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**THE SOUTH PACIFIC NUCLEAR FREE ZONE TREATY:
A LOST BATTLE AGAINST THE SUPERPOWERS?**

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THE SOUTH PACIFIC NUCLEAR FREE ZONE TREATY:

A LOST BATTLE AGAINST THE SUPERPOWERS?

Pieter Glebbeek

Politically the South Pacific region has been relatively isolated until recently. A major event which marked a change in this situation and which drew the attention of both policy-makers and the peace movement in other parts of the world, was the establishment of a nuclear-free-zone, through the adoption of a treaty to that effect by the South Pacific nations in August 1985 and its subsequent entry into force in December 1986.

One of the main goals of the exercise was to ensure that the region remains (or becomes) free of the serious threats posed by the nuclear rivalry between the superpowers.

Does the Nuclear Free Zone Treaty really serve this goal or does it simply confirm the status quo and constitute the expression of a lost battle against the superpowers?

1. THE PACIFIC ENVIRONMENT.

Superpower rivalry, both military and economic, as well as the ongoing testing of nuclear devices in the South Pacific by France have led to a growing awareness of the necessity for a stronger regional cooperation by the small island states and their "big brothers" (New Zealand and Australia) in this region.

At the same time the specific interests and degree of involvement of the superpowers and nuclear powers in the Pacific region differ. Due to its geographical location, the United States of America has traditionally had a great influence in the Pacific, not in the least because of its military build-up in the region. Although its actual military

presence is limited to the Northern Pacific (it has major military bases in the Philippines, Guam, Kwajalein and the Marshall Islands), it has been able to pursue its military strategic interests in the South Pacific through its military alliance (ANZUS) partners in the region. Especially Australia has appeared to have been very useful in this respect: US defence communication facilities in Australia include the Naval Communications Station at North-West Cape, the Defence Space Research Facility at Pine Gap and the Defence Space Communications Facility at Nurrungar.¹

The economic interests of the US in the South Pacific region are probably most clearly illustrated by what is sometimes referred to as the "tuna war". Until recently US distant tuna fishing fleets have been roaming the small South Pacific island states. After the introduction of 200-miles exclusive economic zones by countries as Vanuatu and Kiribati, Washington immediately responded by refusing to recognize these claims and by stating that tuna, being a highly migratory species, is excluded from the exclusive fishing jurisdiction of the coastal state. The whole issue escalated when a US purse-seiner was seized by the Solomon Islands in June 1984 and when Kiribati opened negotiations with the Soviet Union to provide the Soviets with special fishing facilities in its exclusive economic zone. Another small island state, Vanuatu, also entered into negotiations with the Soviet Union. Vanuatu was not only willing to grant the Soviets fishing rights, but also to provide them with shore facilities for their crew and other port facilities.² Moreover the US was not particularly enthusiastic about the establishment, by the South Pacific Forum, of a Forum Fisheries Agency (FFA)³, which would provide the small island states plus Australia and New Zealand with a multilateral forum to coordinate the management of fisheries in the Southwest Pacific. The Reagan administration has always demonstrated a clear preference for a bilateral approach in its international dealings and most certainly as far as concerns negotiations with small developing countries. Under pressure of Australia and New Zealand and for fear of increasing Soviet influence in the Southwest Pacific, the US entered into negotiations with

the South Pacific Forum Fisheries Agency(FFA). These negotiations were concluded successfully in 1986 with the signing of an agreement between member states of the FFA and the United States. Washington acquired certain fishing rights in return for US\$ 12 million a year for a period of five years.

Soviet interest in the South Pacific region was highlighted in a speech by Gorbachov in Vladivostok on 28 July 1986, in which he stated that the Soviet Union was eager to improve its relations with the South Pacific Nations, including "the youngest independent participants in the region's political life".⁴ Only a few months earlier a Pacific Desk was established in the Soviet Ministry of Foreign Affairs. Until a few years ago Soviet interest in the region was rather low-key. Its increased economic interest in the South Pacific more or less coincided with the tuna war between the US and the small island states. In 1985 Moscow managed to reach a deal with Kiribati offering the country US\$ 1.7 million in return for fishing rights for one year within the 200-mile exclusive economic zone. Most recently Papua New Guinea expressed interest in concluding a similar agreement with the Soviet Union.

Although the Soviet Union is not involved in military operations in the South Pacific and does not possess any military bases in the region either, certain western circles fear that the Soviets are taking certain preparatory measures which could facilitate a military involvement in the South Pacific. In this respect it has been pointed out that Soviet oceanographic vessels have been active in the South Pacific for almost 30 years and that this oceanographic research has been linked to the Soviet programme for an "all oceans" navy.⁵

China's interests in the South Pacific region have so far been minor compared to those of the US and the Soviet Union. In line with its traditional foreign policy, it supports the ANZUS military alliance and aims at preventing a too large Soviet influence in the area. Contrary to the Soviet Union, the People's Republic of China has diplomatic missions in a number of small island states in the Southwest Pacific,

such as Papua New Guinea, Fiji and Western Samoa. Until recently China's economic relations with countries in the South Pacific were limited. But since the introduction of its open door policy and the new economic policy, economic relations have expanded, especially with New Zealand and Australia.

As stated above, French nuclear testing in the Southwest Pacific has encouraged a closer cooperation between the small island states and New Zealand and Australia. Although the history of French nuclear testing is of more recent date than that of the US, its testing programme has been more intensive. Whereas the US and Great Britain ended their testing in the Pacific in 1963, France started its atmospheric testing programme in the South Pacific in 1966. An action by New Zealand and Australia at the International Court of Justice led to a stop of these tests in 1974.⁶ France however resumed an underground testing programme at Moruroa Atoll in 1975. Until now there is no indication that France is planning to give up its testing in the South Pacific. As a consequence anti-French sentiments in the region have come to such a pitch, that at a certain stage Australian Foreign Minister Bill Hayden commented:

"If they're determined to test these things, then let them test the damned things in the Atlantic, the Mediterranean or mainland France. Let them keep out of our backyard."⁷

The New Zealand government has expressed itself in similar terms on various occasions. Pacific protests against the French nuclear activities reached a dramatic climax after the bombing of the Greenpeace ship the "Rainbow Warrior" in the harbour of Auckland by French security agents on 10 July 1985 and the subsequent visit of French President Francois Mitterrand to the Moruroa nuclear testing site in mid-September 1985. This last event was described by the Australian Foreign Minister as "an extremely provocative act".⁸ It was probably because of the first event that the countries of the South Pacific Forum managed to reach an agreement on the text of the South Pacific

Nuclear Free Zone Treaty in Rarotonga in August 1985 despite different views on certain issues connected with this concept.

French colonial presence in the South Pacific (New Caledonia) has also given rise to anti-French sentiments among the island states in the region, especially after the 1986 parliamentary elections in France, which brought the conservatives into power. Prime Minister Chirac rejected the self-determination plan proposed by the previous socialist government. As a consequence, the South Pacific Forum, at its annual meeting in August 1986, agreed unanimously to bring the issue of New Caledonia to the United Nations and to propose to reinscribe New Caledonia on the list of Non-Self-Governing Territories within the meaning of the UN Charter. At its forty-first session in December 1986, the UN General Assembly adopted a resolution supporting the Forum's proposal and "affirming the inalienable right of the people of New Caledonia to self-determination and independence".⁹ Out of obvious displeasure, the French declared the Australian Consul-General in New Caledonia, John Dauth, persona non grata in January 1987 and all ministerial contacts with Australia were frozen.

It can be concluded that whereas Chinese and Soviet interests in the South Pacific are mainly of an economic nature (and maybe to a certain extent of a diplomatic nature), French and US interests in the region are predominantly aimed at strengthening their military-strategic positions, although US economic interests in the region are also quite significant.

The degree and nature of involvement of these four powers in the South Pacific have no doubt contributed to the process of institutionalisation of regional cooperation in this remote area of the world, especially in as far as economic matters and security issues are concerned.

In this respect a number of important legal developments have taken place within the framework of the South Pacific Forum during the last decade. These include:

1. The establishment, in 1977, of the Pacific Forum Line, a joint venture between 10 South Pacific countries, operating a shipping line to meet the problem of high costs of transport in the region.
2. The above-mentioned¹⁰ establishment, in 1979, of the Forum Fisheries Agency to coordinate the management of fisheries in the region.
3. The signing of the South Pacific Regional Trade and Economic Cooperation Agreement (Sparteca) in July 1980, giving the small island states of the South Pacific Forum free access (on a non-reciprocal basis) to Australian and New Zealand markets for almost all products.¹¹
4. The signing of the South Pacific Nuclear Free Zone Treaty in August 1985 and its entry into force in December 1986.
5. The signing of the Treaty on Fisheries Between the Governments of Certain Pacific Island States and the Government of the United States of America on April 2, 1987 and its entry into force on 15 June 1988. The Treaty provides access (for US fishermen) to the tuna fishing stocks in the exclusive economic zones of the Pacific Island states at an access fee of US\$60 million over a period of five years.

2. THE SOUTH PACIFIC NUCLEAR FREE ZONE:

THE EMERGENCE OF THE CONCEPT

The concept of nuclear (weapon) free zones is not a new one. Article 1(1) of the Antarctic Treaty of 1959 provides for a nuclear weapon free regime and in fact prohibits any measures of a military nature. In the early 1960's negotiations started between a number of Latin American countries about the possibilities of establishing a Latin American nuclear-free zone. After a series of negotiations the Treaty for the Prohibition of Nuclear Weapons in Latin America (Treaty of Tlatelolco) was signed in 1967. The Treaty entered into force in April 1968. Parties to this treaty undertake not to possess, test or use nuclear weapons, or to allow their storage or stationing in their territory.

On various occasions nuclear weapon free zones have been proposed for Central Europe, Africa, the Middle East, the Balkans, Scandinavia, the

Mediterranean, the Indian Ocean and Southeast Asia. But these have never materialised.

In 1974 the United Nations General Assembly established an ad hoc Group of Experts to study the issue of nuclear weapon free zones and to define a number of criteria. The Group of Experts presented its findings to the General Assembly in 1975.¹² According to this report, the main object of nuclear weapon free zones is to guarantee the freedom from all nuclear weapons in the respective zones. The following main characteristics have been identified by the Group of Experts as underlying the concept:

1. The zone must be effectively free of all nuclear weapons;
2. The initiative should come from countries within the region;
3. All military significant states in the region should participate;
4. There should be an effective verification system.
5. The use of nuclear technology for peaceful purposes should be allowed;
6. The zone must have clearly defined and recognized limits;
7. The establishment of the zone should not effect existing treaty obligations within the zone.
8. Certain obligations under international law, such as the freedom of the high seas, freedom of navigation through international straits should be respected.
9. The establishment of the zone should have the support of the nuclear weapon states.
10. The treaty establishing the zone should be of unlimited duration.

Although these principles are rather vague and ambiguous and have therefore given rise to quite some criticism,¹³ they have served as a model for the South Pacific Nuclear Free Zone Treaty.

A first proposal to establish a nuclear-weapon-free zone in the South Pacific was initiated by the New Zealand Labour Government in the mid-1970s. This initiative gained support at a meeting of the South Pacific

Forum in July 1975 and it was agreed to bring the issue to the attention of the United Nations General Assembly in order to mobilise broader support. A draft resolution, sponsored by New Zealand, Fiji and Papua New Guinea, endorsing the idea of the establishment of a zone, was adopted by the General Assembly on 11 December 1975 by 110 votes to 0, with 20 abstentions.¹⁴ The coming into power of conservative governments in both New Zealand and Australia in 1975, paralysed further discussions and initiatives.

After the victory of the Labour Party during the 1983 elections in Australia and similar election results in New Zealand in 1984, events moved quickly. The Australian Government put forward a nuclear-free proposal at the South Pacific Forum meeting in 1983. The discussions did not lead to any concrete results, due to a number of factors.

In the first place the South Pacific countries had not been allowed enough time to reflect on the Australian proposal. Secondly the Australian Government was probably not aware enough of the notable differences of opinion between the Forum countries concerning the scope of a nuclear-free zone. A third important factor which probably also contributed to the disappointing outcome of the 1983 meeting was the aloofness on the part of the small island states in view of the fate of the 1975 UN Resolution. Finally, during the 1983 Forum meeting, the New Zealand Government was still headed by the conservative Prime Minister Robert Muldoon, one of the most fervent opponents of the Australian proposal.

At the August 1984 Forum meeting the political scene had somewhat changed, due to the coming into power of a Labour Government in New Zealand in July, which was committed to a stringent anti-nuclear policy. The Forum members agreed to establish a working group to prepare a draft treaty, which could be discussed at the next Forum meeting in 1985. During the negotiations there was a clear dividing line between the "radicals" (Papua new Guinea, Solomon Islands, Vanuatu, New Zealand) and the "conservatives" (Samoa, Tonga, the Cook Islands), as far as the intended scope of the treaty was concerned.

Major discussion centered around the following issues:

1. Should the treaty aim at a prohibition of nuclear weapons only or should nuclear weapon-related activities, such as communications and surveillance facilities and delivery systems be included?
2. Should port visits by foreign nuclear-armed or nuclear propelled ships or aircraft be prohibited or should each party to the treaty be free to determine its own policies on the issue?
3. To what extent would a nuclear-free zone interfere with existing security/defense arrangements?

The stand taken by the various Forum countries on these issues was obviously shaped by considerations of both domestic and foreign policies.

During the 1983 Australian election campaign, which brought Labour into government, the party had pledged both loyalty to its military alliance with the United States (ANZUS) and to the notion of a nuclear-free Pacific. Contrary to another election promise however, the Labour Government continued the mining and export of uranium, a policy which was heavily criticized within the Labour Party and by the peace movement. In an attempt to break down domestic opposition against its uranium policy, the Labour Government pushed for a rapid establishment of a nuclear-free zone within the South Pacific Forum Meetings. During these meetings the Australian attitude was determined by the necessity to reconcile its proclaimed loyalty to ANZUS and to a nuclear-free Pacific. It therefore opposed a ban on port visits by nuclear armed or nuclear-propelled craft as well as a prohibition of nuclear-related activities, so US defence communication facilities in Australia¹⁵ would not be effected and the US navy could continue to benefit from Australian port facilities. US satisfaction with the Australian position during the negotiations on the treaty was expressed in an official US Government statement on the South Pacific Nuclear Free Zone Treaty, in which it was said that

"The United States is appreciative of the role
of the Government of Australia (emphasis added)

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."¹⁶

Upon its entry into office, in July 1984, the newly elected Labour Government of New Zealand decided to pursue a more stringent anti-nuclear policy than its conservative predecessors. In this context it announced a ban on port visits by nuclear-armed or nuclear propelled craft. The consequences of this new policy were dramatically highlighted in February 1985 when the US warship, the USS Buchanan, was refused entry into New Zealand ports because the Government was unable to satisfy itself that the Buchanan was not carrying nuclear weapons. The United States reacted by actually suspending (though not formally) its ANZUS obligations vis-a-vis New Zealand.

In December 1985 the New Zealand policy on port visits was laid down in the New Zealand Nuclear Free Zone, Disarmament and Arms Control Act and introduced to Parliament. Article 9(2) of this law states that

"The Prime Minister may only grant approval for entry into the internal waters of New Zealand by foreign warships if the Prime Minister is satisfied that the warships will not be carrying any nuclear explosive device upon their entry into internal waters of New Zealand."

There are similar provisions dealing with port visits by nuclear-armed aircraft and nuclear-powered ships¹⁷.

Despite its own stringent domestic policies on port visits and reported clashes with Australia on the issue, New Zealand ultimately supported the Australian proposal at the Forum, so as to achieve at least something.

New Zealand's policies on port visits was and is supported by Vanuatu, the most outspoken representative of the "radicals" during the negotiations on the Nuclear Free Zone Treaty. Vanuatu, the only member of

the Non-Aligned Movement in the South Pacific, already introduced a ban on port visits by nuclear-armed ships shortly after its independence in 1980. Prime Minister Lini made it clear that he was not willing to compromise on the issue and advocated a more comprehensive South Pacific nuclear free regime, which would bring a stop to American, Soviet and French influence in the region. Disappointed over the final outcome of the discussions, Vanuatu announced that it would not sign and ratify the treaty.

Tonga, a clear representative of the "conservatives", on the other hand did not attend the Working Group meetings, where the various proposals were discussed and the treaty provisions were drafted. It feared that a nuclear free zone would effect American interests in the region and would encourage anti-American sentiments. Tonga changed its position at the 1985 Forum meeting, probably after having understood that the Americans were not particularly upset about the Draft Treaty.

The attitude of Fiji towards the nuclear issue in the South Pacific underwent a drastic change in July 1983, when the government publicly denounced its previous policy of banning foreign nuclear-powered and armed vessels from its ports. As a token of gratitude for this change in policy, the United States offered Fiji an aid programme of \$1.5 million a year and now seems to consider Fiji as one of its most reliable allies in the region. There is no indication that the US policy will be revised after the recent military coup.

3. THE RAROTONGA TREATY

The South Pacific Nuclear Free Zone Treaty was adopted by the South Pacific Forum and opened for signature in Rarotonga, Cook Islands on August 6, 1985 and entered into force in December 1986 after the deposit of the eighth instrument of ratification (by Australia). The three protocols to the Treaty were adopted by the Forum at its meeting in August 1986.

The Treaty consists of 16 articles, four Annexes and three Protocols. Annex 1 describes the geographical area of the South Pacific Nuclear Free Zone. In Annex 2 IAEA safeguards, which are to be an integral part of the control system of the Treaty, are dealt with. Annex 3 establishes a Consultative Committee for purposes of consultation and co-operation on any matter arising in relation to the Treaty or for reviewing its operation. And Annex 4 outlines the complaints procedure. The first Protocol is open to signature by France, the United Kingdom and the United States and invites them to apply the main provisions of the Treaty to their territories in the South Pacific. The second and third Protocol are open to signature by the five nuclear weapon states (France, the United Kingdom, the United States, Soviet Union and China) and respectively invites them not to use or threaten to use any nuclear explosive device against the parties to the Treaty and not to test any nuclear explosive device within the Nuclear Free Zone.

3.1 AREA OF APPLICATION

The South Pacific Nuclear Free Zone encompasses a vast area bounded in the east by the Latin American Nuclear-weapon free zone (Treaty of Tlatelolco) and in the south by the area of application of the Antarctic Treaty. In the west the zone is bounded by the outer limit of the territorial sea of Australia and in the north by the equator with three exceptions to the north to include the exclusive economic zones of Papua New Guinea, Nauru and Kiribati. The Australian islands and their territorial seas lying outside the above-described area are also subject to the regime of the Treaty.

The defined area of application has probably been based on political motives rather than legal considerations, because the large areas of high seas included in the zone are not and cannot be effected by the regime of the treaty, as they are not subject to the national jurisdiction of any state. In the second place the fact that in the north the zone extends beyond the equator in certain sections to include the exclusive economic zones of Papua New Guinea, Nauru and Kiribati,

whereas the exclusive economic zone off the west coast of Australia is not included constitutes a legal inconsistency.¹⁸ But from the geographical point of view this is understandable, because the sea areas lying off the west coast of Australia are part of the Indian Ocean. Finally the extension of the South Pacific Nuclear Free Zone up to the area of application of the Tlatelolco Treaty and Antarctic Treaty is born out of a political desire to connect to existing nuclear weapon-/military-free zones, whereas the legal significance of this exercise is minor.

3.2. NUCLEAR PROHIBITIONS

The label "nuclear-free zone" in connection with the Rarotonga Treaty seems rather pretentious and ambitious especially in view of the loopholes in the provisions in the Treaty dealing with nuclear activities. The nuclear activities covered by or rather prohibited by the Treaty can be categorized as follows:

1. The production, acquisition, possession of and control over nuclear explosive devices by states party to the Treaty (art. 3);
2. The stationing of nuclear explosive devices in the territories of the states party to the Treaty (art. 5);
3. The testing of nuclear explosive devices (art. 6);
4. The export of all nuclear materials, unless subject to strict non-proliferation measures (art. 4);
5. The dumping of radio-active waste within the zone (art. 7);

Whereas the prohibitions 1-4 are clearly intended to be arms control measures, the only provision justifying the broader label of a "nuclear-free zone" above a "nuclear-weapon-free zone" is the one relating to the prohibition of dumping of radio-active waste.

The first apparent loophole is inherent in the concept of "nuclear explosive device" as defined by the Treaty. According to art. 1 nuclear explosive device means "any nuclear weapon or other explosive device capable of releasing nuclear energy....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 (emphasis added) if separable from and not an indivisible part of it". It is clear from this definition that delivery systems, such as missiles, are excluded from the scope of the Treaty, provided they are not armed with nuclear warheads. This means that production, acquisition, possession, stationing and testing of, as well as control over such missiles is not prohibited by the Treaty.

Nuclear weapon-related activities and facilities in the field of communications and surveillance are also not prohibited by the Treaty.

Finally the use of nuclear technology for peaceful purposes, such as energy and medical applications, is not covered by the prohibitions.

A second important loophole can be derived from the provision dealing with port access by foreign ships and aircraft (art. 5:2). According to the Treaty each party remains free to decide for itself whether to allow such visits. The same provision also allows each party to determine its own policies as regards navigation by foreign ships through its territorial sea or archipelagic waters and transit by foreign aircraft through its national airspace. Such policies however may not interfere with or jeopardize the rights of innocent passage, archipelagic sea lane passage or transit passage through straits as recognized by international law. Although not mentioned specifically in art. 5:2, it is obvious from the discussions which took place within the South Pacific Forum as well as from the general scope of the Treaty, that this provision relates to nuclear armed and/or nuclear propelled ships and aircraft.

As stated above, the New Zealand Government introduced legislation sanctioning its stringent policies on port calls by foreign nuclear armed and nuclear propelled ships and aircraft. This law nevertheless expressly recognizes the rights of innocent passage and transit passage and also the right of ships or aircraft in distress to enter internal waters.

A different attitude has been adopted by the Australian Government and incorporated in the South Pacific Nuclear Free Zone Treaty Bill 1986.

Clause 15 of this Bill allows port calls by foreign nuclear armed and nuclear propelled ships and aircraft.

A third "weakness" in the Treaty is connected with the prohibition to have control over nuclear explosive devices (art. 3(a)). As this provision only binds states party to the Treaty, it still remains possible for third states (e.g. the United States) to exercise control over nuclear explosive devices from the territory of the parties to the Treaty. The explanatory memorandum to the South Pacific Nuclear Free Zone Treaty Bill 1986, issued by the Australian Minister for Foreign Affairs is rather clear on this issue by stating that:

"Certain forms of "control" of a nuclear explosive device are not prohibited - control by way of the transmission of instructions to a foreign force outside Australia, e.g. by a visiting U.S. President or CINCPAC Admiral...."

Moreover the use of the term control in art. 3(a), without any attempt to define it more clearly, can give rise to different interpretations.

In this context, the same Australian explanatory memorandum states for example that control by way of interceptions by an Australian stationed at the North West Cape Joint Facility of transmissions of instructions to foreign forces outside Australia does not constitute a breach of art. 3(a) of the Treaty.¹⁹ In other words, according to the Australian view, the Treaty does not prohibit parties or their nationals to assist in the control over nuclear explosive devices. Indeed art. 3(c) of the Treaty, which prohibits parties to assist or encourage the manufacture or acquisition of any nuclear explosive device by any state, does not explicitly outlaw assistance in the control over such devices.

New Zealand, in line with its anti-nuclear policies, has opted for a more stringent legislation on the issue. Article 5(1)(b) of the New

Zealand Nuclear Free Zone, Disarmament and Arms Control Act 1985, states that:

"(1) No person, who is a New Zealand citizen or a person ordinarily resident in New Zealand, shall within the New Zealand Nuclear Free Zone,

(a) "....have control over any nuclear explosive device."

(b) "aid, assist, or abet any person to.. have control over any nuclear explosive device."

Apart from these loopholes, arising out of issues which are or can be subject to the national jurisdiction of states party to the Treaty, a further two weaknesses, which fall beyond the control of these states, can be identified.

As stated above,²⁰ the South Pacific Nuclear Free Zone encompasses large areas of high seas, which are governed by the principle of freedom of the high seas and therefore cannot be subject to national jurisdiction, are included in the zone. Parties to the Treaty cannot prevent third states from undertaking nuclear activities in these areas, at least not on the basis of this Treaty.

Although French, American and British territories are within the geographical scope of the Treaty, they cannot be subject to the legal regime of the Treaty, unless Protocol I is signed by their "motherland".

3.3. ATTITUDE OF THE NUCLEAR WEAPON STATES

Until now, only China and the Soviet Union have acceded to the Protocols, which invite the nuclear weapon states to adhere to the main provisions of the Treaty and to apply these provisions to their territories in the region (in the case of the US, France and the UK).

The Soviet Union was the first nuclear weapon state to sign the Protocols 2 and 3 on 15 December 1986, although it would probably have favoured a more comprehensive zone, including a ban on port visits by US warships and the dismantling of US communication facilities in Australia. At an earlier stage, the Soviet Union already expressed its support for the New Zealand port ban policy.

On the other hand the Soviet Union abstained from voting on the UN General Assembly resolution endorsing a South Pacific nuclear free zone, despite its positive stance towards nuclear-free zones in general. A more active policy on nuclear disarmament by Gorbachev as well as a desire to undermine the American position in the region are probably important factors which have caused this change in policy towards the South Pacific Nuclear Free Zone.

China signed the Protocols 2 and 3 on February 10, 1987, thereby "reserving the right to reconsider these obligations if another nuclear state 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."²¹ At the same time China was the only nuclear weapon state to vote in favour of the 1975 General Assembly resolution supporting a South Pacific nuclear free zone.

Although China has never supported and is not a party to such international agreements as the Treaty on the Non-Proliferation of Nuclear Weapons (1968), because it objects to a US-Soviet monopoly on nuclear issues, it seems to have consistently supported regional initiatives in the field of nuclear disarmament, such as the Treaty of Tlatelolco.

The US position towards the South Pacific nuclear free zone has been rather ambiguous. Although the US abstained from voting on the above-mentioned General Assembly resolution, during the process of negotiations among the South Pacific states on the nuclear free zone treaty there were several indications that the US would ultimately support the regional initiative.

In 1978 the United States Nuclear Nonproliferation Act was introduced by the Carter administration. During the Reagan administration the United States ratified the Treaty of Tlatelolco Protocol I. These developments illustrate that Washington had become more receptive to the issue of nonproliferation. The United States Arms Control and Disarmament Agency also issued criteria for judging nuclear free zone proposals. The South Pacific Nuclear Free Zone Treaty seemed to meet these criteria. After the 1984 South Pacific Forum meeting had decided to establish a working group to prepare a draft treaty on the basis of a set of principles adopted at the meeting, the commander of the US Pacific Forces, Admiral William J. Crowe, commented that he doubted the United States would object to the proposed nuclear free zone.²²

In February 1987 the US Government conveyed its official position to the parties to the treaty, informing them that

"The United States has now completed its study and has decided that in view of our global security interests and responsibilities, we are not, under current circumstances, in a position to sign the protocols."²³

At the same time the United States acknowledged that its interests had been taken into account by the South Pacific states when drafting the Treaty. In fact US policy makers agreed that the Treaty would not affect current American operations in the South Pacific region. The wording of the official US reaction is quite moderate and leaves the possibility open that the US may reconsider its position if "current circumstances" change.

Although the United Kingdom has no clear military-strategic reasons to object to the South Pacific Nuclear Free Zone, its negative attitude thus far might be explained in terms of its general policy of supporting US foreign policy.

In an official statement, in March 1987, the United Kingdom announced that it would not sign the Protocols because it did not believe it

would serve its national interest, though it would keep its position under review. The wording of the UK statement as well as the fact that the UK appears to be willing to reconsider its position in the future illustrate a remarkable similarity with the official US reaction.

In February 1987 France formally rejected the Nuclear Free Zone Treaty, which was not surprising. A year earlier a South Pacific Forum delegation visited the French Ministry for External Relations to discuss the nuclear free issue. During these discussions the French already made it clear that a South Pacific Nuclear Free Zone would not be in line with their interests in the region and that "An end to nuclear testing cannot, for France, be a condition of, or even a prerequisite to, global reduction in nuclear arsenals."²⁴

4. CONCLUSION

The South Pacific Nuclear Free Zone Treaty is the outcome of a political exercise which took many years. Has the effort been worthwhile? Will the Treaty succeed in affecting military-strategic interests of the nuclear powers in the region? And what could be the side-effects of the Treaty for the relations and cooperation between the South Pacific nations?

Although the treaty clearly bears the characteristics of a compromise between the divergent positions adopted by the South Pacific nations on the nuclear issue, it also seems to have been heavily influenced by the Australian position.

As a consequence of the "loophole provisions" identified above, especially those dealing with the definition of nuclear explosive devices, port access by foreign ships, and the control over nuclear explosive devices, parties to the treaty still retain a considerable degree of freedom in determining their own nuclear policies. The striking differences between the Australian and New Zealand legislation, adopted on this issue, clearly illustrate this. It is not unthinkable that such a

situation may be exploited by the United States to drive a wedge between the South Pacific nations, which in turn could lead to a desintegration of the South Pacific Forum.

For the time being the Nuclear Free Zone Treaty will not really put an end to US military-strategic operations in the South Pacific: The Australian South Pacific Nuclear Free Zone Treaty Bill adequately protects the important Australia-based US defense facilities and guarantees port access by US nuclear ships and aircraft.

Although the Nuclear Free Zone Treaty itself can also not effectively ban French nuclear testing in the South Pacific region, it can be considered an important political signal, which eventually may restrain this testing.

FOOTNOTES

1. The issue of US defence facilities in Australia is discussed in Desmond Ball, A Suitable Piece of Real Estate, Hale & Iremonger, Sydney, 1980.
2. At the same time the Prime Minister of Vanuatu, Father Walter Lini stressed that Soviet warships would not be allowed to enter Vanuatu ports. Colin Shaw, "Ripping off the straitjacket", South, Dec. 1986, p. 19.
3. The Forum Fisheries Agency was established in 1979.
4. See "South Pacific", Asia 1987 Yearbook, Far Eastern Economic Review, p. 84.
5. See Richard A. Herr, "The Soviet Union in the South Pacific", The Australian Development Studies Network, Briefing Paper, October 1986, p. 2.
6. Australia and New Zealand initiated separate actions at the International Court of Justice. Both cases were removed from the Court's list in a preliminary stage. The Court found that the claims no longer had any object because France had publicly announced that it planned to stop its atmospheric tests in the South Pacific in 1974.
7. "South Pacific", Asia 1984 Yearbook, Far Eastern Economic Review, p. 109.
8. Statement by the Australian Foreign Minister, Bill Hayden, in Parliament on 11 September 1985, as quoted by Ramesh Thakur, "A dispute of many colours: France, New Zealand and the Rainbow Warrior affair", The World Today, December 1986, vol. 42, no. 12, p. 210.
9. General Assembly Resolution 41/41 A of 2 December 1986.
10. Supra p. 2.
11. For an interesting analysis of the successes and failures of Sparteca see Sutherland, William Morrison, "Microstates and Unequal Trade in the South Pacific: The Sparteca Agreement of 1980", Journal of World Trade Law, vol 20, no. 3, May/June 1986, pp. 313-328.
12. Comprehensive Study of the Question of Nuclear-Weapon-Free Zones in All its Aspects (New York: United Nations, General Assembly Official Records 1975), 30th session, Supplement No. 27A.
13. See Ramesh Thakur, "A Nuclear-Weapon-Free South Pacific: A New Zealand Perspective", Pacific Affairs, vol. 58, no. 2, Summer 1985, p. 222. Thakur points out that a.o. "nuclear weapons" are not defined; it is not clear whether negative security guarantees by nuclear powers are an

essential or merely a desirable condition; the line between peaceful nuclear development and peaceful nuclear explosions remains blurred.

14. General Assembly Resolution 3477 (XXX).
15. Supra p. 1.
16. Department Statement of February 5, 1987, Department of State Bulletin, vol. 87, nr. 2121, April 1987, p. 53.
17. Art. 10(2) resp. art. 11.
18. See Australian Foreign Affairs Record, Dep. of Foreign Affairs, vol. 57, no. 5, May 1986, p. 384.
19. ibidem, p. 384, 385.
20. supra p. 14.
21. See Beijing Review, vol. 30, no. 8, February 23, 1987, p. 10.
22. See Paul F. Power, "The South Pacific Nuclear-Free-Zone", Arms Control Today, vol. 17, no. 1, Jan./Febr. 1987, p. 10.
23. supra note 16.
24. Press Release no. 4/86 of 11 Febr., 1986, issued by the French Embassy, Canberra, as quoted in Australian International Law News, March 1986, p. 119

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