zealand Party Elects New Premier: Anti-Nuclear Policy Unlikely to Change" in the Washington Post, August 8, 1989. The new Prime Minister recently visited the United States to address the United Nations. In keeping with the precedent set during Lange's April visit to the US, the US did not formally receive the Mr. Palmer, nor attempt to set up discussions of New Zealand's continued port visit policy.

⁶ James, Colin, "Lange's Goodbye: New Prime Minister inherits a ruling party behind in the polls" in the Far Eastern Economic Review, 17 August 1989.

the Treaty regime as established by the South Pacific Nuclear Free Zone Treaty. In order to meet the criteria for a nuclear free zone, the Treaty regime must be accepted by all of the states which it may affect, in this case these are the nuclear weapon states which have control over territory or are active in the South Pacific: the US, the UK, France, China, and the USSR. These provisions are embodied in the Protocols.

In order to gain greater international acceptance of this Treaty, the framers of the Treaty and Protocols went directly to the affected international actors, the nuclear weapon states, to elicit comments and concerns prior to the final drafting of the Protocols. Several of those issues which were identified, such as the question of access to ports by nuclear vessels, were left out or left to the determination of the individual South Pacific states. Other issues of contention, such as the inclusion of a withdrawal clause and the inclusion of a total ban on testing were not compromised, but included as integral to the purpose of the Treaty.

Compromises were made in an effort to gain wider acceptance by the nuclear weapon nations. The weaknesses in this Treaty are a direct result of these attempts at compromise and conciliation of the nuclear weapon states. Of utmost importance to the states of the region was to stop nuclear testing in the French territories. In order to gain French compliance with this provisions in the Treaty and Protocols, other concessions had to be made. As it turned out, the prohibition on testing was too much for France, and it refused to sign the Protocols. Prior to the US decision to refuse the Protocols, there was a rumour that the US would offer France the right to test weapons at the Nevada test site, and thus give up its Moruroa test site, making the nuclear free zone a possibility.⁷ This has not yet come to pass. Other compromises, such as the provisions which limit Treaty designation of non-nuclear zones encompassing ocean space, were made to gain US and

⁷ This was an unsubstantiated rumor. It arose in several places, among them, a Hearing on United States Policy toward New Zealand and Australia, before the Subcommittee on Asian and Pacific Affairs of the Committee on Foreign Affairs of the House of Representatives, September 25, 1986, page 64.

other maritime power acceptance. There is no possibility for nuclear weapon state compliance without insurance of freedom of the seas. These compromises weakened the effectiveness of the Treaty. They also gave the Treaty greater credibility, on the global scale, by establishing that the Treaty was not the product of a few small ultra-radical island states with no strategic concerns, but of rational actors. The Treaty established the seriousness of the concept to a region not dependent on nuclear deterrence.

As discussed above and in Chapter 6, only two of the potential Protocol states have signed and ratified the Treaty. In the cases of both China and the USSR, signature was accompanied with what amounts to a provision for withdrawal, a provision which is not available in the Protocols. The levels of involvement of China and the USSR in the region are such that neither needs to curtail activity in the region in order to meet the provisions of the Protocols. France, the US and the UK have refused to sign the Protocols. The French claim that the Protocols do not accommodate their foreign or military policies for the region. The US and UK claim that the provisions do not meet their requirements for such Treaties. The realities are that the French are not willing to lose a major weapons test site or affect compromise in the region, and that the US is more concerned with the future possibilities for more restrictive nuclear free zones should this one become internationally accepted. The two major concerns of the nuclear weapon states are the prevention of testing and the restriction of freedoms of passage through ocean space and access to Party states. To date, the Treaty and the Protocols have not been able to affect sufficient accession to the Protocols for the Treaty to be considered a true success of international agreement.

Although there is continued support for the South Pacific Nuclear Free Zone among the states of the South Pacific, the fact that the Protocols have not gained total international support by those states eligible to sign them means that the Treaty regime has not gained complete support. It does not have the support of the nuclear weapon states which are most active in the region: the French maintain a nuclear test site as well as several overseas

territories and the United States maintains a significant military presence in the region. Without their support, as expressed above, the Treaty regime cannot be considered a total success.

Effectiveness of Provisions

The Treaty makes a bold attempt to establish a zone that is more than nuclear weapon free, but totally nuclear free. In order for the Treaty regime to create an effective nuclear free zone, all possibilities for the introduction, use or testing of nuclear explosive devices and disposal of nuclear waste would have to be prevented. Due to the two tiered regime established by the Treaty of Rarotonga, both the Treaty and the Protocols must have effective provisions to prevent such activity and be adhered to by states Party to the Treaty and states Party to the Protocols.

It succeeds in its goal of preventing the control of nuclear explosive devices by Party states, and the contribution of Party states to the development of even peaceful nuclear explosive devices, and to the testing of nuclear explosive devices within the territories of Party states. It, as a part of a series of regional and international actions, succeeds in stopping the dumping of radioactive waste throughout the region.

As is discussed in earlier chapters, the Treaty itself is the voluntary and formal denuclearization of the Zone by South Pacific Forum nations. The only way in which nuclear explosive devices and nuclear waste can be introduced into the Zone is by materials in the control of foreign powers, non-Party states. The most prominent mode of introduction of these materials is by sea aboard foreign controlled military vessels. This Treaty fails to establish a totally nuclear free zone either because it does not stretch far enough to prevent all nuclear intrusion into the region, or because it stretches too far which thus prevents its acceptance by nuclear weapon states.

In the early stages of Treaty development, it was discussed whether to designate the entire Zone as nuclear free, rather than to apply only to the areas under national jurisdiction.

A zonal approach would open the possibilities for the prohibition of nuclear activity throughout the ocean space of the South Pacific, including that space outside national jurisdiction. This was considered too radical a move, one that would antagonize rather than promote compliance, and one that would raise serious concerns as to the legitimacy of such a claim in areas outside of national jurisdiction. It would also create the burden of enforcement for small island nations without the capability to patrol the vast expanses of ocean within their jurisdiction.

In order to avoid the provocation of potential protocol states, the provisions of the Treaty with regard to ocean space do not extend beyond the territorial jurisdiction of Party states. Special attention is paid to the protection of the freedoms of passage and the rights to freedom of the seas. The Treaty is careful not to influence the accessibility of foreign vessels to Party states through the territorial sea. In perhaps the most important provision of this Treaty, access to the territorial sea and associated airspace, and to the archipelagic waters of a Party state is left to the determination of the Party state in the exercise of its sovereign rights. In this way, the Treaty does not designate ocean space as nuclear free.

Concerns about the restrictions which may have been or which may be placed upon access to the ocean space of the South Pacific exist. These concerns are based upon the possibilities for national restrictions of access and not upon the provisions of the Treaty or the Protocols. It is clear that the Treaty itself refrained from restricting access to areas outside territorial jurisdiction and emphasized the sovereign rights of Party states to determine access to their own territorial seas and associated airspace. Nothing in the Treaty restricts freedoms of passage or access to territorial ocean space in the South Pacific region.

The Protocols to the Treaty call for voluntary acceptance of further restrictions of activity by nuclear weapon states. Simply, Protocol 1 calls for acceptance of and adherence to the Treaty for the territorial possessions of nuclear weapon states in the South Pacific

Zone⁸; Protocol 2 prohibits the use or threat of use of nuclear explosive devices against Party states or Protocol Party's territories and prohibits contribution to violations of the Treaty or a Protocol by states Party to the Treaty or Protocol; and Protocol 3 prohibits testing. Nothing in the Protocols affects passage of vessels within the zone, except in the case of territorial possessions. In this case, Treaty provisions apply in the same way as they apply to independent states and do not prohibit the exercise of freedoms of passage. The Protocols do, however, provide for voluntary cessation of testing and stationing of nuclear explosive devices in these territorial possessions, and the cessation of testing throughout the Zone.

Among the nuclear weapon states which have refused to sign the Protocols, the important issues are the freedoms of passage of vessels and access to ports, and, specific to France, the prohibition of testing of nuclear explosive devices. As is explained above, the issue of continued freedom of passage and access to ports is not a Treaty issue, and should not be an inhibitor of Treaty signature. Testing however is a Treaty and Protocol issue. It is an issue which cannot be compromised or left to national determination. One of the initial factors which prompted the development of the Treaty of Rarotonga was the need to stop testing by the French. French testing can only be stopped by a voluntary act of the French government. The Treaty regime, although it has sought French signature and was initially hopeful of French signature, is directed at developing greater international pressure to be used on the French government and to force the voluntary cessation of French testing in the South Pacific.

It is unfortunate that the issue of freedom of passage and access to ports has been associated with the Treaty of Rarotonga. Concerns which could have been alleviated have become the sticking point to signature by the United States, which has enjoyed traditional favored status in the South Pacific. An associated concern is the future development of

⁸ Specifically Articles 3,5 and 6 of the SPNFZ Treaty: the manufacture, stationing and testing of nuclear explosive devices, and Article 8: safeguards.

nuclear free zones based upon the South Pacific Nuclear Free Zone. It is possible, should the SPNFZ become internationally accepted and recognized as an effective nuclear free zone, that other nuclear free zones would be developed that would be more restrictive to the freedoms of passage and access to ports that are preserved by the Treaty regime. By withholding signature and acceptance of the Treaty and Protocols, the US, and the UK and France, are undermining the international acceptance of the principles embodied in the Treaty of Rarotonga and thus, perhaps, forestalling future restrictions by future Treaties.

The actual effects of the Treaty and Protocols upon the activities of nuclear weapon states in the South Pacific are minimal, with the exception of French testing. Table 6:1 shows naval presence in the South Pacific. It is evident that naval activity in the South Pacific is less than that in the North Pacific. The territories of the United States and of Great Britain within the zone are presently free of nuclear weapons or military installations. The territories which are of the most concern to the US strategic planners are outside the actual Nuclear Free Zone: Guam, the Marshall Islands, the Northern Marianas, and the Republic of Palau. Their anti-nuclear activities are a concern of the US and are associated with the development of the Nuclear Free Zone in that the anti-nuclear concerns are region wide and that their anti-nuclear concerns can now be backed up by a standing Treaty within the region.

It is important to US strategic planners to have access to the entire South Pacific region, both for access to the large expanse of ocean space and transit potential, and for military access to back up the US bases in the Philippines. The latter is the primary reason for US interest in the Compact of Free Association with Palau. Until 1987, the US enjoyed the Tripartite Defense Agreement with Australia and New Zealand: the ANZUS Alliance. This ended subsequent to the adoption of New Zealand policy to deny port access to vessels and aircraft which could not prove a nuclear status. The timing of the declaration of the policy and associated legislation, added to US concerns about the SPNFZ Treaty, sounded a death knell for US signature of the SPNFZ Treaty. The US was faced

with losing access to New Zealand ports and the possibility of the same throughout the South Pacific should it express support for the concept. In this way, the US refusal to sign the Protocols is not based upon the objection to the Treaty and the Protocols themselves, but to the potential for the disruption of a system of military access in the region. It is not even military access which is presently being used, but the potential for access in the region which is the concern.

And so, the provisions of the Treaty are effective in that they are simple and do not extend beyond the limit of legitimacy. They prohibit nuclear presence and control for Party states. They do not inhibit freedom of passage and the protect sovereign rights to determine rights of access. They do, unequivocally, provide for the voluntary cessation of all testing of nuclear explosive devices within the Zone.

What the Treaty regime does not do is change the strategic situation in the South Pacific to any great extent. The majority of states Party to the Treaty are already Party to the Non-Proliferation Treaty as non-nuclear states, and as such do not control or manufacture any nuclear explosive devices. They also adhere to the IAEA Safeguard system. None of the Party states maintain military bases of nuclear weapon states which include the stationing of nuclear explosive devices. Australia does maintain communications stations for the US and Britain. Of the nuclear weapon states, France is the most active in nuclear weapon development, deployment and testing in the region. The rights which are necessary to the continued accessibility of nuclear weapon states in the Zone, freedom of passage and access to ports, are not inhibited by the Treaty itself. It is evident that the Treaty does not change the level of activity in the South Pacific. In fact, with the refusal of France to sign the Protocols, the activity in the South Pacific does not change at all with the enactment of the South Pacific Nuclear Free Zone Treaty.

The major change in the strategic structure of the South Pacific is associated with the end to military association of the US and New Zealand within the ANZUS Alliance. New Zealand is now responsible for its own defense and the US no longer has access to

New Zealand ports, and must seek other ports. These changes are not a product of the Treaty regime, although it may be considered a by-product.⁹

The Treaty regime is thus effective but has little effect. The Treaty has established regional cohesion and determination to be free on nuclear weaponry and waste and has established one more nuclear free zone for an inhabited area. It has attracted the attention of the world to a topic of global proportions. It is effective for those states Party to it, and yet it fails to stop French testing. It has little effect on the nuclear power states.

The South Pacific Nuclear Free Zone Treaty is a good step in the direction of global arms control, a small step, but an important one. The development of this Treaty has proven that continued cooperation and effort on the part of a lesser strategically important region of the world can produce a product which makes the powers that be take notice, and can accomplish that which might seem impossible, the denuclearisation of a large part of the earth's surface.

Prospects for the Future

The nuclear free zone concept is important to the future developments in arms control and disarmament. Perhaps regional actors from outside the bipolar world of superpower politics can establish a credible alternative to nuclear deterrence and the arms race. Perhaps regional activity can replace the outmoded, dangerous and destabilizing concept of unilateral disarmament. Continued efforts into developing nuclear free zones and dedication to improving those in place will lead to stronger more cohesive zones. More cohesive zones will inevitably lead to greater credibility for the importance of the nuclear free zone concept.

⁹ It may be a by-product because the declaration of the NZ Nuclear Free Zone is part of the implementing legislation of the SPNFZ Treaty, and because the declaration of both Zones occurred in the same time period.

While the South Pacific Nuclear Free Zone Treaty regime cannot be considered a total success, neither can it be considered a total failure. The establishment of the South Pacific Nuclear Free Zone will simplify the development of subsequent nuclear free zones. The Treaty can be judged to be successful even though it has failed to gain the support of the nuclear weapon states. It has succeeded in establishing the region's determination to be free of nuclear weapons and to act independently of the interests of the world powers. It has stretched the definitions of the nuclear free zone to include all nuclear explosive devices, waste disposal and peaceful uses of nuclear materials. It has also succeeded in gaining full regional support for removing the presence of nuclear materials from national territories. It can thus be considered a success of regional action and of the next step in the development of the nuclear free zone concept.

Although the Treaty is itself successful, it is worthwhile to identify its failings in order to avoid them in the future. The Treaty-framers efforts at compromise have established a Treaty system with very little effect on foreign powers operating within the zone but outside national territorial jurisdiction. In order for the South Pacific to be considered truly nuclear free, provisions must extend to the entire zone and be enforceable by the Party states. This is not consistent with international law and may thus be considered illegal, however, a stronger stance by the Treaty in the definition of innocent passage would free the territorial sea from the burden of nuclear weapons. This could then be extended to the Exclusive Economic Zone for environmental or security reasons, thus making the majority of the region's ocean space, as well as land space, nominally nuclear free.

Obviously this is the extreme. The efforts at compromise have led to greater legitimacy for the Treaty among both the nations of the South Pacific, and the greater world theater. Had these compromises not been reached, the Treaty would not have been accepted, and would have been considered a 'radical leftist movement' and thus dismissed

as a worthless concept. In addition, the nations of the South Pacific do not have the capability to patrol the zone or enforce any regulations they may have enacted.

The Treaty's success lies in its importance as a future model for nuclear free zone development and as the device for the successful exercise of regional cooperation and action to make an international statement. In all, the South Pacific Nuclear Free Zone Treaty is an agreement which is successful on several levels, and can thus be used as a model for future development of nuclear free zones. It is more stringent than previous agreements, and future agreements will be more stringent than it is. It promotes a greater role for regional activity in the denuclearization of the world.

Appendices

Appendix 1: ANZUS as a Regional Defense Alliance

The ANZUS (Australia, New Zealand, and United States) Security Treaty was formed following World War II. The War in the Pacific had involved the entire world, but most importantly to this study, Australia, New Zealand, the United States and the Allied Powers. The War in the Pacific happened in the back yards of Australia, New Zealand and Oceania, but this did not limit the involvement of Australia and New Zealand. The troops of Australian and New Zealand were to be found in all arenas of battle.

Among other things, the War in the Pacific served to highlight the importance of this nether-region of the world, to the United States. Prior to World War II, the Pacific received little attention. The years that followed saw an increased involvement of the 'metropolitan' powers in the Pacific, politically, economically, and for development aid. One of the first actions of the newly established United Nations was to create a mechanism for aid to the war-torn regions of the world, including the islands of the South Pacific. In this case the UN created Trusteeships, by which the regional and European powers would administer and assist the islands of the SP.

There was a need for a regional defence or security agreement to protect the interests of the nations of the South Pacific. It was viewed as a type of agreement which would benefit all nations involved. Australia had determined its regional position and the need for regional defense planning as early as 1943. The idea of a Southwest Pacific 'zone of security' was made clear in an announcement by Australia that it would be "concerned not only with islands crucial to her own security such as Timor, New Guinea, the Solomons, New Hebrides, Fiji, and New Caledonia, but with areas and territories far more distant." The Prime Minister visualized the formation of a 'great Southwest Pacific Zone of Security against aggression' This was to be established by collaboration with the Netherlands, France, Portugal, the US and Great Britain and in closest cooperation with

Britain, as Australia was a trustee of British civilization in the Pacific.¹ (This alliance was made permanent in the South Pacific Commission, not an alliance but a forum for regional organization) The United States had seen its backdoor attacked in the attack on Pearl Harbor, and did not want to see this opening occur again. A defense alliance would ensure US presence and strength in the Pacific and thus protect against such an attack again. The US did not agree. It was the opinion of the US that no alliance was needed in order for the US to maintain its power in the Pacific, and at first it seemed to be true.

Following World War II, the primary security agreement being studied by the US was the North Atlantic Treaty Organization (NATO). In fact, it was the only Pact given any credence or attention until 1950. As Secretary of State Acheson announced on May 18, 1949, the "US was not currently considering participation in any further collective defense arrangements other than the North Atlantic Treaty, and attributed this agreement to the special circumstances of the North Atlantic Region"² Both Australia and New Zealand were fervently supporting the idea of a Pacific Pact and refused to give up hope of future US involvement.

In the meantime, Australia and New Zealand were discussing defense arrangements with Britain. The 1946 Commonwealth Prime Ministers Conference dealt with the establishment of a defense partnership for Britain, Australia, and New Zealand as "the nucleus for a future Pacific pact including the US and other countries"³ There was further discussion at a meeting on Commonwealth issues in November 1949, on the possibility of a pact without the US.⁴ As Starke states, "before the opening of the year 1950, no Pacific regional security pact had even begun to take shape. Without the participation of the US, any such pact would have been meaningless and of no practical value."⁵

¹ Starke, J.G., The ANZUS Treaty Alliance, (Melbourne University Press) p. 10

² Starke, J.G. p. 23

³ Starke, p. 24

⁴ Starke, p. 26

⁵ Ibid.

The commencement of hostilities in Korea on June 25, 1950 changed the stalemate in the development of a defense alliance. Australia and New Zealand became involved with the UN forces and the US saw a threat to its Pacific bases. Thus arose new interest in the establishment of a Pacific security agreement, in the form of an initiative from the US House of Representatives. In the two years that followed, the State Department and Congress were talked into the idea of a Pacific pact. In the end, the United States, Australia and New Zealand signed a defense agreement on September 1, 1951, which came into force on April 29, 1952, following ratification by the signatories. The treaty itself was based on the form and function of the NATO Alliance and is considered a "major step in the evolution of the foreign policies of Australia and New Zealand" .⁶

Since then, the nations have enjoyed increasing cooperation and reliance on the resources and capabilities of the allied nations. The mid 1960's under President Kennedy saw growing material and resource dependence ties between the three nations. By May 1962, Dean Rusk said of ANZUS "that no defense alliance was ever more firmly anchored in the solid realities of common interest, common ideals, and mutual confidence."⁷ On May 9, 1963, the signing of the US-Australia Agreement established the first US Naval Communications Station in Australia. Until recently the militaries of the three nations have shared joint defense exercises, funded largely by the US.

The US had a great deal of control over the alliance due to its military and economic superiority over both Australia and New Zealand. This fact allowed the US to feel calm about the alliance and its position as a power in the Pacific. In fact, the US has been able to establish itself as the greatest metropolitan power in the region.

Recent events have changed this idyllic situation for the US. The nations of the South Pacific have begun to assert their international voice and have jointly chosen to remove themselves from the nuclear arms race. The forum they have chosen to accomplish

⁶ Starke, p. 1.

⁷ Starke, p 3.

this is the establishment of the South Pacific Nuclear Free Zone. The provisions of this Treaty call for the prohibition of nuclear arms and nuclear power from the territories of the signatories. The provisions of the Protocols, which the nuclear weapon states have been asked to sign ask for voluntary compliance with the ideals of the Treaty.

In the implementing legislation, the party nations have established independent regimes for their own territorial and internal waters. The legislation of New Zealand goes as far as to prohibit those vessels which cannot confirm a nuclear free status. The US Navy maintains a nether confirm not deny policy as to the nuclear capacity of any of the vessels in the US Navy, and thus, US warships have been Prohibited from New Zealand waters. The US cannot operate a defense alliance with its hands tied and as such has broken the treaty agreement and effectively dissolved ANZUS. The strategic ramifications of the breakdown of this regional alliance are far reaching and encompass all aspects of Pacific development from strategic change to economic sanctions. This study will attempt to untangle to web of problems, both perceived and real, that this situation has caused.

Appendix 2: Time Line Chronology of the Development of the South Pacific Nuclear Free Zone Treaty

a 1945 August 6	First Atomic bomb dropped on Hiroshima, Japan by the United States
a 1945 August 9	Atomic bomb dropped on Nagasaki, Japan
b 1946 June	US conducts world's first underwater nuclear weapons test Operation Crossroads - Bikini Atoll
f 1951 September 1	US Australia and New Zealand sign mutual security pact.
a 1952 November 1	First Hydrogen device exploded at Eniwetok Atoll.
1958	Antarctic Treaty opened for signature
c 1962	Western Samoa becomes independent
1963 August 4	Nuclear Test Ban Treaty enters into force
c 1965	the Cook Islands gain Associated Statehood with New Zealand
1966	Outer Space Treaty
1967	Treaty of Tlatelolco opened for signature
1968	Non-Proliferation Treaty opened for signature
c 1968	Nauru becomes independent
d 1969 December	United Kingdom ratifies Protocol 2 to Tlatelolco (signed December 1967)
c 1970	Fiji becomes independent Tonga becomes independent
c 1971	SPF established Primary concern of SPF to halt French testing at Moruroa
d 1971 May	United States ratifies Protocol 2 to Tlatelolco (signed April 1968)
d 1971 July	The Netherlands ratify Protocol 1 to Tlatelolco (signed March 1968)
c 1972-1975	Labour Government in Australia and New Zealand active in protests against French Testing
c 1972-1975	South Pacific Forum "continually condemns" French Testing

- c 1973 June 'Otago' Incident:
Kirk Government, New Zealand sent frigate Otago into danger zone near Mororua test site.
- d 1974 March France ratifies Protocol 2 to Tlatelolco (signed July 1973)
- d 1974 June PROC ratifies Protocol 2 to Tlatelolco (signed August 1973)
- c 1974 Niue gains Associated Statehood with New Zealand
- e 1974 UN Commissioned the Conference of the Committee on Disarmament to establish an ad hoc group the undertake a comprehensive study of the Question of Nuclear Weapon Free Zones in all its Aspects
- c 1975 Papua New Guinea becomes independent
- c 1975 South Pacific Forum calls for establishment of NFZ
- c 1975 New Zealand government proposal to establish NFZ - backed by SPF, UN General Assembly, nearly all states of South Pacific.
- c 1975,early New Zealand PM Bill Rowling, Labour party, begins to seek support for NFZ
Australian PM Gough Whitlam expresses misgivings
- c 1975 July SPF Meeting -
Australia's PM supports New Zealand Proposal at meeting.
Resolution: to commend "the idea of establishing a nuclear weapons free zone in the South Pacific" (FRY P. 25) to the UNGA.
- c 1975 October Australian PM withholds support of NFZ concept.
- c 1975 December resolution brought before the UNGA by Fiji and New Zealand, passed by UNGA
- c 1975 December Change of Government in Australia and New Zealand - Fraser in Australia, Muldoon in New Zealand
Moves to halt further development of NFZ concept.
- e 1975-6 UN General Assembly resolutions 3472 (XXX) and 31/70 accepting the concept of a NWFZ, a NWFZ can contribute to the security of its members, and goals of general and complete disarmament.
- c 1976 February SPF Meeting -
Australia and New Zealand persuaded SPF leaders to drop the NFZ concept
NFZ shelved until 1983
- c 1978 Solomon Islands become independent

	Tuvalu becomes independent
c 1979	Kiribati becomes independent
d 1979 January	USSR ratifies Protocol 2 to Tlatelolco (signed May 1978)
d 1979 March	France signs Protocol 1 to Tlatelolco (not ratified)
c 1980	Vanuatu becomes independent
c 1980 October	Fiji's UN Ambassador Filipe Bole calls for UN and SPF not to be contrary to the NFZ concept
d 1981 November 23	US ratifies Protocol 1 to Treaty of Tlatelolco (signed May 26, 1977)
c 1982	Australian Labour Party and Conference
c 1982 February	Fiji closes port visits by vessels which are nuclear powered and nuclear capable.
c 1982	at UN - Fiji' permanent representative called for NFZ for the South Pacific, like Tlatelolco Fiji would seek assurances from nuclear weapon states
c 1983	Fiji reverses policy on port visits by nuclear vessels
c 1983 January	US military took up option to lease land in Marianas
c 1983	Kiribati and Nauru propose LDC amendmend to ban Low-level radioactive waste dumping - passed in 1985
c 1980's	Compact of Free Association with the US of Federated States of Micronesia, Marshall Islands, Marianas, Palau
c 1984	Labour Party returns to power in New Zealand PM Robert Lange Labour Party platform includes NFZ concept
c 1984	Rainbow Warrior incident - a Greenpeace vessel in New Zealand to protest French testing in the South Pacific is bombed and sunk in harbor by French naval operatives.
e 1984 August	SPF Meeting in Tuvalu SPF undertakes " an examination of the substantive legal and other issues involved with a view to preparing a draft of a treaty for consideration by the Forum meeting in 1985" with Australian nurturing.
e 1984 November-1985 June	Working group met to draft a treaty
e 1984 December	Legal drafting group met to formalize treaty
b 1985 February 4	New Zealand refuses to allow the USS Buchanan, guided missile destroyer, entry into New Zealand.

- US cancels joint military exercise with Australia and New Zealand.
- e 1985 August 5 SPF Meeting in Rarotonga, the Cook Islands
Draft Treaty presented and adopted.
Protocols deferred until 1986 meeting
- e 1986 January-February Representative delegation from working group visited the capitals of the five nuclear weapon states with which the Protocols are concerned.
- e 1986 August SPF Meeting in Suva, Fiji
- d 1986 December USSR signs Protocol 1,2, and 3 to SPNFZ. Statement includes reservations.
- People's Republic of China signs Protocol 1, 2, and 3 to SPNFZ. Statement includes reservations.
- d 1987 February 5 US announces it will not sign the Protocols to the SPNFZ Treaty

a The World Almanac and Book of Facts 1988, (Published by Pharos Books: Scripps Howard, 1988)

b Arkin, William M., Andrew Burrows, Richard Fieldhouse and Jeffrey I. Sands, "Naval Nuclear Weapons Developments: A Selective Chronology", Appendix in The Denuclearisation of the Oceans R. B. Byers, ed. (Published by St. Martin's Press, NY 1986), pages 237-263.

c Fry, Greg, "A Nuclear Free Zone for the Southwest Pacific: Prospects and Significance", Working Paper number 75, for the Strategic and Defence Studies Centre of the Research School of Pacific Studies, the Australian National University, Canberra, September 1983.

d Donnelly, Warren H., Two approaches to Establishing Nuclear Weapons Free Zones: A Comparison of the Treaties of Tlatelolco and Rarotonga, Prepared for the House Committee on Foreign Affairs, Subcommittee on Asian and Pacific Affairs by the Congressional Research Service of the Library of Congress, May 7, 1987.

e Report by the Chair of the Working Group on a South Pacific Nuclear Free Zone (SPNFZ) to the South Pacific Forum, 14 June 1985; and the Recommendation on the Adoption of the Protocols to the Treaty on a South Pacific Nuclear Free Zone (The Treaty of Rarotonga), Report to the South Pacific Forum by the Chair of the Working Group of Officials on a South Pacific Nuclear Free Zone, 30 April 1986.

f Starke, J. G., The ANZUS Treaty Alliance, (Melbourne University Press/Cambridge University Press, London and NY, 1965)

Appendix 3: South Pacific Regional Organizations

South Pacific Bureau for Economic Cooperation (SPEC)

SPEC was established in 1972, and signed into force in 1973, by the Forum, with a basic objective to encourage and promote regional cooperation to further the development of the island nations in partnership with Australia and New Zealand. To this end, its purpose is to facilitate continuing cooperation and consultation between members on trade, economic development, transport, tourism, and other related matters. The original signatories were the Cook Islands, Australia, Fiji, Nauru, New Zealand, Tonga and Western Samoa, which have since been joined by Niue, Papua New Guinea, Kiribati, the Solomon Islands, Tuvalu, Vanuatu and the FSM. Assistance from this Bureau is not limited to Forum members but is open to extension to other Pacific Territories upon request.

South Pacific Regional Trade and Economic Cooperation Agreement (SPARTECA)

Like the SPEC, this Agreement provides a forum for economic cooperation among Forum nations. SPARTECA was signed into effect in 1980-81, and allows duty-free and unrestricted access to New Zealand and Australian markets for almost all products of the Forum countries. New Zealand's agreement is non-reciprocal. Australia has offered similar access concessions but with slightly different conditions. SPARTECA's full potential has not yet been realized.

SPARTECA acts as Secretariat for the SPF, the South Pacific Nuclear Free Zone Treaty, and as a regional depository for the South Pacific Regional Environment Plan (SPREP), (the international secretariat is in the UN headquarters for the UN Environment Programme in Nairobi), as well as other regional organizations.

Forum Fisheries Agency (FFA)

The initial concept for the FFA was brought to the Forum meeting in 1976, in an attempt to comply with the wish of the Forum nations to manage and exploit the fishery resources found within the 200 mile EEZ area of the island nations. This was in response to the development of the EEZ concept at the international level. It is an attempt to coordinate fishing and enforcement effort. All members of the Forum are members, and the Federated States of Micronesia, Palau, the Marshall Islands have observer status.

Negotiations for foreign fishing access rights are often handled by the FFA for the individual nations and for the group of nations represented by the Forum. It is the FFA which has been most instrumental in obtaining management rights over the tuna resources of the region which were being exploited without consent by the US, Japan, USSR and other distant-water fishing nations.

Pacific Forum Line (PFL)

The PFL is the regional attempt to provide for and ensure shipping resources for the South Pacific. It was originally a joint venture between 10 Forum nations, not including Australia, Niue and Vanuatu, and provides shipping services, specializes to accommodate the special needs of the region, between the Forum nations. Other nations are also involved in intra-regional shipping.

The University of the South Pacific (USP)

The University of the South Pacific was established, by the South Pacific Forum nations, with the financial help of Australia and New Zealand. Its purpose is to further the educational capabilities of the island nations and of the region, and to provide research and educational opportunities in the region to serve the needs

and possibilities for the development of the region. The University's headquarters are in Suva, Fiji, and there are campuses all over the South Pacific, including the territories of the metropolitan powers.

Pacific Islands Producers' Association (PIPA)

An organization of the Cook Islands, Fiji, Gilbert and Ellice Islands (now Kiribati and Tuvalu), Niue, Tonga and Western Samoa established to organize production of goods and cooperation between the producer nations and the rest of the Pacific islands. This was subsequently incorporated into the South Pacific Bureau for Economic Cooperation.

The United Nations (UN)

The UN has traditionally served as a leader and facilitator for encouraging development and organizing aid in developing areas. It worked both directly as a development agency and indirectly as a forum for regional and international interaction and for the dispersal of aid from the international community. The UN has been active in the South Pacific in many ways and on different projects. The more general branches involved in the South Pacific are the UN Economic and Social Committee on Asia and the Pacific (ESCAP), the UN Environment Programme (UNEP) and the UN Development Programme (UNDP). The more specifically involved organizations and projects of the UN are:

The UN Commission on Trust Territories and Trusteeship Council

This UN Branch was set up following World War II to oversee the Trusteeships set up to protect the undeveloped nations which had been ravaged by the War. Nations were put under the control of sponsor nations which were to be responsible for their development and eventual independence. The Micronesian

island groups was one of these nations and the Trusteeship of the Pacific was set up under the control of the United States. This Trust has since been dissolved (see above). This groups oversees the relationships between newly de-colonized nations and the patron nation and the eventual independence from that nation.

UNEP: Designated Regional Seas and SPREP

In recognition of the importance of regional action the United Nations Environment Programme (UNEP) was created. It followed the 1972 Stockholm Conference on the Human Environment. Its purpose was to organize an office of the UN to handle enviromental issues and to coordinate world wide efforts to protect and maintain environmental quality. Environmental issues are unique in that they are often transboundary. One cannot limit the effects of degradation to artificial political boundaries. The peculiarities of water and air provide the perfect medium for the transboundary transport of pollutants.

UNEP therefore chose to incorporate a regional approach to environmental control into its charter. To that end, they created the Regional Seas Program. They identified eleven regions of the world which share a common ocean and environmental concern, and created the regional seas program. These seas of concern are: the Mediterranean; the Red Sea and Gulf of Aden; the Kuwait Action Plan Region; West and Central Africa; Wider Caribbean; East Asian Seas; East Africa; South Asian; South East Pacific; and the South Pacific. Each region is asked to create a regional management plan to coordinate regional concerns and government action.under the auspices and approval of UNEP, and with the financial assistance of UNEP.

The 1982 South Pacific Commission meeting at Rarotonga, the Cook Islands, saw the adoption of the Action Plan for Managing the Natural Resources and Environment of the South Pacific Region. The regional action plan is the first

step in the UNEP process. The next step is draft plans and programmes to be adopted within the region. The final step is the adoption of a regional convention making the action plan into law. In 1983, the South Pacific nations established the South Pacific Regional Environment Programme, in coordination with UNEP, to draft a plan for regional cooperation. This resulted in the final draft of a regional agreement and convention, the Convention for the Protection of the Natural Resources and Environment of the South Pacific Region. This was signed by the nations of the South Pacific and adopted by the South Pacific Commission at its annual meeting, November 24, 1986, at Noumea, New Caledonia. The final Convention implements the general objectives of the Action Plan for Managing the Natural Resources and Environment of the South Pacific Region, and incorporates the concerns, needs and financial capabilities of the nations of the region.

CCOPISOPAC

The Committee for Coordination of Joint Prospecting for Mineral Resources in South Pacific Offshore Area is an intergovernmental body established under the UN Economic and Social Committee on Asian and the Pacific (ESCAP). Its mission is to develop and promote the investigation of the mineral potential of the South Pacific Ocean. This was expanded in 1979 by the UNDP to include additional inshore coastal activities and marine studies. These studies have been directed toward research, training, and obtaining management information systems and priority setting systems and the baseline data necessary for orchestrating and organizing comprehensive management and development for the South Pacific Region.



DEPARTMENT OF FOREIGN AFFAIRS
CANBERRA, A.C.T.

South Pacific Nuclear Free Zone Treaty

(Rarotonga, 6 August 1985)

Entry into force: 11 December 1986

TREATY SERIES 1986
No. 32

SOUTH PACIFIC NUCLEAR FREE ZONE TREATY

The Parties to this Treaty

Commonwealth of Australia 1987
ISSN 0729-6525
ISBN 0 644 06578 R

United in their commitment to a world at peace,
Gravely concerned that the continuing nuclear arms race presents the risk of nuclear war which would have devastating consequences for all people;

Convinced that all countries have an obligation to make every effort to achieve the goal of eliminating nuclear weapons, the terror which they hold for humankind and the threat which they pose to life on earth,

Believing that regional arms control measures can contribute to global efforts to reverse the nuclear arms race and promote the national security of each country in the region and the common security of all,

Determined to ensure, so far as lies within their power, that the bounty and beauty of the land and sea in their region shall remain the heritage of their peoples and their descendants in perpetuity to be enjoyed by all in peace;

Reaffirming the importance of the Treaty on the Non-Proliferation of Nuclear Weapons (NPT) in preventing the proliferation of nuclear weapons and in contributing to world security,

Noting, in particular, that Article VII of the NPT recognises the right of any group of States to conclude regional treaties in order to assure the total absence of nuclear weapons in their respective territories;

Noting that the prohibitions of emplacement and emplacement of nuclear weapons on the seabed and the ocean floor and in the subsoil thereof contained in the Treaty on the Prohibition of the Emplacement of Nuclear Weapons and other Weapons of Mass Destruction on the Seabed and the Ocean Floor and in the Subsoil Thereof apply in the South Pacific,

1. Aust. T.S. 1973 No. 3; U.K.T.S. No. 83 of 1970;
U.N.T.S. 729 p. 161.

2. Aust. T.S. 1973 No. 4; U.K.T.S. No. 13 of 1973;
U.N.T.S. 955 p. 115.

Noting also that the prohibition of testing of nuclear weapons in the atmosphere or under water, including territorial waters or high seas, contained in the Treaty Banning Nuclear-Weapon Tests in the Atmosphere, in Outer Space and Under Water³ applies in the South Pacific;

Determined to keep the region free of environmental pollution by radioactive wastes and other radioactive matter;

Guided by the decision of the Fifteenth South Pacific Forum at Tuvalu that a nuclear free zone should be established in the region at the earliest possible opportunity in accordance with the principles set out in the communique of that meeting,

Agreed as follows:

ARTICLE 1

USAGE OF TERMS

For the purpose of this Treaty and its Protocols:

- (a) "South Pacific Nuclear Free Zone" means the areas described in Annex 1 as illustrated by the map attached to that Annex;
- (b) "territory" means internal waters, territorial sea and archipelagic waters, the seabed and subsoil beneath, the land territory and the airspace above them;
- (c) "nuclear explosive device" means any nuclear weapon or other explosive device capable of releasing nuclear energy, irrespective of the purpose for which it could be used. The term includes such a weapon or device in unassembled and partly assembled forms, but does not include the means of transport or delivery of such a weapon or device if separable from and not an indivisible part of it;
- (d) "stationing" means emplacement, emplacement, transportation on land or inland waters, stockpiling, storage, installation and deployment.

³. Aust. T.S. 1963 No. 26 U.K.T.S. No. 3 of 1964; U.N.T.S. 480 p. 43.

ARTICLE 2

APPLICATION OF THE TREATY

1. Except where otherwise specified, this Treaty and its Protocols shall apply to territory within the South Pacific Nuclear Free Zone.
2. Nothing in this Treaty shall prejudice or in any way affect the rights, or the exercise of the rights, of an State under international law with regard to freedom of the seas.

ARTICLE 3

RENUNCIATION OF NUCLEAR EXPLOSIVE DEVICES

Each Party undertakes:

- (a) not to manufacture or otherwise acquire, possess or have control over any nuclear explosive device by any means anywhere inside or outside the South Pacific Nuclear Free Zone;
- (b) not to seek or receive any assistance in the manufacture or acquisition of any nuclear explosive device;
- (c) not to take any action to assist or encourage the manufacture or acquisition of any nuclear explosive device by any State.

ARTICLE 4

PEACEFUL NUCLEAR ACTIVITIES

Each party undertakes:

- (a) not to provide source or special fissionable material, or equipment or material especially designed or prepared for the processing, use or production of special fissionable material for peaceful purposes to:
 - (i) any non-nuclear-weapon State unless subject to the safeguards required by Article III.1 of the NPT, or
 - (ii) any nuclear-weapon State unless subject to applicable safeguards agreements with the International Atomic Energy Agency (IAEA).

Any such provision shall be in accordance with strict non-proliferation measures to provide assurance of exclusive peaceful non-explosive use;

- (b) to support the continued effectiveness of the international non-proliferation system based on the NPT and the IAEA safeguards system.

ARTICLE 5

PREVENTION OF TESTING OF NUCLEAR EXPLOSIVE DEVICES

1. Each Party undertakes to prevent in its territory the stationing of any nuclear explosive device.
2. Each Party in the exercise of its sovereign rights remains free to decide for itself whether to allow visits by foreign ships and aircraft to its ports and airfields, transit of its airspace by foreign aircraft, and navigation by foreign ships in its territorial sea or archipelagic waters in a manner not covered by the rights of innocent passage, archipelagic sea lane passage or transit passage of straits.

ARTICLE 6

PREVENTION OF TESTING OF NUCLEAR EXPLOSIVE DEVICES

Each Party undertakes:

- (a) to prevent in its territory the testing of any nuclear explosive device;
- (b) not to take action to assist or encourage the testing of any nuclear explosive device by any State.

ARTICLE 7

PREVENTION OF DUMPING

Each Party undertakes:

- (a) not to dump radioactive wastes and other radioactive matter at sea anywhere within the South Pacific Nuclear Free Zone;

- (b) to prevent the dumping of radioactive wastes and other radioactive matter by anyone in its territorial sea;
- (c) not to take any action to assist or encourage the dumping by anyone of radioactive wastes and other radioactive matter at sea anywhere within the South Pacific Nuclear Free Zone;
- (d) to support the conclusion as soon as possible of the proposed Convention relating to the protection of the natural resources and environment of the South Pacific region and its Protocol for the prevention of pollution of the South Pacific region by dumping, with the aim of precluding dumping at sea of radioactive wastes and other radioactive matter by anyone anywhere in the region.

2. Paragraphs 1(a) and 1(b) of this Article shall not apply to areas of the South Pacific Nuclear Free Zone in respect of which such a Convention and Protocol have entered into force.

ARTICLE 8

CONTROL SYSTEM

1. The Parties hereby establish a control system for the purpose of verifying compliance with their obligations under this Treaty.
2. The control system shall comprise:
 - (a) reports and exchange of information as provided for in Article 9;
 - (b) consultations as provided for in Article 10 and Annex 4(i);
 - (c) the application to peaceful nuclear activities of safeguards by the IAEA as provided for in Annex 2;
 - (d) a complaints procedure as provided for in Annex 4.

ARTICLE 9

REPORTS AND EXCHANGES OF INFORMATION

1. Each Party shall report to the Director of the South Pacific Bureau for Economic Co-operation (the Director) as soon as possible any significant event within its jurisdiction affecting the implementation of this Treaty. The Director shall circulate such reports promptly to all Parties.
2. The Parties shall endeavour to keep each other informed on matters arising under or in relation to this Treaty. They may exchange information by communicating it to the Director, who shall circulate it to all Parties.
3. The Director shall report annually to the South Pacific Forum on the status of this Treaty and matters arising under or in relation to it, incorporating reports and communications made under paragraphs 1 and 2 of this Article and matters arising under Articles 8(2)(d) and 10 and Annex 2(4).

ARTICLE 10

CONSULTATIONS AND REVIEW

Without prejudice to the conduct of consultations among Parties by other means, the Director, at the request of any Party, shall convene a meeting of the Consultative Committee established by Annex 3 for consultation and co-operation on any matter arising in relation to this Treaty or for reviewing its operation.

ARTICLE 11

AMENDMENT

The Consultative Committee shall consider proposals for amendment of the provisions of this Treaty proposed by any Party and circulated by the Director to all Parties not less than three months prior to the convening of the Consultative Committee for this purpose. Any proposal agreed upon by consensus by the Consultative Committee shall be communicated to the Director who shall circulate it for acceptance to all Parties. An amendment shall enter into force thirty days after receipt by the depositary of acceptances from all Parties.

ARTICLE 12

SIGNATURE AND RATIFICATION

1. This Treaty shall be open for signature by any Member of the South Pacific Forum.
2. This Treaty shall be subject to ratification. Instruments of ratification shall be deposited with the Director who is hereby designated depositary of this Treaty and its Protocols.⁴
3. If a Member of the South Pacific Forum whose territory is outside the South Pacific Nuclear Free Zone becomes a Party to this Treaty, Annex 1 shall be deemed to be amended so far as is required to enclose at least the territory of that Party within the boundaries of the South Pacific Nuclear Free Zone. The delineation of any area added pursuant to this paragraph shall be approved by the South Pacific Forum.

ARTICLE 13

WITHDRAWAL

1. This Treaty is of a permanent nature and shall remain in force indefinitely, provided that in the event of a violation by any Party of a provision of this Treaty essential to the achievement of the objectives of the Treaty or of the spirit of the Treaty, every other Party shall have the right to withdraw from the Treaty.
2. Withdrawal shall be effected by giving notice twelve months in advance to the Director who shall circulate such notice to all other Parties.

ARTICLE 14

RESERVATIONS

This Treaty shall not be subject to reservations.

4. Instrument of ratification deposited by Australia 11 December 1986.

ARTICLE 15

ENTRY INTO FORCE

1. This Treaty shall enter into force on the date of deposit of the eighth instrument of ratification.
2. For a signature which ratifies this Treaty after the date of deposit of the eighth instrument of ratification, the Treaty shall enter into force on the date of deposit of its instrument of ratification.

ARTICLE 16

DEPOSITARY FUNCTIONS

The depositary shall register this Treaty and its Protocols pursuant to Article 102 of the Charter of the United Nations and shall transmit certified copies of the Treaty and its Protocols to all Members of the South Pacific Forum and all States eligible to become Party to the Protocols to the Treaty and shall notify them of signatures and ratifications of the Treaty and its Protocols.

IN WITNESS WHEREOF the undersigned, being duly authorised by their Governments, have signed this Treaty.

For the Government of Australia:	R.J.L. Hawke
For the Government of the Cook Islands:	T.R.A.H. Davis
For the Government of Fiji:	K.K.T. Mara
For the Government of Kiribati:	I. Tabai
For the Government of New Zealand:	D. Lange
For the Government of Tuvalu:	R.R. Rex
For the Government of Samoa:	T. Puapua
For the Government of Western Samoa:	Tofilau Eti

DONE at Rarotonga, this Sixth day of August, one thousand nine hundred and eighty five, in a single original in the English language.

5. The Treaty entered into force on 11 December 1986.

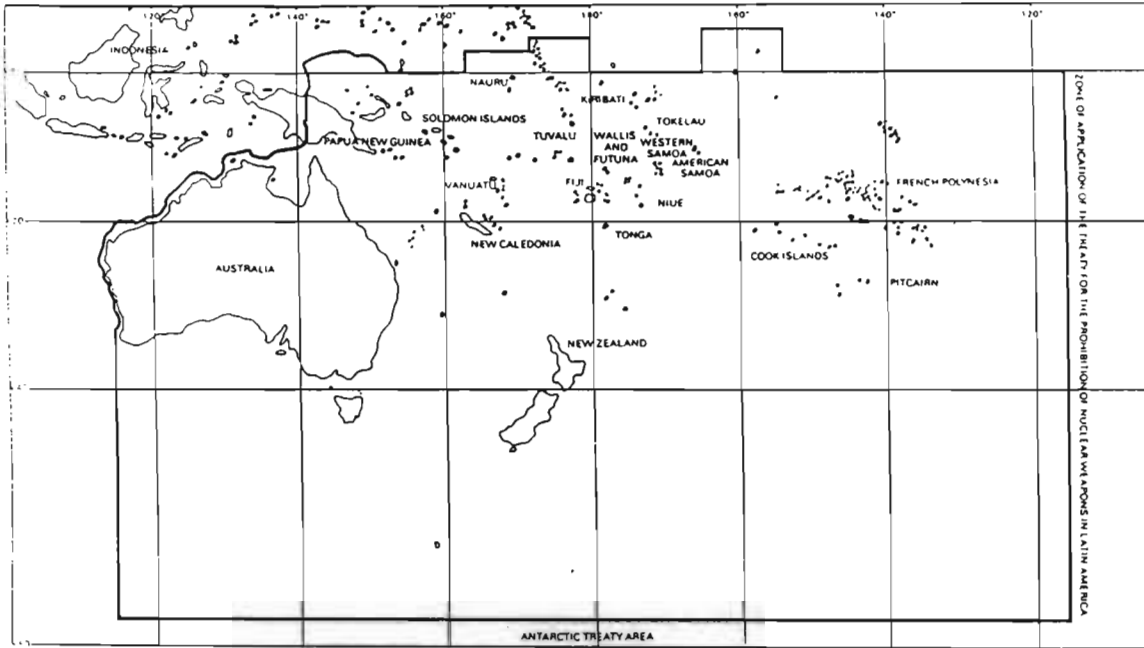
ANNEX 1

SOUTH PACIFIC NUCLEAR FREE ZONE

A. The area bounded by a line -

- (1) commencing at the point of intersection of the Equator by the maritime boundary between Indonesia and Papua New Guinea;
- (2) running thence northerly along that maritime boundary to its intersection by the outer limit of the Exclusive Economic Zone of Papua New Guinea;
- (3) thence generally north-easterly, easterly and south-easterly along that outer limit to its intersection by the Equator;
- (4) thence east along the Equator to its intersection by the meridian of Longitude 163 degrees East;
- (5) thence north along that meridian to its intersection by the parallel of Latitude 3 degrees North;
- (6) thence east along that parallel to its intersection by the meridian of Longitude 171 degrees East;
- (7) thence north along that meridian to its intersection by the parallel of Latitude 4 degrees North;
- (8) thence east along that parallel to its intersection by the meridian of Longitude 180 degrees East;
- (9) thence south along that meridian to its intersection by the Equator;
- (10) thence east along the Equator to its intersection by the meridian of Longitude 165 degrees West;
- (11) thence north along that meridian to its intersection by the parallel of Latitude 5 degrees 30 minutes North;
- (12) thence east along that parallel to its intersection by the meridian of Longitude 154 degrees West;

ATTACHMENT TO ANNEX 1 TO THE SOUTH PACIFIC NUCLEAR FREE ZONE TREATY ILLUSTRATIVE MAP
 (Australian islands in the Indian Ocean, which are also part of the South Pacific Nuclear Free Zone, are not shown)



11

- (13) thence south along that meridian to its intersection by the Equator;
 - (14) thence east along the Equator to its intersection by the meridian of Longitude 115 degrees West;
 - (15) thence south along that meridian to its intersection by the parallel of Latitude 60 degrees South;
 - (16) thence west along that parallel to its intersection by the meridian of Longitude 115 degrees East;
 - (17) thence north along the meridian to its southernmost intersection by the outer limit of the territorial sea of Australia;
 - (18) thence generally northerly and easterly along the outer limit of the territorial sea of Australia to its intersection by the meridian of Longitude 136 degrees 45 minutes East;
 - (19) thence north-easterly along the geodesic to the point of Latitude 0 degrees 50 minutes South, Longitude 139 degrees 12 minutes East;
 - (20) thence north-easterly along the maritime boundary between Indonesia and Papua New Guinea to where it joins the land order between those two countries;
 - (21) thence generally northerly along the land border to where it joins the maritime boundary between Indonesia and Papua New Guinea, on the northern coastline of Papua New Guinea; and
 - (22) thence generally northerly along that boundary to the point of commencement.
3. The areas within the outer limits of the territorial seas of all Australian islands lying westward of the area described in paragraph A and north of Latitude 60 degrees South, provided that any such areas shall cease to be part of the South Pacific Nuclear Free Zone upon receipt by the Depository of written notice from the Government of Australia stating that the areas have become subject to another treaty having an object and purpose substantially the same as that of this Treaty.

ANNEX 2

IAEA SAFEGUARDS

1. The safeguards referred to in Article 8 shall in respect of each party be applied by the IAEA as set forth in an agreement negotiated and concluded with the IAEA on all source or special fissionable material in all peaceful nuclear activities within the territory of the Party, under its jurisdiction or carried out under its control anywhere.
2. The agreement referred to in paragraph 1 shall be, or shall be equivalent in its scope and effect to, an agreement required in connection with the NPT on the basis of the material reproduced in document INF/CIRC/153 (Corrected) of the IAEA. Each Party shall take all appropriate steps to ensure that such agreement is in force for it not later than eighteen months after the date of entry into force for that Party of this Treaty.
3. For the purposes of this Treaty, the safeguards referred to in paragraph 1 shall have as their purpose the verification of the non-diversion of nuclear material from peaceful nuclear activities to nuclear explosive devices.
4. Each Party agrees upon the request of any other Party to transmit to that Party and to the Director for the information of all Parties a copy of the overall conclusions of the most recent report by the IAEA on its inspection activities in the territory of the Party concerned, and to advise the Director promptly of any subsequent findings of the Board of Governors of the IAEA in relation to those conclusions for the information of all Parties.

ANNEX 3

CONSULTATIVE COMMITTEE

1. There is hereby established a Consultative Committee which shall be convened by the Director from time to time pursuant to Articles 10 and 11 and Annex 4(2). The Consultative Committee shall be constituted of representatives of the Parties, each Party being entitled to appoint one representative who may be accompanied by advisers. Unless otherwise agreed, the Consultative Committee shall be convened at any given meeting by the representative of the Party which last hosted the meeting.

of Heads of Government or Members of the South Pacific Forum. A quorum shall be constituted by representatives of half the parties. Subject to the provisions of Article 11, decisions of the Consultative Committee shall be taken by consensus or, failing consensus, by a two-thirds majority of those present and voting. The Consultative Committee shall adopt such other rules of procedure as it sees fit.

2. The costs of the Consultative Committee, including the costs of special inspections pursuant to Annex 4, shall be borne by the South Pacific Bureau for Economic Co-operation. It may seek special funding should this be required.

ANNEX 4

COMPLAINANTS PROCEDURE

1. A Party which considers that there are grounds for a complaint that another Party is in breach of its obligations under this Treaty shall, before bringing such a complaint to the Director, bring the subject matter of the complaint to the attention of the Party complained of and shall allow the latter reasonable opportunity to provide it with an explanation and to resolve the matter.
2. If the matter is not so resolved, the complainant Party may bring the complaint to the Director with a request that the Consultative Committee be convened to consider it. Complaints shall be supported by an account of evidence of breach of obligations known to the complainant Party. Upon receipt of a complaint the Director shall convene the Consultative Committee as quickly as possible to consider it.
3. The Consultative Committee, taking account of efforts made under paragraph 1, shall afford the Party complained of a reasonable opportunity to provide it with an explanation of the matter.
4. If, after considering any explanation given to it by the representatives of the Party complained of, the Consultative Committee decides that there is sufficient substance in the complaint to warrant a special inspection in the territory of that Party or elsewhere, the Consultative Committee shall direct that such special inspection be made as quickly as possible by a special inspection team of three suitably qualified special

inspectors appointed by the Consultative Committee in consultation with the complainant and the complainant Parties, provided that no national of either Party shall serve on the special inspection team. If so requested by the Party complained of, the special inspection team shall be accompanied by representatives of that Party. Neither the right of consultation on the appointment of special inspectors, nor the right to accompany special inspectors, shall delay the work of the special inspection team.

5. In making a special inspection, special inspectors shall be subject to the direction only of the Consultative Committee and shall comply with such directives concerning tasks, objectives, confidentiality and procedures as may be decided upon by it. Directives shall take account of the legitimate interests of the party complained of in complying with its other international obligations and commitments and shall not duplicate safeguards procedures to be undertaken by the IAEA pursuant to agreements referred to in Annex 2(f). The special inspectors shall discharge their duties with due respect for the laws of the Party complained of.

6. Each Party shall give to special inspectors full and free access to all information and places within its territory which may be relevant to enable the special inspectors to implement the directives given to them by the Consultative Committee.

7. The Party complained of shall take all appropriate steps to facilitate the special inspection, and shall grant to special inspectors privileges and immunities necessary for the performance of their functions, including inviolability for all papers and documents and immunity from arrest, detention and legal process for acts done and words spoken and written, for the purpose of the special inspection.

8. The special inspectors shall report in writing as quickly as possible to the Consultative Committee, outlining their activities, setting out relevant facts and information as ascertained by them, with supporting evidence and documentation as appropriate, and stating their conclusions. The Consultative Committee shall report fully to all Members of the South Pacific Forum, giving its decision as to whether the Party complained of is in breach of its obligations under this treaty.

9. If the Consultative Committee has decided that the Party complained of is in breach of its obligations under this Treaty, or that the above provisions have not been complied with, or at any time at the request of either the complainant or complained of Party, the Parties shall meet promptly at a meeting of the South Pacific Forum.

CH009

CH009471/2

PROTOCOL 1

SOUTH PACIFIC NUCLEAR FREE
ZONE TREATY

The Parties to this Protocol

Noting the South Pacific Nuclear Free Zone Treaty (the
Treaty)

Have Agreed as follows:

ARTICLE 1

PROTOCOL 1

Each Party undertakes to apply, in respect of the territories for
which it is internationally responsible situated within the
South Pacific Nuclear Free Zone, the prohibitions contained in
Articles 3, 5 and 6, insofar as they related to the manufacture,
stationing and testing of any nuclear explosive device within
those territories, and the safeguards specified in Article
8(2)(c) and Annex 2 of the Treaty.

ARTICLE 2

Each Party may, by written notification to the depositary, indicate its acceptance from the date of such notification of any alteration to its obligation under this Protocol brought about by the entry into force of an amendment to the Treaty pursuant to Article 11 of the Treaty.

ARTICLE 3

This Protocol shall be open for signature by the French Republic, the United Kingdom of Great Britain and Northern Ireland and the United States of America.

ARTICLE 4

This Protocol shall be subject to ratification.

ARTICLE 5

This Protocol is of a permanent nature and shall remain in force indefinitely, provided that each Party shall, in exercising its national sovereignty, have the right to withdraw from this Protocol if it decides that extraordinary events, related to the subject matter of this Protocol, have jeopardised its supreme interests. It shall give notice of such withdrawal to the depositary three months in advance. Such notice shall include a statement of the extraordinary events it regards as having jeopardised its supreme interests.

ARTICLE 6

This Protocol shall enter into force for each State on the date of its deposit with the depositary of its instrument of ratification.

IN WITNESS WHEREOF the undersigned, being duly
authorised by their Governments, have signed this Protocol.

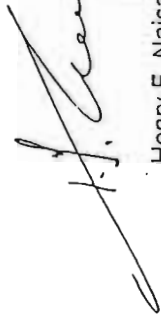
For the United Kingdom of Great

DONE at ST. JAMES, this Eighth day of August, One
thousand nine hundred and eighty-six, in a single original in the
English language.

For the French Republic

For the United States of America

Certified true and correct copy of the Original.



Henry F. Naisal
Director
South Pacific Bureau for Economic Co-operation
Suva, FIJI.



PROTOCOL 2

The Parties to this Protocol

SOUTH PACIFIC NUCLEAR FREE ZONE TREATY
Noting the South Pacific Nuclear Free Zone Treaty (the Treaty)

Have Agreed as follows:

ARTICLE 1

PROTOCOL 2

Each Party undertakes not to use or threaten to use any nuclear explosive device against:

- a) Parties to the Treaty; or
- b) any territory within the South Pacific Nuclear Free Zone for which a State that has become a Party to Protocol 1 is internationally responsible.

ARTICLE 2

Each Party undertakes not to contribute to any act of a Party to the Treaty which constitutes a violation of the Treaty, or to any act of another Party to the Protocol which constitutes a violation of a Protocol.

ARTICLE 3

Each Party may, by written notification to the depositary, indicate its acceptance from the date of such notification of any alteration to its obligation under this Protocol brought about by the entry into force of an amendment to the Treaty pursuant to Article 11 of the Treaty or by the extension of the South Pacific Nuclear Free Zone pursuant to Article 12(3) of the Treaty.

ARTICLE 4

This Protocol shall be open for signature by the French Republic, the People's Republic of China, the Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland and the United States of America.

ARTICLE 5

This Protocol shall be subject to ratification.

ARTICLE 6

IN WITNESS WHEREOF the undersigned, being duly authorised by their Governments, have signed this Protocol.

indefinitely, provided that each Party shall, in exercising its national sovereignty, have the right to withdraw from this Protocol if it decides that extraordinary events, related to the subject matter of this Protocol, have jeopardised its supreme interests. It shall give notice of such withdrawal to the depositary three months in advance. Such notice shall include a statement of the extraordinary events it regards as having jeopardised its supreme interests.

DONE at SUVA, this Eighth day of August, One thousand nine hundred and eighty-six, in a single original in the English language.

ARTICLE 7

For the People's Republic of China

This Protocol shall enter into force for each State on the date of its deposit with the depositary of its instrument of ratification.

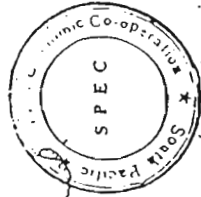
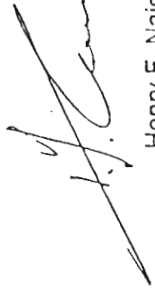
For the French Republic

For the Union of
Soviet Socialist Republics

For the United Kingdom of Great
Britain and Northern Ireland

For the United States of America

Certified true and correct copy of the Original.



Henry F. Naisali
Director
South Pacific Bureau for Economic Co-operation
Suva, FIJI.

PROTOCOL 3

SOUTH PACIFIC NUCLEAR FREE
ZONE TREATY

The Parties to this Protocol

Noting the South Pacific Nuclear Free Zone Treaty (the
Treaty)

Have Agreed as follows:

PROTOCOL 3

ARTICLE 1

Each Party undertakes not to test any nuclear explosive device
anywhere within the South Pacific Nuclear Free Zone.

ARTICLE 2

Each Party may, by written notification to the depositary,
indicate its acceptance from the date of such notification of any
alteration to its obligation under this Protocol brought about by
the entry into force of an amendment to the Treaty pursuant to

Article 11 of the Treaty or by the extension of the South Pacific Nuclear Free Zone pursuant to Article 12(3) of the Treaty.

ARTICLE 3

This Protocol shall be open for signature by the French Republic, the People's Republic of China, the Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland and the United States of America.

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ARTICLE 4

This Protocol shall be subject to ratification.

ARTICLE 5

This Protocol is of a permanent nature and shall remain in force indefinitely, provided that each Party shall, in exercising its national sovereignty, have the right to withdraw from this Protocol if it decides that extraordinary events, related to the subject matter of this Protocol, have jeopardised its supreme interests. It shall give notice of such withdrawal to the

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depository three months in advance. Such notice shall include a statement of the extraordinary events it regards as having jeopardised its supreme interests.

ARTICLE 6

This Protocol shall enter into force for each State on the date of its deposit with the depository of its instrument of ratification.

IN WITNESS WHEREOF the undersigned, being duly authorised by their Governments, have signed this Protocol.

DONE at SUVA this Eighth day of August, One thousand nine hundred and eighty-six, in a single original in the English language.

For the People's Republic of
China

For the French Republic

.....

For the Union of the

Soviet Socialist Republics

.....

For the United Kingdom of Great
Britain and Northern Ireland

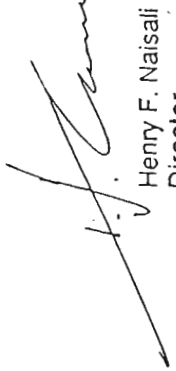
.....

For the United States of America

.....

Certified true and correct copy of the Original.




Henry F. Naisali
Director
South Pacific Bureau for Economic Co-operation
Suva, FIJI.

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