

WORKING PAPER N0.9

**NUCLEAR FREE NEW ZEALAND:
THE POLICY IN ACTION**

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ABSTRACT

This is the third in a planned series of working papers dealing with aspects of New Zealand's nuclear free policy and legislation. These papers are intended to cover the introduction of the policy in 1984 and the legislation in 1987, and related developments in New Zealand following these events.

The present paper examines the operation since 1984 of the policy as embodied in the 1987 New Zealand Nuclear Free Zone, Disarmament, and Arms Control Act, the Act. It looks at the policy in action. The major sections of the Act are considered in turn and their effectiveness discussed, starting with the concept of New Zealand's own Nuclear Free Zone, the NZNFZ, as defined in the Act. The core matter of visits by nuclear armed or powered vessels is addressed in chapter 2, and of visits by foreign military aircraft in chapter three. The question of continuing military contacts with New Zealand's nuclear allies forms the subject of chapter 4, while chapter 5 reviews the work of the Public Advisory Committee on Disarmament and Arms Control, PACDAC, established under the legislation. In the final chapter Labour's nuclear stance in the 1980s is subject to scrutiny, and criticisms of it examined.

The overall conclusion reached is that the policy has been effective in terms of its major objectives of keeping the NZNFZ free of nuclear weapons and of nuclear armed or powered vessels. However, the detailed application of specific aspects of the policy is considered to be open to considerable criticism. Proposals are presented which, it is considered, would overcome some of these criticisms and strengthen New Zealand's nuclear free status.

BIOGRAPHICAL NOTE

The author, now retired from the University of Auckland, has an extensive record of research in nuclear physics. Since 1986 he has been engaged in research related to nuclear policies and strategies. He was a founder member of Scientists Against Nuclear Arms (NZ) in 1983, and has been the Director of the Centre for Peace Studies since it was established late in 1988 in the University. He holds the degrees of Doctor of Philosophy (1957) and Doctor of Science (1981).

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ACRONYMS - ABBREVIATIONS

ABCA	American, British, Canadian and Australian
ANZUS	Treaty between Australia, New Zealand, and the United States
ASEAN	Association of South East Asian Nations
BAOR	British Army of the Rhine
CDH	Citizens for the Demilitarisation of Harewood
CINCPAC	Commander in Chief Pacific Forces (US)
CTBT	Comprehensive Test Ban Treaty
CWC	Chemical Weapons Convention
EEC	European Economic Commission
FPDA	Five Power Defence Arrangements
GCSB	Government Communications Security Bureau
GPS	Global Positioning System
IAEA	International Atomic Energy Agency
ICJ	International Court of Justice
ISAC	International Security and Arms Control (Division of MFAT)
LANFZ	Latin American Nuclear Free Zone
MAC	Military Airlift Command (United States)
MAF	Ministry of Agriculture and Fisheries
MFAT	Ministry of Foreign Affairs and Trade
MP	Member of Parliament
MSC	Military Sealift Command (US Navy)
NATO	North Atlantic Treaty Organisation
NCND	The policy of neither confirming nor denying the presence or absence of nuclear weapons on vessels, aircraft, or at any location
NGO	Non-governmental Organisation
NPT	Non-Proliferation Treaty

NPW	Nuclear powered warship
NSF	National Science Foundation (of the United States)
NZDF	New Zealand Defence Force
NZNFZ	New Zealand Nuclear Free Zone
NZPD	New Zealand Parliamentary Debates
ODF	Operation Deep Freeze
PACDAC	Public Advisory Committee on Disarmament and Arms Control
PADET	Peace and Disarmament Education Trust
PM	Prime Minister
RNZAF	Royal New Zealand Air Force
SANA	Scientists Against Nuclear Arms
SPNFZ	South Pacific Nuclear Free Zone
UKUSA	An acronym indicating the grouping United Kingdom-United StatesAustralia-Canada-New Zealand
UN	United Nations
UNGA	United Nations General Assembly
UNSSOD	United Nations Special Session on Disarmament
USAF	United States Air Force
WHA	World Health Assembly

INTRODUCTION

This is the third in a series of working papers examining aspects of New Zealand's nuclear free policy, and its operation since it was introduced in July 1984 by the newly elected Labour Government headed by Prime Minister David Lange. The 1984 policy became law on 8 June 1987 as the New Zealand Nuclear Free Zone, Disarmament, and Arms Control Act, referred to as the Act below. This study also examines the operation of the Act over the last decade.

These working papers bear the common title, Nuclear Free New Zealand, and individual specific titles. The first in the series, 1984 - New Zealand Becomes Nuclear Free, was published as Working Paper No.7 by the Centre for Peace Studies in June 1997 to mark the tenth anniversary of the enacting of the legislation. The second in the series, 1987 - From Policy to Legislation, was published in April 1988 as Working Paper No.8. These working papers are linked and interdependent in that they present different sections of the overall study outlined above. However, to make them reasonably independent, some repetition of material is necessary, in the introductions in particular.

Working Paper No.7 examined and debunked claims that New Zealand had been made nuclear free much earlier, in the 1960s, by a former Prime Minister, Keith Holyoake, and clarified incorrect claims that in the early 1970s there had been a ban on visits to New Zealand by nuclear armed or powered warships. This paper makes clear that perhaps the most important consequence of the nuclear free policy in action was to make New Zealand truly nuclear free for the first time. Prior to July 1984, there could be no guarantee that nuclear weapons were not entering New Zealand on some visiting warships, US Navy vessels in particular.

It also presents new material in the form of official documents concerning events in late 1984 and early 1985 that relate to the proposed visit in March 1985 by the USS Buchanan. The documents, only recently released by the Ministry of Foreign Affairs and Trade, referred to as the ministry below, show collaboration by New Zealand, Australian and American government officials to reassure the New Zealand Government that the visit would be acceptable under the new nuclear free policy. The visit failed because these officials could not in the end guarantee absolutely that the Buchanan would be free of nuclear weapons at the time of the visit. The working paper examines the question of whether or not the Buchanan was nuclear armed at that time. It concludes that while the ship may well not have been carrying nuclear weapons, it would have been difficult to establish this with the absolute certainty the Lange government finally saw was required if the visit was to proceed. Pressure from within the Labour Party, from his caucus, and from the peace movement and the public generally made it impossible for Lange to allow the visit without this absolute certainty.

There are strong suggestions in these documents of collusion amongst ANZUS government officials to undermine the nuclear policy by weakening it to be more in line with the Australian, Danish and Norwegian types of nuclear armed or powered warship visit policies. The anti-nuclear policy and subsequent legislation produced strong reactions from New Zealand's major allies the United States and United Kingdom. It also strained relations with Australia in some quarters, and still does.

This working paper also includes an extensive chronology of events related to the nuclear policy and the Act from July 1984 to June 1997.

The nature of the ANZUS alliance, conventional or nuclear, has been a pivotal factor in the anti-nuclear debate in New Zealand. Material will be presented in a subsequent working paper which is claimed to show beyond doubt that ANZUS is a nuclear alliance,

seen by the United States as an integral part of its global nuclear deterrence strategy. Further, it is clear from material recently released by the ministry under the Official Information Act that both National and Labour governments throughout the 1960s, 1970s and 1980s had access to material establishing ANZUS as a nuclear alliance. Claims by National to the contrary in attacks on the anti-nuclear policy were specious, and claims by Labour that New Zealand could stay in the alliance in a purely conventional role are seen as either naive, or at least very questionable. Both are seen as being designed to win electoral support.

Many comments were heard in the mid-1980s concerning the costs to New Zealand of the nuclear free policy, particularly in the defence and security areas. Another working paper will examine these claims, and the impacts of the policy in these areas, but in the context of the mid to late 1990s, the present context. The conclusion drawn is that past claims concerning the costs of the policy were considerably exaggerated, and that this question of costs of the policy to New Zealand needs extensive re-evaluation. Further, New Zealand has retained many contacts with the military forces of its nuclear allies that are never normally discussed. The significance of these contacts will also be examined.

During the period since 1984 there have been a considerable number of developments that have an important bearing on New Zealand's anti-nuclear position. Support for the Act within major political parties has greatly increased, particularly with National changing its position to support for the legislation prior to the 1990 election. Working Paper No.8, - From Policy to Legislation, traces the path of the nuclear free policy from policy to legislation between 1985 and 1987, examines the legality of the suspension of military contacts with New Zealand under ANZUS by the United States in 1986, and presents some new thoughts on possible motivations for the switch by National in 1990, apart from their desire to win some of the anti-nuclear vote.

The same National Government elected in 1990 nevertheless commissioned a further review of the safety of nuclear powered vessels published in December 1992, a review that never won public support for its finding that nuclear powered vessels are safe. However by 1995 it was calling for the threat or use of nuclear weapons to be declared illegal and supporting a request for an opinion on this question from the International Court of Justice, the so-called World Court Project. Under this government, New Zealand in 1998 was one of eight countries that initiated a call for increased commitment by the nuclear weapons states to the elimination of nuclear weapons, following nuclear weapons tests by India and Pakistan.

United States forces in the Pacific have been declared free of nuclear weapons apart from ballistic missile submarines in the Pacific Fleet, and these do not normally make foreign port calls. However some of the naval and other nuclear weapons removed could, under present United States policy, be redeployed in a crisis. The Royal Navy made its first visit since 1984 in June 1995, and also in 1995 the Prime Minister invited the United States Navy to visit with conventionally powered ships. The United States invited a Royal New Zealand Navy ship to visit Hawaii in August 1995 to participate in naval celebrations of the fiftieth anniversary on 1 September of the end of the war in the Pacific.

The non-proliferation treaty has been extended, and a comprehensive nuclear test ban treaty is in place, although not yet ratified by all the countries required for the treaty to come into force. New Zealand ratified this treaty in March 1999, and 30 countries had done so by this time. (The New Zealand Herald, 23 March 1999, p.A3) But developments in the nuclear policies of the nuclear powers are a source of new concerns.

The United States has carried out a major review of its policy towards New Zealand, and announced in February 1994 the resumption of senior-level contacts between United States and New Zealand officials for discussions on political, strategic and broad security matters ⁽¹⁾. Since 1994 several high ranking United States officials have visited New Zealand. The New Zealand Prime Minister was invited to the White House in March

1995 and met President Clinton and top United States Government personnel, the first such visit for eleven years. New Zealand has established a new electoral system, Mixed Member Proportional Representation, or MMP, that could well see a wider diversity of opinion, on security matters and foreign affairs for example, represented in our government.

By contrast, some factors related to our policy have not changed. Opposition to nuclear weapons and nuclear power remains strong. The leading role played by New Zealanders in the World Court Project to have the International Court of Justice consider the question, 'Would the threat or use of nuclear weapons in any circumstance be permitted under International Law?' is one manifestation of this. Another is strong opposition to nuclear testing and support for the comprehensive test ban treaty. This despite a significant diminution in the strength and activity of peace groups in recent years. Public support since 1984 for the policy, the legislation, and New Zealand's anti-nuclear stand generally will also be examined in this working paper series.

United States Government opposition to our anti-nuclear legislation has also not changed, at least officially. On 20 April 1995 the United States Ambassador to New Zealand, Josiah Beeman, said he did not foresee any change in (US) policy as long as the legislation remained ⁽²⁾. Strove Talbott, US Deputy Secretary of State, while in Wellington early in 1995 was reported as indicating that even if New Zealand were prepared to accept United States nuclear propelled vessels, Washington would continue the military stand-off. He said the Act 'would have to be revised or repealed' to resolve matters ⁽³⁾. Even more recently in March 1997, responding to a suggestion by the then Minister of Defence, Paul East, that American and New Zealand forces might begin joint exercises again within one or two years, the Defense and Naval Attache at the United States Embassy, Captain R E Houser US Navy, stated that the nuclear powered ship ban still represented a barrier to the resumption of these contacts ⁽⁴⁾. In correspondence he also said that 'The impediment to a restoration of the ANZUS alliance remains New Zealand's anti-nuclear legislation'. Referring to the nuclear powered vessel ban he said, 'This position impedes New Zealand's ability to uphold its responsibilities as an ANZUS treaty partner'. (private communication 30 April 1997) The Americans still see ANZUS as extant it seems, with a place for New Zealand should it wish to return. This looks unlikely at present, as even the Americans apparently recognise. Ambassador Beeman was reported in the Christchurch paper The Press for 30 September 1997 p.11 as saying that he did not believe the anti-nuclear law would be changed. And Strove Talbott visiting again the following November was reported in The New Zealand Herald for 4, November 1997 p.A4 as stating that ANZUS would not resume until the anti-nuclear issue was resolved. 'I look forward to the day, whenever it comes, when this issue passes into history and we can resume a fully normal security relationship.'

This sentiment was expressed again in August 1998 during the landmark visit by the United States Secretary of State Madeleine Albright, the first visit by an American Secretary of State since 1984. Mrs Albright did say, however, that the United States would consider ways of enhancing military cooperation to help New Zealand strengthen its defence capabilities. (The New Zealand Herald, 3 August 1998, p.AS, 30 July, p.A1)

February 1999 saw another important development in United States-New Zealand relations with the three day visit of the United States' second highest ranking military officer, General Joseph Ralston. He also said that he would like to see difficulties with New Zealand over the nuclear issue resolved, and one reason for doing so urgently was because of instabilities in Asia. He is believed to be the highest ranked American military officer to visit New Zealand since nuclear powered or armed warships were banned from New Zealand ports. (The New Zealand Herald 15 and 18 February 1999, p.A3 and p.A5 respectively)

Another landmark event occurred in June 1999 when Minister of Defence Max Bradford went to Washington for the first meeting for 25 years with the United States Secretary of

Defense, now William Cohen. (The New Zealand Herald 3 June 1999, p.A4) The outcome from this meeting is discussed briefly in chapter four.

The policy of neither confirming nor denying the absence or presence of nuclear weapons on ships, aircraft, or at any location, the 'neither confirm nor deny' policy, referred to as NCND below, remains. This policy is often said to be challenged by section 9 of the Act covering visits by possibly nuclear armed vessels, thereby rendering the Act unacceptable to the United States and the United Kingdom. The United States version of this policy has been modified following the removal of tactical nuclear weapons and now reads, 'It is general United States policy not to deploy nuclear weapons aboard surface ships, attack submarines, and naval aircraft. However, we do not discuss the presence or absence of nuclear weapons aboard specific ships, submarines or aircraft.'⁽⁵⁾ The logic of this in the face of statements by Ambassador Beeman, and affirmed elsewhere, that we can be assured that 'U.S. troops, aircraft, surface vessels, and attack submarines deployed in this region are not nuclear armed' ⁽⁶⁾, is hard to understand,

There have been hints that the NCND policy may be reviewed. A proposal relating to the policy that would remove this contradiction will be presented in this working paper. At present it still represents an important difficulty in United States considerations of the Act, a difficulty the United Kingdom appears to have overcome with Royal Navy visit in June 1995 and subsequently. Material was cited in Working Paper No.8 showing that the NCND policy has been used to transport nuclear weapons covertly into the ports of countries that in principle ban the entry of these weapons, including New Zealand prior to 1984, and the implications of this were discussed to some extent. The present paper considers this matter further.

Major differences remain between the United States and some political parties in New Zealand concerning the nature and extent of future of US-NZ military relations, and between the New Zealand parties themselves. Concerns continue over some facilities in New Zealand considered by the peace movement to be associated with the United States military. New Zealand's involvement with nuclear weapons through ANZUS has been quite extensive. When considering any future security relationship with the United States or Britain, their nuclear power status must be kept clearly in mind now that New Zealand is an established nuclear free nation. The intention is that all these developments and factors will be considered and examined in this planned working paper series.

This third working paper in the series, The Policy in Action, examines how the policy has worked in practice. The term 'policy' here refers both to the nuclear free policy put into effect in 1984 after the July election, and its subsequent formulation in the 1987 legislation. This paper considers how, and in what circumstances, the policy has been applied, and what, if any, its successes and failures have been. A number of authors have already examined aspects of the development and implementation of the nuclear free policy, see refs. 7-13 below. Their work will be referred to where appropriate. It must be remembered that the New Zealand legislation is unique when considering it in operation, there was no precedent to look to.

There was criticism of many sections of the proposed Bill as it passed through Parliament, in submissions received by the Select Committee. These 1236 submissions were discussed to some extent in Working Paper No.8, pp.16-17. Some of these criticisms continue to apply to the resulting Act. The submissions included criticisms from individuals and groups in the community supportive of the legislation. As an example, reference will be made at various points to a submission to the Foreign Affairs and Defence Select Committee in March 1986, from the group Scientists Against Nuclear Arms (SANA), a group representing scientists around New Zealand that was quite active in the early 1980s to early 1990s, and particularly concerned with the technical aspects of nuclear, chemical and biological weapons and associated technologies. The author was a founding member of this group and involved in the preparation of this submission. There

has also been criticism of the Act and its implementation from a variety of sources as will be discussed.

The consistency and moral integrity of the overall nuclear stance of the Labour government in the 1980s has also come in for some quite adverse comment. As a government promulgating a policy rejecting nuclear weapons and eschewing nuclear strategies for New Zealand's defence, we need to examine how scrupulous the 1984-1989 Labour governments were in ensuring that activities under their control offered no support of any form to others for their nuclear warfighting plans. The nature and validity of criticisms of Labour's performance form the subject of chapter six of this paper.

Included in this paper are a number of proposals which if accepted would, it is considered, remove many of the grounds for existing criticisms of the implementation of the Act. These are collected together in a section entitled 'Proposals' following the conclusion to the paper. The main sections of the Act are included for reference as appendix one.

Copies of a number of documents released recently by the ministry and not yet in the public domain are included in these working papers to reinforce some claims and for the interest of readers who are left, to some extent, to assess them for themselves. Most of these are marked 'Secret', 'Confidential', or 'For New Zealand Eyes Only'. Some have been censored to a certain extent, and other documents are withheld, even now.

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CHAPTER ONE

NEW ZEALAND'S NUCLEAR FREE ZONE

1.1 The Act and New Zealand's Nuclear Free Zone

One purpose of the legislation was to establish in New Zealand territory a nuclear free zone. Section 4 of the legislation establishes the geographical limits of this zone. It covers all the land territory and inland waters within the territorial limits of New Zealand, the internal waters of New Zealand and New Zealand's territorial sea, and the airspace above all these areas. The territorial sea extends out to twelve miles, or something over nineteen kilometres, from the coast, and the internal waters constitute bays and harbours inside the inner limits of the territorial sea. This inner limit is the low water line along the coast and across the mouths of most bays and harbours. The exact definitions are given in the Territorial Sea and Exclusive Economic Zone Act 1977 and amendments to it. The importance of including the internal waters in the zone definition, thereby explicitly including New Zealand's harbours, is clear since the Act prohibits visits by nuclear armed or powered warships to these waters.

New Zealand was unique in establishing a national nuclear free zone through legislation. No other country with a supposedly non-nuclear weapons policy, Denmark or Japan for example, has taken this formal step as far as is known. All other nuclear free zones encompass considerable areas covering a number of countries, or territories of countries. The comparable zones established at the time the legislation was being discussed, 1985 to 1987, were the Latin American Nuclear Free Zone (LANFZ), embodied in the Treaty of Tlatelolco, or since 1990 the Treaty for the Prohibition of Nuclear Weapons in Latin America and the Caribbean signed on 14 February 1967, entered into force on 22 April 1968, and the South Pacific Nuclear Free Zone (SPNFZ), embodied in the Treaty of Rarotonga signed on 6 August 1985, entered into force on 11 December 1986. The definitions of the territories to be included in these zones are very similar to that for the New Zealand Nuclear Free Zone (NZNFZ), but apply of course to the territories of each of the signatory parties to these two treaties. Both the LANFZ and the SPNFZ include large areas of international waters, not covered by the definitions of the term 'territory' in the two treaties. The SPNFZ encompasses the NZNFZ of course, which requires that the definition of 'territory' for the two agree.

The Antarctic was also a nuclear free zone at this time in the sense that under the 1959 Antarctic Treaty, nuclear explosions and the deposition of radioactive waste are prohibited there. The treaty does not actually refer to nuclear weapons directly however, or discuss visits by nuclear armed vessels or aircraft. The treaty does allow inspection of all ships and aircraft arriving in Antarctica by observers from the 12 contracting countries, a provision that would not be readily accepted by the nuclear weapons signatories should they be shipping nuclear weapons into the region. This is considered to have been very unlikely in the past, and even more unlikely now. The Antarctic nuclear free zone differs considerably in its provision from the other three zones, the nuclear aspect being much less significant, so no comparisons between this zone and the NZNFZ will be made.

The SPNFZ Treaty was signed in August 1985, so the treaty articles had been agreed prior to the introduction the following December of New Zealand's nuclear free zone Bill. It is not surprising, therefore, that clauses in the Bill reflected wording in articles in the SPNFZ Treaty. This treaty came into force in December 1986, prior to the enacting of New Zealand's nuclear free legislation. This meant that New Zealand territory was already included in a nuclear free zone from December 1986, before the Act came into

force, although there are very important differences between the SPNFZ Treaty and the NZNFZ Act as we shall see.

The full text of the SPNFZ Treaty can be found as the First Schedule to the Act and , elsewhere. The full text of the LANFZ Treaty is given in the Encyclopedia of the United Nations and International Agreements, 1990, pp.900-903.

Sections 5 to 13 of the New Zealand legislation detail the rules applying within the NZNFZ. David Lange discussed these sections, and section 4, when introducing the nuclear free Bill to Parliament on 10 December 1985, although at that time they were still clauses of the Bill being considered. All debates relating to the passage of the Bill were discussed in Working Paper No.B in some detail, with references to where they can be found in New Zealand's Parliamentary records, the New Zealand Parliamentary Debates (NZPD). Lange stated that clause (now section) 4 'reflects fully the geographical scope of the obligations anticipated for parties to the South Pacific Nuclear Free Zone Treaty'. 'Clause 5', he said, 'specifically implements article 3 of the South Pacific Nuclear Free Zone Treaty'. See NZPD vol.468 1985, pp.8910-8930 for this discussion. However, there are significant differences between section 5, as clause 5 became, and article 3 that warrant comment. The wording of section 5 can be found in appendix 1, and prohibits the manufacture, acquisition, possession, or control of nuclear weapons. In most respects the wording is very similar to the wording of article 3 of the SPNFZ Treaty except that section 5 is in two parts with different regions of application, and the parties involved for the two zones differ importantly, even though the NZNFZ is contained within the SPNFZ.

For the NZNFZ, section 5(1) applies to all persons who are New Zealand citizens or normally resident in New Zealand, but only within the zone. Section 5(2) applies outside the zone, but relates only to servants or agents of the Crown. The New Zealand Government would be included in the prohibitions of section 5(1) because all government workers are citizens of New Zealand or normally resident in New Zealand. Article 3 of the SPNFZ Treaty imposes the same restrictions, but applies both within and beyond the zone. However, it applies to the parties involved, here the states which are signatories to the treaty. This article applies to actions by the governments of those states only. Indeed Lange went on to say that section 5,

takes New Zealand's responsibilities further than the minimum requirements of the South Pacific Nuclear Free Zone Treaty. It provides for the possibility, however remote that possibility may now seem, that some private citizen, or group of citizens, may seek to develop some sort of backyard nuclear weapon in New Zealand. (NZPD vol.468 1985, p.8911)

This possibility is not covered by article 3 of the SPNFZ Treaty. It is difficult to see how the prohibitions of section 5(1) could be imposed on individuals outside the NZNFZ, that is, to see how New Zealand could legislate to control the actions of individuals who are not servants of the Crown outside the territory over which the New Zealand Government has jurisdiction. Actions by the New Zealand Government itself outside the NZNFZ are also covered by article 3 of the SPNFZ Treaty to which New Zealand is a party. These points will be relevant when we look at some criticisms of the Act and the prohibitions that relate to the NZNFZ. Article 1 of the LANFZ Treaty includes the restrictions covered by section 5 and article 3, and again these apply to the states for which the treaty is in force.

Section 6 of the Act prohibits the stationing of nuclear weapons in the NZNFZ and their transport on land, internal and inland waters. It parallels article 5(1) of the SPNFZ Treaty but is more explicit. Lange's comment was that this section was modelled on article 5 of the SPNFZ Treaty, and, 'establishes firmly and unconditionally that New Zealand will not in any circumstances play host to nuclear weapons'. Section 6 imposes similar restrictions to article 1(b) of the LANFZ Treaty.

Section 7 prohibits nuclear testing in the NZNFZ, and Lange said that it implements article 6 of the SPNFZ Treaty and the provision of the test ban treaty of 1963. It imposes restrictions found in article 1(a) of the LANFZ Treaty. However, this latter zone treaty does not prohibit nuclear explosions for peaceful purposes, although no such tests are known to have occurred. No nuclear tests have ever been carried out in the NZNFZ.

Section 8 is a prohibition on biological weapons in the NZNFZ. New Zealand has not experienced any problems involving biological weapons as far as is known. Section 8 is not paralleled by a similar prohibition on chemical weapons. As discussed in Working Paper No.8, p.17, the reason given for this was that at the time there was no clear definition of what constituted a chemical weapon, and the Act could be amended when an agreed definition became available. This has not been done. However, on 24 June 1996 New Zealand enacted The Chemical Weapons (Prohibition) Act 1996, to implement in the law of New Zealand the 1993 Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction, the Chemical Weapons Convention (CWC), which entered into force on 29 April 1997. This convention includes an extensive definition of 'chemical weapon'. New Zealand's obligations under the CWC are acknowledged, and the omission of chemical weapons from the nuclear free Act effectively corrected. There is no equivalent of section 8 of the Act in either of the other nuclear free zone treaties being used for comparison. Further, New Zealand has carried out test inspections of chemical weapons manufacturing companies to simulate searches for the production of chemical weapons or chemical weapons components.

Lange commented that section 8 implements the provisions of the 1972 Biological Weapons Convention, and continued saying that the sections considered so far were either required by, or were absolutely consistent with, the provisions of disarmament and arms control treaties to which New Zealand had been party for many years, or with the SPNFZ Treaty, which New Zealand ratified late in 1986.

Sections 9, 10 and 11 are key sections of the Act in terms of presenting fundamental differences from the other two zone treaties. Section 9 requires the New Zealand Prime Minister to make, or at least formalise, decisions on whether or not to allow visits by foreign warships capable of carrying nuclear weapons, and to refuse them unless he or she is satisfied that they are not carrying any such weapons. The mechanism for making these decisions is indicated, and involves the Prime Minister in seeking the advice of his officials and possibly other sources, as will be discussed. Section 10 is the equivalent for visits by foreign military aircraft, but with the difference that here, exceptions may be made for specific classes of aircraft. This has been the source of considerable dissatisfaction with the implementation of the Act. Section 11 completely bans visits by nuclear powered ships. These sections are not paralleled in the other two zone treaties, and this has been a very significant factor in the problems New Zealand has had with its traditional allies, the United States and the United Kingdom, since sections 9 and 10 are seen as challenging the NCND policy. These three sections figure many times throughout these working papers.

The SPNFZ Treaty article S(2) specifically leaves it to each member state 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 innocent passage, archipelagic sea lanes passage or transit passage of straits. The LANFZ Treaty was seen clearly by noncontracting parties like the United States not to inhibit previously granted transit or transport rights of, in this case, United States vessels or aircraft carrying nuclear weapons through the zone, including port visits or aircraft landings. Again, under this treaty the granting or denying of these rights remains the prerogative of each member state, but as far as is known transit and transport privileges have never been denied on the basis of the treaty, and the neither confirm nor deny policy has not been challenged.

Records of port calls for the United States Navy released by the US Navy show that for the years when the NZNFZ was under discussion there was quite a range of port calls to 18 countries in the LANFZ. These included in 1984 and 1985, visits by nuclear powered ships and submarines, battleships, and a variety of conventionally powered warships for over 500 ship days in each of these years. A ship day refers to a ship being in port for part or all of a given day (global port call data supplied by the US Navy under the Freedom of Information Act, a source of information subsequently terminated by American authorities). The situation for this zone has not changed as far as is known.

But claims to the contrary have been made. Ambassador Julio Carasales, former Head of the Argentine Delegation to the Conference on Disarmament, writing in the New Zealand International Review in 1992 on the scope and impact of the LANFZ stated that an important difference between the LANFZ and the SPNFZ is that the LANFZ,

prohibits the introduction of nuclear weapons of any kind by anybody in the vast areas of high sea included in the zone of application. Raratonga [SPNFZ] restrains only the actions of the treaty parties, not those of the nuclear-weapons states, which remain free to bring nuclear weapons into the high seas of the South Pacific Zone⁽¹⁾.

The basis for this claim in the face of the above evidence from the US Navy of both transit and port calls in the LANFZ, at least in 1984 and 1985 but undoubtedly in subsequent years is not understood. The claim is considered to be in error.

In the same period there were also a small number of visits to some island countries in the SPNFZ by the US Navy, to Fiji, Solomon Islands, American Samoa. Australia, a member state of the SPNFZ, has continued to host frequent US Navy visits for many years.

Sections 9, 10, and 11, whatever their weaknesses, represent a complete departure from any previous example of a nuclear free zone, or from any previous policy of any other country that in principle banned nuclear weapons from its ports.

The problems raised with New Zealand's allies, and for supporters within New Zealand of a nuclear free New Zealand by various of the sections discussed so far are addressed in the chapters that follow. Some of these problems have been discussed from certain perspectives in the two preceding working papers in this series.

Two other sections of the Act relate directly to the NZNFZ. Section 12 acknowledges the freedom under international law for ships to exercise the rights of innocent passage through the territorial sea of New Zealand, or transit passage through any strait used for international navigation, and for aircraft of transit over such straits. It also acknowledges the rights of ships or aircraft in distress. The equivalent provisions are contained in article 2(2) of the SPNFZ Treaty. The position for the LANFZ has been outlined. Section 13 addresses the question of immunities, defined in section 2 of the Act in relation to ships, aircraft, or crew members, as immunities enjoyed under international law by ships, aircraft, or crew members of a class to which that ship, aircraft, or crew member belongs. Section 13 states that the Act does not limit the immunities of any foreign warship or foreign military aircraft, or the crews of any of these. Clause 12 of the Bill was subject to considerable criticism in submissions to the Foreign Affairs and Defence Select Committee during the passage of the Bill. These, and other criticisms, are considered below.

Finally, the Act contains sections relating to the dumping and storing of radioactive waste, sections 22 to 25, but these are presented as amendments to the Marine Pollution Act 1974. Dumping is covered by article 7 of the SPNFZ Treaty, but the LANFZ Treaty does not address the problem of dumping, perhaps according to Ambassador Carasales, 'because the problem was not there twenty years before' (ref.1, p.19).

There are some articles in the SPNFZ Treaty not included in the NZNFZ Act, but which apply to New Zealand as a signatory to the treaty. Article 4 relates to peaceful nuclear activities, and requires each party 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 any non-nuclear weapon state unless subject to the safeguards required by article III.I of the nuclear Non-Proliferation Treaty (NPT), or to any nuclear weapon state unless subject to applicable safeguards agreements with the International Atomic Energy Agency (IAEA). Any such provisions shall be in accordance with strict non-proliferation measures to provide assurance of exclusively peaceful non-explosive use. Article 4 also requires each party to support the continued effectiveness of the international non-proliferation system based on the NPT and the IAEA safeguards system.

Article 6(b) requires each party not to take any action to assist or encourage the testing of any nuclear explosive device by any state, a requirement not included in section 7 of the Act.

1.2 The Nuclear Free Policy and the NZNFZ in Action - Criticisms

We consider a number of criticisms of the implementation of the nuclear free policy and the NZNFZ in this paper. Criticisms have ranged from the policy going too far to its not going far enough, and have come from a variety of sources both within New Zealand and elsewhere. What follows is not meant to be an exhaustive examination of all criticisms of, and commendations for, the policy and the subsequent NZNFZ legislation. References are given in the introduction to studies that have considered aspects of this question from several viewpoints. Also a number of criticisms are considered in detail elsewhere in this working paper series. Here we will concentrate on some criticisms not addressed fully in those other working papers.

Criticisms by the Americans and British were wide ranging and, in the case of the United States, continue. Little has been heard from the British in recent years concerning the nuclear free policy, certainly since Royal Navy visits recommenced in 1995. These criticisms centred around concerns that New Zealand through its policy was weakening the western alliance structure, western solidarity, and deterrence, and in the case of the United States, undermining ANZUS. There was also concern that New Zealand might further damage western military arrangements through its example. Other countries opposed to the presence of nuclear weapons in their ports might follow New Zealand's example and strengthen their own non-nuclear policies, countries like Japan, the Scandinavian countries and, in the Mediterranean, Spain for example.

Considerations of these criticisms constitute major sections of a number of working papers in this series, and are not discussed further in this chapter. The reader is referred to chapter 2 and appendix 2 of Working Paper No.7, chapter 2 of Working Paper No.8, and chapters 2, 3 and 4 of the present paper for example, and to future papers in the series.

Criticism also came from unexpected quarters, for example Japan, supposedly the world's most anti nuclear country following the atomic bombings near the end of World War Two. These criticisms were indirect but significant. For example, David Lange in his book, *Nuclear Free - The New Zealand Way* p.194, (ref.9, introduction), reports that he never went to Japan as Prime Minister, the post he held from 1984 to 1989, an implied criticism of New Zealand's anti-nuclear stance, although this, 'made absolutely no difference to day-to-day business between Japan and New Zealand', he says. However, by 1993 the Japanese Prime Minister was visiting New Zealand, and Prime Minister of the time, Jim Bolger, was visiting Tokyo and addressing the influential Asia Society there. (*The New Zealand Herald* 14 May 1993, p.9) Of course the nuclear free policy

similarly had little or no effect on day-to-day contacts with New Zealand's traditional allies the United States and Britain.

Stuart McMillan also discusses Japan's negative reactions to New Zealand's policy in his book, Neither Confirm Nor Deny: The nuclear ships dispute between New Zealand and the United States, (ref.8, introduction). He says, p.132, that,

One small group of countries - Italy, France, Norway, Japan and Singapore - was reported to have approached the United States Government to ask that the New Zealand Government not be allowed to get away with the action of banning nuclear ships, [nuclear armed or powered vessels].

He explains Japan's concern with New Zealand's policy as arising because it reflected on Japan's own ship visit policy which saw large numbers of US Pacific Fleet vessels in Japanese ports, many widely-believed to be nuclear armed, despite Japan's non-nuclear principles which prohibit the introduction of nuclear weapons. The concern was that a US Navy vessel might be refused entry to New Zealand and then visit Japan, an event that could challenge the delicate nuances in Japanese interpretation of the non-nuclear principles and of other policy whereby the Japanese Government reconciled these considerations with US Navy visits. This is discussed further in chapter 2, but McMillan, p.141, attributes Japanese reluctance to have Lange visit to this problem with New Zealand's policy.

On the domestic scene, while the policy has enjoyed strong and longstanding support from the Labour Party, a large active peace movement, and many other groups and individuals, there has been no lack of criticism from sources within New Zealand. The passage of the Bill through Parliament saw extensive and often virulent criticism of aspects of the Bill by National Party MPs, generally reflecting perceived threats to New Zealand's security and standing in the international community posed by the Bill, through its impact on traditional military ties with Britain and the United States, and its extreme anti-nuclearism. Their criticisms have been discussed already in Working Paper No.8 chapter one. The New Zealand military have in general opposed the policy for similar reasons, as have some government officials. Criticisms reflecting a military perspective have been spelled out by former Chief of Defence Staff, Sir Ewan Jamieson, in his book Friend or Ally: New Zealand at Odds with its Past (ref.10 introduction). Readers interested in such views of the adverse impacts of the nuclear free policy can consult Jamieson's book. It is worth noting that in the United Nations, New Zealand now appears to be recognised as a leading anti-nuclear country. Its work on the Security Council during a recent term won it considerable respect, and New Zealand has taken a major role in moves in the United Nations to further nuclear disarmament. This view of New Zealand as a significant player on the international scene conflicts rather with Jamieson's 1990 views. However, it is not the intention at this juncture to attempt any analysis of New Zealand's security situation, so no further consideration of views like those of Jamieson, or of the opposing views of those who welcomed a reduction of military ties to the West will be attempted here. Opposition to the policy within New Zealand continues from some quarters. Some aspects of this opposition are examined in this paper.

Criticisms have also been voiced by a number of commentators that relate to the morality of the policies and actions of Lange's 1984 government in the anti-nuclear area. These critics have been concerned by apparent contradictions in this government's stance after it won the 1984 election. It wanted to be seen as strongly anti-nuclear, yet also wanted to keep New Zealand in ANZUS, an alliance widely regarded as one component of an American global nuclear structure. The reader is referred to Working Paper No.8, p.12 for statements by two leading American political and security commentators supporting this view of ANZUS. Lange also stated on a number of occasions that it was not the intention of his government to influence other countries to follow New Zealand's example. This was summed up by critics as saying the policy was 'not for export', a

position diametrically opposite to that which would be expected from a country preaching opposition to nuclear weapons. We will examine these particular criticisms, and proffered rebuttals of them, in the final chapter of this paper. First let us consider some criticisms of the NZNFZ itself as a nuclear free zone.

1.3 Criticisms of the NZNFZ as a Nuclear Free Zone

In this section we confine ourselves to criticisms that relate more directly to the nature of the NZNFZ, although these cannot always be disentangled from more wide ranging criticisms that appear in subsequent chapters in discussions of specific sections of the Act, and all the criticisms to be considered relate in a sense to the nature of the NZNFZ through its provisions. Some criticisms have been directed at sections of the Act not considered in detail in the following chapters. We examine a number of these criticisms now.

Most of the matters of concern here, and in subsequent chapters, were addressed by the Foreign Affairs and Defence Select Committee during their consideration in 1986 of submissions on the nuclear free Bill, and, where appropriate, reference will be made to the committee's findings. These were reported to Parliament by the committee chairperson, Helen Clark, on 16 October 1986, and are to be found in NZPD vol.475 1986, pp.4994-5004.

One section of the Act to receive considerable criticism is section 12 acknowledging the rights of innocent passage of ships through New Zealand's territorial sea and of transit passage through straits used for international navigation, and of aircraft over these straits. Helen Clark reported that there was considerable public debate about whether or not New Zealand had the power to ban vessels that it believed were carrying nuclear weapons from these areas, and submission were made to the select committee supporting the view that New Zealand did have this power. The committee devoted considerable time to this question, she said, and sought expert legal opinion on the matter. She says in her report that,

In the end the committee was persuaded that, at the least, New Zealand could be seen to be in breach of its international legal obligations if it sought to include in domestic legislation a general prohibition on the presence of nuclear weapons in its territorial seas (NZPD vol.475 1986, p.4996).

Criticisms of this provision in the Bill, and later in the Act, reflect criticisms of the same aspect of the SPNFZ Treaty which was seen by many peace groups and other critics as being too weak in several major regards. These criticisms of the SPNFZ Treaty are aired in a 1990 paper, *The South Pacific Nuclear Free Zone Treaty: A Critical Assessment* ⁽²⁾, by Michael Hamel-Green, then at the Peace Research Centre of the Australian National University. He is strongly critical of the role of Australia's Hawke government from 1983 on in producing a treaty that was primarily motivated by its government's wish,

to protect US, ANZUS and Australian nuclear policies against more comprehensive denuclearization arrangements sought by the domestic peace movement, the New Zealand Labour Party, [the New Zealand peace movement and many others in New Zealand] and the Melanesian Alliance states (Papua New Guinea, Solomon Islands and Vanuatu). By advancing a limited-scope, limited-domain zone, primarily directed at channelling domestic and regional anti-nuclear sentiment against 'third-party' non-ANZUS nuclear activities in the form of French nuclear testing, while exempting and legitimizing all existing and contemplated US, ANZUS and Australian regional nuclear activities, the Australian Government aimed to pre-empt more comprehensive zone arrangements and to secure ANZUS nuclear interests (ref.2, p.3).

He examines why New Zealand and most of the South Pacific Forum states should have cooperated by supporting the Australian initiative. In the case of New Zealand, he argues that,

the Lange Government, while implementing a more comprehensive nuclear free policy within New Zealand itself, was reluctant, in the context of its dispute with the United States and Australia over its nuclear warship ban, to incur either additional US sanctions or to jeopardise relations with Australia by appearing to seek the 'export' of its 'nuclear allergy' to the whole region (ref.2, p.4).

As discussed in Working Paper No.7, there was strong support at the time within New Zealand for continued membership of ANZUS, a factor that is also considered to have had a significant influence on the stance taken by the Lange Government concerning decisions likely to further damage ANZUS relations. New Zealand continued to support the Australian SPNFZ concept, Hamel-Green reports p.75, and was one of the first signatories of the treaty at the end of August 1985, and subsequently ratified it late in 1986. However, he states that,

Lange chose to give full support to the Australian initiative and guidelines, including the principle of rights of nuclear weapon transit through the high seas of the region, emphasizing to fellow Forum heads of state that New Zealand remained a committed member of ANZUS and would not wish to create a zone which would put its major treaty partner at a disadvantage *vis-a-vis* other powers; nor was New Zealand asking other countries to adopt its policy on port calls. ... Despite its own domestic anti-nuclear policies, and opposition to such regional nuclear activities as missile-testing, the New Zealand government carefully avoided supporting Melanesian island state negotiators in their efforts to strengthen aspects of the treaty, including incorporation of bans on missile testing and safeguards against use of transit provisions to circumvent the anti-stationing provisions (ref.2, pp.75-76).

This bitterly disappointed the Melanesian states Hamel-Green says. He reports one Vanuatu official as saying,

It is hard to understand Lange; to us he is rather hypocritical. We wonder just what really is behind his nuclear-free rhetoric. Vanuatu is deeply committed to its role as a nuclear-free country. Our country would never sell out on our principles like New Zealand has over the treaty (ref.2, p.76).

This material may appear to constitute a digression, but it is considered relevant to the overall discussion of New Zealand's nuclear free policy and to the comparison of nuclear free zones being made, and it leads us to criticisms by Hamel-Green of section 12 of the Act. In its own legislation to implement the SPNFZ Treaty, the Lange government accepted the SPNFZ Treaty's qualifications of sovereign state rights to determine the nature of innocent passage, he says. He is referring presumably to article 5(2) of that treaty which allows each party to the treaty to decide its own policy on port calls and navigation in its territorial sea or archipelagic waters in a manner not covered by innocent passage, or of archipelagic sea lane passage or transit passage of straits.

In the section 12 exemption of innocent passage, for example, New Zealand, he states, did not include any reservations aimed at retaining its sovereign rights under the 1982 United Nations Law of the Sea Convention (which entered into force on 16 November 1994), to determine whether a foreign warship or aircraft was in fact covered by the rights of innocent passage, nor to seek to build on the opportunities afforded under that convention for the blanket denial of rights of innocent passage to certain classes of vessels or aircraft, such as nuclear armed forces or forces engaged in military exercises. New Zealand is a signatory to this convention.

The position reached by the select committee concerning the provisions of section 12 has been stated. A detailed examination of the Law of the Sea Convention does not make obvious what provisions Hamel-Green is referring to regarding foreign warships or aircraft being covered or not covered by innocent passage, or for the blanket denial of innocent passage for certain classes of vessels or aircraft. Discussing this question in relation to the SPNFZ, Hamel-Green cites a reference to article 25 of the convention which allows a coastal state to take necessary steps, in its territorial sea, to prevent passage which is not innocent. He suggests banning nuclear weapon transit in the territorial sea as such a step. However, for the NZNFZ, this would conflict with the findings of the select committee. In fact article 24, 'Duties of the Coastal State', requires the coastal state not to hamper the innocent passage of foreign ships through the territorial sea except in accordance with this convention. Nevertheless, a state may under article 22 require ships exercising the right of innocent passage and carrying nuclear substances or materials, or nuclear powered ships, to keep to designated sea lanes in its territorial sea, and such ships are required under article 23 to carry appropriate documents and exercise special precautionary measures established for such ships by international agreement. Concerning forces engaged in military exercises, the definition of innocent passage in subsection A, article 19, which applies to all ships, precludes, under article 19(b), ships engaging in any exercise or practice with weapons of any kind. This already meets Hamel-Green's proposal, and makes it unnecessary to incorporate any specific provision in section 12 of the Act. His criticisms of section 12 are not considered to be well founded.

He also criticises section 5 of the Act, stating on p.76 that the prohibitions are limited to New Zealand nationals only. This is incorrect since section 5 applies also to people normally resident in New Zealand. He goes on to claim, p.76, that,

A foreign national on board a transiting foreign nuclear-armed vessel could, for example, issue an order to fire a nuclear weapon from the vessel without in any way violating either New Zealand's own legislation or the Rarotonga Treaty [SPNFZ] itself.... In effect, the New Zealand government accepted a substantial retreat from the Tlatelolco [LANFZ] precedent which secured nuclear power undertakings not to fire nuclear weapons from the zone (in addition to guarantees against using weapons against the zone).

Again, under the definition of innocent passage in the Law of the Sea Convention, article 19(e) prohibits the launching, landing or taking on board of any military device by a ship engaged in innocent passage. So again the inclusion of any specific provision in the Act section 12 to cover this contingency is unnecessary, firing a nuclear weapon from within New Zealand's territorial sea would make the passage no longer innocent passage. Of course at the time the Bill was being debated, the legislation passed, and Hamel-Green writing, the law of the Sea Convention had not been ratified. Nevertheless, it had been under discussion for some time, and major powers would have been expected to abide by its main provisions. Hamel-Green in 1990 apparently considered this to be a reasonable expectation.

Despite these efforts by Australia, supported by others, the United States did not formally accept the SPNFZ Treaty until 1996. Hamel-Green attributes this reluctance to accept a treaty designed to suit American interests as resulting from global considerations, notably fears about the treaty encouraging more radical denuclearization moves elsewhere, concern about its relations with France, the treaty being hostile to French nuclear activities in the region, and the need to exert leverage on New Zealand to reverse its nuclear ships ban, again to discourage a spread of this policy to other American allies (p.119). It is interesting to note that the United States and Britain together with France signed the protocols to the treaty after France announced the ending of its nuclear weapons testing programme in January 1996.

Other general criticisms by groups like the SANA group related to the lack of any exclusion clauses covering transport, delivery, or support systems for nuclear, chemical or biological weapons. Definitions of these were proposed by SANA, together with a definition for chemical weapons. It was proposed that these various systems should figure in a number of the clauses in the Bill, in clause 5, sections (2)(a) and (2)(b) for example, so that these imposed a prohibition on any involvement with a nuclear explosive device, or any transport, delivery, or support system for such a device beyond the NZNFZ. Again clause 6 should, it was proposed, be entitled, 'Prohibition on stationing of nuclear explosive devices or associated systems', rather than just '... of nuclear explosive devices', and the wording of the clause would then be changed appropriately to cover these ancillary systems. Similar changes were proposed for clauses 7 and 8 with the latter extended to cover chemical weapons as well.

The objection raised by this group and others was that as worded, the Bill in its interpretation of the term 'nuclear explosive device' explicitly excluded transport and delivery systems if separable from the nuclear weapon, and this would be the situation in many cases. This would apply to chemical and biological weapons also. In the case of nuclear weapons for example, most nuclear navies maintained vessels used for the transport or storage of nuclear weapons, and these formed part of the total nuclear deployment systems for those navies. Complete rejection of nuclear weapons required, it was argued, rejection of such vessels as well as the nuclear armed warships themselves. Rejection of delivery and other support systems for weapons of mass destruction, nuclear, chemical or biological, was seen as necessary to prevent involvement of any kind by New Zealand with these weapons. Support systems would include command, control, or communication systems or components thereof for such weapons, or intelligence material or facilities for them, navigational information for submarines or missiles, and so on. Involvement with delivery or support systems for chemical and biological weapons would be much easier to conceal than for nuclear weapons, and should be explicitly prohibited. The aim of the proposals was to produce an all embracing Bill, to cover what were seen as weaknesses in the NZNFZ as presented, weaknesses shared by the other two nuclear free zones that have been discussed. These proposals were not accepted.

The SANA group also reported that the United States in a 1982 statement to the United Nations General Assembly concerning nuclear free zones said that one of the criteria by which it judged the effectiveness of such zones was that 'the zone arrangements should provide for adequate verification of compliance with the zone provisions'. SANA argued that to satisfy this requirement as it applied to the NZNFZ, the legislation should include provisions for inspection by appropriate persons of any vessel or aircraft granted entry to the zone under an amended clause 9 or clause 10, at the discretion of the Public Advisory Committee on Disarmament and Arms Control, PACDAC, who would appoint the inspectors, and would make their findings public (see chapter 5 for a discussion of PACDAC). This proposal was not accepted either.

Two other clauses in the Bill, clauses 14 and 15, that SANA wanted changed relate to offences and penalties under the legislation. In the Act as it appeared, section 14 states that every person commits an offence who contravenes or fails to comply with any provision of sections 5 to 8 of this Act. SANA argued that this should be broadened to cover sections 5 to 11 of the Act to include the vital sections 9 to eleven. The penalty is imprisonment for a term not exceeding 10 years.

The consent of the Attorney-General is required for laying information against any person in relation to offences against the Act. SANA's claim was that while this was a standard requirement where defence and security matters are concerned, it potentially removed the right of private citizens or non-governmental groups to take legal action against those who infringe this Bill or the resulting Act. They wanted clause 15 changed to allow a citizen or group to challenge a decision of the Attorney-General through PACDAC. These changes were not accepted.

Other criticisms from this group are discussed in subsequent chapters.

1.4 Conclusion

In the event, what were criticised above as weaknesses in sections 12 and 5 of the nuclear free Act have not been tested in any of the ways proposed. No ship from any of the navies of the nuclear weapons powers entered New Zealand's territorial waters from July 1984 until June 1995 when two Royal Navy ships visited New Zealand with the agreement of the New Zealand Government, unless there were covert entries by submarines from one or more of those navies. This would now be in breach of article 20 of the Law of the Sea Convention which requires submarines to travel on the surface and to show their flag within territorial seas. By 1995, all ships and submarines from the nuclear navies likely to want to visit New Zealand were free of nuclear weapons. There have been no exercises involving vessels from those navies within New Zealand's territorial waters since the nuclear free policy came into effect.

The policy has been in action in these regards in the sense that it resulted in the cessation of entry into New Zealand's territorial waters by the Royal Navy until 1995, and by the United States Navy up to the time of writing, consequences of the policy welcomed by many in the peace movement in New Zealand and by sections of the general population, but deplored and strongly criticised by others, particularly in New Zealand's defence forces, but also by some in government. This result has, however, stemmed from the policy simply being in place, and from decisions by the United States and Britain consequent upon this not to send their navies to New Zealand, rather than from any decision by the New Zealand Government to apply some provision in a specific section of the policy, the more normal mechanism whereby a policy is seen in action.

However, the creation of the NZNFZ was, in itself, a major action of the nuclear free policy presented by the Labour Party for the 1984 election, embodied in Bill, and finally in the Act. Speaking to the Bill during its introduction in December 1985, Lange stated that,

I make it absolutely clear that, notwithstanding speculation, and notwithstanding all the concern that has been expressed, the Bill excludes nuclear weapons from New Zealand to the absolute maximum of a Government's legal capacity to do it. In practical terms, the Bill means that New Zealand has completely disengaged itself from any nuclear strategy for the defence of New Zealand. Let that be absolutely understood (NZPD vol.468 1985, p.8914).

Later he said,

The legal exclusion of nuclear weapons from New Zealand is the only means by which the public of New Zealand can be absolutely assured that New Zealand has disengaged itself from any nuclear strategy (NZPD vol.468 1985, p.8914).

The NZNFZ, through its various requirements, manifests these attributes of the nuclear free policy. As discussed in detail in Working Paper No.7, the nuclear free policy resulted for the first time in New Zealand being free of nuclear weapons that previously had entered New Zealand on visiting US Navy vessels. And this remains the present status of the NZNFZ under the subsequent legislation.

To conclude this discussion of New Zealand's nuclear free zone and other such zones, it is interesting to note that some 144 countries are now included within nuclear free zones. The five nuclear weapons states again jointly declared their support for such zones as recently as May 1998 at the second Preparatory Committee meeting for the year 2000 review of the NPT. They see nuclear free zones, freely arrived at, as enhancing global and regional peace and security. The non-nuclear countries in these zones are either

covered by, or eligible for, security assurances from the nuclear weapons powers not to use or threaten to use nuclear weapons against them, depending on whether or not the nuclear weapon state in question has ratified the appropriate nuclear free zone treaty. The whole matter of formalising these so-called negative security assurances is under review by a committee of the United Nations Conference on Disarmament, established in March 1998.

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CHAPTER TWO

VISITS BY NUCLEAR ARMED OR POWERED VESSELS

2.1 Introduction

As discussed in chapter 1, the NZNFZ is unique amongst nuclear free zones in banning visits to New Zealand's internal waters, its harbours and ports, by vessels considered to be nuclear armed and by all nuclear powered vessels nuclear armed or not, and in banning visits by aircraft considered to be carrying nuclear weapons. These provisions are now embodied in sections 9, 10, and 11 of the Act, but were already contained in the policy presented by the Labour Party in July 1984 to the New Zealand electorate. This uniqueness still applies when the more recently created Southeast Asia Nuclear Weapon Free Zone, and the African Nuclear Weapon Free Zone are also considered, both of which leave it to individual parties to the zone treaties to decide their policy on foreign ship or aircraft visits. The New Zealand policy is also unique in the mechanism prescribed for allowing or rejecting foreign warship or military aircraft visits, involving decisions by the Prime Minister, as outlined in chapter one.

Criteria for deciding in marginal cases whether a visiting vessel should be classed as a foreign warship under the Act were given in 1987 by the Legal Division of the Ministry of Foreign Affairs in relation to visits to Lyttleton early in 1987 in support of United States Antarctic research by a merchant ship, the *Green Wave*, under contract to the US Navy Military Sealift Command. This visit is discussed in the next chapter. Four criteria were set out by that Division in a note in the ministry files for assessing the status of the ship, criteria that are interesting in relation to the administration of section 9 of the Act. Did it belong to the armed forces of another state; did it bear external markings that distinguish ships of that state's nationality; was it under the command of an officer duly commissioned under the government of that state; was it manned by a crew under regular armed forces discipline. In the case of the *Green Wave*, the decision was that it did not meet all these criteria so was not a foreign warship under the Act, but the criteria are interesting in themselves, and have not been seen referred to anywhere else.

It is now over thirteen years since New Zealand's anti-nuclear policy was first implemented, when early in 1985 a request for the US Navy destroyer, USS *Buchanan*, to visit was refused under what is now section 9 of the legislation. The background to this incident, and details of events surrounding the proposal for the visit and its eventual refusal, are presented fully in Working Paper No.7, together with a considerable amount of material not previously released by the New Zealand Government concerning the proposed visit. As discussed in that paper, the material presented strongly suggests collusion between officials from the three ANZUS governments, New Zealand, Australia, and the United States, to arrange a visit by a US Navy ship, and to establish a programme of further visits that would see New Zealand gradually return to a position of accepting visits under the NCND policy. The NCND policy was seen by the United States and the British as being challenged by the New Zealand formula for deciding the acceptability of requested visits. This was discussed to some extent in chapter 2 of Working Paper No.8, but will be considered further below.

These sections 9, 10, and 11, are the most widely publicised sections of the Act by far. As argued in Working Paper No.8, section 6 can also be interpreted as providing a further ban on nuclear armed vessel visits. This will not be discussed further. We now examine how these sections have operated subsequent to the *Buchanan* incident. Events involving sections 9 and 11 are addressed in this chapter; section 10 related matters constitute chapter three.

2.2 Nuclear Armed or Powered Vessel Visits - Sections 9 and 11

The policy and legislation have succeeded completely in that no nuclear powered or potentially nuclear armed vessels have visited New Zealand since the 1984 election. This has not, however, been the result of applying the mechanism for approving or refusing requested visits by possibly nuclear armed foreign warships established in 1984, and finally manifested in section 9 of the Act, or of declining visit requests for nuclear powered vessels in accordance with the policy as now found in section 11. As far as is known, the mechanism in section 9 was never applied following the Buchanan incident, although Lange did guarantee to the United States that visit refusals would not be made public. The reason for not divulging this information was, Lange stated in a letter dated 16 September 1988, 'to avoid endangering New Zealand's relations with other countries.' He continued,

I appreciate that for you and some others in the peace movement this may not be a satisfactory response. But governments are required at times to make hard choices and when the Act was being drafted we had to decide between a perfectly understandable wish for information by the public and the need to protect New Zealand's broader foreign policy interests. We had to choose the latter. (private communication)

The complete cessation of requests for visits by potentially nuclear armed warships and nuclear powered vessels resulted from decisions by the United States and the British to terminate all visits by vessels from their navies. The position of the United States was unchanged at the time of writing, but as stated earlier, surface ships of the Royal Navy resumed visits in June 1995 and visited again in 1997. These ships now being free of nuclear weapons, the visits posed no problems.

For supporters of the policy the cessation of these visits was welcomed as a major victory. By contrast, amongst the significant number in New Zealand who saw the United States as the guarantor of their security there were mixed feelings, and feelings of concern, as shown by correspondence in the newspapers of the time for example. It was often claimed that the policy was anti-American, or based only on the rather restricted motive of removing the possibility of New Zealand being a Soviet nuclear target. These charges against the anti-nuclear movement and its supporters are considered elsewhere, but it is clear from histories of the anti-nuclear movement that the concerns that led to the policy being adopted were always, and still are, much wider.

The policy, while not directly anti-ANZUS or anti-US/NZ security relations, made a major impact on ANZUS, and this became the key issue after the 1984 election. It was this impact and the strong American reactions involved that led largely to the claim that it was anti-American, as the practical result was the disappearance of much of the former American military presence in New Zealand and the cessation of the more obvious US-NZ military contacts. Considerations of why these reactions should have been so strong were presented in Working Paper No.8, and throw into question the nature of the ANZUS alliance, nuclear or not nuclear, and the integrity of the United States in taking the actions it took. The answers to these questions, given already in that working paper and supported by further analysis, present a picture of a nuclear alliance seen by the United States as part of a seamless web of global nuclear deterrence, and of anti-New Zealand action by the United States when compared with their response to the non-nuclear policies of Japan, Denmark and other countries.

The section 9 mechanism has not been extensively tested, and this is now unlikely following the removal of naval tactical nuclear weapons from vessels likely to want to visit New Zealand in future. Nevertheless, the establishment of the policy did halt visits by these vessels during the period when the possibility that they were carrying nuclear

weapons was a source of concern. To assess the significance of this change in visit patterns, it is useful to examine the past record of US Navy and Royal Navy visits to New Zealand.

An official source, the Report of the Foreign Affairs and Defence Select Committee on the Inquiry into Disarmament and Arms Control 1985 ⁽¹⁾ lists visits for the period 1958 to 1984. These lists are not, however, completely correct. The most detailed listing of visits over the longest period was prepared by Owen Wilkes ⁽²⁾, but has not been published. His manuscript was summarised in Peacelink No.97, November 1991, but this is difficult to obtain. Documents seen in the ministry files confirm the presence of some inaccuracies in the above report. Wilkes' compilation differs most markedly from the report for the years prior to 1970, with only minor differences in a few subsequent years. The report is publicly available, and the period that will be of interest is from 1970 to 1984, so the report lists have been used for reference. Here we will examine only the general pattern of past visits.

US Navy Visits 1970 to 1984

US Navy vessels have been visiting New Zealand for a long time. In his as yet unpublished study, US Warships and Nuclear Weapons in New Zealand: The Facts ⁽²⁾, Wilkes says,

The US 'Great White Fleet' under Admiral Perry put into Auckland in 1908 in the course of a worldwide tour to show the flag. In 1925 a vast fleet under the command of Admiral Coontz was sent to Australasia in a peacetime display of force without equal before or since.

Visits have continued, at varying intervals, and with varying frequency. There was a period of about nine years from 1948 to 1955 inclusive when there were no visits.

We will consider the fifteen years 1970 to 1984 inclusive for comparison with the fourteen years 1985 to 1998 that followed with no visits. The years 1970 to 1972 saw between 11 and 17 different vessels visiting each year, 12 ships in 1970, 17 ships in 1971, and in 1972 10 ships and one submarine. The number of visits dropped sharply over the period 1973 to 1975 with 7 different ships coming in 1973, but only one in 1974 and two in 1975. This was a period when the Labour Party was in government, and a time when concerns over nuclear powered vessels was high.

As explained in Working Paper No.7, nuclear powered vessels were technically not banned from New Zealand at this time. Visits were suspended because of concerns relating to the possible consequences of an accident involving the reactors in the vessels and the lack of satisfactory guarantees of acceptance of liability for accidents by the US Navy. The United States would also not release enough information concerning the reactor design and safety systems in these vessels to allow New Zealand authorities to assess their safety fully and independently, as is still the case. This suspension resulted in difficulties with the United States which wanted to see such visits resumed, particularly after 1974 when the United States Government finally gave a guarantee of absolute liability for naval reactor accidents.

Under the National Government that followed, nuclear powered vessels began visiting again, and while 1976 saw only two visits they were both by nuclear powered cruisers, the first such visits since 1964. Four ships visited in 1977, and in 1978 the first nuclear powered submarine since 1960 appeared in Auckland. Six surface ships also visited that year. Visits in the late 1970s peaked in 1979 with a total of 8 ships and a further nuclear powered submarine arriving in New Zealand. One nuclear powered cruiser and three other ships visited during 1980. Four ships visited in 1981, while 1982 saw only two visits but again one of these was a nuclear powered cruiser. A further nuclear powered cruiser and a nuclear powered submarine visited in 1983 as did two other ships. Four ships and a nuclear powered submarine had already visited in 1984 prior to the crucial

election victory by Labour and the introduction of the nuclear free policy. Some vessels visited more than once and made more than one port call.

The report lists a total of 127 port calls in this fifteen year period 1970 to 1984, only 10 by nuclear powered vessels. They occurred in the years 1976 to 1984 inclusive. During these nine years a total of 39 different vessels visited on 42 occasions and made 72 port calls. Of these vessels 7, or 18%, were nuclear powered, the USS Truxton visited three times. They made 9, or 21%, of the 42 visits, and 10, or 14%, of the 72 port calls. Interestingly one of the visitors in 1979 was the USS Buchanan of 1985 fame, her visit to Auckland at that time producing no known protest of significant scale.

The following table presents the above information in a more accessible form.

United States Warship Visits			1970 to 1984 Inclusive	
Year	Vessels	Port Calls	NPW, Type	Port Calls
1970	12	13		
1971	17	18		
1972	11	14		
1973	7	7		
1974	1	1		
1975	2	2		
1976	2	2	2 CGN	2
1977	4	9		
1978	7	10	1 SSN	1
1979	9	12	1 SSN	1
1980	4	12	1 CGN	1
1981	4	10		
1982	2	2	1 CGN	1
1983	4	7	2 CGN, SSN	3
1984	5	8	1 SSN	1
TOTAL	91	127		
1976-1984	41	72	9	10

Vessels - gives the total number of vessels visiting each year. For the years 1976 to 1984 inclusive, the total of 41 visits includes three visits by the nuclear powered cruiser Truxtun, so the number of different vessels that visited in this period is 39, and only 7 different NPW visited on 9 occasions making 10 port calls.

Port Calls - gives the total number of different port calls made each year for all vessels, and separately for NPW
NPW, Type - lists the number and types of nuclear powered warships that visited each year. CGN denotes nuclear powered cruiser, SSN denotes nuclear powered attack submarine.

From the data given in the report, a total of 76 different vessels from the US Pacific Fleet visited during the 1970 to 1984 years. Using contemporary issues of *Jane's Fighting Ships* published by Jane's Publishing Company, London, and the Greenpeace publication, *Nuclear Warships and Naval Nuclear Weapons: A Complete Inventory* by J Handler and W Arkin, *Neptune Papers No.2*, May 1988⁽³⁾, Wilkes classes 54, or 71%, of these as nuclear capable and probably nuclear armed at the time of their visits, a further 7, or 9%, as nuclear capable or possibly nuclear capable but probably not nuclear armed when visiting in this period, and 15 (20%) as not, or not known to be, nuclear capable.

Wilkes also discusses the likely nuclear weapons brought into New Zealand during US Navy visits, and using the above sources estimates that on a conservative basis at least

868 nuclear weapons entered New Zealand between 1945 and 1984, the majority - 532 - being of low yield but with a total yield of between 2,400 and 18,000 kilotonnes. He considers that the actual number of nuclear weapons that have entered may well be more like one thousand. That many of these visiting US Pacific Fleet vessels would have been nuclear armed at the time of their visits has been argued elsewhere ⁽⁴⁾.

From this brief examination of port call information it can be seen that visiting New Zealand ports was a practice of long standing and of reasonable scale for the US Pacific Fleet, although some other Pacific countries had much more frequent visits, Japan in particular, and Australia. Terminating this visit practice for New Zealand did not involve setting aside an activity of negligible magnitude, or one only undertaken infrequently. Together with the cessation of exercises with New Zealand forces, this action ended all major contacts between the US Navy and the Royal New Zealand Navy.

Royal Navy Visits 1970 to 1984

Royal Navy ships also visited in considerable numbers in some years during this period with 10 ships appearing in New Zealand ports in 1971 and 1979, and 12 in 1974. At other times visits were rare. There were no visits in 1972, 1977, and 1978, or from 1980 to 1982, or in 1984. A total of 44 different ships visited in this period but almost none of these were nuclear capable apart from the aircraft carrier HMS Invincible that visited in 1983, the ship that because it was possibly carrying nuclear weapons caused problems in Australia later in the same year when dry dock facilities were requested, as discussed in Working Paper No.8. Nevertheless these 44 ships made a total of 87 different port calls in this period, the Royal Navy showed the flag quite widely around New Zealand.

Contact with the Royal New Zealand Navy was not curtailed to the same extent as with the US Navy by the British termination of port calls. Unlike the US Navy, the Royal Navy had only terminated activities inside New Zealand's nuclear free zone, its territorial waters in this case. Important multilateral exercises in the North Pacific involving both navies continued under the so-called Five Power Defence Arrangements (FPDA) involving Britain, New Zealand, Australia, Malaysia and Singapore, considered in detail in the chapter four. However, for many in New Zealand the cessation of Royal Navy visits was felt quite keenly because of the long historical ties with Britain which they symbolised. Anti-nuclear protests prior to 1984 that greeted Royal Navy visits tended to be more muted than when the US Navy visited, at the visit of the Invincible in 1983 for example.

It must be noted that while protests by the anti-nuclear movement during visits by both these navies reached an impressive scale, the crews of the visiting vessels were at the same time given a warm welcome and shown a high level of friendliness and hospitality while on shore. The protests were not directed at the crew members individually but at what their vessels represented - nuclear warfighting navies.

June 1995 - The Royal Navy Returns

June 1995 was an important month for supporters of the legislation. For the first time since the policy was introduced in 1984 the Royal Navy visited New Zealand as part of a wider South Pacific deployment. Two ships, the frigate Monmouth and the fleet auxiliary support ship the Brambleleaf, spent a week in New Zealand waters, first visiting Wellington together with the Monmouth then sailing to Auckland and the Brambleleaf to Dunedin.

The Prime Minister assured New Zealanders that the visit was in accordance with the legislation, the British having announced that tactical nuclear weapons had been removed from all their surface warships. (The New Zealand Herald, 10 December 1994, p.24) The peace movement decided not to protest during the visit as the occasion represented a

very important achievement for all New Zealanders supporting the country's nuclear-free policy. When the Monmouth sails into Wellington it will be proving that the nuclear-free law is secure for many years to come.

as spokesman N Hager said in a public statement. He continued, ,

Opponents of the law like [Foreign Minister] Don McKinnon will lose a lot of ground that day. After 10 years of pressure, Britain is saying it can live with the policy. This is the first British or American warship to accept New Zealand's nuclear-free law and visit on our terms. However, we still won't be welcoming the warship and we aren't promising not to protest against further warship visits. The ships were still part of a nuclear armed Navy, including new Trident submarines and they were used in indefensible wars and conflicts throughout the world. Sending a warship into our harbours is a bizarre and outmoded way of showing friendship between nations. (The New Zealand Herald, 6 June 1995, p.4)

The peace movement was satisfied the Monmouth had no nuclear capacity. It was commissioned in September 1993, after tactical nuclear weapons were withdrawn from the Royal Navy in 1992, and the British Government announced that British ships would not have the capacity to deploy tactical nuclear weapons in the future, with the weapons concerned to be destroyed. Prime Minister at the time, Jim Bolger, also announced in a press release that New Zealand Navy ships would exercise with the Royal Navy ships while they were here.

The next visit by the Royal Navy occurred in June 1997 when the guided missile destroyer HMS Gloucester visited Auckland, Napier and Wellington after participating in FPDA exercises. (The New Zealand Herald, 25 May 1997, p.A13) This report stated that air defence exercises were planned off the lower North Island east coast against mock attacks by New Zealand aircraft. The report also cited The British High Commission Defence Adviser, Colonel Peter Barry, as saying that Britain hoped to send large fleets to the region every four years and make ship visits to New Zealand and Australia every second year. There appears to be little problem with the nuclear free policy any longer for the British in this regard.

May 1996 - The British Return to New Zealand's Territorial Waters

An equally noteworthy change in the British position occurred in May 1996 when for the first time since 1982 the Royal New Zealand Air Force (RNZAF) hosted an international aerial submarine-hunting competition at the Whenuapai Air Base near Auckland including two Nimrod aircraft from the Royal Air Force. They were joined by Orion aircraft from Australia and Canada in the competition for the Fincastle trophy, their quarry being in this case the Australian submarine the Onslow hunted in the waters beyond Great Barrier Island, well inside New Zealand's territorial waters. While the competition was not strictly an exercise, the aircraft, including the Nimrods, did during their visit to New Zealand fly about 50 training missions off the east coast of the North Island against the Onslow and a second Australian submarine the Otama that was in New Zealand waters at the time. (The New Zealand Herald, 13 May 1996, p.5, and 14 May 1996, p.4)

New Zealand Herald defence reporter Ric Oram states in the 13 May article that the British would not earlier have sent their nuclear capable aircraft to this competition if held in New Zealand because of the nuclear policy. But 'since the end of the Cold War, and any need to carry nuclear weapons regularly, the stand-off has ended.' If the stand-off with the British has now ended, this marks one major step towards the goal of having the legislation accepted as a permanent mark of New Zealand's nuclear free status, its rejection of nuclear deterrence, and its support for complete nuclear disarmament. Other recent contacts with elements of Britain's military forces are examined fully in a later paper, which will also consider continuing, and quite extensive, contacts with United States forces that have remained essentially unmodified by the ANZUS rift.

In spite of these changes, Britain retains a NCND policy as was confirmed by the British High Commission in Wellington in 1994. The current policy was stated as being to neither confirm nor deny the presence of nuclear weapons in specific locations at specific times. (private communication 30 May 1994) Prime Minister Bolger confirmed this in the December 10 1994 Herald article cited above. France also retains its NCND policy, or did in 1994 at least, as the French Embassy in New Zealand confirmed in May 1994 (private communication 30 May 1994), stating it in the traditional form of neither confirming nor denying the presence of nuclear weapons on its vessels, aircraft and at land based military installations. No change in either the British or French positions have been seen. The present American statement of their NCND policy was presented in the introduction to this paper.

Questions that need to be examined are how important were these port calls, for the US Pacific Fleet in particular, and how important were they for ANZUS? Were claims that by restricting port calls New Zealand had abrogated some of her ANZUS responsibilities justified? These questions need extensive consideration, and are deferred to a later paper where they are challenged. It is worth noting at this point that these claims are not heard now. The claim by the United States now when calling for repeal or modification of the legislation relates to section 1 I, and is that they cannot divide their navy into nuclear and conventionally powered components to convenience New Zealand. This basis for this claim is challenged in the next section, but as already indicated nuclear powered vessels did not figure frequently as visitors to New Zealand ports prior to the 1984 election.

The findings that will be defended in this study are that New Zealand port calls had no major operational significance for the US Pacific Fleet or for ANZUS, and that the claim concerning ANZUS responsibilities was not justified unless it is accepted that ANZUS was then, and has always been, a nuclear alliance, and ship visits contributed to underlying United States nuclear strategy that involved ANZUS.

A closely related question that merits detailed examination is why New Zealand was treated so harshly by both the British and the Americans concerning port calls in comparison with some other countries whose non-nuclear policies were in principle as troublesome as New Zealand's.

2.3 Denmark - Why was New Zealand Different?

From early 1976, although the National governments, and Prime Minister Rob Muldoon in particular, were emphatic that nuclear powered warship visits would definitely resume, they were clearly sensitive to the growing public opposition to these visits and to the presence of a potentially nuclear armed American Navy. One manifestation of this sensitivity was strong interest shown by these governments in the policies of other countries regarding nuclear powered warship visits, as documents in the ministry files make clear. Of particular interest were the policies of Denmark and Japan. It is revealing in trying to understand the reactions of New Zealand's allies to the 1984 nuclear free policy to examine the reasons for this interest, and to examine the policies of these countries.

One argument opponents of nuclear powered ship visits often used in this early post-1976 period was that Denmark had not hosted a nuclear powered vessel since 1964 and rejected nuclear weapons on its territory in peacetime despite being a member of NATO. Yet both the United States and Britain had continued their programmes of visits by conventionally powered warships. In the 1970s and early 1980s the question asked by those supporting ANZUS but concerned by possible risks associated with nuclear powered vessels was why can we not also reject nuclear powered warship visits but still have visits by their conventionally powered counterparts, thereby satisfying our ANZUS responsibilities but keeping New Zealand free of the dangers associated with nuclear reactors. Others concerned about possible New Zealand involvement with nuclear weapons were opposed to these visits resuming because nuclear powered warships being large, relatively modern

naval craft were almost certain to be nuclear armed. In general, opponents in this group also wanted all contacts with the US Navy to cease for the same reason, its vessels were generally nuclear armed, and they were opposed to continued membership of ANZUS.

After the introduction of the 1984 nuclear policy, the question for those wanting New Zealand to retain ANZUS contacts with the United States became why should New Zealand be treated so differently from Denmark and a number of other countries with non-nuclear policies. For those opposed to American nuclear weapons strategies and to its NCND component, the question addressed to the United States was, how do you justify your treatment of New Zealand relative to your treatment of Denmark in terms of your NCND policy. To understand these questions and the bases for them, we need to examine the policies of Denmark and Japan in particular, and other countries with seemingly strong non-nuclear policies, of which there are a considerable number

The Danish Non-Nuclear Policy

It is probably easiest to understand what was happening in the period after the resumption of nuclear powered warship visits in 1976 by first stating the Danish policy that was of such interest, and then looking at the situation from 1976 onwards. The 1964 visit was not by a nuclear powered warship, but by the N/S Savannah, an early American trial nuclear propelled merchant ship.

The official Danish policy was obtained from the Danish Embassy, Canberra, in 1992. The rules applied are those of the International Convention on the Safety of Human Life at Sea, 1960, chapter 8, relating to nuclear powered merchant and passenger vessels, with reference to the recommendations contained in Annex C of the convention. This convention was replaced and abrogated by a 1974 convention which entered into force on 25 May 1980, and may be found in the United Kingdom Treaty Series No.46, 1980, and the United Nations Treaty Series vol.1184. The United States and New Zealand were both represented at the 1960 meeting to establish the convention.

Chapter 8 of the convention states clearly that it does not apply to 'ships of war', but Denmark has chosen to require that these same regulations be applied to all nuclear powered vessels. As a result, Danish regulations are that before permission is granted for nuclear powered vessels to berth in Danish ports the following documents must be available:

- a) a safety report approved by the authorities responsible for the vessel, providing a technical description of the nuclear power plant in the ship which will enable the Danish authorities to evaluate the safety-related standards of the ship;
- b) an emergency plan, approved by the Danish authorities, which specifies the measures to be implemented for the protection of the population in the event of its exposure to radiation, radioactive substances or other nuclear dangers;
- c) a satisfactory liability agreement between the Danish authorities and the authorities responsible for the vessel, which covers such nuclear incidents as might be caused by the vessel and which provides for objective liability and a high ceiling on the amount of damages.

As far as warships capable of carrying nuclear weapons are concerned it has been the constant policy of Danish governments to ban the presence of nuclear weapons on Danish territory in times of peace, including nuclear weapons aboard ships. Denmark says that this policy is well known to its allies within the North Atlantic Alliance, and the Danish Government takes it for granted that warships which visit Danish ports respect this policy. It does not question compliance as it does not want to express distrust in its allies.

The aspect of this policy that the US Navy and the British Navy will not accept is the requirement of details of their naval reactors for the safety report. They will not reveal technical details of their reactors as the New Zealand Government discovered in 1976

when trying to clarify the provisions of the absolute liability guarantee given by the United States in 1974 for reactor accidents. The nuclear weapons policy, on the other hand, was not a problem for these navies and visits by conventionally powered vessels have continued, a matter we will consider further.

Two important points to note from this are that Denmark does not ban nuclear powered warship visits, and it trusts its allies to respect its no nuclear weapons policy. There have been some intriguing developments involving this Danish policy and its implementation, and a number of interesting arguments raised that relate to the New Zealand situation. Before examining these let us return to 1976.

New Zealand Interest and Concern Around 1976

First it should be noted that in the early 1970s, the combination of the then existing safety code for nuclear powered ship visits, AUCKNUSAFE, discussed in Working Paper No.7, with the no nuclear weapons in New Zealand but we 'trust our allies' policy stated by the Defence Minister in the Lange Government, Frank O'Flynn, to have operated during the 1972 to 1975 Labour Government term and cited in Working Paper No.7, corresponded very closely to the Danish policy. And during these years the United States and Britain continued to send conventionally powered warships to New Zealand just as they do to Denmark. New Zealand's policies as they stood at that time presented no problems for these nuclear powers.

Investigation of Danish policy began soon after the Muldoon Government took office late in 1975, and had by 15 January 1976 announced its willingness to allow nuclear powered ship visits. This investigation took the form of telephone enquiries and telegrams from Wellington to Brussels asking for details of visits to Denmark by nuclear powered vessels and of Danish policy. The earliest telegram seen in the Ministry files is from Brussels dated 25 March 1976, soon after the 4 March request for clearance for a visit by the nuclear powered cruiser Truxtun later that year, and outlines the policy given above. It states that while the Danish decision to extend the 1960 regulations to warships was not enforceable in international law, other regulations issued by a Danish Ministry of Defence ordinance on 27 February 1976 allowed the Danish Government to refuse warships entry to their territorial waters. Refusal to comply with Danish safety provisions would be grounds for such refusal, the telegram says. This ordinance includes a requirement that the Danish Government be supplied with information on all types of armaments being carried, but does not make any specific reference to nuclear weapons. It also covers military aircraft.

Interestingly, the telegram states that two applications to visit were made, one from the United States and one from Britain, but did not eventuate. At the time, the telegram continues, it was accepted by both sides that there was not time to sort out safety precautions.

It would seem that no subsequent attempt was made either by the U.S. or the U.K. to negotiate any general rules for future occasions. The Danes were left with the impression that the other parties (the Americans particularly) were annoyed at their 'unreasonable' demands and were not prepared to permit the inspection which was necessary to allow the Danish authorities to satisfy themselves the security precautions had been, or could be, implemented.

The telegram states that they had been asked not, repeat not, to report the last sentence just quoted, and that the information given should be treated with some care. 'We have the feeling that the Danes would not be happy if we quoted their rules publicly as being specifically of Danish origin.' These enquiries continued, together with enquiries concerning other countries and concerning various proposals to develop safety rules for nuclear powered ship visits, warships and merchant ships.

The sensitivity of the 1976 New Zealand Government to comparisons between their position on nuclear powered warship visits and the Danish position, which was correctly, claimed to be different in principle, is clearly shown in a document included here from the ministry files dated 2 July 1976 from the Secretary of Foreign Affairs to his Minister Brian Talboys. Of particular interest is the handwritten note on page 3 suggesting that to try and settle the matter of this comparison by setting up a parliamentary question could backfire, because visits to Danish ports by nuclear powered ships had not occurred, and opponents of the government's position might use this against the government. Talboys agreed.

It should also be noted that paragraph 7 on page 2 again points out that the Danish position was not known publicly, and that the Danes themselves were sensitive about it being discussed. The Danish conditions relating to safety procedures were more stringent than those established by New Zealand. New Zealand's new safety code, AEC 500, set up in 1976 did allow berthing of nuclear powered vessels without any technical reactor information being made available. Danish legal liability requirements probably did not arise as a problem since the safety report problem effectively blocked visits for the Americans and the British. The whole matter was one of great sensitivity in all quarters, an intriguing situation in itself, demonstrating the longstanding impact of the anti-nuclear movement and its activities and of the widespread public unease concerning nuclear reactors and nuclear power, coupled with the desire by allies of the United States and the British not to disturb mutual military and political relations.

The comment in paragraph 8 of this 1976 document that 'it looks as if the United States has not pressed the question with the Danes, as it has with us and the Australians', referring to nuclear powered warship visits, is also worth noting particularly in relation to the two unsuccessful requests referred to in the 25 March telegram. The question is why this should have been so. The same question presents itself again now, over twenty years later, for New Zealand. All vessels in the US Pacific Fleet likely to visit are now free of nuclear weapons. The only obstacle to the resumption of visits, should New Zealand want this, is the ban on nuclear powered vessels. Again the United States is pressing for access for these vessels if New Zealand wants restoration of full military relations, but Danish policy remains unchallenged. Before looking at the answer to this question, we examine the situation after the adoption of the nuclear free policy in 1984 by New Zealand.

By 1979, if not earlier, the Americans were emphasising that around 40% of their fleet were nuclear powered, as they repeatedly did through the 1980s in arguing the difficulty in allowing visits to New Zealand by only conventionally powered vessels. This argument is considered in detail in another paper. Queries concerning the Danish situation continued into the early 1980s, with questions directed equally at the behaviour of other countries like Japan, a country to which we return soon. First the post-1984 era.

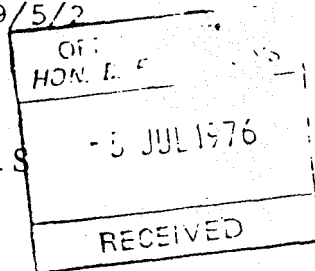
2.4 The Post-1984 Era and the Hypocrisy of Neither Confirm Nor Deny

All visits by the American and British navies ceased after the refusal of the visit by the USS Buchanan early in 1985, as discussed already. Yet visits to Denmark with its no nuclear weapons in peacetime policy continued, and the whole period from 1984 has been one of peace in the terms used in this policy. So where does the difference lie between New Zealand's policy of deciding whether or not to admit a nuclear capable vessel but not telling anyone if a visit request is declined, and Denmark's policy of trusting its allies not to cheat and take nuclear weapons covertly into Danish ports?

New Zealand's position concerning the NCND policy was stated clearly by Geoffrey Palmer, then Deputy Prime Minister in the Lange government, in Parliament during the Introduction of the Bill debate. He said,



PM 59/5/2



MINISTRY OF FOREIGN AFFAIRS
WELLINGTON

2 July 1976

The Minister of Foreign Affairs

VISITS BY NUCLEAR-POWERED WARSHIPS

From time to time opponents of visits to New Zealand by nuclear-powered vessels have asserted that Denmark has placed a ban on visits to Danish ports by such vessels. It is suggested that the reason is to avoid the risk of radioactive contamination of food exports.

2. Dr Finlay is reported to have said during the Prime Minister's radio talk-back programme on 28 June that "Denmark has not been deterred by her membership of NATO from banning all nuclear ships from her waters".

3. These statements are simply not true. You will recall that during your discussions with the Danish Foreign Minister, Mr Andersen, in Copenhagen on 12 February you raised the question whether the Danes permitted visits by nuclear-powered vessels. Mr Andersen replied that such visits were permitted.

4. This has been pointed out to members of the public in letters from Ministers but as Dr Finlay's assertion was made in a nation-wide broadcast and was carried in the press it may be desirable to take steps to refute it publicly. Consideration is being given to the possibility of a Parliamentary Question, addressed to yourself, along the following lines:

"Is he aware that the opponents of visits to New Zealand by nuclear warships have on several recent occasions stated publicly that Denmark, a small country with an important agricultural industry, like ourselves, has placed a ban on visits to Danish ports by such vessels, and can he confirm that these reports are wrong and that no such ban has been imposed by the Danish Government?"

(It would be advisable to say "nuclear-powered warships" rather than "nuclear warships".)

/5. Your reply

Mr. Egan
Mr. Norrish
in Bill
Mr. Atkinson

Photocopy of original
given to the Synagogue.

5. Your reply could be as follows:

"Yes, I am aware that such statements have been made from time to time and I can confirm that they are incorrect. I raised the question with the Danish Foreign Minister when I was in Copenhagen in February and was told by him that no such ban has been imposed."

6. Such an answer is likely to be followed by Supplementary Question whether any such visits had taken place and, if not, why not? No nuclear-powered warships have visited Denmark. So far as nuclear-powered merchant vessels are concerned, the Danish and United States Governments concluded in 1964 an agreement concerning visits of the nuclear-powered merchant vessel "Savannah" but we are not aware whether the vessel has in fact subsequently made any visits to Denmark. As to the reasons for the lack of visits, this is not a matter on which the New Zealand Government is in a position to comment.

7. There may be some problems, however, if the question is pursued, especially if Members ask what conditions, if any, are imposed on visits to Denmark by nuclear-powered warships. Enquiries made through the Embassy in Brussels (which is accredited to Denmark) suggest that the conditions relating to safety procedures and legal liability drawn up by Danish officials are more stringent than the Americans (and British) can accept. These considerations have not however been made public; and the Brussels Embassy has suggested that the Danes would not be happy if detailed comments were made about their position. It would be advisable, therefore, to say no more than that you have no information about any conditions that may have been formulated by the Danish Government on visits by nuclear-powered warships.

8. It looks as if the United States has not pressed the question with the Danes, as it has with us and the Australians. The point of the assertion about Denmark's alleged refusal to accept visits is, of course, that if it is good enough for a NATO ally to do this, it is good enough for an ANZUS ally to do the same. It might, however, be observed that nuclear-powered United States warships visit other NATO ports - e.g. last September, a U.S. nuclear-powered cruiser visited Norway and the Netherlands. Such visits seem to be few and far between. There is nothing in what you were told by the Danish

/Foreign

Foreign Minister to suggest that Denmark will not at some future date accept a visit by an allied nuclear-powered warship, as her NATO neighbours have done.

9. It seems unlikely that a Supplementary Question would be asked about the Danish Government's position on visits by nuclear-armed vessels. It is of interest to note, however, that, when it joined NATO, Denmark specified that no nuclear weapons should be introduced to Danish territory in peacetime. While it acknowledges that it is the policy of the nuclear powers never to confirm or deny the presence or absence of nuclear weapons on any of their naval vessels or military aircraft, it is firmly convinced that its known wishes are respected by its allies.

10. While it is clearly desirable to refute the continued misrepresentation of the Danish position on visits by nuclear-powered warships, a detailed discussion should be avoided.

11. I should be grateful to know whether, in the light of the considerations set out above, you consider it advisable to proceed with the proposed Parliamentary Question.

I frankly doubt whether this should go ahead; it could raise more problems than it solves.

Symons suggested it should be done but I doubt if he realised that no visit had yet taken place. It might be best simply to be ready to answer the question the next time it is raised from the other side?

Agreed
R. S. Albo
15.7.76

[Signature]

Secretary of Foreign Affairs

The Bill has been carefully crafted not to compromise the 'neither confirm nor deny' policy of the United States and the United Kingdom. If those countries seek to interpret it otherwise, that is their business. In the end, Parliament and the Government must be responsible to the people of New Zealand. However highly we regard Washington D.C., or however warm and friendly our relations with London, New Zealand is not responsible for those countries. New Zealand is a sovereign, democratic country, and New Zealanders are entitled to make their own decisions ... The Government does not want to have disagreements with its friends, but it will not buckle to the view of others about what New Zealand should do. (NZPD vol468 1985, p.8919)

If the United States and Britain always honoured the Danish policy, then any of their warships by visiting a Danish port were labelled publicly and openly as being free of nuclear weapons at that time, a clear breakdown of the NCND policy. This should have been just as unacceptable to the British and the Americans as they stated the effect of the New Zealand policy would be in labelling any vessel allowed to visit as free of nuclear weapons while in New Zealand ⁽⁴⁾. The Danish situation prevailed for many years including the cold war years when it would have been very surprising for most nuclear capable warships to have been free of nuclear weapons for long periods.

An analysis of the movements of US Navy nuclear capable warships visiting the non-nuclear Scandinavian countries Denmark, Norway, and Sweden in 1984 and 1985 was published in May 1990 by the present writer using global port call lists supplied by the US Navy before it began refusing Freedom of Information Act requests for such lists ⁽⁴⁾. The approach used was to analyse the movements of vessels for which detailed information was available over these two years to see if opportunities arose for them to off-load any nuclear weapons they were carrying in other countries before entering ports in these Scandinavian countries, or to see if the weapons could have been off-loaded at sea to what the US Navy calls underway replenishment vessels deployed with them before the port calls, and reloaded subsequently.

The analysis showed that unless the US Navy was willing to send vessels at high speed across the Atlantic from the Scandinavian area to the United States east coast to unload their weapons and back for the port calls, and then to repeat the process to reload the weapons, an unlikely situation, or to have these ships at sea for quite long periods without nuclear weapons, United States warships were taking -nuclear weapons into Denmark, Sweden and Norway at this time, the mid-1980s. The US Navy did not have underway replenishment vessels available for nuclear weapons to be off-loaded at sea for all the visits that would have required this in order to allow nuclear weapons free port calls. This would have been an unlikely procedure in any case, since the transfer of nuclear weapons at sea is considered by the US Navy to be 'one of the most hazardous of all shipboard operations' ⁽⁴⁾. Visits to these Scandinavian countries were not infrequent. Norway does not have such a strong non-nuclear policy, but assumed in the past that visiting warships did not carry nuclear weapons and expected its allies to respect this position ⁽⁵⁾.

An astonishing sequence of events that occurred in 1988 showed clearly the great sensitivity of the nuclear powers to any challenge to their NCND policies. The details are given in the May 1990 study ⁽⁴⁾. They followed an unexpected victory in the Danish Parliament in April 1988 of an Opposition resolution requiring the captains of visiting warships to each be sent a letter reminding them of Danish policy regarding nuclear weapons. This seemingly innocuous change to existing practice produced strong reactions from the United States and Britain. The US State Department said it was deeply distressed, and the vote could have serious consequences for US-Danish defence cooperation if interpreted in a manner inconsistent with the United States NCND policy. They said that the resolution could

go to the very heart of the meaning and interlocking nature of our mutual commitments within the NATO alliance and make it impossible for US and other alliance warships to visit Danish ports or participate with Denmark in naval exercises.

The British conveyed a similar message.

The Danish Prime Minister, Poul Schlüter, expressed the view of his coalition government by saying, 'We consider that the resolution endangers Denmark's membership of NATO and we fear that its consequences will be to isolate us from our allies.' The Danish Government resigned, and a snap election was held in May producing little change in the composition of the government, but the ship visit problem was solved in a manner acceptable to Denmark's allies. Their embassies each received a letter which contains the following sentence to be included in every clearance for a foreign warship visit, and to be given to the diplomatic mission of the country concerned: 'The Danish Government assumes that the visit of vessels will be in compliance with the rules laid down by the Danish Government.' Poul Schlüter, in his inaugural address to his new Parliament said, 'The Government considers that this procedure respects both the Danish non-nuclear policy and the views of our Allies.' And there the matter rested. The NCND policy went unchallenged once more, and the US Navy visited again in July that year.

Debate in New Zealand about the policies of Denmark and New Zealand continued into the 1980s, and figured particularly around the time of the 1984 election and during the passage of the Bill debates. It surfaced again in 1995 with suggestions that the reason for the lack of nuclear powered warship visits to Denmark was that in military terms the geography of the Baltic is such that nuclear powered attack submarines and aircraft carriers would only rarely be deployed there ⁽⁶⁾. An examination of US Navy records for warship visits to neighbouring Norway and West Germany, which accept nuclear powered warships, shows that from 1976 to 1984 inclusive Norway had visits by US -;nuclear powered cruisers and attack submarines at very similar rates to New Zealand in the same period. West Germany had similar rates of visits. So US Navy nuclear powered vessels do seem to have been in the Scandinavian region, at least in this period. Records of visits are not available beyond 1985.

Sweden also has a policy banning nuclear weapons on visiting warships ⁽⁵⁾. A very detailed analysis published in September 1990 of US Navy visits to Sweden from 1960 to 1990 and of US Navy practice concerning its nuclear weapons, concludes that,

The evidence, unfortunately, is unambiguous. Ships load their nuclear weapons before their forward deployment and they hardly ever unload them. No special procedures are taken when entering non-nuclear countries, other than implementation of the NCND policy.

An equivalent analysis for visits to New Zealand prior to the adoption of the 1984 policy yields the same conclusion, supporting the claims by Owen Wilkes cited earlier concerning nuclear weapons entering New Zealand on US Navy vessels. There was no problem for the US Navy in bringing nuclear weapons to New Zealand before the 1984 election of course, as discussed in Working Paper No.7.

These studies, and other evidence cited in them, reveal the weakness of the so-called 'trust our allies' type policies for nuclear weapons. The nuclear navies just did not honour the policies of their allies, and used NCND to cover the unhindered covert movement of nuclear weapons. This certainly applied to The US Navy, the Royal Navy, and it is assumed to the French Navy. The Soviet Navy had a somewhat different procedure for port calls, but may well have adopted a similar cavalier approach at times.

Lange in his book pp.145-147 recounts an incident that expresses the widely known NCND problem clearly. He was attending an annual meeting of the Association of South-East Asian Nations (ASEAN) in 1986. The meeting was held in Manila, and George Shultz and other American representatives were present. Questions arose about the future of American military bases in the Philippines, and whether the bases played host to American nuclear weapons. President Laurel of the Philippines was in the chair. He was asked if the Americans brought nuclear weapons to their base at Subic Bay, 'No' he answered. 'How do you know?' was the next question. 'Because,' said Laurel, 'the United States would tell us if they did.' From the front row, Lange recounts, an American voice uttered, 'Jesus Christ!'. I turned to look at Shultz, Lange continues. 'His face was totally expressionless. I think he earned whatever the American public paid him to represent them.'

To summarise this comparison of the Danish and New Zealand positions and the treatments of the two countries by their nuclear allies, the United States and the British, we have seen that in the period from the late 1960s to 1975 New Zealand had policies covering nuclear armed and powered warship visits that were very like the longstanding Danish policies, and the United States and British navies continued to send their conventionally powered warships to both Denmark and New Zealand. Both nuclear powers have continued visits to Danish ports with conventionally powered warships, despite the ongoing policy of Denmark regarding nuclear powered vessels which, while different from the policy established by New Zealand in 1984, has the same effect in practice of preventing visits by nuclear powered vessels from those nuclear navies, at least on terms they will accept. Yet all visits by these navies to New Zealand ceased until 1995 for the British, and are still suspended for the US Navy, even though the warships in the US Pacific Fleet likely to want to visit New Zealand, and that are conventionally powered, are now free of nuclear weapons, so there is no problem with the nuclear weapons ban in New Zealand's policy.

The conclusion reached is that the position now taken by the United States cannot be justified by logic, or by arguments that the US Navy cannot divide its fleets into nuclear and conventionally powered components for visits to New Zealand, since it is willing to do so for Denmark. Rather it is seen as reflecting a determination that New Zealand must bow to the will of the United States in this matter, and be seen by the rest of the world to be so doing, as discussed further below. If this is a correct analysis of the situation, there is small likelihood of its resolution at present. As stated in the introduction, during the visit of US Secretary of State Madeleine Albright to New Zealand on 1 August 1998, the nuclear powered vessel ban was referred to as 'unfinished business' between the United States and New Zealand. However, she was told by the New Zealand Prime Minister, Jenny Shipley, that there would be no change to New Zealand's policy. It does seem, however, that there may be some relaxing of United States' restriction on military contacts with New Zealand following the visit. This will be considered elsewhere.

Japan and Other Non-Nuclear Countries

Japan is known as a strongly anti-nuclear country, and this is undoubtedly true for many of its people. At governmental level, the sincerity of this position has been more questionable, in relation to Japanese involvement with the US Navy at least. The Japanese Embassy in Wellington wrote in March 1987 that, 'Japan holds fast to the three non-nuclear principles of not possessing producing or permitting the introduction into Japan of nuclear weapons.' A memorandum attached to the 1960 US-Japan military treaty requires prior consultation with the Japanese Government before the United States can make any major change in the types of weapons deployed in Japan. Introducing nuclear weapons would constitute a major change of the type referred to. The absence of any such consultation has been taken by the Japanese Government to show that nuclear weapons do not enter their ports on US Navy vessels ⁽⁴⁾⁽⁵⁾.

This all sounds fine. The problem is that Japan has for a long time had very large numbers of visits by American warships, and homeports some of them. The May 1990

analysis technique for Scandinavian countries described above was applied to Japan also, and the conclusion was the same ⁽⁴⁾. It is almost impossible to argue that Japan has never had American nuclear weapons in its ports. How is it possible for the Japanese Government to accept these ship visits?

It has been said that the Japanese Government applies the 'no introduction' principle in a way that is 'full of diplomatic delicacy and semantic subtlety', and may accept an interpretation permitting the carrying of nuclear weapons on ships entering Japanese ports in transit as not constituting introduction. It has also been argued that temporary introduction on ships does not constitute deployment of nuclear weapons, so prior consultation is not required in these situations. Subtleties in the translation of 'introduction' into Japanese have also been used as a basis for justifying nuclear capable ships visits.

The New Zealand Government was asking about this by mid-1976 and in one exchange it was stated that if it was not disclosed that ships were in fact carrying nuclear weapons, it was convenient for the Japanese to ignore this issue. There was a considerable flurry of concern in many quarters following statements by US Ambassador Reischauer, Ambassador to Japan from 1960 to 1966, that there was a tacit agreement between the two governments that transit of warships and aircraft carrying nuclear weapons (port calls and overflying) would not be treated as the 'introduction' of nuclear weapons calling for prior consultations. A 22 May 1981 telegram included below from Tokyo to Wellington spells out the situation and events that followed, and underlines the complete ambiguity in the Japanese position.

The conclusion that cannot be avoided is that nuclear weapons did enter Japanese ports for many years. The Japanese Government knew this, but attempted to reconcile this situation with its non-nuclear principles by using arguments that cannot be accepted from a supposed anti-nuclear country, and, furthermore, do not stand up to scrutiny. This has resulted in a policy beset with a level of ambiguity that has destroyed all belief in the integrity of the Japanese in this respect.

There is a parallel between the Japanese situation and the early 1957 and 1963 Holyoake pronouncements, discussed in Working Paper No.7, that New Zealand would not store nuclear weapons. Material already presented should make it clear that nuclear weapons did enter New Zealand ports in the years up to 1984, and this was not a problem for New Zealand governments from 1976 to 1984, while the 1972 to 1975 government operated a 'trust them' policy. The 'no storage' Holyoake policy was effectively equivalent to the Japanese 'no introduction' policy, and like it was not honoured.

Lange discusses the Japanese situation in his book pp.69-70, and American concerns that New Zealand's actions in 1984 might stimulate anti-nuclear sentiment in Japan. However, he says that the Americans could not have been worried about any impact at governmental level in Japan. Japanese administrators were of the same mind as the Americans concerning retaining access for Americans warships on existing terms he says. No instance has been seen of any official support for New Zealand's nuclear free policy from supposedly anti-nuclear Japanese governments.

There are a surprising number of countries that profess to have non-nuclear policies. A study of the policies of 55 countries by the writer published in 1989 ⁽⁵⁾ showed 20 countries that can host foreign warships prohibit nuclear capable ship visits in principle in some manner. However, only 5 do not have these visits. The NCND policy has been a very successful and widely applied policy, but it is an insidious policy that has bred hypocrisy. The logic of retaining it now in the mid-1990s when tactical nuclear weapons have been removed from the nuclear navies of the United States, Britain, France and Russia is difficult to justify. Arguments against the operation of NCND were developed in the May 1990 study ⁽⁴⁾.

22 MAY 81
FROM TOKYO
TO WELLINGTON 916 ROUTINE

NUCLEAR WEAPONS IN JAPANESE TERRITORY

YOUR 932.

1. SHIOTA STATEMENT, WHILE AN ACCURATE SUMMARY OF JAPANESE POLICY, HAS BEEN ENLARGED ON RECENTLY BY THE PRIME MINISTER AS RESULT OF A CONTROVERSY PROVOKED BY REMARKS MADE RECENTLY BY PROFESSOR REISCHAUER, THE HARVARD JAPANOLOGIST WHO WAS AMBASSADOR TO JAPAN FROM 1961 TO 1966. FOLLOWING OUTLINES RELEVANT BACKGROUND AND RECENT DEVELOPMENTS.

2. WHEN THE SECURITY TREATY WAS REVISED IN 1960, IT WAS AGREED BETWEEN THE UNITED STATES AND JAPAN THAT ANY MAJOR CHANGES IN AMERICAN MILITARY DEPLOYMENTS (FORCES OR EQUIPMENT) WOULD BE MADE ONLY AFTER JOINT CONSULTATION. IT WAS ALSO AGREED THAT THE INTRODUCTION INTO JAPAN OF NUCLEAR WEAPONS WOULD BE A MAJOR CHANGE CALLING FOR PRIOR CONSULTATIONS IN ACCORDANCE WITH THE SECURITY TREATY. WHAT WAS LEFT UNCLEAR WAS THE QUESTION WHETHER THE TRANSIT OF UNITED STATES WARSHIPS AND AIRCRAFT (PORT CALLS AND OVERFLYING) ARMED WITH NUCLEAR WEAPONS WAS TO BE TREATED ON THE SAME BASIS AS THE LANDING, DEPLOYMENT AND STORAGE ON JAPANESE TERRITORY OF NUCLEAR WEAPONS AND ACCORDINGLY TO BE MADE SUBJECT TO THE CONSULTATION CLAUSE.

3. REISCHAUER HAS CLAIMED THAT WHEN HE WAS APPOINTED AMBASSADOR HERE IN 1961 HE LEARNED THAT THERE WAS A TACIT AGREEMENT BETWEEN THE TWO GOVERNMENTS THAT TRANSIT (PORT CALLS AND OVERFLYING) OF WARSHIPS AND AIRCRAFT CARRYING NUCLEAR WEAPONS WOULD NOT BE TREATED AS THE "INTRODUCTION" OF NUCLEAR WEAPONS CALLING FOR PRIOR CONSULTATIONS. HE SAID HE HAD CONFIRMED THIS UNDERSTANDING OF THE SITUATION IN 1963 WITH THEN FOREIGN MINISTER OHIRA. IT HAD APPARENTLY BEEN REISCHAUER'S CONCERN THAT THE AMBIGUITIES IN THE PUBLIC RECORD SHOULD BE REMOVED IN THE INTEREST OF OPEN DEALING AND THE AVOIDANCE OF MISUNDERSTANDING.

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4. THE JAPANESE GOVERNMENT HAS DENIED THE EXISTENCE OF ANY AGREEMENT OF THE KIND MENTIONED BY REISCHAUER. ITS SPOKESMEN HAVE SAID THAT IT HAS ALWAYS BEEN THE JAPANESE POSITION THAT INTRODUCTION INCLUDED TEMPORARY VISITS BY US NUCLEAR-ARMED VESSELS AND AIRCRAFT, ALTHOUGH THERE ARE NO RECORDS CONFIRMING THAT THIS INTERPRETATION WAS ALSO THAT OF THE UNITED STATES AT THE TIME THE SECURITY TREATY WAS REVISED IN 1960. HOWEVER, IN 1975, AFTER A RETIRED AMERICAN ADMIRAL HAD ASSERTED THAT MAJOR AMERICAN VISITS (E.G. AIRCRAFT CARRIERS) CARRIED THEIR NUCLEAR WEAPONS AS A MATTER OF ROUTINE IN AND OUT OF THEIR JAPANESE BASES, THE UNITED STATES HAD CONFIRMED JAPAN'S UNDERSTANDING OF THE SCOPE OF THE CONSULTATIVE PROVISIONS OF THE SECURITY TREATY. SINCE THE UNITED STATES HAS NOT REQUESTED PRIOR CONSULTATIONS IN CONNECTION WITH THE MOVEMENT OF US VESSELS AND AIRCRAFT, THE JAPANESE AUTHORITIES HAVE EXPRESSED THEMSELVES AS BEING SATISFIED THAT THE UNITED STATES HAS NOT BEEN BRINGING NUCLEAR WEAPONS IN AND OUT OF JAPAN ON ITS SHIPS AND AIRCRAFT.

5. THE AMBIGUITY SURROUNDING THE QUESTIONS HAS SUITED BOTH PARTIES WELL ENOUGH. CERTAINLY ON THE JAPANESE SIDE THERE HAS BEEN NO OFFICIAL DESIRE TO PURSUE IT FURTHER. IN 1967, THE JAPANESE CABINET APPROVED THE THREE "NON-NUCLEAR PRINCIPLES": NO MANUFACTURE, NO POSSESSION AND NO INTRODUCTION (I.E. BY THE UNITED STATES) OF NUCLEAR WEAPONS. THESE PRINCIPLES HAVE STRONG PUBLIC SUPPORT. THE UNITED STATES HAS INDICATED ITS "RESPECT" FOR THEM. THE JAPANESE GOVERNMENT ACCORDINGLY HAS TAKEN THE LINE THAT THE UNITED STATES CAN BE COMPLETELY TRUSTED TO OBSERVE JAPAN'S WISHES. THERE IS, OF COURSE, NO WAY OF VERIFYING THE PRESENCE OR ABSENCE OF NUCLEAR WEAPONS ON JAPANESE TERRITORY. THE UNITED STATES ADHERES STRICTLY TO THE POLICY OF NEITHER CONFIRMING NOR DENYING THE PRESENCE OF THESE WEAPONS ON ITS SHIPS OR AIRCRAFT.

6. IN THE BACKGROUND OF JAPANESE ATTITUDES THERE IS ALSO THE IMPORTANT CONSIDERATION THAT JAPAN'S SECURITY IS DEPENDENT ON THE AMERICAN NUCLEAR DETERRENT. THE JAPANESE AS A WHOLE, JUDGING FROM NEWSPAPER POLLS, ARE REALISTS, SINCE IN 1975 AS MANY AS TWO-THIRDS OF THOSE POLLED HAD THE VIEW THAT THE POLICY OF BARRING NUCLEAR WEAPONS FROM JAPAN WAS NOT BEING OBSERVED. THE INCONSISTENCY BETWEEN THE ACCEPTANCE OF THE AMERICAN NUCLEAR UMBRELLA UNDER THE SECURITY TREATY AND THE VIGILANT OBSERVANCE OF THE THREE NUCLEAR PRINCIPLES HAS BEEN VIOLENTLY ATTACKED BY THE LEFT-WING OPPOSITION AND THE SPOKESMEN FOR THE "NUCLEAR ALLERGY" WHICH REMAINS UNDERSTANDABLY STRONG IN JAPAN. IT IS, HOWEVER, DOUBTFUL WHETHER THE MAJORITY OF JAPANESE ARE UNDULY WORRIED ABOUT THE AMBIGUITIES WITH WHICH THEY ARE LIVING IN THEIR SECURITY RELATIONSHIP WITH THE UNITED STATES. THE PRESENT GOVERNMENT, MINISTERS OF PUBLIC OPINION TOWARDS NUCLEAR WEAPONS, WANTS TO BE SEEN TO BE UPHOLDING THE THREE NON-NUCLEAR PRINCIPLES BUT AT THE SAME TIME IT WISHES TO ENABLE THE UNITED STATES TO CONTINUE TO DISCHARGE ITS COMMITMENTS UNDER THE SECURITY TREATY. IT HAS SOUGHT TO MEET THESE TWO POSSIBLY CONFLICTING AIMS BY REITERATING ITS ESTABLISHED POLICIES AND REFUSING DEMANDS THAT IT SHOULD ASK THE UNITED STATES TO CONFIRM THAT IT IS ACTING IN ACCORDANCE WITH THOSE POLICIES. IF DR REISCHAUER'S PURPOSE WAS TO FORCE THE ISSUE OUT IN THE OPEN IN ORDER TO HABITUATE THE JAPANESE TO THE REALITY THAT THE UNITED STATES ALLIANCE REQUIRES JAPAN TO ACCEPT THE CARRIAGE OF NUCLEAR ARMS IN AND OUT OF JAPAN, HE HAS NOT BEEN SUCCESSFUL.

ON 21 MAY THE PRIME MINISTER REPEATED IN THE DIET THE MAIN ELEMENTS OF THE JAPANESE GOVERNMENT'S POSITION. THE ██████████

[REDACTED] PAGE FOUR/916 [REDACTED]

JAPANESE AND UNITED STATES GOVERNMENTS ARE AGREED THAT THE REQUIREMENT FOR PRIOR CONSULTATION INCLUDES ANY PROPOSALS FOR TRANSIT CALLS BY NUCLEAR-ARMED SHIPS AND AIRCRAFT. IT IS UNNECESSARY TO RECONFIRM THIS WITH THE UNITED STATES. IF THERE WERE ANY SUCH PROPOSALS THEY WOULD BE REJECTED BY JAPAN. THE AMERICAN UNDERTAKING TO RESPECT JAPAN'S POLICY STILL STANDS AND HAS BEEN REITERATED BY THE PRESENT UNITED STATES AMBASSADOR AND FOREIGN MINISTER SONODA. THE PRESENT GOVERNMENT ADHERES TO THE POLICY FIRST ANNOUNCED IN THE LATE 1960S BY THE SATO CABINET THAT THE NON-NUCLEAR PRINCIPLES REQUIRE JAPAN TO REJECT REQUESTS FOR THE INTRODUCTION OF NUCLEAR WEAPONS INTO JAPAN EVEN IN EMERGENCIES OR IN TIME OF WAR, EVEN THOUGH IT IS IMPOSSIBLE TO FORECAST WHAT THE SITUATION WOULD BE IN THE EVENT OF A NUCLEAR WAR WHICH WOULD BRING WITH IT THE THREAT OF ANNIHILATION TO THE HUMAN RACE.

SECRETARY OF FOREIGN AFFAIRS(UNC AAD) [REDACTED]

COL 916

20/2/002 TK

An unpleasant conclusion that follows from these studies is that there may have been some active collusion by the governments in some of these countries with non-nuclear policies over visits by nuclear capable warships carrying nuclear weapons. It would certainly seem reasonable to argue that these governments had access to the same types of information used in the studies cited and could reach the same conclusions, which they could then have acted on in various ways.

What is worse about this whole NCND problem is that it has generated a deep level of distrust of the nuclear navies and the military involved. This distrust has also spread to include distrust of sections of the administrations in those countries. It is difficult to dispel distrust once established, and this should pose a serious difficulty for those in New Zealand who want New Zealand to restore full military links with the United States, still a nuclear power with a nuclear navy. Furthermore, hypocrisy of the level shown by the nuclear powers in the application of the NCND policy and by governments colluding with them cannot, and should not, be forgotten.

The language, logic and morality, and the ambiguity of NCND in application, has been discussed by Dr Mike Goldsmith, then a staff member in the Department of Politics, University of Waikato, who sees such a logical analysis of the contradiction in the Danish-New Zealand situation as presented here as resting on too narrow a concern with the propriety of international relations, and as requiring a notion of how governments ought to comport themselves, in the conduct of foreign affairs without recognising that there is always recourse to moral justifications on both sides.

NCND, like many other conventions, creates a space for governments to act with what they consider to be proper morality; a sense of firmly felt propriety (however deficient the argument on which it is based) is often recruited to support actions of pragmatic intent ⁽⁸⁾.

He is referring to the argument for NCND as having as its fundamental purpose the military security of nuclear weapons by concealing their presence from an aggressor, and providing greater flexibility in deploying nuclear weapons in support of nuclear deterrence. NCND is thus seen as an essential part of nuclear deterrence. But in the case of the governments of countries with non-nuclear policies like those of Denmark and Japan, NCND is seen in the present study as a tool allowing those governments to argue that they believe their non-nuclear policies have been honoured, and that the NCND ambiguity is retained by their nuclear allies for strategic reasons, thereby attempting to counter suspicions amongst their citizens concerning the presence of nuclear weapons on visiting warships.

Why then was New Zealand so different, and why does the United States still maintain its ban on ship visits and military contacts when its military in the Pacific have been declared free of nuclear weapons, so NCND can no longer be argued to apply to them? They and the British were, and are, clearly not averse to having military contacts including naval visits and alliances with countries that have non-nuclear policies that in principle ban the entry of their naval nuclear weapons, and to which they will not, by their own choice, send their nuclear powered warships. Why did this not hold for New Zealand after 1984, and in particular why does it not hold now in the mid-1990s?

Different treatment of New Zealand was already seen in the mid-1970s as noted, with pressure exerted for the renewal of access for nuclear powered vessels. This is interpreted as manifesting the determination of the United States to have full support for its global naval nuclear strategies, and for its allies to be seen as loyal supporters of alliance relations with the United States.

There were ships in the US Pacific Fleet in the 1980s that could easily be identified as not equipped to carry nuclear weapons from public information sources like the annual editions of Jane's Fighting Ships, and that could have been sent to New Zealand without

challenging the nuclear free policy, had the Americans wished to maintain existing military relations while trying to defuse the nuclear issue. Indeed such a choice, of a Oliver Hazard Perry Class ship, was proposed at the time of the Buchanan incident in 1985 by the New Zealand Government. The proposal was leaked to the media which complicated the issue, but the proposal was rejected by the Americans in any case as discussed by Lange, pp 87-91 of his book. Further, Lange did tell them that any rejection of a ship visit request would be kept secret. This was not satisfactory either. As Lange recounts p.146, Shultz on being told this responded that New Zealand might be able to keep a secret, but the United States could not. 'Our system leaks like a sieve' he said.

The reason the Americans could not send any type of warship to New Zealand after the Buchanan incident was simply that no indication could be given to other allies with non-nuclear policies that the US Navy was in any way, or to any degree, accommodating New Zealand's nuclear free policy. While New Zealand was not itself strategically of any great importance, allies like Denmark might be moved by seeing New Zealand receiving only US Navy ships known to be free of nuclear weapons to want similar treatment. They could have become infected with the 'Kiwi disease' as the nuclear free policy was termed then. This could have had a serious impact on the unhindered operation of NCND in strategically important regions, the Atlantic and the Mediterranean for example, and the Pacific should Japan be influenced. A stern example had to be made of New Zealand so others would definitely not follow.

This strategy, coupled with other influences the United States and Britain had within NATO and with non-nuclear countries, worked very well. No other country followed New Zealand's lead and adopted a non-nuclear policy like New Zealand's such that breaches could not be concealed by diplomatic nuances of interpretation as with Japan, or by blindly ignoring the obvious as with Denmark, Sweden and others.

The situation in the mid-1990s is different, but the position of the United States on ship visits is unchanged, at least it was at the time of writing. This has no logical justification considering the continued willingness of the US Navy to visit Denmark, minus its nuclear powered warships, and considering that the US Pacific Fleet is effectively free of nuclear weapons as far as likely visits to New Zealand is concerned. So why no visits? The United States has maintained its policy of no visits while the nuclear free policy remains for some 14 years now, and its position that New Zealand by imposing restrictions on warship visits has defaulted on certain of its ANZUS obligations. The argument continues to be presented, as it was even in the 1970s, that the US Pacific Fleet cannot be divided into two fleets, nuclear and conventionally powered just for New Zealand, but as stated tediously often now, this is done for Denmark.

2.5 The Danish and New Zealand Policies - the Difference

Section 2.3 presented the question of why New Zealand should have been treated differently from Denmark by the United States and Britain, and continue to be so treated by the United States, when both countries have policies that in practice result in no visits by nuclear powered warships. While this is the outcome in practice for both countries, there is a significant difference in principle between the policies that is here considered to be seen as very important by the United States. Denmark does not ban visits by nuclear powered vessels, but New Zealand does, as many have pointed out.

The Danish Government requires information about such vessels which the nuclear navies could, if they wish, supply, in an emergency for example. Such navies have chosen not to since 1964, but this decision is theirs. So the decision not to have their nuclear powered warships visit Denmark is controlled by the governments of the nuclear powers involved. In the New Zealand case, however, the decision not to have these visits is out of the control of these governments. It is made by New Zealand. The United States and Britain are told that their nuclear powered warships may not visit under

any circumstances. For these nuclear powers this is a major difference. The British appear to have accepted New Zealand's position, the Americans have not.

For the United States, this position taken by New Zealand can be seen in some sense as challenging or questioning the ability of the United States as the leading world power to judge what is best for world order and world peace, here as manifested through the strategies of its navies. Denmark does not do this through its policy. Further, in the case of New Zealand, this apparent questioning of American judgement is being done by a country that has acquired a high anti-nuclear profile since 1984, so this behaviour becomes even more unacceptable.

To renew ship visits in this situation would appear as a considerable weakening on the part of the United States of its positions regarding New Zealand. While there have been recent indications of some softening of the attitude of the Americans to New Zealand regarding naval contacts, a major change could be interpreted negatively by other countries, with resulting adverse consequences in military relationships with the United States, something it and the US Navy are, not surprisingly, very averse to. The Americans have got themselves into a position that is going to be difficult for them to extract themselves from, should they so wish. They show no indication of seeking to implement change at present, continuing to say that it is New Zealand that must change. There seems no likelihood that New Zealand's legislation will change. The situation appears deadlocked, a matter of great concern to some in New Zealand and of great satisfaction to others.

The legislation also represents a public challenge to nuclear deterrence. While the NCND problem is fading somewhat in significance now that the nuclear navies have removed most of their nuclear weapons, the public rejection by New Zealand of nuclear deterrence and nuclear powered vessels both stand as major blocks to a renewal of former military relations with the United States.

Should the United States seek to ameliorate this situation at any future time, the unpleasant history of NCND and what this implies concerning the integrity of its proponents should not be forgotten. Other aspects of the NCND problem and sections 9 and 10 of the Act are discussed in Working Paper No.8, pp.28-33.

2.6 A Proposal for Solving the NCND Problem

The problem for the NCND policy with New Zealand's legislation is that the Act represents a challenge to a covert aspect of western nuclear deterrence strategies. This problem could be solved now, at least in peacetime, by a simple decision by those countries operating NCND policies. This is for them to abandon these policies in times of peace, and if it was considered necessary, to reinstate NCND in times of crisis. Reinstatement might be seen as necessary if the nuclear powers decided that their navies needed the protection that NCND apparently offers and, in the case of the United States, if it decided that its navy should be re-equipped with nuclear weapons now held in storage. This proposal would not appear to compromise the nuclear navies in any way since the warships involved are now free of nuclear weapons apart from deep sea ballistic missile submarines, and it is universally accepted that these are nuclear armed. So there is nothing to hide here apart from the detailed movements of these vessels, which are kept well concealed.

2.7 Criticisms of Sections 9, 10, and -11

Helen Clark, reporting the findings of the select committee that studied the Bill and submissions on the Bill, said that most of the submission saw clauses 9 and 10 as at the heart of the Bill, and agreed they should be strengthened. For example, she said,

669 submissions - more than half the total - wanted the standard of proof required by the Prime Minister on the absence of nuclear weapons on board warships or aircraft extended from the 'is satisfied' test provided in the Bill to a test of 'beyond reasonable doubt'. 'Some submissions argued that the decisions for entry or landing in New Zealand's nuclear free zone should be made by persons other than the Prime Minister, or that the Prime Minister should share the decision making with others. ' ... After due consideration of all the options the decision was made to leave clauses 9 and 10 unaltered, in the belief that in their present form those clauses will prevent the entry of nuclear weapons into New Zealand, which is, after all, the key objective of the Bill (NZPD vol475 1986, p.4995)

The SANA group was also very critical of the forms of clauses 9 and 10 in the Bill. They were concerned that clause 9(1) could provide a loophole whereby 9(2) could be circumvented. A Prime Minister could in changed circumstances consider that New Zealand's strategic and security interests outweighed other considerations and admit a potentially nuclear armed warship. Again, they argued, a Prime Minister could be 'satisfied' in terms of the existing clause 9(2) in the Bill and grant entry to a warship, but find he was mistaken about its nuclear armed state. The 'is satisfied' requirement was seen as very weak.

The proposal made by the group was that the existing clause 9 be replaced by a clause requiring that a foreign warship be granted entry to the NZNPFZ only when the government of the country of origin of that warship confirmed that it carries no nuclear explosive device, was not designed for the transport, delivery, or support of such devices, and was not used as or carrying any such transport, delivery, or support system or part thereof. That government would issue a certificate to the Public Advisory Committee on Disarmament and Arms Control (PACDAC) who would make this certificate public. A verification mechanism was also proposed to be included in the Bill that would allow for inspection by appropriate persons of visiting warships 'or aircraft admitted under clause 9 as amended, or clause 10 similarly amended. Such inspections could be at the discretion of the Public Advisory Committee, who would appoint appropriate inspectors, and make their findings public.

No such changes were made to the Bill, and this is not surprising. While these changes would have produced a stronger prohibition on nuclear weapons entering New Zealand, the nuclear powers have never, in general, issued declarations concerning the nuclear armed state of their warships or aircraft, although a few exceptions to this have occurred, see ref.4, pp.40-42, and chapter three. Normally, in keeping with NCND, these countries refuse to make declarations relating to the locations of nuclear weapons. The 1984 Labour Government was very concerned to produce a formula that would not undermine NCND, as the quotation from Geoffrey Palmer in section 2.4 indicates, even though they did not succeed. 'The procedures proposed by the SANA group ran completely counter to NCND, and would have been unacceptable to the proposers of the Bill

The port of Kobe in Japan has since March 1975 demanded such declarations before admitting foreign warships, and does not have visits by US Navy vessels as it did prior to 1975.

The complete ban on nuclear powered ship visits in clause 11 was strongly supported by the SANA group and by other like minded groups and individuals. However, SANA wanted the ban extended to the complete NZNPFZ. This was not done, there would have been problems with innocent passage through New Zealand's territorial sea as for possibly nuclear armed vessels. But measures that could have been put in place under the Law of the Sea Convention discussed in chapter one were not implemented.

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CHAPTER THREE

VISITS BY US MILITARY AIRCRAFT, HAREWOOD

3.1 Military Aircraft Visits and the Harewood Situation

A section of the Act that has caused on-going concern within the New Zealand peace movement is section 10 which addresses the question of visits to New Zealand by foreign military aircraft that might be nuclear armed. This section is worded in exactly the same way as section 9 covering the entry of foreign warships, and requires the Prime Minister to be satisfied that aircraft will not be carrying nuclear weapons before granting landing approval, this approval being based on all available relevant information and advice. However, unlike section 9, there is in sub-section 10(3) the possibility for the Prime Minister to grant approval for a category or class of foreign military aircraft, 'including foreign military aircraft that are being used to provide logistic support for a research programme in Antarctica'. These aircraft use facilities at the Christchurch airport in the suburb of Harewood, operated for most of their history by the US Navy and Air Force, but latterly by the US Air Force.

Approvals may be granted for a specified period, and this has traditionally been a period of 12 months. Copies of the approvals for certain categories of United States military aircraft given by David Lange on 8 June 1987, the day the nuclear free legislation became law, were included in Working Paper No.8 following page 41, and the latest forms of those approvals signed by the present Prime Minister, Jenny Shipley, on 10 December 1997 were detailed on p. 28 of that working paper.

There were two problems for the peace movement with sub-section 10(3) of the Act. First, how could New Zealanders be sure these United States aircraft were actually free of nuclear weapons? Second, the approvals given by Lange in 1987, and every year subsequently by the current Prime Minister, include categories of United States military aircraft other than those with direct involvement in the Antarctic research programme. Instead they are considered by the peace movement to be involved in activities that support American nuclear and intelligence strategies, thereby subverting at least the spirit and purpose of the Act if not infringing it. We need to examine the history of the situation to some extent to better understand these two concerns, although it is not the intention to explore this very extensive history in detail in this paper. Much of what follows is taken from articles produced by a very dedicated band of researchers in Christchurch who have for many years observed these aircraft arrivals and departures, and behaviour associated with their presence. These articles are to be found for the most part in issues of the journal Peace Researcher, the journal of the Anti-Bases Campaign as the group is now called, formerly the Citizens for the Demilitarisation of Harewood, and concern what has become known as Operation Deep Freeze (ODF).

3.2 The Harewood Situation up to the Passing of the Legislation in 1987

The US Navy first established a foothold in Christchurch in the mid-1950s in relation to International Geophysical Year activities in Antarctica, including flights to and from Antarctica via Christchurch by American military transport aircraft to service facilities there. In 1958 the arrangement was formalised through a US-NZ Agreement dated 24 December 1958 'regarding the provision of facilities in New Zealand for US Antarctic expeditions', and amended on October 18 1960. A Memorandum of Understanding attached to the agreement requires in paragraph 1(a) that,

1(a) The New Zealand government will provide as far as possible facilities in New Zealand requested by the United States authorities in connection with United States operations in Antarctica. It agrees to the establishment of operational headquarters in New Zealand and to the transit of United States personnel, ships and aircraft through New Zealand. United States personnel may be accommodated in New Zealand and United States aircraft may be based at agreed airports within New Zealand.

By 1984, in response to this agreement and earlier practice, a pattern of ODF related aircraft flights through Christchurch had been established. But these were not the only aircraft that visited Christchurch at that time. Around 1962-63 a series of flights through Christchurch began that became known as the 'channel flights'. These aircraft did not go on to the Antarctic at all, but were en route to Australia, or returning from Australia, and followed a quite regular pattern.

Flights into and out of Christchurch by American military aircraft had, of course, been occurring for many years by the time the nuclear free policy came into force in July 1984. It is relevant here to examine what the procedure had been for giving these aircraft diplomatic clearance to land before this, and what happened as a result of the requirements of the nuclear free policy coming into effect.

Prior to 1970, all visiting foreign military vessels and aircraft required individual clearance. But in December that year, and following considerable pressure from the United States, the US Embassy was invited, with the Prime Minister's approval, to seek annual blanket clearances for visiting US Navy vessels that were not nuclear powered, with no questions asked about their armaments nuclear or otherwise, and for clearances for certain categories of United States military aircraft. These were,

annual clearances for regular flights by military non-combat aircraft entering New Zealand in support of United States installations established pursuant to certain specified memoranda of understandings attached to agreements between the New Zealand and US Governments (viz the 1958 Agreement amended 1960 regarding the provision of facilities in New Zealand for US Antarctic expeditions - still in force; the 1963 Agreement concerning the provision of facilities in New Zealand for a US programme of research on aerospace disturbances - still in being; and the 1968 Agreement concerning the provision of a facility in New Zealand for a US programme relating to space vehicle tracking - now terminated). Regular notification of such flights was a condition; and second to seek quarterly clearances for military non-combat aircraft visiting New Zealand with high priority cargo in support of US installations or with dignitaries visiting New Zealand with the prior knowledge of the New Zealand Government. Notification of flights was a condition. ... Other US military flights from 1970 ... continued to require diplomatic clearance on a case by case basis. (private communication, M J Powles for Secretary of Foreign Affairs, 9 October 1987)

Material in the ministry of foreign affairs and trade files 59/206/20 and 59/8/2, the 'ministry files' below, provide a history of these clearance procedures from 1970 up to the time the legislation was passed in 1987, and this history has a number of interesting features of its own which we will look at briefly. The clearance procedures for the categories of aircraft detailed by Powles were approved and continued through to 1984. Individual clearances were also given for a range of other US military aircraft visits. (Note: Clearances for the second category of aircraft were changed by 1987 to annual clearances rather than being issued quarterly.)

These procedures continued after the 1984 election, and late 1984 saw the US Embassy making standard requests to the Ministry of Foreign Affairs, as it then was, for blanket clearances for their aircraft, and interestingly for their warships. These were all granted, although in the case of ship visits a new requirement was added that the New Zealand

Government had to have assessed visiting warships as not being nuclear armed (see Working Paper No.7, facing p.8 for a copy of this blanket clearance note). The ministry files contain a note dated 4 February 1985 from Murray Watkins of the ministry to David Lange concerning these blanket clearances, recommending they be granted, and arguing that these involve non-combat aircraft only so they are not equipped to carry nuclear weapons and are parked unattended, and saying an irrational and negligent commander would be required to do this on a civilian airfield. Lange approved the clearances.

A letter from Air Attache to the United States Embassy, Colonel P D Clark US Air Force, to the Ministry of Foreign Affairs dated 15 November 1984 indicates that there were three groups of aircraft to consider in relation to the annual clearances. He was notifying the likely pattern of flights by calendar year to be expected at that time. He said that the US Air Force Military Airlift Command (MAC) was committed to two missions each week to stations in New Zealand and Australia, transiting Christchurch to off load and on load cargo in support of American installations and activities at each stop (the channel flights). These would use C141 Starlifters. There could be up to three extra missions each week in the peak cargo and passenger carrying period associated with ODF activities he continued. He anticipated around 20 further flights each year bringing visiting dignitaries to New Zealand with the prior knowledge of the New Zealand Government. The mission itineraries for the channel flights were from Hickam Air Force Base in the United States to Pago Pago to Christchurch to Richmond Air Force Base and Alice Springs in Australia, returning via Richmond and Pago Pago. Alternatively the flights went from Hickam to Pago Pago to Richmond to Woomera to Learmonth and back to Richmond, and then returned via Christchurch. The second category of aircraft in the 1987 letter from Powles would, presumably, have included both the channel flights and the extra flights carrying visiting dignitaries. (ministry file 59/206/20)

Blanket clearance requests for 1986 were made on 4 November 1985 with US Embassy notes 122 and 133 covering the two categories of aircraft in Powles' letter. It is interesting that the US Embassy always asked for the two clearances separately, presumably so that clearance could be given without confusion for only one category should New Zealand so decide. Watkins contacted others in the ministry and the Ministry of Defence in December saying that US installations was generally taken to mean the US Embassy, but the US could consider Black Birch as a 'US installation' too although they have never said as much and we have not raised it with them - this since the 11 November 1982 agreement with the US Government establishing Black Birch. There were no objections from these ministries to continuing the past practice, and Watkins' 12 December note, copied to his colleagues, has on it that by hand the PM says give the Americans this blanket clearance 'without delay'. This was one area of cooperation involving the US Navy and the US Air Force, that continued unaffected by the nuclear free policy.

Coming to 1987, the US Embassy applied on 26 November 1986 for the standard annual clearances for the calendar year 1987, and these were granted on 1 December, regardless of the fact that the legislation was advancing through Parliament, and could have required changes to these procedures when enacted. This did not happen and the legislation included in sub-section 10(3) the specific exception for the ODF flights. Before turning to the post-legislation situation, we examine briefly another aspect of the Deep Freeze operation, United States maritime support activities.

United States ships were involved in logistics support for Operation Deep Freeze as well as their military aircraft. These ships were US Coast Guard ice breakers and merchant ships, some US Navy operated early in the establishment of the Antarctic programme, but later all operated under contract to the US Navy Military Sealift Command (MSC), and had participated in ODF related activities for many years prior to the nuclear free policy coming into force. There was no initial change in this situation for some time after July 1984, but a telegram from the New Zealand Embassy in Washington to Wellington dated 11 December 1986, marked 'For New Zealand Eyes Only' said that there would be

no US Coast Guard visits this season, referring to the season appropriate to ODF activities in 1986-87 presumably, as the US Coast Guard Command 'regards their vessels as being subject to NCND in exactly the same way as those of the US Navy'. This does not apply to commercial vessels under charter, the telegram stated, and port calls by two MSC ships in January and February 1987, one a tanker and the other a resupply ship were scheduled. This NCND question was foreshadowed in October 1984 when another telegram from the New Zealand Embassy stated that NCND covered the US Coast Guard as well, but visits did not stop then.

However there was a fuss of sorts about an earlier proposed US Coast Guard visit in 1986 by the icebreaker Polar Star to Auckland in February 1986, diplomatic clearance for which was requested on 31 December 1985 and granted on 30 January after some discussion by New Zealand officials. The visit was subsequently cancelled as the ship was experiencing engineering problems and the resulting delay precluded the Auckland visit. A 6 March 1986 communication between the Embassy in Washington and Wellington in file 59/206/20 vol. or part 14 said there was

quite a fight within [the US] State Department and then between State Department and Defense Department about whether Polar Star should go the New Zealand at all this last Antarctic summer. There is of course no suggestion that the engineering problems which precluded the visit to Auckland after the US request for diplomatic clearance had been lodged and approved, were 'diplomatic ones'. And let us hope that all those concerned at this end adopt a more sensible approach towards this aspect of cooperation next time around.

The MSC supply ship referred to in the 11 December 1986 telegram was called the Green Wave, and a US Embassy Note 133 of 28 November 1986 requested diplomatic clearance for this visit to Lyttleton from 23 - 26 January and 13 - 15 February 1987 'for the purpose of onloading and offloading cargo in support of Operation DEEPFREEZE'. The clearance was given by the Ministry of Foreign Affairs on 3 December. There was some fuss about this visit by the Green Wave. These ships under charter were referred to as United States Navy Subordinated vessels, or as United States Naval Ships, USNS, in the Embassy note for example.

A memo from Watkins to some others in the ministry dated 2 December 1986 refers to material from Jane's Fighting Ships to clarify the status of these USNS ships as compared with the USS, United States Ship, used for US Navy manned ships. The MSC ships were manned by civilians, Jane's said, and gave the owner of the Green Wave as Central Gulf who had chartered her to the MSC from 2 January 1985 to 1 June 1989. Watkins was concerned that some people in the community could be confused by the USNS preceding Green Wave's name 'and they may make assumptions that are not called for.' The concern, it would seem, was that people would take this to be a US Navy ship visiting and question this visit because of the nuclear free policy and NCND.

These concerns were extensive enough for the Legal Division of the ministry to give an opinion as to whether or not the Green Wave would be classed as a foreign warship under the Act. Four criteria were set out by that Division for assessing the status of a visiting ship, the criteria referred to briefly in the preceding chapter. Did it belong to the armed forces of another state; did it bear external markings that distinguish ships of that state's nationality; was it under the command of an officer duly commissioned under the government of that state; was it manned by a crew under regular armed forces discipline.

The Legal Division's view was that the Green Wave was under contract to the MSC, so it could be argued to 'belong' to the United States armed forces by virtue of the contract. These USNS ships bear the hull designation T, but it was not clear if this was painted on. But it would be flying the American flag, possibly enough to satisfy the second criterion. The ship's master was described in a way which the ministry said was common merchant navy practice, and probably employed under contract, not a US Navy officer. Jane's

gave that the MSC fleet was manned by civilians, which together with advice from the ministry suggested the crew were not subject to regular armed forces discipline. The Legal Division's conclusion was that more likely than not the Green Wave was not covered by the definition of foreign warships in the Act, and the latter two criteria were not met. It was not necessary, therefore, for the Prime Minister to approve its entry into New Zealand's internal waters under the Act. Ministry officials were satisfied that the visit 'would be consistent with the provisions of the Act, and reported this to ministers'. (private communication from A Cook, 12 November 1998)

The Ministry of Foreign Affairs and Trade was asked if the Green Wave did visit as planned. They replied that they were not in a position to advise whether the ship did visit Lyttleton, but assumed it did, since its purpose was to load cargo on behalf of the US National Science Foundation for the US Antarctic Program. (private communication 12 November 1998) They also stated that the vessel has visited Lyttleton since, most recently in January 1998 to load supplies for Antarctica, and under tow in March 1998, as indicated above.

However, Mr W Oliver, Marine Operations Manager of the Lyttleton Port Company Ltd, was able to confirm that the Green Wave did visit Lyttleton from 26 January to 1 February 1987 during its passage from the United States to Antarctica returning two days later on 3 February for engine repairs, and again from 24 to 26 February 1987 en route from Antarctica to the United States. (private communication 4 December 1998)

The Ministry of Foreign Affairs and Trade was asked in October 1998 for information relating to US Coast Guard visits after 1984. The reply was that,

Since 1984 there has been one visit by a vessel of the US Coast Guard - the USCG icebreaker Polar Star visited Lyttleton from 1 to 7 March 1998 following approval by the Prime Minister under the relevant provisions of the Act. Its purpose in doing so was to tow in the [MSC supply ship] Green Wave which had broken down in the Ross Sea. (private communication from A Cook, 12 November 1998)

3.3 The Harewood Situation Subsequent to the Passing of the Legislation

We now turn to the period post June 1987 with the legislation in place. That Labour should include in the legislation some mechanism to allow the continuation of the flights to Antarctica or supporting the Antarctic programme was foreshadowed in Labour's 1984 Party Policy Document which includes an extensive portion specifically on Antarctica. Section 27 of this policy document, 'Labour will therefore, ...', includes as part (c), 'support continuation of New Zealand's scientific endeavours in the Antarctic region and facilitate joint scientific ventures with other states'. This would include the joint activities undertaken in Operation Deep Freeze. These in turn required the continuation of ODF related flights providing logistic support, by inference including the channel flights, some of which carry cargo for the Antarctic programme. We see this built into sub-section 10(3) of the Act, although the direct reference to these ODF flights as constituting a 'category or class' of aircraft to be given blanket approval was only added as an amendment by Lange in May 1987, see Working Paper No.8, chapter one.

The reason or reasons for continuing to grant blanket clearances for the channel flights after the nuclear free policy came into effect in 1984 is not obvious except that they did at times carry cargoes for ODF and other United States installations, and Watkins had argued that they would not carry nuclear weapons. Again, terminating their visits would have been a very unpopular move with the United States of the sort the New Zealand Government was anxious to avoid. How frequently support for ODF was the main reason for them stopping in Christchurch is considered below in relation to the main purpose of these flights. Norrish produced a memorandum for Lange on 4 June 1987, the day the Bill passed its third reading, discussing the questions of entry of foreign warships and foreign military aircraft into New Zealand under the legislation. This is

reproduced in full in Working Paper No.8 following p 41, but parts of it are very relevant to the present considerations and are summarised here. Norrish had obviously given these matters considerable thought in anticipation of the legislation coming into effect. His memo discussed all countries whose military aircraft and warships had visited New Zealand regularly.

Considering the United States, he wrote that combat aircraft were in the past subject to case by case clearances for visits. Non-combat aircraft were subject to a modified clearance regime. Blanket clearances had been sought annually for two categories of flights:

- (i) flights in support of the US Antarctic Programme,
- (ii) flights carrying high priority cargo for US installations in New Zealand or with dignitaries visiting New Zealand with the prior knowledge of the New Zealand Government.

These arrangements would need to be reconsidered when the legislation entered into force Norrish said. Further on in his memo he lays out arguments for continuing the existing arrangements for these two categories of non-combat aircraft; the second category carrying cargo for the US Embassy and the American operated observatory at Black Birch he states.

He argued that the aircraft involved were 'non-combat', 'C130 and C141 transport aircraft plus occasional tanker aircraft for inflight refuelling. They are not designed or equipped to engage in air-to-air or air-to-ground combat.' They fall into two categories, he said:

- (a) flights actually going to Antarctica with personnel or supplies and their associated refuelling aircraft.
- (b) USAF military airlift command 'Channel Flights' on a regular shuttle from the US to Australia and back. Australia is the only destination for such flights.

He then makes what is considered to be a somewhat questionable claim, that by virtue of the Antarctic Treaty, referred to briefly in chapter 1, Antarctica is a demilitarised zone. 'The transportation then (sic) of any bombs, let alone nuclear explosive devices, is prohibited.' This is one of his arguments to show that none of the flights in either category carry nuclear weapons. But as pointed out in chapter 1, this treaty only prohibits nuclear explosions in Antarctica, and makes no direct reference to bombs or nuclear weapons being prohibited. However it does allow the major signatories to inspect any aircraft landing in Antarctica which would be unacceptable to the nuclear weapons powers for aircraft carrying nuclear weapons.

Australia, he points out, is a signatory to the SPNFZ treaty, and 'has prohibited, as a matter of its own criminal law the stationing of foreign nuclear explosive devices on its territory including the transportation of such devices in Australia'. The channel flights, he argues, could not unload any nuclear weapons in New Zealand or Australia, their only stopping points, and any nuclear weapons they might carry could not be transported lawfully in Australia from these aircraft to other American aircraft or vessels. 'It is inconceivable that one [nuclear weapon] would be transported from the US and back again simply as an exercise.'

A further argument he gives is that when United States aircraft transporting nuclear weapons land, extremely high security measures are provided, including armed guards, around the aircraft. These are not seen in Christchurch when such aircraft are there. Also nuclear weapons when being carried are not mixed with other cargo, he says, and the most direct route is used. A stopover in New Zealand would not be contemplated or necessary 'given the capability of US transport aircraft to fly direct from US airbases in the region to any relevant destination'. Finally he argues that New Zealand agricultural

quarantine personnel inspect the aircraft, and New Zealand personnel are responsible for loading and unloading such aircraft. The possibility of detection rules out even the 'negligible possibility' of any covert unguarded transport of a nuclear weapon he concludes. Evidence is presented below suggesting that this last claim is invalid for the channel flights.

Norrish then turned to the requirements under section 10 on the Prime Minister to have regard to relevant information and advice including information and advice concerning the strategic and security interests of New Zealand. He says the advice he has given is in response to this requirement. Antarctica, he points out was identified in the recent Defence Review as of 'considerable strategic significance', for New Zealand, and the review also states that

the Antarctic Treaty, together with the cooperation established under it, is the basis for stability in the region to our South. Our security interests are therefore served by maintaining the cooperative arrangements that exist in respect of Antarctic research. This applies to the vast majority of incoming US aircraft.

A number of Norrish's assertions, are considered further below. He cited New Zealand's obligations under the treaty quoted earlier as a further basis for admitting the ODF aircraft under sub-section 10(3).

Turning to the flights visiting New Zealand to offload high priority cargo or visiting dignitaries, he argued that these have

only limited implications for New Zealand's security or strategic interests. Inasmuch as VIPs travelling on military aircraft have usually been either Cabinet level officers or senior officials visiting for consultations in the defence and security fields there is an advantage in terms of our strategic interests in facilitating such visits. With respect to Section 10(3) our advice is that these aircraft also constitute a 'category or class' within the meaning of that provision.

A draft determination relating to US aircraft is attached for your consideration.

The above represents a synthesis of the advice and information available from officials of different departments.

The document has the words signed 12.10 pm 8/6/87 against the draft determination sentence, in what must be Lange's hand, so he accepted the proposals for annual clearance for both categories of United States military aircraft made by Norrish. As stated in chapter 6, Lange considered Norrish to be a 'model of rectitude', and would have relied on his judgement. These analyses from Norrish appear to be the basis on which Lange signed the first annual blanket clearance on 8 June 1987 covering both the ODF and the channel flights, and other flights carrying visiting dignitaries, a document clearly prepared in advance in anticipation of the legislation being passed, since the figure 8 was written in by hand. As stated already, these clearances continued, and continue, to be renewed annually, see Working Paper No.8, pp.27-8.

Lange discusses the Harewood question in his book chapter 13, and a number of his comments will be examined subsequently. In relation to the channel flights he says p.174,

Members of the peace movement regarded the Harewood base with deep suspicion. ... It was the flights to and from Australia that made them anxious. ... I didn't share their worry. It never seemed to me that our nuclear-free policy, required that we demand from the Americans an accounting of the contents of the hold of every Starlifter [C141] - we made our own judgement.

In other words, as long as he was satisfied these C141 Starlifters did not carry nuclear weapons, what other purposes the channel flights might serve did not matter in terms of the legislation. In principle this is correct, but in terms of New Zealand's status as a nation rejecting nuclear deterrence and nuclear strategies, in terms of the morality of Labour's nuclear stance, Lange's position is not necessarily quite so easy to justify.

Lange spelled his position out more clearly in a 1 December 1986 letter to Maire Leadbeater, a well known peace campaigner and then a spokesperson of the Campaign for Nuclear Disarmament, in which he was responding to a number of questions from her. With regard to the channel flights he claimed that most of them were also visiting New Zealand in support of the American Antarctic research programme.

I understand that the same aircraft frequently do fly on to Australia to deliver cargo to US installations in that country. I have no problems with that. ...The non-Antarctic aircraft do all have cargo for (one or more of) the US Antarctic research programme, the US Embassy, or the US Naval Observatory at Black Birch. There would be no point in them going all the way to Christchurch unless they had cargo to deliver or pick up there. ... I have no problem with the idea that US aircraft transiting through Christchurch are also carrying cargo to US installations in Australia. Moreover, these cargoes are going to a country, Australia, which as a party to the Nuclear Non Proliferation Treaty has pledged not to acquire or use nuclear weapons.

I fully accept that we must have certainty about the role of the United States aircraft transiting through Christchurch. We have that certainty already. I do not accept that it is essential for us to have certainty about the cargoes that the aircraft are carrying to destinations beyond New Zealand. I see no conflict here with the provisions of the Nuclear-Free Zone, Disarmament and Arms Control Bill. Our policy, as you well know, is to keep New Zealand nuclear free.

But as we shall see, the source of the peace movement's concern with the channel flights being allowed into nuclear free New Zealand has always involved the question of what cargoes these aircraft carry to Australia.

There is one interesting point that should be noted at this juncture concerning the annual clearances following the passing of the Act. Up to and including the annual clearance given for 1987 mentioned earlier, these clearances had described the aircraft involved as 'non-combat' aircraft. However, in the 12 month clearance signed by Lange on 8 June 1987, the day the legislation came into force, the words 'non-combat' do not appear. This document, clearly prepared in advance, see Working Paper No.8 following p.41 for a copy, presumably overrode the existing clearance for 1987. Nor does this term appear in the most recent clearance given by Shipley for 1998, see Working Paper No.8, p.28 for the details of this clearance.

The reason for this change is given in documents in the ministry files, in a telegram from Wellington to Washington dated 9 June 1987 for example headed 'Nuclear Free Zone Act', sent one day after Lange's first clearance under the Act. It states that there was one substantive difference from the text of the previous clearances. The clearances had referred to "non-combat" aircraft. That phrase was not included in the present note [the note from the Ministry of Foreign Affairs conveying the clearance signed by Lange]. The reason given for this was that the term 'non-combat'

was not used in the New Zealand legislation. It was a difficult term to interpret because, in the normal sense of the words, C130 and C141 aircraft are clearly designed for and used in combat situations. The words had a specialist meaning for defence experts, and it might have been difficult to persuade a court that such aircraft were legally 'non-combat'.

Against this background we had decided that the note should also not include this potentially ambiguous phrase. However, it was important that there be no misunderstanding that the approval contained in the note relates exclusively to the kinds of aircraft which in the past had been covered by New Zealand blanket clearances. It would be desirable, in due course, to reach an understanding on a form of words to include in US requests for clearances to cover this situation.

For the legislation to have allowed only non-combat foreign military aircraft to land in New Zealand would have been unacceptable in any case in terms of normal defence practice. Clearance request notes from the US Embassy subsequent to 1987 have not been seen to see if any form of wording was agreed to as proposed. However, in a letter dated 12 January 1999 Alan Cook, Director of the International Security and Arms Control Division of the Ministry of Foreign Affairs and Trade, states that,

After the passage of the Act the phrase 'military logistics transport aircraft' was adopted instead and it has continued to be used when conveying 'all the relevant information and advice' to the Prime Minister as required under Section 10(1). In approvals issued by the New Zealand Government this phrase is further qualified by the addition of words defining the tasks in which the aircraft are engaged ie to provide logistic support for a research programme in Antarctica. (private communication 12 January, 1999)

This is described as a 'brief explanation of the present situation', so gives the situation current in 1999 at the time of writing. It should be appreciated that section 10(3) of the Act is the section where the mechanism provided in the Act has been, and still is, most regularly invoked in granting the annual blanket clearances discussed.

With this background, we now examine the aspects of the application of section 10 that concerned the peace movement. We look in particular at the concerns of the group in Christchurch who have for many years opposed the American military presence at the ODF base, claiming that the ODF operation is primarily a military operation not a scientific operation as implied in the 1958 agreement, and in many other instances.

3.4 Harewood and Nuclear Weapons

It had been hoped that Robert Leonard from the group who, for many years, have so assiduously monitored the use by American military aircraft of facilities in Christchurch would express the concerns of this group, widely shared in the peace movement particularly, through a contribution to this paper. Leonard has written extensively and over a long period about the Harewood situation. Unfortunately illness precluded his contributing. What follows is a more brief and less complete discussion of what are here considered to be the main concerns that have motivated, and continue to motivate, the Christchurch group. These are:

- (i) do these military flights ever transport nuclear weapons or components thereof?
- (ii) what purpose do the channel flights serve, and is this compatible with New Zealand's nuclear policy and legislation?

One basic problem with the annual blanket clearance agreements under which ODF flights operate has been, and still is, that the aircraft involved either are all capable of, or at least include aircraft capable of, carrying nuclear weapons. In the most recent Peace Researcher for May 1999, No.18, Leonard states on p.11 that ODF flights 'are all capable of carrying nuclear weapons as cargo aircraft and continue to carry the neither confirm nor deny policy to this day'. The flights were originally operated by the US Navy and the US Air Force, but from early 1999 this task has been taken over by the US Air Force culminating a phase-in of greater air force involvement begun in January 1998. The planes are now piloted by members of the New York Air National Guard 109th Airlift Wing Leonard reports.

That the ODF flights are covered by NCND has been discussed by the Christchurch group many times, and was confirmed early in 1993 in correspondence discussed below with the Defense Naval Attache at the American Embassy, Wellington. That NCND still applied to these aircraft as of June 1999 was confirmed by the Commander, Operation Deep Freeze, Colonel R M Saburro, United States Air Force. (private communication 28 June 1999) The logic of this situation is criticised in section 3.8.

Do any ODF flights carry nuclear weapons or nuclear weapons components, and have they ever done so? This is considered to be extremely unlikely, and is even more unlikely in the strategic climate that now prevails. Nevertheless the question remains as to whether the issuing of blanket clearances for categories of what have always been nuclear capable aircraft was clearly and fully justified in terms of the Act, which requires judgements to be made that these aircraft, while in New Zealand, are all free of nuclear weapons.

Reference has been made to a 4 February 1985 note from Murray Watkins to Lange concerning this matter saying that these are non-combat aircraft only so they are not equipped to carry nuclear weapons. Further they are parked unattended, and only an irrational or negligent commander would do this on a civilian airfield. A lengthy 4 June 1987 memorandum for Lange on the ODF flights prepared by Mervyn Norrish was also cited as giving further reasons why these flights could be considered free of nuclear weapons. These were that the Antarctic is a demilitarised zone and the transport of nuclear and other bombs there is prohibited, so flights going there must be free of nuclear weapons. Australia prohibits the stationing of nuclear explosive devices on its territory. So the channel flights cannot land nuclear weapons outside American territory and would not carry them on a circuit from United States territory and back for an exercise, particularly unguarded as the channel flights are. They are not suspected of leaving such weapons in Christchurch since no secure storage of the type demanded by the United States military is evident.

Some security measures are seen at times but these are associated with the arrival of VIPs on ODF flights, channel or otherwise. But very high security is required and evident around United States military aircraft carrying nuclear weapons on land, and this is not seen at Christchurch. The levels of security, and the measures taken to ensure that these are attained, are detailed in a 29 January 1981 United States Air Force document obtained by Peter Wills and entitled Operations: Nuclear Airlift Operations, MAC Regulations 55-18 Vol:1. This document, available if required, definitely confirms that the measures demanded at overseas air bases are not seen in Christchurch. Norrish also points out that nuclear weapons are not carried with other cargo, and a stopover in New Zealand for an aircraft carrying nuclear weapons would not be contemplated since the aircraft involved have the capability to fly direct to any destination. He raises the matter of inspections by New Zealand customs staff of ODF aircraft and New Zealand personnel unloading and loading the aircraft meaning that any nuclear weapons on board would be discovered, but there appear to be conflicting views on this point. We will return to this.

Finally during the period 1960 to 1970, at the height of the Cold War, all United States flight clearance requests required the signing of a declaration that the aircraft carried no warlike stores. This is discussed in an earlier working paper ⁽¹⁾, but meant that at that time at least, unless the Americans were willing to perjure themselves repeatedly, there were no nuclear or other weapons on these aircraft. After 1970 blanket clearances were given annually by the New Zealand Government for many flights and these declarations were no longer required.

The reasons given by Watkins and Norrish are considered to be valid reasons, with the caveat concerning the prohibition on nuclear weapons on aircraft landing in Antarctica set out earlier. Together with the other points raised, they are taken to establish that ODF

flights, including the channel flights have never carried nuclear weapons or nuclear weapons related components into New Zealand.

The problem posed for the legislation by these arrivals of nuclear capable military aircraft was, nevertheless, very correctly raised by members of the peace movement, particularly earlier during the Cold War period of high strategic tension. The validity of the procedure for granting blanket clearances was very rightly strongly challenged. Leonard made a submission dated 5 September 1986 on behalf of Citizens for the Demilitarisation of Harewood (CDH) to the Foreign Affairs and Defence Select Committee of Parliament in support of a Petition to Demilitarise Operation Deep Freeze. In this he cited a United States Department of Defense Technical Manual Transportation of Nuclear Weapons Materiel (Supplement) dated 27 June 1975 which lists a

bewildering array of nuclear armaments carried routinely around the world by USAF Hercules, Starlifters and Galaxy's. Included in the list are nuclear depth bombs. It is not far-fetched to conclude that the United States military has every reason to transport such weapons within the South Pacific region.

The possibility that such aircraft transiting Christchurch might be transporting nuclear weapons, and entering New Zealand in violation of the Act, was very real at that time.

This problem has generated a considerable amount of criticism of Labour's nuclear stance from a range of sources, some of which is aired in chapter 6, and has been discussed by M Goldsmith in another working paper ⁽²⁾. The problem no longer generates comment, apart from statements like that from Leonard that nuclear capable aircraft still do enter New Zealand as part of ODF.

3.5 Harewood and the Channel Flights

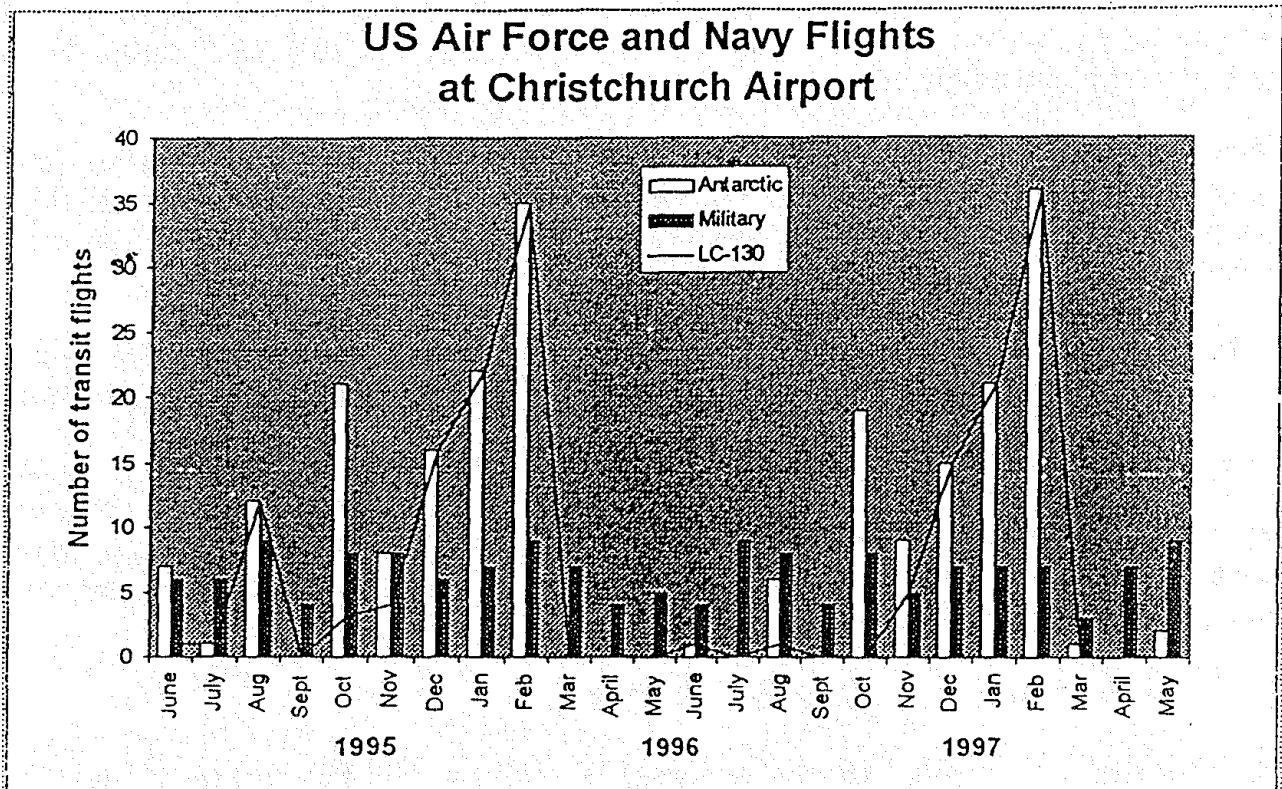
What is meant by 'channel flights' has been explained, and the nature of these flights indicated. They are flights by United States G141 military Starlifter aircraft and some Galaxy aircraft transiting through Christchurch either on their way to destinations in Australia, or to the United States from Australia, and staying overnight in Christchurch. The official position concerning why these flights should stop in Christchurch has also been stated. They are bringing material either to the ODF base in Christchurch, or to some other United States installation or installations in New Zealand including the American Embassy.

So why have the Christchurch group and others, in the peace movement in particular, been so concerned about these channel flights for so long? The basis for this concern is clear if the number and frequency of these flights is examined. No attempt is made here to cover the whole history of these flights, this has been done in some detail in various issues of the journal of the Christchurch group Peace Researcher, referred to earlier. Only relatively recent data is presented as adequate to make the point. This is taken from Peace Researcher No.14, December 1997, p.18

Flight Year	Antarctic	Military	Total	% Military
1990-91	32	86	118	72.9
1991-92	71	97	168	57.7
1992-93	38	85	123	69.1
1993-94	47	63	110	57.3
1994-95	33	58	91	63.7
1995-96	28	79	107	73.8
1996-97	31	78	109	71.6
Totals	280	546	826	66.1

Here 'Antarctic' refers to flights that transit Christchurch serving the Antarctic research programme. 'Military' refers to the channel flights. This is the most recent compilation of data seen for ODF and channel flights.

Antarctic flights are concentrated in the summer season with the peak numbers in February, the aircraft involved then being Ski-Hercules (LC-130) since wheeled aircraft cannot land in the soft ice and snow. In October and November the Antarctic flights are primarily conducted with larger capacity Air Force planes which can land in spring on the ice. This is shown in the figure below which presents data from June 1995 to May 1997.



About the graph: The bar chart presents complete flight data for US Air Force and Navy aircraft using Christchurch International Airport in the period June 1995 through May 1997. The aircraft are primarily cargo carriers: LC-130 Ski-Hercules, C-141B Starlifters and C-S Galaxy's. A *transit flight* consists of an arrival and a departure for a given plane. **Military** denotes military/intelligence Channel flights serving US bases in Australia; **Antarctic** denotes flights to and from the Antarctic in support of the US research programme. (Other US aircraft that occasionally appear in the data are C-130, C-135, C-17 and Orions). Data provided by the Ministry of Foreign Affairs and Trade under the Official Information Act. (Caption as in the original, see [Peace Researcher](#) No.14, p.18.)

It is clear that the channel flights, far from being a small component in the overall annual flight patterns for US military aircraft through Christchurch, constitute the major component in these flight patterns. This is not a recent development, see for example the 1986 submission by Leonard referred to above. This shows that from February 1985 to January 1986, 105 channel flights transited Christchurch as against 104 Antarctic flights.

But these channel flights never go to Antarctica or return from there. This is the first concern stressed by the Christchurch group. Why does the New Zealand Government regularly give a blanket clearance for a considerable number of military nuclear capable aircraft that appear to only have a peripheral connection with the programme that forms the basis of the blanket clearance arrangement?

The pattern of channel flights was, of course, well established before 1984 when the nuclear free policy came into force and before the legislation was enacted in 1987. We have seen that ministry officials argued *in* 1984 for the continuation of the procedure of allowing these aircraft *to* transit through Christchurch. Again in 1986 we saw evidence

of Lange approving, even encouraging, continuation of the channel flight access. We have also seen the arguments presented by Norrish for continued acceptance of the channel flights after the legislation came into force, once more accepted by Lange, who, in fact, argued for their acceptability as we also saw.

The significance, or rather the lack of it, of the channel flight visits for the ODF programme has been commented on at times, if not frequently. The ODF research programme is operated by the United States National Science Foundation (NSF). File 59/206/20 volume or part 15 in the ministry files includes a report of an interview with Mr Fowler of the NSF on April 7 1987. He was interviewed on the Radio New Zealand National Programme Morning Report. Fowler was asked about the channel flights and their connection with ODF. He said that we only use them for ODF 'to some minor extent' for some cargo and passengers. 'But in general these channel flights are not vital to the programme.' Concerning the question of what cargo these flights carry, or carried then, Fowler said,

The channel from our West Coast through New Zealand to Australia is not a function of the Antarctic Programme. And we at NSF and the Antarctic Programme management really have no idea, certainly no control, over those flights.

This was reported in The Evening Post of 9 April 1987. Leonard reports that he heard a similar comment from an NSF representative at Harewood who subsequently 'tried to back away from the statement' (private communication 5 November 1998)

It may seem extreme to take just two statements as providing any basis for questioning the significance for ODF of the channel flights. But when coupled with the suspicions of the Christchurch group regarding the purpose of these flights and the nature of their cargoes, they support the consistent and long standing criticisms from this group of allowing these flights into Christchurch under the ODF blanket clearance arrangements.

3.6 Channel Flight Cargoes

The consistent claim by the Christchurch group is that these flights carry material to and from the large American bases in Australia at Pine Gap and Nurrungar. They give a brief description of these two bases and their functions in Peace Researcher No.14, December 1997, p.19.

Discussing these bases the group says that the satellite ground station at Pine Gap near Alice Springs is 'the most important US installation in Australia', quoting Dr Desmond Ball, well known Australian academic and researcher. The Peace Researcher article continues,

It is in fact one of the largest intelligence bases in the world. It is the Earth-based link to a network of US spy satellites in geostationary orbits around the equator. Pine Gap is run by the US National Security Agency.

Nurrungar is a US Air Force satellite ground station in South Australia. It is a key station controlling the Air Force's Defense Support Program system of early warning satellites, a system in operation since 1970.

Both Australian bases are thus an integral part of the vast US signals intelligence system. Christchurch does its part in supporting that system by hosting the hundreds of so-called Channel flights of Starlifters and Galaxys that visit our city under the cover of Operation Deep Freeze every year.

Nurrungar was operated by the United States as part of its system to detect the launch of Soviet missiles during the Cold War. This function may now be somewhat modified, but

the overall role of these two bases, together with the third base at North West Cape in Australia, still undoubtedly is that they are, to quote Dr Ball again ⁽³⁾, 'vital elements of the US strategic command, control, communications and Intelligence (C³I) system which supports the US strategic nuclear posture.' The nuclear posture of the United States has changed since this was written, but the strategic policy of that country retains a major nuclear component.

There are consequently two grounds for objecting to the channel flights if the claim that they service these bases is valid. The bases are elements in American nuclear strategic planning. They are also part of a very secret intelligence system, as Hager has discussed at length in his masterful book on the subject of this global UKUSA system ⁽⁴⁾. The peace movement finds the goals of this UKUSA system unacceptable.

Considerable evidence can be found in various issues of Peace Researcher to support the claim by the Christchurch group, and it accepted here. They identify the arrival of Starlifters on Sundays in Christchurch with flights serving Pine Gap via Richmond Royal Australian Air Force Base near Sydney, and flights arriving in Christchurch usually on a Friday as arriving from Nurrungar having travelled directly to Richmond from the United States via Pago Pago. At Richmond these aircraft 'are given very considerate customs and health checks ' according to D Doherty writing in Peace Researcher No.13, June 1987, p.19, or were then.

Writing in Peace Researcher No.30, December 1991, pp.19-20, Leonard reported on the cargoes these flights carry as follows.

Citizens for the Demilitarisation of Harewood and the Anti-Bases Campaign have observed the Starlifter flights for many years. Most flights seem to carry loaded pallets of various sizes and composition, wrapped in clear plastic and securely strapped. Some of these are obviously for Operation Deep Freeze and Antarctic supply. Others are said to be household goods of service personnel in New Zealand and Australia being transferred to and from the US. ...

Other pallets are destined for the US military/intelligence bases in Australia. We have seen the curious marking 'Credible Dove' on some large palletted boxes. These were for one of the large antenna projects at Pine Gap; they have been seen as recently as March of this year [1991].

He writes of seeing couriers on the Starlifter flights 'within the last year or so', who carry attache cases and 'keep a careful watch on large grey bags, each with two red stripes. ... The two couriers are the only personnel seen to handle these special bags. The ground crews and Starlifter flight crews do not touch them.'

The CredibleDovexefereence is interesting. A US Military Airlift Command (MAC) cable in the ministry file 59/206/20 vol. or part 10, dated 27 January 1981 refers to Credible Dove personnel. In response to a 1992 question about Credible Dove cargoes directed to the ODF Commander he, together with the MAC Commander, said such questions should be directed to the US Embassy. The Defense Attache at the Embassy, Captain R L Norwood, responded to this question, and others, early in 1993 by stating that 'Neither members of the American Embassy nor the NASU [Naval Antarctic Support Unit] representative in Christchurch have knowledge of the term "Credible Dove."' (private communication 1 February 1993) However, Dr Ball in his book Pine Gap p.66, fig.30 shows a photograph with what looks like a transport structure carrying crates and clearly bearing the label Credible Dove. The caption reads,

'Credible Dove', the US Air Force code-name for the installation project for the eighth antenna/radome at Pine Gap, inscribed on crates unloaded at Alice Springs airport, 29 January 1985.⁽⁵⁾

Leonard's comment on the response from Norwood was, 'This is evasive crap. Of course they know what 'Credible Dove' is. (private communication 12 February 1993)

This appears to have been a long running US Air Force programme associated with Pine Gap about which the Americans claim officially to have no knowledge, even though Captain Norwood was referred to Dr Ball's book. It also appears to have operated for more than just the period covering the installation of the eighth radome as implied by Dr Ball since the term appears in 1981 and 1985, and was seen in 1991 by the Christchurch group.

The same ministry file and volume contains another MAC cable dated 25 November 1980 relating to channel flights that states that 'All crew members are US citizens possessing a minimum clearance of secret.' Why should this be necessary? The same cable says that 'MAC is committed to operate two missions per week to stations within Australia. These missions transit Christchurch, New Zealand.' It gives the purpose of these flights as being 'to offload/onload cargo in support of US activities at each stop.' Exactly what these cargoes are has not been established, but they do appear to be associated in Australia with the American bases as claimed by the Christchurch group.

Leonard also stated in his 1986 submission that channel flight transits are 'conducted in almost complete secrecy'. He cites a letter dated 9 September 1985 from the then Minister of Customs, Margaret Shields, to him as establishing that,

since January 1981, New Zealand Customs has inspected just three shuttle [channel] flight cargo manifests out of a total of over 350 through-flights by U.S. Air Force Starlifters. It may be more than coincidence that the three manifests were requested from the US authorities by NZ Customs only after CDH began writing to Customs about the cargoes in 1984.

In Peace Researcher No.10 published in the same year, 1986, he reports, however, that Starlifter going to the ice, to Antarctica, regularly carried civilian scientists and support personnel. 'And the cargoes to and from the Ice are handled by New Zealand civilians who must have free access to the Starlifters as well as the Hercules.' So there was no secrecy about these flights as claimed for the channel flights.

The history behind this September 1985 letter from Ms Shields appears to relate to events between 1981 and 1985 involving drug smuggling in mail bound for ODF in Christchurch and Antarctica, and to 'the resulting power politics revolving around the American military and New Zealand Customs at Operation Deep Freeze', to quote from the cover of a special issue of Peace Researcher No.25, November 1989 written by Murray Horton of the Christchurch group and devoted to this 'saga'. An article covering these matters also appeared in the New Zealand Listener for 13-19 November 1989. This 'saga' will not be examined here, and only the conclusion of Horton's article is quoted. He wrote, p.19,

To conclude, Customs was extremely diligent in its pursuit of drugs entering New Zealand in US military mail - in reality transiting Harewood for McMurdo [the Antarctic base] Customs was altogether too diligent for the liking of the US military and the Embassy. The question of mail searches, and related issues of aircraft inspections (by both Customs and MAF [Ministry of Agriculture and Fisheries]) was deemed too tough to be resolved at the Christchurch level, and was always referred to the political level in Wellington. ... It is fair to say the US view prevailed. Customs mail searched diminished; requests to board aircraft stopped. Indeed, Customs became considerably less zealous after the high drama of 1981 had passed. Margaret Shields told CDH in a 1985 letter: 'From January 1981 to mid-1985 Customs asked the US military precisely three times for a manifest of Starlifter cargoes. ... This is not physical searches of aircraft; this is simply asking the US military what is on the planes.'

The actions of NZ Customs and MAF posed big problems for the US military because it would set precedents, undermining its worldwide right to conduct its business without in any way being answerable to host governments. As this study has proved, the US military exerted pressure at the highest level to ensure that its interests were protected.

Attempts were made to clarify just how freely and thoroughly customs are able to examine these United States military aircraft and their cargoes, but these were inconclusive. Leonard was told by the Ministry of Agriculture in 1986 correspondence that under legislation all aircraft arriving in New Zealand must be cleared by officers of the Agriculture Quarantine Service which requires boarding for disinsection and inspection for quarantine purposes, and cargo manifests are sighted for all items of cargo of agricultural interest to be landed in New Zealand.

A similar response was received in correspondence with the Ministry of Agriculture and Fisheries (MAF) in 1989. John Burton, Manager, Border Services, wrote on 18 December 1989 that (emphasis as in the original),

ALL overseas aircraft are entered immediately on arrival - and this is prior to cargo removal. My staff inspect all parts of US Military Aircraft without hindrance. There are no areas which are forbidden. ... Passenger and cargo holds of aircraft from Antarctica are not subject to disinsection (spraying). Passenger and cargo holds from all other countries are subject to disinfection ... all cargo remains on board until this procedure is completed. All cargo (from all sources) is subject to document or physical inspection (or both). To assist us with any procedure or inspection US Military personnel accompany my staff. They do not in any way influence what my staff inspect. They are there to facilitate by way of orders and command. (private communication)

Leonard, however, challenged the statement that all cargo was subject to some form of inspection. He wrote (private communication 16 May 1990),

Starlifter cargoes destined for Pine Gap are palletted - wrapped in clear plastic and tightly strapped. There is no way MAF would be allowed to inspect one of these. MAF had to battle with the US military just to get the right to spray the aircraft which are in transit to and from Australia. On many occasions I have observed MAF inspectors enter and leave newly arrived Starlifters. They spend little time on board (5-10-minutes max), certainly not enough to do anything more than spray and collect refuse bags.

In a 23 July 1991 letter he wrote that channel flight cargoes,

are handled strictly by Americans as far as we can tell from observation. Pallets that are removed from those Starlifters are stored in the Air Force buildings under lock and key. What appear to be diplomatic bags (grey with two prominent red stripes, bags about 1.5m long, 0.5m square on bottom), handled only by plain-clothes couriers, are also locked up for the night and then reloaded early in the morning by the same couriers. (private communication)

While in Christchurch early in 1992 a visit was paid to the ODF complex and to customs staff at the airport. They said that they were officially not allowed search access to United States military aircraft because they 'are instruments of the United States Government' and our government recognises this. They can request a form of entry, discretionary entry, if they insist, but this is not exercised. They get manifests for aircraft - or at least entry documents - but in coded numbers, hard for customs to interpret. United States staff assist with this. People coming off and cargo they carry are searched/checked. They do not have access to material marked 'official' but are told what is in it.

The visit to the ODF base resulted in a considerable number of questions concerning ODF being directed Captain Norwood, Defense Attache at the United States Embassy. These included the following questions, given with Norwood's replies.

Question: Do New Zealand Customs have free access to all United States aircraft that land at Christchurch, including the so-called 'channel flights'. If not, why not.

Answer: All cargo and personnel discharged in New Zealand from U.S. military aircraft are subjected to inspection by New Zealand Customs authorities. U.S. military aircraft are sovereign instrumentalities. When cleared to overfly or land in foreign territory, it is U.S. policy to assert that military aircraft are entitled to the privileges and immunities which are customarily accorded warships. U.S. Department of Defense (DOD) aircraft commanders will not authorise search, seizure, inspections, or similar exercises or jurisdiction enumerated above by foreign authorities except by direction of the appropriate service headquarters or the American Embassy in the country concerned. [The full meaning of the last sentence will become clear when we look below at other questions put to Norwood].

Question: Would your Government have any objection to NZ Customs being given the right to inspect all United States aircraft landing at Christchurch if so requested.

Answer: Refer to the answer provided to the above question.

Question: Do NZ Ministry of Agriculture and Fisheries have the right to spray all United States aircraft that land at Christchurch. If not, why not. If they have this right, for how long have they had it.

Answer: The Ministry of Agriculture and Fisheries has access to spray all U.S. military aircraft landing in Christchurch, New Zealand. This procedure has been in effect for some time. A record review does not reveal the actual start date of the process.

Leonard's response to these answers was to write,

What does 'discharged' mean to NZ authorities? I assume it does not apply to the materials that go into the USAF hangar for overnight storage and reloading onto morning departing flights. We've seen some of those pallets unwrapped and taken apart in the hangar, I doubt they are seen by Customs. Courier bags (grey with red stripes) are often on those pallets but probably not on the ones that are unwrapped. The privileges and immunities accorded military aircraft are one of the major reasons we want the military out of ODF and NZ. It gives them licence and cover to run anything they want through the country. The couriers do not undergo any checking by Customs as far as we can tell. (private communication 12 February 1993)

What scrutiny channel flight cargoes are subject to by customs remains unclear. If the cargoes do include special materials or items for the big American bases in Australia it is very unlikely that customs are given free access to these parts of the cargoes. The conclusion that the channel flights almost certainly represent an important supply and communication channel for these bases stands.

3.7 Operation Deep Freeze - An Official View

The 1992 visit to the ODF base already referred to resulted in a series of questions being directed on 28 April 1992 to Captain Norwood, Defense Attache at the American Embassy in Wellington. The responses received constitute one official view of the

Christchurch operation. They are presented as question and answer from a letter dated 1 February 1993, it took some time to get this information. Some of the answers have been abbreviated.

Question: Could you please outline the Operation Deep Freeze operation in Christchurch, and the relationship between the National Science Foundation, the Navy section of the operation and the Military Airlift Command.

Answer: Operation Deep Freeze is a descriptive phrase used to identify military units that participate in the United States Antarctic Program (USAP). The permanent 'Deep Freeze' unit in Christchurch is the Naval Antarctic Support Unit (NASU) which consists of approximately 40 personnel. Its principal purpose is to provide a logistics staging area and support for the movement of passengers and cargo between New Zealand and the Antarctic. NASU is a subordinate command to the larger Naval Support Force Antarctica (NSFA) that seasonally (normally October - February) augments the Christchurch unit and deploys to McMurdo where it provides a number of support functions around the Antarctic. In reference to the command relationship in 'Deep Freeze', all military units of the USAP (Antarctic Development Squadron SIX (VXE-6) with its helicopters and ski-equipped Hercules, the Military Airlift Command with its C-5's and C-141's, and the Coast Guard with its Icebreakers, etc.) respond directly to the operational requirements of the National Science Foundation (NSF), which conducts scientific research at McMurdo in cooperation with the New Zealand Antarctic Programme (NZAP). Essentially, USAP agencies are contracted by NSF to perform specified support services.

Question: Could you explain who owns the buildings and other installations in the base. These include the new International Antarctic Centre buildings, several hangars and other buildings, and other installations.

Answer: The land used by the USAP and Operation Deep Freeze is owned by either the Christchurch International Airport Company, New Zealand Defence Forces or New Zealand citizens. The USAP or U.S. Navy leases the buildings located in the Christchurch International Antarctic Centre complex and barracks areas from the Christchurch International Airport Company. The buildings on the flight line and at the communication site are owned by the U.S. Navy. The U.S. Navy also owns the Public Works Office, and the electrical and warehouse buildings located in the barracks area.

Question: Is this a United States base under United States law, or does New Zealand law cover all activities at and on the base. Are there any activities not covered by New Zealand laws. If so, what are they,

Answer: All activities at the U.S. Naval Antarctic Support Unit are subject to New Zealand law. In addition, U.S. military personnel in New Zealand are also subject to the U.S. Uniform Code of Military Justice (UCMJ) system, concurrently with New Zealand law.

Question: Is the operation part of an international operation, because the new facility is called the International Antarctic Centre.

Answer: A number of countries cooperate in Antarctic research programs. ... The International Antarctic Centre in Christchurch is a commercial undertaking which rents space to the U.S., New Zealand and other Antarctic programs.

Question: What various types of U.S. military aircraft are involved in Operation Deep Freeze activities, and what other aircraft are involved. Which of these aircraft are U.S. Navy aircraft, and which are U.S. Air Force aircraft, and are they flown by reserve or active duty pilots and crew. Are all the latter U.S. Military Airlift Command (MAC) aircraft.

Answer: Transport aircraft (C-5 and C-141) are owned and operated by the U.S. Air Force Air Mobility Command (formerly the Military Airlift Command (MAC)). These aircraft are crewed by both active duty and reserve personnel. LC-130 aircraft are flown and maintained by U.S. Navy personnel assigned to Antarctic Development Squadron SIX (VXE-6). U.S. Navy UH-1N helicopters are also flown and maintained by VXE-6. Aircrew personnel assigned to VXE-6 are normally on active duty with the U.S. Navy. LC-130's belonging to the New York Air National Guard, which is staffed by active duty and reserve personnel, periodically augment the NSFA air logistics efforts in and around McMurdo. [Note: The involvement of the US Navy in Christchurch has now ceased and its activities have been taken over by the US Air Force (see below)].

Question: What is the relationship of the channel flights to Operation Deep Freeze, because they do not go on to the Antarctic as I understand.

Answer: The relationship between channel flights and 'Deep Freeze' flights is essentially coincidental. Channel flights are year-around logistics flights that are routinely scheduled through Christchurch. When cargo and passenger space from the U.S. is available on these aircraft, the Air Force Mobility Command can allocate this space to 'Deep Freeze' cargo/personnel movements - NSF will reimburse the Air Force for this service. Air Force flights that provide direct support to the Antarctic program are tasked independently of channel flights and are based on requirements levied by NSF.

Question: The MAC Commander in Christchurch told me that these flights bring personal and domestic items for U.S. staff at the base. Is this correct.

Answer: U.S. government personnel on official 'Permanent Change of Station' orders are authorised to ship specified household goods and unaccompanied baggage via the Air Force channel flights to their new duty station. U.S. mail and items to support the military facility in Christchurch are also authorised on the channel flights.

Question: If this is the reason for the channel flights using Christchurch, why do so many call there, one each week I understand. Could you please verify that one channel flight a week passes through Christchurch enroute to Australia and one on its way to the U.S. from Australia.

Answer: The Air Force currently schedules two channel flights through Christchurch each week - one flight arrives from Hawaii and the other flight arrives from Australia. The efficiency and necessity of channel flights are carefully monitored by the Air Mobility Command as well as the Department of Defense. As mentioned above, cost efficiencies can be enhanced by loading cargo destined for the Antarctic onboard these regularly scheduled channel flights.

Question: What type of aircraft are involved in these flights.

Answer: The C-141 Starlifter is the primary aircraft used by the U.S. Air Force to support channel mission requirements.

Question: Are these two calls at Christchurch to and from Australia part of a circuit, or are the flights from Australia separate from those to Australia. In this case, what do the flights from Australia bring to Christchurch that they need to call there at all.

Answer: Channel aircraft usually operate on a circuitous routing to efficiently utilise the aircraft and best meet the needs of their customers. Regardless of where the flight originates, the cargo delivered to Christchurch supports the local U.S. military facilities or the Antarctic program. The Air Mobility Command is pleased with the efficiency of their flight planning/routing system.

Question: I have been told of some people described as couriers who unload bags from these flights in Christchurch, appear to guard them carefully, and then reload them before the flight departs for Australia. This behaviour has been observed and recorded. What is in these bags that requires such careful attention. Why is any cargo unloaded overnight at Christchurch and then reloaded next day before take off.

Answer: Couriers are an internationally accepted method of transporting government properties that require restricted distribution. Couriers transport classified documents and diplomatic pouches throughout the world and are required to maintain close, careful control of the entrusted property at all times.

Question: Do these channel flights carry any data in any form from NZ bases or other sources, or from your Embassy, to Australia or to the United States. There have been suggestions to this effect on Australian television.

Answer: Refer to the previous answer.

Question: Does the U.S. Neither Confirm Nor Deny Policy (NCND) still apply to U.S. flights into and out of Christchurch. If so, why in the new world circumstances that now prevail.

Answer: It is general U.S. policy not to deploy nuclear weapons aboard surface ships, attack submarines, and naval aircraft. However, we do not discuss the presence or absence of nuclear weapons aboard specific ship, submarines or aircraft. This policy, which you refer to as NCND, applies worldwide.

Question: If NCND does still apply for Christchurch flights, do you see it being relaxed for this particular situation soon.

Answer: Refer to the previous answer.

Question: How many US personnel are involved overall in Operation Deep Freeze at various times during the year. How do these divide between Naval, MAC, and other military, and civilian personnel.

Answer: The USAP muster reports record the totals of military, civilian and NZ nationals who are on the Antarctic Continent. A breakdown between Navy, MAC and other military personnel is not maintained. Average totals are: military - 550, NZ nationals - 100, and civilian (NSF/ Antarctic Support Association (ASA)/science parties) - 760.

Question: Finally for this occasion, why is it necessary for me to direct these questions to you rather than directly to Commander McAllister [ODF base commander] and the MAC Commander at the base in Christchurch. This is a scientific mission, not a military mission, I understand.

Answer: All U.S. government activities in New Zealand are under the purview of the United States Ambassador. It is therefore appropriate that your questions be addressed by the Embassy, of which the U.S. Defense Attache office is a part.

Responses to questions relating to customs access to the channel flights, and to Credible Dove cargoes were given earlier. This series of questions and answers has been included in part to provide information relating to aspects of the ODF operation, and in part to present one official American response to these questions.

The overall impression given by these answers is that they constitute a set of diplomatically worded responses, but that these sidestep difficult issues like the possibility of extending inspection rights for customs, neither confirm nor deny, data transport by the channel flights, Credible Dove cargoes and the ODF-channel flight

relationship. Nevertheless the answer that the relationship between the channel flights and ODF is 'essentially coincidental' is strange since the Embassy must have known that the standard picture given by New Zealand officially is that all channel flights serve the ODF mission or some other American installation in New Zealand, as we have seen. Norwood's answer would seem to cast doubt on this claim.

Leonard's reactions to Norwood's answers supports the above interpretation. This is evident from his responses, presented already, to the questions about customs access and Credible Dove. Further, he comments on the answer about the relationship between the channel flights and ODF by saying,

'Coincidental' is an odd term to apply to the channel and ODF flights. This answer certainly makes it clear that ODF service on channel flight Starlifters is incidental to those flights. It seems to me to be a clear admission that channel flights are an operation quite separate from ODF operations (and the DF [Deep Freeze] agreement) with the latter simply taking advantage of the space on aircraft when it is available. We've known this for a long time but it's nice to get the answer from the Embassy. New Zealand politicians have consistently refused to accept that this is the case. In my experience they always refer to all Starlifter flights as serving ODF, and if they do acknowledge the existence of channel flights they ignore their true roles and the fact that there is no known agreement between the US and NZ covering those flights - only annual blanket clearances. (private communication 12 February 1993)

Norwood's answer and Leonard's response agree with the statement by Fowler of the NSF reported earlier. Leonard commented that he had had some simple questions dealt with directly by the ODF commander. 'It's the sticky stuff they give to the Embassy.'

3.8 Operation Deep Freeze and Neither Confirm Nor Deny

Under the 1958 Agreement and Memorandum of Understanding covering Operation Deep Freeze, the ODF facilities are provided 'in connection with United States operations in Antarctica'. 'These are scientific research operations. Lange writing to the Hon Stan Rodger MP on 17 August 1984 in response to a query to Rodger from a constituent said that facilities provided under this Agreement,

are used exclusively in support of US Antarctic activities, which consists of non-military scientific research conducted in accordance with the Antarctic Treaty.

Again, writing to Owen Wilkes on 17 February 1987, Lange stated that,

The Government is fully aware of the nature of American activities in Christchurch, and is satisfied that they are in support of Antarctic research. They are not in conflict with the Government's anti-nuclear policies.

So why should aircraft entering New Zealand in support of ODF have to be covered by the neither confirm nor deny policy? Yet they always have been and still are. The United States claim is that all their military aircraft are subject to the NCND policy, as Norwood did above. But there have been important exceptions to this blanket rule that would seem to have provided very appropriate precedents for the relaxation of the policy for ODF and other flights transiting Christchurch.

First with regard to the ODF flights themselves, it is not reasonable for the United States to argue that NCND is maintained for the flights that proceed to Antarctica. Leonard in Peace Researcher No.10, p.2, wrote that,

the [US] Air Force does not seem to try to enforce the [NCND] policy for certain of its Starlifters at Christchurch Airport. Despite the so-called universal policy for

military ships and planes, the policy apparently does not apply to the Starlifters going to the Ice. It would be obviously difficult to enforce such a policy because these planes regularly carry civilian scientists and support personnel. And the cargoes to and from the Ice are handled by New Zealand civilians who must have free access to the Starlifters as well as the Hercules.

However, the situation is not the same for the channel flights he says. He wrote in this regard,

But the MAC channel flights to and from Pine Gap, Nurrungar and North West Cape in Australia are definitely covered by the nuclear weapons policy. The American military must have something to hide in those Starlifters.

As remarked, the Christchurch group report that these aircraft are unloaded and loaded by American personnel only as far as they can tell. Even so, the situation for the other flights does provide a basis for New Zealand to demand that NCND be dropped for all United States military aircraft using Christchurch, or any other New Zealand airport in fact, and to demand an explanation for any different treatment of the channel flights if they are as innocuous as claimed. These requests would certainly not be unreasonable in peacetime. Furthermore, the lack in Christchurch of normal security procedures associated with United States military aircraft carrying nuclear weapons in itself constitutes a relaxation of NCND for all these flights transiting Christchurch. It was proposed in chapter 2 section 2.6 that NCND should be dropped by all countries in peacetime, to be reimposed in times of crisis if deemed necessary. This would certainly be appropriate in the Christchurch situation.

Again, the United States and Australia agreed on 11 March 1981 that B-52 bombers and associated KC-135 tankers could stage through the Australian Air Force base at Darwin for the purpose of sea surveillance in the Indian Ocean and for navigational training. The then Prime Minister, Malcolm Fraser, stated on the same day that the flights 'will be unarmed and carry no bombs' (see press release 26 October 1981 by the then Minister of Defence, Mr I Sinclair). This agreement is discussed in more detail in an earlier working paper⁽¹⁾, but clearly constitutes a situation in which NCND cannot be claimed to apply.

Indeed in a late 1984 press guidance statement relating to an exercise in New Zealand involving United States nuclear capable aircraft, exercise TRIAD, Richard W Teare, Deputy Chief of Mission in the American Embassy Wellington, confirmed that

In the past there have been a very few exceptions to our 'neither confirm nor deny' policy for a limited range of B-52 operations for specific missions. These exceptions do not apply to the aircraft in TRIAD.

A copy of this statement was sent by Teare to H H Francis, Acting Secretary of Foreign Affairs, with a letter dated 4 October 1984. (ministry file 59/206/20 vol. or part 13)

During 1990 correspondence was entered into with ministers in the government and with the American Embassy concerning another instance where NCND was clearly set aside, and which provides another precedent for doing the same for the Christchurch situation. This concerned low level flight training to be undertaken in Canada and organised by the North American Aerospace Defense Command (NORAD) and the United States Air Force Strategic Air Command (SAC). The aircraft involved were B-52, G/H, FB-111 and B-1B bombers, nuclear capable aircraft, and some NORAD fighter aircraft. An initial environmental evaluation of the proposal dated December 1987 and prepared for the SAC and the Canadian Department of National Defence stated that,

Bomber aircraft from SAC will not carry any conventional or nuclear weapons during low-level training flights.

An information package for the exercises also states that 'No nuclear weapons are carried' on such training flights.

This information was provided by colleagues in Canada in 1990. When asked to comment on this clear departure from a blanket NCND policy, the First Secretary at the American Embassy, R G Loftus, replied on behalf of the Ambassador of the time Ms D Newman. Loftus repeated the claim that the United States does not make exceptions to the NCND policy, and commented that flights into Christchurch are covered by blanket clearances, and the flights are also covered by the NCND policy. Government ministers were no more forthcoming, and again cited the blanket clearances issued annually by New Zealand. But why can the same assurance, that the Christchurch transit flights carry no nuclear weapons, not be given to New Zealand, as it was to Canada for these training flights?

A number of countries place restrictions on the armaments that foreign military aircraft may carry that overfly those countries. Overflying would seem to be a less serious intrusion into a country by foreign military aircraft than landing while in transit, as occurs in Christchurch. Yet Ireland and Britain lay down rules that would appear to provide the possibility that aircraft overflying these countries may not carry nuclear weapons. The Irish situation, possibly the strongest, has been discussed in detail in another working paper ⁽¹⁾, and does appear to involve a ban on nuclear armed aircraft from overflying Irish territory. However, it is not clear how effective this is in practice.

In the case of Britain, Mr J A Cassidy, Secretariat (Air Staff), Ministry of Defence, wrote in 1991,

I should start by saying that the detailed criteria and arrangements for granting diplomatic clearance for military aircraft overflights of the UK are confidential between the United Kingdom and the individual countries concerned. In general, however, all foreign military flights must comply with current ICAO [International Civil Aviation Organisation] and British air traffic and operational requirements. Unless specific approval has been granted aircraft must be unarmed; ie, not carrying weapons, munitions, photographic or other surveillance equipment, other than items which normally form part of the installed equipment of the aircraft, and which must remain inactive for routine transit. (private communication 12 August 1991)

It may well be that the British make some special concessions for United States military aircraft, or that these rules are not of much significance. But again there is some basis for arguing that New Zealand could demand that the Christchurch flights abide by similar rules to those imposed by Britain and Ireland.

Other instances of NCND being set aside are discussed elsewhere ⁽¹⁾. These, together with the cases described, constitute a strong body of precedent for demanding that NCND be dropped for all United States military aircraft using Christchurch airport in particular.

3.9 Other US Military Aircraft Visits

There have been a considerable number of other visits to New Zealand over many years by United States military aircraft for a variety of purposes. In a number of cases, these visits were considered by the peace movement to be associated with projects that related to United States nuclear strategies, projects to which New Zealand should not contribute and the military aspects of which a nuclear free country should condemn. To illustrate this, three projects will be discussed in which New Zealand has been involved and which figure in the ministry files. These were known as Navstar, Project Magnet and the Omega Beacon project. In each case New Zealand's involvement was justified on the grounds that the project had considerable civilian significance as well as having potentially important military applications.

Navstar

These visits included a visit during April 1986 by a US Air Force C-135 to Christchurch to use Christchurch to gather stellar navigational data from a ground position concurrent with global positioning system (GPS) data. A hand written note on the US Embassy request for clearance says 'This is a delicate one' and indicated that while Navstar had civil applications, it was 'essentially the product of the military'. The aim of the visit according to the ministry files was to relate navigational systems employing respectively Southern Hemisphere stellar data and GPS data, using observations made in the air and on the ground.

At the time the GPS system, planned to be operational in 1988 and now so familiar,' was known as the Navstar Global Positioning System according to an article by J Bell in New Scientist dated 11 October 1984 and entitled 'Navigation for everyman, and his bomb'. Navstar is the name given to the satellites employed. This article describes the system, funded by the US Department of Defense, as a 'military system' that 'will revolutionise war', by providing positional and other information of unprecedented accuracy. This would clearly have application in missile guidance and targeting, both fundamental in nuclear war fighting.

The problem for New-Zealand officials involved in clearing this visit was this question of military applications of the data to be collected. Nevertheless Mervyn Norrish, Secretary of Foreign Affairs, wrote on 21 April to the Minister of Foreign Affairs saying,

notwithstanding the possibility of protests, diplomatic clearance should be given in accordance with the Government's efforts to continue with a normal cooperative defence relation with the United States. I recommend accordingly.

Lange was the Minister of Foreign Affairs, and he wrote, 'I agree' (ministry file 59/206/20 vol. or part 14). The Minister of Defence, Frank O'Flynn, added that there seemed no logical reason for objecting to this 'despite the emotional reactions of some people', meaning the 'peace movement it would seem. He hoped we (New Zealand) would be treated as 'authorised users' and get the most accurate information. It is very unlikely that New Zealand did at the time get the most accurate information as the US military guarded this closely, only releasing it to their most trusted allies in NATO and to some American companies according to Bell. Data provided for civilian use was for many years degraded in accuracy by the US military before release.

Project Magnet

This was a project of the US Naval Oceanographic Office established in 1953 'to collect accurate and current worldwide geomagnetic data' according to a 21 September 1983 release by that office held in the ministry files. The release also said,

The data collected by Project Magnet are required for charting purposes, advanced navigation systems, space programs, and other scientific programs of the United States. Survey operations are carried out by an RP-3D Orion aircraft specially instrument for this purpose.

The data collected was combined with ground data to produce a series of world magnetic charts, and cooperation with foreign governments in exchanging data was desired. Data collected over countries providing clearances for flights would be provided to them on request. Foreign officials and scientists were invited to visit the aircraft used, and discuss the project.

Owen Wilkes, however, saw the project differently ⁽⁶⁾. He wrote in 1973 that under Project Magnet,

Research directed at improving magnetic detection of submarines and use of magnetic anomalies for undersea navigation is continually being carried out by US Navy aircraft engaged in Project Magnet. Magnet aircraft have been based in or passed through Christchurch Airport in 1960, 1961, 1962, 1966 and 1968. One of the aircraft also visited Australia in 1968 where it performed a survey off South Australia's coast. The assistant director of the survey (an Australian) was quoted as saying 'I will not talk about this project and I don't have to give my reasons for not talking'. (ref.6, p.45)

Again we find conflicting claims concerning the aim of a project, civilian or military or both. The point of interest here is that Project Magnet flights continued to use Christchurch for many years after 1973 according to the ministry files, in 1979 for example and very probably between 1968 and 1979, but also in 1982, 1983, 1984 and 1985.

The 1983 release includes a chart showing that flights in late 1983 covered the north and south Pacific and Australia and included a visit to Christchurch in November that year. A further request for diplomatic clearance for one of these flights was received by the Ministry of Foreign Affairs on 2 February 1984 and approved on 9 February, and on 16 August that year Wilkes again claimed on the Eyewitness News television programme that the project had military implications, the interviewer saying it gave information used in studying ways to detect submarines underwater.

The next request, and the last in the files seen, came in a US Embassy note dated 16 September 1985, a year into Labour's first term of office. A note dated 23 September from C Beeby, Acting Secretary of Foreign Affairs, stated that it would not be good to precipitate further retaliatory actions by the United States, a cut back in defence science cooperation under TTCP (see chapter 4), by refusing diplomatic clearance for the Project Magnet flight. He pointed out that the data was openly available, and so on. This note has written on it by hand, 'Very good let it rip DL', presumably written by David Lange giving his approval. Clearance was given on 1 November.

The Omega Beacon Project

This project dates back to 14 June 1968 when it was announced that the US Navy planned to build an Omega very low frequency (VLF) radio navigation transmitter in the Southern Alps. When the Omega system became fully operational, the announcement said, 'an aircraft, ship or submarine equipped with an Omega receiver would be able to determine its exact position anywhere in the world within one or two miles' ⁽⁶⁾. The indomitable Owen Wilkes became concerned by the military implications of this system, since VLF waves 'are the only radio waves receivable up to 50 feet below the surface of the ocean', making them detectable by submerged submarines (ref.6, p.7).

He was able to obtain official American documents establishing that the system was indeed intended for use by US Navy ballistic missile submarines regardless of other uses. An active protest campaign ensued. Whether because of this or for some other reason or both, the LTS Navy finally decided to establish the transmitter in Australia. Many interesting features of the history of this episode are presented by Wilkes in ref.6, suggesting strongly an unwillingness on the part of the government of the time under Keith Holyoake to inform the public about the project.

The interest in this project for the present discussion is that in 1983 and 1985, requests were received for diplomatic clearance for United States aircraft to use New Zealand facilities in Omega system related activities. A request was made for a US Coastguard plane to visit Christchurch in August 1983 to test the system, partly to get data as close as possible to the routes requested - 'here Pago Pago American Samoa, to Christchurch and to Melbourne'. This was granted by the National government then in power. A similar request was received in January 1985 for a US Coastguard plane to use Wellington as a base, while determining the accuracy of the Omega system and this was again approved,

but now by the new Labour government under Lange. No other indications of visits related to the Omega system were seen.

Here we have three instances of New Zealand involvement in United States initiated programmes each of which had significant military implications according to well informed researchers in New Zealand, or was suspected of having such. Certainly in two of the cases this was the position prior to Labour gaining office, New Zealand was involved and there had been criticism of this. In the case of the GPS system, the potential military uses of the system had been well documented when Labour became the government. In all three cases the Labour government continued the practice of the previous government or allowed visits requested, despite information being available making it clear that the activities to be undertaken could be of use in United States nuclear warfighting strategies. In terms of the policy in action, the nuclear free policy did not stop these involvements with the US military system, just as it did not stop other contacts examined in the next chapter. We see evidence of compromise and expediency on the part of the government, with the encouragement of its officials, to avoid antagonising the United States, providing grounds for criticism of the strength of Labour's commitment to its nuclear stance of the sort we will meet in the final chapter of this paper.

A variety of visits by American military aircraft to New Zealand not covered by the annual clearances continued through 1987 according to the ministry files, and still continue. This was confirmed by Alan Cook of the Ministry of Foreign Affairs and Trade in a letter which states that,

We can confirm that from time to time requests are received for clearance for visits by US military aircraft which fall outside the annual category clearances (which may change from year to year) issued to the US Embassy following approval by the Prime Minister under S 10(3) of the Act. Such clearance requests are of course processed in accordance with the relevant provisions in the Act. (private communication 12 November 1998)

It would be interesting to investigate the details of these flights, and numerous other matters relating to this working paper series, by examination of further ministry files. It is known from correspondence with the ministry subsequent to the termination of the research carried out for the present study that there is a considerable body of material in the files examined covering the period subsequent to 1987 that has not been seen. Further, there are other series of files not seen at all so far that appear relevant to the study of New Zealand's nuclear free policy. Unfortunately, limitation of resources precludes any further examination and analysis of ministry files at present.

3.10 Harewood - the Future - Proposals

There were criticisms of clause 10 of the Bill as introduced by Labour. These were similar to those voiced in relation to clause 9 covering the entry of nuclear armed or powered vessels. The SANA group again asked that the country of origin should be required to confirm that aircraft for which they were seeking clearance were not carrying nuclear weapons. Further, the said government should be required to confirm that those aircraft were not designed specifically for the transport, delivery or support of nuclear weapons, and were not being used as, or carrying, any such transport, delivery or support system or part thereof. A certificate to this effect should be issued to PACDAC which would make it available to the public.

No problem was then seen with the issuing of blanket clearances for specific categories of aircraft visits such as those involved in the ODF research since guarantees that these would not be associated with nuclear weapons programmes would have been supplied. This would also have removed the uncertainties of concern to the peace movement associated with the channel flights. The justifications for these recommendations were as for the changes proposed for clause 9 of the Bill. These recommendations were not

followed. They are presented here because proposals to be made concerning the future operation of the ODF programme echo these criticisms to some extent.

Arguments and evidence have been presented which establish to a high degree of certainty that the intent of section 10, to ensure that no nuclear armed aircraft enter New Zealand, has been achieved. There seems to be no reason to suspect that this will not continue to apply. This despite the large number of nuclear capable United States military aircraft that transit Christchurch annually.

The situation with regard to section 10(3) is far less satisfactory. Here we see evidence strongly suggesting that under section 10(3) a large class of military aircraft are granted annual blanket clearances on the ground that they all serve ODF or other American installations in New Zealand when in fact this is not the case. It has been stated officially that these flights are merely 'coincidental' to the Antarctic programme.

Further while the standard official New Zealand argument is that ODF is a scientific programme, the Christchurch group has always maintained that it is primarily a military programme. There is evidence supporting this claim. The Christchurch group, using the US Freedom of Information Act, obtained a listing of American military bases in Australia and New Zealand. This list included Christchurch airport, and some material referring to the airport was blacked out. This, according to an accompanying letter from the US Department of Defense, was because the material concerned military weapons, plans or operations considered classified. This was reported in the Christchurch Star for 22 January 1987.

On 23 September 1995 The Press, Christchurch, reported comments by Dr Charles Paul, New Zealand representative of the NSF, foreshadowing the departure of the US Navy from Christchurch, which finally happened on 20 February 1998. Paul was speaking on the eve of celebrations to mark 40 years of US Antarctic activity in Christchurch. He was quoted as saying,

The United States has always had three reasons for being in Antarctica and science has always been the lowest priority. The first was military - keeping an eye on what the enemy is doing; the second commercial; and the third scientific.

With the end of the Cold War and with the environmental protocol signed in Madrid in 1991 banning mining for 50 years, the NSF's political constituency is now the science community.

The US Navy is leaving the programme. That's no secret, whether it be in three years or five years, and the NSF is right now trying to find another military organisation to take over the programme.

The military organisation that took over is the US Air Force. The Christchurch group sees this as arising because the US Air Force already operated the channel flights as well as logistics flights to Antarctica. They discuss the takeover in Peace Researcher No.15 June 1998, pp.2-3. They saw the transfer as a negative development, as 'transfer of all logistics to one service, the one that serves the widest array of interests of the American government in this part of the world'.

There appear to be strong grounds for criticising the existing blanket clearance arrangements as they relate to American military aircraft not going directly to the Antarctic or coming directly from there, and for the maintenance of NCND for all flights transiting Christchurch. Echoing the criticisms by SANA and others of the form of section 10 adopted by Labour in 1987, and echoing a proposal made by Leonard in a telegram to Lange dated 20 August 1986, if not made earlier by him or others in Christchurch, the following proposals are made for the future of operations at Harewood.

1. The New Zealand Government should, at the termination of the present annual blanket clearance period, 31 December 1999, revoke all existing blanket clearances for United States military aircraft. These should be replaced by a blanket clearance only for military-logistics transport aircraft of the Government of the United States providing logistic support for the United States Antarctic Program, to use to wording of the blanket clearance issued on 10 December 1997 for the 1998 year, and assuming the wording for the 1999 year is the same. These would be aircraft travelling on to the Antarctic or returning from there.

All other United States military aircraft wishing to enter New Zealand for any reason should have to apply for individual diplomatic clearance, including those transporting dignitaries, carrying high priority cargo, in support of aeromedical evacuations or search and rescue, or in support of other United States research projects, or visiting for maintenance, to list the categories of activity given blanket clearance at present. This was the practice for many years in the past for some of these categories of visiting aircraft according to ministry files.

Clearance for the channel flights should be kept to a minimum annually, and only granted if cargo directly related to ODF is being carried or is to be collected. Cargo for installations like the American Embassy would have to be dealt with by arranging for this to be carried on flights serving ODF requirements.

This proposal, which parallels Leonard's earlier proposal to ban all channel flights, would reduce the anomalously large number of transits by channel flights not related to ODF, and restore the original purpose of the blanket clearance arrangement. This was to acknowledge, and implement the 1958 Agreement.

2. The New Zealand Government should demand the lifting of the NCND policy for all United States military aircraft given diplomatic clearance to enter New Zealand. These will be for the very large part aircraft visiting Christchurch in relation to ODF which should be cleared of NCND for the reasons given already. Dropping NCND for the small number of visiting military aircraft remaining should then not be a serious problem.

Justification for the proposal to abolish NCND for the ODF programme has been given already.

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CHAPTER FOUR

EXERCISES AND OTHER MILITARY CONTACTS

4.1 Exercises with the Nuclear Powers Post-1984 - The United States

An active area of interaction between New Zealand's defence forces and those of other countries is in joint exercises. The nuclear free policy does not prohibit New Zealand from exercising with the forces of other countries but, section 5(2)(b) of the legislation does prohibit the New Zealand military from activities involving nuclear weapons. How has the policy operated in this regard? This restriction could have been expected to impinge upon exercises with the United States and Britain, possibly resulting in their termination. This was particularly the case for the United States and exercises involving naval forces, since the majority of US Navy warships were capable of carrying nuclear weapons, nuclear capable, in the mid-1980s. And New Zealand had had a regular pattern of such ANZUS exercises.

The United States terminated exercises with New Zealand forces early in 1985 following the refusal by New Zealand of their request for the USS Buchanan to visit, see Working Paper No.7 for details. In terms of the legislation, this action related to components of the 1984 nuclear free policy now formulated as sections 9 and 11, but it appears the Americans were also unhappy about section 5 and its possible consequences for joint activities, see Working Paper No.8, p.35. Once again it cannot be claimed that the appropriate section of the Act was invoked by the New Zealand government to produce this termination of joint exercises, just as sections 9 and 11 were not invoked directly in the termination of all ship visits. The cessation of exercises resulted from a decision by the United States. The costs to New Zealand of this decision are discussed in a subsequent working paper.

Regardless, New Zealand has contributed to multinational coalition forces in the Persian Gulf, and New Zealand frigates have served there under US Navy command. Some intriguing aspects of this situation are discussed in Working Paper No.8, pp.37-9, including a careful and detailed interpretation of the terminology used in section 5 issued by the Ministry of Defence for their personnel serving in the Gulf.

The exclusion of New Zealand from exercises with United States forces remains complete at present.

4.2 The British and Five Power Defence Arrangements Exercises 1981 to 1995

As explained in Working Paper No.8, pp.36-7, this termination of joint exercises did not apply to the British who were more measured in their reactions to the nuclear free policy and only terminated exercises within New Zealand waters. Traditional exercises like the so-called Five Power Defence Arrangements (FPDA) exercises and others continued unchanged.

The FPDA reflect the Commonwealth past of our region and the former presence of Britain as a major power, and major military power. The history of the FPDA has been considered elsewhere ⁽¹⁾ and will not be examined here in any detail. According to J Rolfe ⁽¹⁾, when established in 1971 the FPDA had a specifically security focus, but in the completely changed security environment now existing, the alliance has adapted itself to provide different benefits to each of its partners, and now its main role is as a networking and confidence building arrangement for its own area. The important aspect of the

Arrangements for the present discussion is that they include regular joint military exercises involving the forces of the five member countries, Australia, Britain, Malaysia, New Zealand and Singapore. They encompass land, air and naval force exercises. It is interesting to examine the recent history of the naval component of these exercises in relation to the legislation because they have at times since 1985 included British nuclear capable vessels, while the land and air exercises do not include any possibly nuclear weapons equipped units.

Details of the Royal Navy and Royal New Zealand Navy vessels that participated in these exercises, referred to as Exercise Starfish, were kindly supplied by the Naval Staff, Head Quarters NZ Defence Force, and by British Defence Liaison Staff at the British High Commission, both in Wellington: They are listed in the following table.

Table 1 - Five Power Defence Arrangement Exercises 1981 to 1995

Year	Period	Royal New Zealand Navy	Royal Navy
1981	June	Otago (F) Waikato (F)	Beachampton (H) Walkerton (H)
1982	June	Canterbury (F) (under RN operational control)	Ajax (F) Beachampton (H) Wolverton (H) Gold Rover (T)
1983	June	Waikato (F)	Avenger (F) Monkton (H) Wasperton (H) Pearleaf (T)
1984	July	Waikato (F)	Monkton (H) Wolverton (H)
1985	May	Waikato, (F)	Plover (P) Starling (P)
1986	August	Southland (F) Canterbury (F)	Amazon (F) Beaver (F,NC) Starling (P) Swallow (P)
1987	June/July	Southland (F) Canterbury (F)	Plover (P) Starling (P)
1988	July	Waikato (F) Wellington (F) Endeavour (T)	Peacock (P)
1989	July	Waikato (F) Wellington (F) Endeavour (T)	Brave (F,NC)
1990	July	Waikato (F) Wellington (F) Endeavour(T)	Battleaxe (F,NC) Plover (P)
1991	April/May	Wellington (F) Endeavour (T)	Peacock (P) Manchester (D,NC)

Year	Period	Royal New Zealand Navy	Royal Navy
1992	September	Waikato (F) Endeavour (T)	Boxer (F) Olwen (T) Norfolk (F)
1993	September	Wellington (F) Canterbury (F)	Cornwall (F)
1994	September	Wellington (F) Endeavour (T)	Cardiff (D) Sheffield (F) Splendid (SSN)
1995	September	Wellington (F) Endeavour (T)	Sheffield (F) Monmouth (F) Trenchant (SSN) Diligence (R)

In the table, the types of vessels are indicated by the letter in brackets after the name of each vessel. SSN=nuclear powered attack submarine; F=frigate; D=destroyer; R=fleet repair/maintenance ship; T=tanker; H=coastal minesweeper Hong Kong Squadron; P=Hong Kong patrol boat. These latter are listed in ref.2 below as part of the Royal Navy, but were supplied to Hong Kong, the Hong Kong government paying 75% of their cost. The classifications for the Royal Navy vessels were mostly supplied by the British Liaison Staff, or were taken from Jane's Fighting Ships ⁽²⁾. For the Royal New Zealand Navy they are from New Zealand Naval Vessels ⁽³⁾. Vessels classed as nuclear capable, equipped to deploy nuclear weapons, are indicated by the letters NC and are shown bold. The source used to classify vessels as nuclear capable is ref.4 below. The British announced in June 1992 that their surface ships would no longer be capable of deploying nuclear weapons, so ships like the Boxer, formerly nuclear capable, are not listed as being nuclear capable for 1992 and subsequent years in table 1.

It is interesting that 1994 and 1995 both saw a nuclear powered submarine from the Royal Navy deployed in the North Pacific/Indian Ocean region, while there is no similar deployment for these exercises for the 13 years from 1981 to 1993 shown in the information from the British Liaison Staff. There is a possibility of some ambiguity here however. When requesting the information given in the table, the British Liaison Staff were normally asked to name the vessels involved each year. The term 'vessels' was taken to include both surface ships and submarines. The replies were uniformly couched in terms of 'ships'. When asked in November 1995 if this could lead to any ambiguity, in particular to the omission of any submarine participation, the British Liaison Staff did not reply in direct terms, but said they felt they could not offer much help 'beyond the information which you can glean from open sources'. This does not affect the main point to be discussed, explained in the next paragraph, but leaves a feeling of slight disquiet concerning the movements of British nuclear capable submarines in our region.

The table is not extensive enough to establish any definite patterns of participation by nuclear capable vessels in this series of exercises, should there be any such pattern. But it is interesting that the period after the introduction of the anti-nuclear policy saw these ships involved in 1986 and in each year from 1989 to 1991, the last year the British deployed nuclear weapons on surface ships at the time of these exercises. What is interesting for the present discussion is how these contacts by ships of the New Zealand Navy with nuclear capable ships were encompassed within the restrictions imposed by the legislation.

Before examining this question it is interesting to note that not all Asian countries look favourably on the FPDA system which excludes all of them apart from Singapore and Malaysia. Indonesia for example has always had reservations about the FPDA. (*The New Zealand Herald*, 4 April 1995, p.5) Further, events in 1998 have shown the system to be susceptible to problems between its members, with Malaysia saying it would not participate in FPDA exercises that year. The main reason given was the state of Malaysia's economy, but tense relations between Malaysia and Singapore was acknowledged to be another factor by Malaysian Defence Minister, Syed Hamid. Relations between the two countries have been somewhat strained since their split in 1965. Some FPDA meetings were scheduled to be held in Singapore, and 'with the current environment we felt it was inappropriate' he said. This meant these exercises 'were not held since they are generally held in Malaysian territory. (*Far Eastern Economic Review*, 3 September 1998, p.20)

4.3 Exercising with Nuclear Capable Units - The Official Position

This is not the place to discuss the history of these exercises prior to 1981. The interested reader is referred to the sources listed in ref. 1 of this chapter, and other sources. It could be said that just as ANZUS and ANZUS exercises symbolise a major post-world war two realignment of Australian and New Zealand security interests with the United States in the late 1940s and early 1950s, the FPDA exercises continue to symbolise the earlier strong alignment of their security interests, and those of the other countries involved, within the British Empire. New Zealand clearly wished to continue the contacts provided by the FPDA exercises unaffected by the anti-nuclear policy. What then was the policy of the 1984 Labour Government towards nuclear capable units from the Royal Navy exercising with New Zealand naval ships?

The policy, adopted was established quite early, and has been maintained unchanged. It is spelled out in numerous Questions for Oral Answer presented to the government by Opposition Members of Parliament. On 21 February 1985, Doug Graham MP asked the former Minister of Defence, Frank O'Flynn the following Question which typifies many subsequent Questions. 'Will New Zealand warships be permitted to exercise with any nuclear capable ships of our allies outside New Zealand territorial waters?' The answer presents the policy adopted. It was,

New Zealand naval vessels will be permitted to exercise with nuclear capable ships of our allies outside New Zealand territorial waters provided, as has always been the case, that the exercise has no nuclear context - that there will not be use or simulated use of nuclear weapons or manoeuvres necessary for their use. That is not in breach of or inconsistent with the Government's anti-nuclear policies for New Zealand. (NZPD vol1461, 1985, p.3167)

Very similar questions will be found on pp.3567-68 and 3593 of the same volume, on 18 June 1986 Question 6; 30 September 1986 Question 1; 9 June 1988 Question 9; and 23 June 1988 Question 3 relating to the Starfish exercises that year, 6 September 1990 Question 11, and possibly elsewhere.

The most detailed exposition of the policy seen was given by the former Labour Minister of Defence, Bob Tizard, in a letter dated 16 November 1988. It was his reply to a series of questions on the matter put to him for the purpose of this study. These questions were, (the wording is slightly changed in question 1 for brevity only):

1. Reference is often made to a statement by the former Minister of Defence F O'Flynn on 18 June 1986 covering the question of exercises with nuclear capable naval vessels, but our nuclear policy became law after this, in 1987. Is Mr O'Flynn's reply still valid? (The 18 June statement was the same as that just quoted)

2. Following from this, is it Government policy to allow New Zealand naval vessels to exercise with nuclear capable vessels from other navies under our nuclear free law?
3. Will the Government allow such exercises if it is known that the vessels from other navies will be nuclear armed at the time of the exercises?
4. Will the Government allow units from our army or airforce to exercise with units from other countries if those units at times train to use nuclear weapons?
5. Will exercises as in 4 be allowed if it is known that at the time of the proposed exercise the unit or units from the other country or countries will be equipped with nuclear weapons?

Tizard's answers were (private communication):

Question 1: Mr O'Flynn's reply of 18 June 1986 remained a valid statement of the Government's position.

Question 2: New Zealand naval vessels are permitted to exercise with nuclear capable ships of allies outside New Zealand territorial waters provided that the exercise has no nuclear content and provided that there will not be any use or simulated use of nuclear weapons or manoeuvres necessary for their use.

Question 3-5: Yes, subject to the provisos set out in the answer to Question 2.

The policy towards exercises with nuclear capable units was unchanged from that enunciated early in 1985, and was still unchanged as of 29 May 1996. The Defence Minister at this time, Paul East, stated then that 'The Government is not contemplating any change to this policy.' (private communication) As Hager remarks, while section 9 and 11 have far more teeth, and there is no ambiguity about nuclear powered vessels, whether or not under section 5(2)(b) New Zealanders were helping with the control of nuclear weapons was far more ambiguous when a New Zealand frigate was part of a naval exercise with a nuclear capable vessel even if the exercise had no explicit nuclear content. (private communication 3 April 1996) Also, as the response to a question for Oral Answer from G Braybrooke MP to Frank O'Flynn on 13 March 1985 revealed, New Zealand servicemen were exercising with West German armed forces who could at times have trained to use nuclear weapons. (NZPD vol 461 1985, p,3593) This exercise policy was invoked on a number of occasions apart from the FPDA exercises.

The policy is still important in that the future could see New Zealand forces once again exercising with American as well as British forces and with the US Navy as well as the Royal Navy. Both still have nuclear armed ballistic missile submarines.

The anti-nuclear movement did not like this approach to joint exercises. There was concern over the continuation of the Starfish exercises, particularly with the growing involvement of nuclear capable vessels from the Royal Navy, and over some other exercises. There was also protest at the possibility that following the Australian Bicentennial celebrations in 1988 which saw ships from four of the world's five nuclear powers in Sydney Harbour, exercises would be held that could include warships from New Zealand and some of these nuclear capable ships. A legal challenge to the interpretation of section 5(2)(b) invoked in the exercise policy was considered by the some in the movement, but did not proceed. Nevertheless, the incident caused quite a stir in the New Zealand press, with questions raised concerning the legal interpretation of section 5(2)(b). While all the details of the exercises that took place did finally become public, it is interesting that at the time, New Zealand Ministry of Defence Naval Staff appeared rather reluctant to release them. Royal Navy warships did in fact exercise with New Zealand warships in the Tasman Sea in October 1988 for the first time since 1985. Australian warships also participated, but US Navy vessels visiting for the celebrations

did not. There was no breach of the Act the then Minister of Defence, R J Tizard said, 'No nuclear scenarios exist in these manoeuvres'. (press release by R J Tizard, 4 October 1988)

In the light of the continued application of the policy on exercises with nuclear capable units it is interesting to consider how the Labour Governments of 1984 and 1987 might have responded had the United States imposed a ban on exercises only within New Zealand's territorial waters, its nuclear weapons free zone, as the British did. This would have made most ANZUS exercises accessible to New Zealand forces as they had been in the past. While the continued FPDA and other exercises with British units that occasionally included nuclear capable elements might have been acceptable to many New Zealanders because of strong historical ties New Zealand has with Britain, equivalent ; activity with units from the United States would have been much more questionable, and very likely much more strongly challenged. The US Pacific Fleet in particular would have regularly included nuclear capable and almost certainly nuclear armed vessels.

Nevertheless, it is very possible that the 1984 and 1987 governments with their position that the anti-nuclear policy was 'not for export', and faced with official anxiety not to offend their major ally further, would have invoked their exercise policy and persisted with ANZUS exercises. Perhaps fortunately for Labour, it was not faced with this dilemma. The United States, in what is here interpreted as its haste to make an example of a formerly loyal ally that threatened the sanctity of NCND, imposed a global exercise ban as a warning to other possibly wavering anti-nuclear allies.

Should they agree to resume exercises with New Zealand forces this problem will no longer arise directly, United States forces in the region having been guaranteed to be free of nuclear weapons. Nevertheless, the morality of a strongly and now politically united anti-nuclear country that effectively rejects nuclear deterrence resuming this level of contact with the military from a country that maintains a large nuclear weapons arsenal, retains nuclear deterrence as a major element of its military policy, and deploys nuclear armed ballistic missile submarines would, in this case and at this time, certainly have to be questioned. The strategic situation now is quite different from what it was in the mid to late 1980s.

This question also arises in a less direct way in relation to the FPDA contacts New Zealand has with British forces. Security alliances in Southeast Asia were described as still needed even though security in the region seems to be 'very satisfactory' by Chief of General Staff of the British Army, General Sir Charles Guthrie, in July 1994 (New Straits Times, 7 July 1994, p.2), and he cited the FPDA as an example. National supports continued New Zealand membership of the FPDA. Labour says past military alliances like ANZUS 'are no longer appropriate', but it is not obvious this rules out the FPDA, although the Alliance Party would withdraw from the Arrangements and Labour and the Alliance are now moving to form a coalition group in the New Zealand political scene.

But Britain like the United States is a nuclear power, and is likely to remain one for a considerable time. There is little likelihood of nuclear weapons being involved in any FPDA activities in peacetime in future, nor is it likely that British nuclear armed ballistic missile carrying submarines will be deployed in the Pacific as in the 'US Pacific Fleet, but this could change in a crisis situation. Even so, the question just raised arises here also for a truly anti-nuclear New Zealand. Should New Zealand in the late 1990s be in any military alliances or other arrangements with any nuclear power, or involving any nuclear power as a member? Meantime the Starfish exercises and other FPDA exercises continue, as the New Zealand Defence Force (NZDF) confirmed recently. (private communication, 28 November 1996)

4.4 The British and the LONGLOOK Exercises

Another series of contacts with British forces that could have raised problems with the legislation through section 5(2)(b) are the annual LONGLOOK exercise. These continued unchanged after 1984, and still continue, with 26 New Zealand soldiers working with the British Army in Britain and Germany from July 19 to November 29 1996. (New Zealand Herald, 16 July 1996, p.3, confirmed by the NZDF in November 1996)

Begun in 1976, these exercises typically involve New Zealand sending about 30 Army personnel to work with the British Army units in the United Kingdom and with the British Army of the Rhine (BAOR) in Germany, and a similar number of British Army personnel come to New Zealand. It was implied in 1986 by Sir John Fieldhouse Chief of the British Defence Staff and Admiral of the Fleet at the time, that training with the BAOR could have involved problems related to the interpretation of section 5(2)(b) because, he said, British troops could be argued to be 'part of an organisation which clearly does "control" nuclear weapons' (see Working Paper No.8, p.36). The programme did continue, and NATO still retains nuclear weapons, although only a small number now, so the issue of whether or not New Zealand forces should exercise with the BAOR remains open.

Other exercises and contacts with British forces apart from the FPDA exercises also continued after 1984. For example, November 1985 saw visiting British units in New Zealand for exercise LOTHLORIEN with a Malaysian Army company and units of the New Zealand Army's Ready Reaction Force. Exercise KAURI PINE South, described in the 1988 Ministry of Defence Annual Report, involved a company from No. 1 Battalion Coldstream Guards deployed from Hong Kong to take part with New Zealand Army personnel in the exercise which provided practice in low-level operations. Contacts with the British military were not curtailed in the same way as with American forces as a result of the policy. The subject of New Zealand's contacts with the forces of its allies after 1984 is considered further in section 4.6. Table 2 lists recent exercises undertaken with British forces, (NZDF, private communication November 1996)

Table 2- Exercises Involving British Forces 1995/96

Name	Nature
FPDA exercises	Air, sea, and land exercises, see above.
Longlook	Annual exchange with British armed forces, sees NZ troops exercising in Germany and Britain, has continued since before 1984.
Kauri Pine	Concurrent NZ infantry deployment to Hong Kong, and Gurkha infantry deployment to NZ - discontinued with the handover of Hong Kong.
Cygnets Globe	Biennial worldwide multinational communications exercise including units from the UK, US, and Australia.
Fincastle	Annual anti-submarine warfare exercise with British,
Bullseye	Canadian, and Australian air forces. Tactical air transport operation practice with British, Canadian, and Australian air forces.
Suman Warrior	Annual exercise for FPDA country forces to practise interoperability.

4.5 The United States' Position - A Gradual Softening?

The February 1994 restoration of high level political, strategic, and broad security contacts with the United States did not extend to the restoration of former defence contacts. Nevertheless, there have been some developments in the position of the United States on contacts with New Zealand forces. The New Zealand Navy held its fiftieth anniversary celebrations late in 1991 and invited the United States and Britain to take part. Both declined the invitation.

However as mentioned, New Zealand frigates have been operating in the United Nations mandated Multinational Interception Force (MIF) in the Persian Gulf under the day to day control of the US Navy Task Force Group Commander and working closely with the US Navy. This is continuing. The current Minister of Defence, Max Bradford, issued a press release on 16 June 1999 stating that the government had agreed-in-principle to contribute the frigate Te Kaha to the interception force for 8 weeks in September, after taking part in FPDA exercises. HMNZS Wellington served with the MIF in late 1995 for three months until early 1996 when she was replaced by HMNZS Canterbury and earlier this year a six person boarding party served on US Navy ships with the MIF, the press release states.

Also in September 1995 the frigate HMNZS Waikato took part in United States celebrations to mark the end of the second world war in the Pacific. These were held in Hawaii, and the Waikato and a New Zealand maritime surveillance Orion participated in the sail and flypasts on 1 September. The Waikato was also given a berth at Pearl Harbor, whereas since the ANZUS split New Zealand naval ships had been made to use berths in the merchant harbour of Honolulu during their infrequent visits. (New Zealand Herald, 20 August 1995, p.3)

Again in 1995 New Zealand was permitted to send observers to exercise KANGAROO, an exercise organised by Australia which New Zealand participated in prior to the 1985 split. Australian Chief of Defence Force, General John Baker said that 'In keeping with the policy of engaging our near neighbours in closer defence cooperation as outlined in the 1994 Defence White Paper, Australia has invited regional countries including Malaysia, Singapore, Indonesia and Papua New Guinea to participate in the exercise.' (Australian Department of Defence, 12 July 1995) New Zealand was not invited because United States forces were also involved, but being allowed to send four observers was an advance compared to the complete exclusion from the exercise that had prevailed. (The New Zealand Herald, 3 August 1995, p.7)

In what is seen as a further sign of improving relations, there was no apparent veto in 1996 over New Zealand wishing to buy a second-hand US Navy ship, the USS Tenacious, for underwater research and charting. (The New Zealand Herald, 11 March 1996, p.5)

New Zealand's then Minister of Defence, Paul East, expressed the view in 1996 that New Zealand forces may soon be exercising with American forces again. (The New Zealand Herald, 12 March 1996, p.5) But United States Commander in Chief in the Pacific at the time, Admiral Richard Macke, said joint exercises 'could not go ahead until "the unfinished business" - New Zealand's anti-nuclear stance - was resolved'. (The New Zealand Herald, 23 August 1995, p.3, The Dominion, 22 August 1995, p.1)

However, as stated, United States Secretary of State Madeleine Albright in August 1998 indicated the willingness of her country to look at how to enhance military cooperation with New Zealand, and East, after a visit to Washington, again interpreted this as signalling a return to joint exercises reasonably soon. (The New Zealand Herald, 3 September 1998, p.A5) This proposal has so far been manifested in an agreement which will allow New Zealand to lease 28 F16 jet fighter aircraft from the United States from the

year 2001 to 2011 with an option to purchase them after that. The present government has agreed to the deal which the Minister of Defence Max Bradford described as 'the deal of the century' (The New Zealand Herald 2 December 1998, p.A3), and which he saw as allowing 'a further thawing in the relationship' with the United States. (The New Zealand Herald 5 December 1998, p.A4) Opposition parties in Parliament criticised the agreement as totally unsuitable, and Labour Leader, Helen Clark, said that the time before the planes are due to arrive 'gives an incoming government plenty of time to review the position'. (The New Zealand Herald 2 December 1998, p.A3)

A further signal of improving military contacts between New Zealand and the United States was the three day visit in February 1999 by General Joseph Ralston, Vice Chairman of the US Joint Chiefs of Staff, and America's second highest ranking military officer. He is believed to be the highest ranking American military officer to visit New Zealand since the nuclear armed or powered ship visit bans were introduced in 1984. He also expressed a desire to see the unfinished business settled and cited instability in Asia as a reason for addressing this question urgently. He referred to the ban on nuclear powered ships, but Shipley again ruled out any change to the Act. Ralston's visit was seen by commentators as signalling 'another large step in the thaw that accelerated last August with the visit of Secretary of State Madeleine Albright'. (The New Zealand Herald, 15 and 18 February 1999, p.A3 and A5 respectively)

Another landmark event in 1999 was the first meeting between Defence Minister Bradford and the United States Secretary of Defense, currently William Cohen, in Washington in June of that year, the first such meeting for 25 years. Bradford discussed the meeting in a speech to the New Zealand Army Officer Cadet School on 16 June. He said that the United States is now 'willing to relax some of the current restrictions on our defence relationship. This will involve such things as increased access to training courses.' Bradford said that it 'was in the interest of the United States to support New Zealand in maintaining an effective defence force'.

In another sign of a thawing of New Zealand-United States relations, the Prime Minister has announced that President Clinton has agreed to make a formal state visit for almost a week following his attendance at the APEC summit to be held in Auckland in September 1999. This would be the first such visit by an American President for more than 30 years. (The New Zealand Herald 12 December 1998, p.A1) Despite these various signs of a warming of relations, the United States is reported still to want New Zealand to rethink its anti-nuclear policy if it wants 'enhanced' defence relations, taken to mean more contacts and joint exercises. These appear contingent on New Zealand acknowledging that the 'unfinished business' of the anti-nuclear policy 'still needs to be addressed' the report states. (The New Zealand Herald 19 December 1998, p.A5)

4.6 Other Ongoing Military Contacts with New Zealand's Nuclear Allies

Although rarely discussed, there are a considerable number of activities in which New Zealand participates that involve military contacts with its former nuclear allies, and that in most cases continued unchanged for many years prior to the nuclear free policy being implemented and have continued unaffected by that policy. These are not military exercises, but are of considerable military importance, sometimes individually, but certainly when taken together. These activities do not involve the nuclear free legislation directly. Nevertheless, it is relevant to discuss them briefly here because the continuing contacts they represent between New Zealand's forces and those of the United States and Britain give a different picture from that normally presented when the impact of the ANZUS rift on such contacts is discussed. This is of an essentially complete break in military contacts.

The question of New Zealand's military contacts was of great concern to the NZDF in 1985-6, and a group of officials from appropriate government departments produced a confidential report in 1986, Report of the Defence Review Officials Committee, referred

to as the officials' report below. The group who prepared this report expressed considerable concern over the possible loss of operational effectiveness that New Zealand's forces might suffer through the loss of training in exercises with United States forces. The question of what exercises New Zealand's forces continued to undertake, and now undertake, is the subject of another working paper that examines the impacts of the nuclear free policy.

Ministry of Defence Annual Reports show, however, that despite the ANZUS rift, New Zealand military personnel did continue to attend conferences and courses in the United States including courses at American military facilities, during 1985-87 for example. Later Annual Reports do not provide this information in explicit form.

Very importantly, New Zealand was not excluded from meetings of a number of multilateral defence forums of which it was a member or associate. The officials' report lists those in Table three.

Table 3 - Multilateral Forums New Zealand Attends

ABCA	A standardisation agreement between the American, British, Canadian and Australian (ABCA) armies. New Zealand has been an associate member since 1965.
PAMS	Annual Pacific Area Management Seminars (PAMS) attended by military representatives from most Pacific rim countries, including the US.
ASCC	The Air Standardisation Coordinating Committee (ASCC) comprises the forces of the US, UK, Canada, Australia and New Zealand.
TTCP	The Technical Cooperation Programme (TTCP) relates to non-nuclear research and development in the group of ABCA countries.
CCEB	The Combined Communications-Electronics Board (CCEB).
AUSCANNZUKUS NAVCOMMS	A naval command, control, , and communications organisation.
COMBEXAG	The Combined Exercise Agreement (COMBEXAG), an ABCA group agreement providing standard operating procedures for exercises in the Pacific.
Another multilateral forum that New Zealand participates in is,	
PASOLS	Meetings of senior military personnel concerned with logistics

New Zealand has for many years participated in regular meetings of senior military personnel from the Asia-Pacific region, including the United States, with a special interest in logistics, the Pacific Area Senior Officer Logistics Seminar or PASOLS meetings. Begun in 1971, these meetings provide opportunities to exchange information on logistics, and to foster regional cooperation. In 1994, for example, 115 delegates from 29 countries attended the PASOLS meeting in Malaysia. This is one of a considerable number of military contacts New Zealand has maintained with the United States despite the ANZUS dispute.

Some of the agreements in table 3 have not been released publicly. **PASOLS** has been discussed. New Zealand also attends annual United States organised Pacific Armies' Reserve Components Seminars (**PARCS**) aimed at exchanging information about the training and organisation of reserve components of Pacific armies. Colonel D J McGuire attended for New Zealand in 1992 for example. Another forum attended by New Zealand is the Pacific Air Chief's Conference (**PACC**) hosted every two years by the United States. The Chiefs of the air forces from 12 Asia-Pacific countries attended in 1994, to discuss developments in air doctrine and to facilitate an interchange of ideas on air force related matters, the purpose of PACC meetings.

ABCA - Aims to achieve the highest level of interoperability and economy of resources between the ABCA armies. The ABCA programme contributes valuable information required by the New Zealand Army in the development of force structure and equipment requirements. There is also an ABCA Navies programme.

PAMS - Coordination of training programmes and military assistance programmes is discussed at PAMS seminars. Recent meetings have been attended by representatives of 35 countries including the US, UK, and Russia.

ASCC - Seeks to standardise air force doctrine and operating procedures, and promote economy in research and development. It is the RNZAF's main source for the acquisition of tactical, technical, and safety information.

TTCP - Our Defence Scientific Establishment is involved in TTCP, which acquaints participating countries with each other's non-nuclear defence research and development programmes thus avoiding unnecessary duplication. It also seeks to close important gaps in the collective technology base.

CCEB - This organisation seeks to improve interoperability in communications, command and control systems in support of command and control, and decides the content, format, and release policy of Allied Communications Publications.

AUSCANNZUKUS NAVCOMMS - Is aimed at monitoring the development of naval communications command and control equipment and procedures, to maintain and improve interoperability.

COMBEXAG - Its aims have been outlined, and New Zealand is still a member. The details are classified.

That these activities represent an important area of defence activity is shown by the following statements. The NZDF Corporate Plan 1992-1993 states that,

The NZDF and single services are signatories to 12 standardization and interoperability agreements with Australia, Canada, United Kingdom and the United States. These agreements call for active participation in some 130 working groups and committees which meet on a rotational basis in respective countries. The NZDF will host some committees or working groups each year.

The forum names and details in table 3 were deleted from a version of the officials' report released to the public. However, discussing these forums the report says,

It cannot be overemphasised that continued access to these forums is of fundamental importance to New Zealand's armed forces.

These forums and agreements involve the same group of countries that figure in relation to New Zealand's intelligence links with its allies, the so-called UKUSA group, the United Kingdom, the United States, Australia, Canada and New Zealand. This comprehensive intelligence network covering military and non-military intelligence is revealed in detail in the recent book Secret Power: New Zealand's Role in the International Spy Network by Nicky Hager ⁽⁷⁾.

Peter Jennings, formerly a teaching fellow at the Australian Defence Academy, published an analysis of the impacts of the ANZUS rift in 1988 ⁽⁵⁾ which will be considered when

the impacts of the nuclear free policy are discussed. He refers to these agreements as continuing NZ-UK-US contacts. He says that,

If ANZUS provided the skeleton of alliance cooperation, then the web of UKUSA arrangements were the muscles and sinews which gave substance to that co-operation. (p.24)

He feared that access to these contacts might be restricted because of the ANZUS problem. The evidence shows otherwise.

Access has continued to these and other ABCA/UKUSA group cooperative arrangements. The agreements listed in Table three are only some of a considerable number of agreements of various kinds linking these countries. They are too numerous to list here. The peace movement has listed many of them at times in the past. Some of the agreements and documents are presented and discussed in the publication The ANZUS Documents ⁽⁶⁾.

Finally we examine material released under the Official Information Act by the NZDF in November 1996 listing meetings and training courses New Zealand military personnel attended during 1995 and 1996 that also involved British military personnel, and in January 1997 listing similar contacts with American forces. Many involve the UKUSA forums.

Contacts with British military forces described by the NZDF are summarised below.

Table 4 - Meetings and Courses Attended 1995-96 Involving the British Military

ABCA Navies	RNZN personnel attended meetings covering technical topics.
Courses	11 courses ranging from systems management to maritime tactics, anti-submarine warfare, and naval control of shipping, this latter exposing New Zealand officers to concepts and procedures being developed by NATO and the US. Training contacts related to UN activities.
Exchange programmes	Two naval exchange programmes.

Contacts with American military forces the NZDF described are summarised next.

Table 5 - Meetings and Courses Attended 1995-96 Involving the US Military

TTCP	NZDF staff attended 67 meetings with US defence science personnel in the US, Canada, Australia, UK, and NZ. New Zealand hosted or part hosted 10 of these.
ASCC	The RNZAF participated in 20 ASCC working party meetings at which USAF personnel were present.
ABCA	Under the ABCA Armies programme, the NZ Army sent observers to 16 working group conferences in the US, UK, France, Canada, and Australia, and hosted two more in NZ.

CCEB	The Director of Joint Command, Control, Communications, and Information Systems attended CCEB meetings in the UK (1995) and the US (1996). Senior communications and electronics officers from the US were present at both.
COMBEXAG	RNZN personnel attended two reviews of the COMBEXAG 5 Agreement, one in 1995 and one in 1996.
AUSCANNZUKUS	RNZN personnel attended meetings of the AUSCANNZUKUS naval communications interoperability forum in Washington in 1996. An RNZN employee commenced a three year appointment in December 1996 as AUSCANNZUKUS secretary in Washington.
Courses	Ten NZ Army personnel attended 7 courses in the US. One RNZN supply officer attended a logistics development course in the US in 1995.
Meetings/Conferences	RNZN personnel attended the 13th International Sea Power Symposium, a software conference, and the Naval Tactical Database Conference, all in the US. RNZN members attended meetings in the US of a US Navy working group reviewing and updating naval communications. Depury Director of Joint Operations, NZDF, attended a symposium on East Asian Security in Hawaii, Japan, South Korea, and Singapore in 1996. Sponsored by the US State Department, the aim was to create an opportunity for security leaders in the Asia-Pacific region to meet and share views on matters of concern. Twenty-four participants from 19 countries attended. NZ also attended the Westpac Naval Symposiums hosted every two years by the US Chief of Naval Operations, and attended by representatives of upwards of 50 navies.
Other Contacts	The Chief of Naval Staff visited Hawaii in 1996 for the change of command ceremony for the Commander in Chief of the US Pacific Fleet. NZDF staff have contacts with British and US counterparts in various UN operations. The RNZN has routine contact with the US Navy Sea Systems Command regarding replenishment of spares, and advice concerning US equipment the RNZN has, including equipment on the new ANZAC frigates. PAMS, PASOLS, PACC, PARCS have been discussed.

The NZDF letter listing contacts with the United States military concludes by stating that information concerning some further contacts has been withheld under the Official Information Act. Many of the activities in table 5 would have also involved the British through being UKUSA structure activities.

The 67 TTCP meetings covered a range of topics including stress management, elite combat, command control and communications, electronic warfare, aeronautics technology, and had a strong emphasis on aspects of undersea warfare. The 20 ASCC working party meetings covered topics including air armament, maintenance and servicing, logistics, operations and doctrine, nuclear-biological-chemical defensive

measures. Observers were present at Quadripartite ABCA working group conferences that included the topics: armour, electronic warfare, infantry, communications, artillery, logistics, nuclear-biological-chemical defence.

This array of technical meetings, exchanges and other contacts are considered to constitute a significant contribution to the overall training and experience of the NZDF, and to the interoperability capabilities of the NZDF with the forces of the UKUSA countries. That they have continued throughout the period of the so-called ANZUS crisis considerably weakens claims of the severity of the impact on the NZDF of that crisis through the resulting loss of only some of the many contacts New Zealand had with the military forces of its nuclear allies.

New Zealand extended its contacts with the United States military in 1997 when it began participating annually in the Pacific Area Special Operations Conference (PASOC). These conferences are described in an article in the United States military publication Asia-Pacific Defense Forum for Winter 1997-98, pp.26-35, as one of the peacetime engagements of the United States Special Operations Command Pacific (SOCPAC), a subordinate unified command reporting to the US Commander in Chief, Pacific (USCINCPAC). When asked about New Zealand's participation in PASOC and any other related activities undertaken by New Zealand in relation to its PASOC membership, the NZDF replied that the normal level of contribution is one brigadier and one lieutenant colonel, but occasionally a colonel has attended the conference instead of the brigadier. (private communication 24 May 1999 from Group Captain K L Crofskey NZDF) This letter described the aim of PASOC as,

to act as a vehicle for relationship-building and the exchange of information between Pacific nations involved in special operations. Approximately 25 nations send representatives to the conference. The New Zealand Defence Force [NZDF] views this annual conference as a valuable forum in which to demonstrate our commitment to regional security issues.

Since PASOC is a conference, and not a programme as you have suggested, there are no other activities in which New Zealand forces participate, or which they undertake, as part of PASOC.

This is reassuring, but all interactions involving special forces have to be viewed with some caution as the some of the activities they undertake are often shrouded in secrecy. It is appropriate to include some background information relevant to the PASOC conference structure.

Commander SOCPAC commands the joint Special Operations Forces (SOF) operating in USCINCPAC's Area of Responsibility. There are 9 principal SOF missions: Foreign internal defence. Training, advising and assisting regional military and paramilitary forces; Unconventional warfare. Long-term training and assistance to a guerilla force; Special reconnaissance. Reconnaissance and surveillance of strategic targets; Direct action. Short-term seizure, destruction, damage, capture or recovery of strategic targets, facilities or personnel; Combating terrorism; Counterproliferation. Actions taken to locate, identify, seize, destroy, render safe, transport, capture or recover weapons of mass destruction; Psychological operations. Planned operations to influence the behaviour of audiences in support of Allied, friendly or US military operations; Civil affairs. Activities that establish relations between military forces and civil authorities to facilitate military operations; Information operations/command and control. Actions taken to achieve information superiority in support of national military strategy by affecting information on information systems while leveraging and protecting US information and information systems, to quote from the article just cited.

The SOF has other collateral missions including improving the interaction of coalition partners and US military forces, combat search and rescue recovery, counterdrug

activities, counte~nine activities and humanitarian assistance. The article says that the specific capabilities and skills which SOCPAC possesses are in high demand throughout the Asia-Pacific region. In peacetime, SOCPAC's peacetime engagement support includes demining programmes, counterdrug operations, bilateral/multilateral training exercises and the PASOC conference programme.

The 1998 PASOC, the fourth such conference was held in Honolulu. It is described in Asia-Pacific Defense Forum Summer 1998, pp.1-13, the Forum is published quarterly by USCINCPAC. Over 200 flag and senior special operations officers and dignitaries from 25 Asia-Pacific countries attended. Countries represented included China for the first time, Russia and Mongolia. The subject of the conference was 'Special Operations, Emerging Missions'. Special operations representatives from each United States service gave a short briefing of their mission, training and capabilities. A briefing on humanitarian activities was also given. Reports on national special operations capabilities and training were given by country representatives including one from Colonel T O'Reilly and Captain T M Fisher from New Zealand. Three seminars were held in which a panel of United States special operations experts shared their experience in the areas of force protection, humanitarian de-mining and non-combat evacuation operations. 'The conference cultivates military to military contacts with all our counterparts' said Brigadier General N Schwartz, Commander SOCPAC.

4.7 Exercises with Other Countries

The nuclear free policy did not affect exercises with non-nuclear countries directly. Indeed, Australian-New Zealand defence relations have strengthened considerably since 1985, not as a result of New Zealand's anti-nuclear stance, rather in spite of it. Table 6 lists the countries with which New Zealand forces exercised recently, including exercises within New Zealand by New Zealand forces alone. The exercises undertaken range quite widely in nature, extent, and complexity. The information in table 6 was taken from the NZDF Departmental Forecast Report 1 July 1996-30 June 1997.

**Table 6-
Forecast** **Countries with which New Zealand Forces Exercised, 1996/97**

Country	Types of exercises
Britain	See Table 2
Australia	FPDA exercises, communications, anti-submarine, tactical air transport, ship safety and crew training, interoperability, maritime warfare, army field exercises, and training, low-level conflict training, electronic warfare, air attack and combat
Canada	Anti-submarine, tactical air transport
Malaysia	FPDA exercises, special air services jungle training, interoperability and commando operations
Singapore	FPDA exercises, tactical integration practice, operations within a division, interoperability
Brunei	Jungle training in a tropical terrain
Pacific Islands	Tropic conditions training, training in deployment to the area

4.6 NOTE ADDED IN PROOF

Two events occurred in 1998 that should be noted. They are described in the Asia-Pacific Defense Forum vol.24, No.1 for Spring 1999, published by the Commander in Chief of the United States Pacific Command (USCINCPAC).

PASOLS 1998

For the first time a Pacific Area Senior Officer Logistics Seminar (PASOLS) was held in New Zealand, in Auckland, from 21 to 25 September 1998. The seminar is co-hosted by the US Pacific Command. This was the 27th annual PASOLS meeting, and was attended by approximately 110 delegates from 27 countries, including 27 flag/general officers or equivalent. The 27 nations represented consisted of the 22 member nations and 5 observers including Russia for the first time.

The theme of this seminar was 'Logistics Cooperation: Joining Forces With Industry'. Speakers from a number of countries gave presentations on topic related to the general theme, and Admiral Joseph Prueher, USCINCPAC, gave a special address.

Chiefs of Defence Conference

The first ever Chiefs of Defence Conference was held in October 1998 in Hawaii. The theme for this inaugural two-day conference was 'Asia-Pacific Security Challenges for the 21st Century', giving Asia-Pacific military leaders a chance to meet and discuss security, political and economic issues.

New Zealand was represented by Lieutenant-General A L Birks, Chief of New Zealand Defence Force. Other countries represented by top military officials were Australia, Brunei, Fiji, Indonesia, Japan, Korea, Maldives, Mongolia, Philippines, Singapore, Thailand, Tonga and the United States represented by the Chairman of the Joint Chiefs of Staff, General H H Shelton. The conference was designed to increase high level dialogue and foster regional military-to-military cooperation. Some specific issues on the agenda included methods to enhance interoperability, potential areas for multilateral cooperation, and the impact of economic interdependence and political challenges on security. Future conferences are planned.

Country	Types of exercises
New Zealand	Maritime air attack, air interdiction and air transport, computerised battlefield simulation, helicopter training in mountainous terrain, tactical air mobility, and counter terrorism.

The inclusion of this material is seen as relevant to a discussion of the nuclear free policy in action because of the negative criticisms that have been levelled at the policy concerning New Zealand's loss of training opportunities in exercises with American forces. This question will be considered in some detail in a subsequent working- paper. The conclusion reached there is that while this loss may have seemed serious in the mid-1980s, New Zealand in the mid to late-1990s has access to ample opportunities for this type of training through the exercises listed in table six. This applies even excluding the training obtained in the exercises with the British listed in table 2 when the existing security environment is taken into account, a very different environment from that faced at the time the 1986 Officials Committee report was prepared. Exercising with British forces should be reviewed while Britain continues to deploy nuclear weapons and maintains the need for nuclear deterrence. That this is still their position is confirmed in their 1998 Strategic Defence Review, even though the only nuclear weapons they now have are Trident missiles to be carried on their four deep sea ballistic missile submarines.

4.8 Problem Installations in New Zealand

There have been installations in New Zealand for many years that have been suspected by the peace movement of being linked to, if not part of, the American nuclear military infrastructure. A number of these are now closed. Brief descriptions of these earlier installations can be found in refs.8 and 9 below. With the establishment of the nuclear free policy, and particularly after the legislation was enacted, three remaining installations stood out as posing serious problems for the policy, and for the spirit if not the letter of the legislation, in the same way as discussed for the operation at Harewood. The installations are Waihopai, Tangimoana, and the now closed Black Birch. We will examine the nature of these installations and the problems they pose or posed briefly. It is not the intention to discuss these matters in detail. This has been done elsewhere. The material that follows is taken from documentation prepared at earlier times by other peace researchers, Peter Wills and Owen Wilkes in the case of Black Birch, and Nicky Hager in relation to Tangimoana and Waihopai.

Black Birch

In November 1982 the New Zealand and United States governments signed an agreement for the construction of a transit circle station near the Carter Observatory at Black Birch. The system consisted of a special telescope mounted so it could point along only one meridian of longitude, and designed to record very carefully the passage or 'transit' of a star as it appeared to cross the precisely aligned north-south axis of the telescope as the earth rotated. The angle of the telescope at the time of transit and the transit time were recorded. The system was computerised and was intended to expand very significantly the existing catalogue of accurate southern hemisphere star positions relative to one another. The system began operation in 1984 and was planned to operate for ten years.

Controversy arose because the installations was operated and funded by the US Naval Observatory, an agency of the US Navy, and because the data provided could clearly have both civilian and military applications. The peace movement raised these problems as early as 1977 when the installation was being proposed. The stellar position information could be used in nuclear missile stellar inertial guidance systems that rely on very accurate star positions to determine accurate trajectories to targets. It also had civilian navigational and other applications. The situation was confused by contradictory information from official American sources. The Head of the US Navy's Astronomy Division, Dr James Hughes, in 1982 described Black Birch as an innocent scientific

endeavour with no more than peripheral relevance to the arms race, while within the United States the US Navy insisted that it was being operated for primarily military reasons, and that it was vital to the successful functioning of United States nuclear weapons systems.

The US Embassy in Wellington issued a fact sheet in February 1982 saying the purpose of the project was purely scientific and definitely not military. Yet at budget hearings before a subcommittee of the US Congress the US Navy stated that the major function of the Black Birch facility would be to obtain locations of stars in the Southern Hemisphere with the increased accuracy required for military purposes ⁽¹⁰⁾. Successive New Zealand Ministers of Foreign Affairs were apparently satisfied by diplomatic assurances that the programme was not conceived for military purposes. Warren Cooper issued a press statement in 1984 saying that the data from Black Birch,

will be freely available to the international scientific community and to all nations who wish to use the data for navigational purposes. Such data will of course be of interest to military as well as civilian users, as are many other types of data used in navigation. Accurate navigation is of vital importance to the world's civilian shipping and aircraft services. New Zealand and New Zealanders depend on these as much as anyone ⁽¹¹⁾.

In a letter to Wills that year he suggested that there was little military value in the data. (private communication to Wills, 21 June 1984) Lange in 1985 echoed those sentiments, and later in a letter to Wills expressed complete satisfaction with the peaceful objectives of the Black Birch operation and put any suspicion of military elements in it down to a number of misunderstandings. (private communication to Wills, 7 October 1985) However Ronald V Dellums, Chairperson of the Armed Services Committee and Subcommittee on Military Installations and Facilities, US House of Representatives, in a letter to Wills dated 26 September 1984, said the observatory was certainly being built for military use or it would not be funded with military construction funds. (private communication to Wills)

The civilian scientific value of the Black Birch data could have justified its operation, but in 1988 Wills obtained official United States documents inadvertently confirming the use of the data for nuclear missile targeting. The operation of a Washington based equivalent of the Black Birch facility was coming under threat from a town planning commission considering allowing the construction of a high rise building adjacent to the observatory. The problem was that heat from this building could disturb the air in the vicinity of the observatory telescope and reduce the accuracy of star position measurements made with it. This Washington observatory determined positions of Northern Hemisphere stars, and was also used to confirm the accuracy of the newer New Zealand installation by observing stars visible from both telescopes. Black Birch was established to provide positions of Southern Hemisphere stars not visible from Washington. The commission was told that without either the New Zealand or Washington observatories, ten percent of US missiles would miss their targets.

A letter obtained by Wills from Lieutenant Colonel R W Padfield US Air Force, Director of Engineering, to Captain R Anwalt US Navy, Superintendent of the US Naval Observatory Washington, dated 22 March 1988 commented on the effects of such reductions in accuracy of stellar data for the United States military. Padfield said,

The Air Force Ballistic Missile Office (BMO) uses data products based on astrometry observations [observations of the positions and motions of celestial objects] made at the Naval Observatory in all of its ICBM [Intercontinental Ballistic Missile] programs. ... These observations provide the capability to determine the ICBM guidance system alignment to the required high level of accuracy. Further deterioration in observing conditions at the Observatory due to additional nearby sources of night time light and heat, such as would be produced by the proposed

condominium construction next to the Observatory, would cause deterioration in alignment accuracy. ... Much of the present high value of the astrometry programs at the Observatory is related to continuing use of the current instruments, undisturbed, in their present locations. ... Retaining these programs at their present or improved accuracy levels is critical for the ICBM programs.

According to The Washington Post for 14 June 1988 p.A11, a major problem was that the proposed building would overlook a jogging track used by President Bush, and could be used for a sniper or rocket attack. The accuracy problem for the observatory was also discussed in the article, and open reference made to serious impacts of this on navigation by naval vessels, guided missiles and space probes, and to MX missiles straying from their targets. Nevertheless, the official New Zealand Government position was that Black Birch did not contravene the letter or spirit of the Act, as will be discussed.

In November 1991 the US Navy announced that Black Birch would close in a few years, and it finally closed in March 1996. However, this history again represents a situation where the Labour governments during whose tenure Black Birch operated appear to have been equivocating over their nuclear stance, as in the case of Harewood and the channel flights, although government ministers do appear to some extent to have been misled by technical statements from seemingly well informed American sources.

Waihopai and Tangimoana

These installations are described in detail in Hager's book Secret Power ⁽⁷⁾. He also fully analyses their uses. What follows is mostly taken from his book with his kind permission, and examines the two installations only briefly. They are operated by New Zealand's Government Communications Security Bureau, the GCSB, a little known organisation to most New Zealanders before the appearance of Hager's book which reveals in impressive details the workings of this secretive organisation.

The GCSB is, in Hager's words p.12,

the most secret organisation in New Zealand. It is also by far the country's largest and most significant intelligence organisation, yet not one in 100 New Zealanders would even know its name.

We will not here attempt any detailed description of the operation of the GCSB. It engages in military and non-military intelligence gathering activities, and is part of the very extensive intelligence network already referred to briefly involving the United Kingdom, the United States, Australia and Canada as partners to New Zealand, the UKUSA group of allies. Hager describes the UKUSA intelligence system as a 'super-secret global intelligence system' (p.23), and New Zealand is a part of it. Intelligence systems require installations to gather and transmit the desired information. Tangimoana and Waihopai are revealed by Hager to be just such installations. It should be noted that Owen Wilkes was fundamentally involved in making the existence of the GCSB known and in exposing the nature of the stations it operates.

Tangimoana

Hager describes the nature and purpose of Tangimoana in chapter 9 and appendix B of his book in particular, but in many other passages as well. Excerpts from his book follow. Tangimoana was opened by the New Zealand Prime Minister at the time, Robert Muldoon, in August 1982. The station is located 150 kilometres north of Wellington in sandhill country near the small beach township of Tangimoana. This site was chosen partly because it was close to an airforce base at Ohakea which would help service and disguise the operation, and partly because the low sandhill country was well suited to radio reception (p.83). Its sophisticated antennae are designed to pick up high frequency radio signals from ships and land based transmitters around the Pacific and beyond. For most of this century, high frequency radio has been used extensively for long distance communication between countries and by ships and aircraft, although the importance of

this means of communication has now been significantly reduced by the advent of satellites. Nevertheless, high frequency radio 'will continue to be used for the foreseeable future by shipping and aircraft, at least as a back-up by isolated communities and extensively by the militaries of the world as one strand of their communications networks' (p.150).

The majority of the station's work has been the interception of shipping messages. 'If it moved, we listened to it' an official source is quoted as saying, referring to shipping to describe the scale of the operation. The shipping targeted has been mostly Russian vessels, Russian fishing boats and research ships, but Russian bases in the Antarctic are also targeted. In addition, the station has increasingly monitored Japanese and other shipping, including fishing trawlers. Occasional special operations occur such as monitoring the Japanese plutonium transport ships that passed through the South Pacific in 1993.

'Tangimoana's assigned "surveillance area" covers the entire Pacific Ocean, Antarctica, the Southern Atlantic, including the Falkland Islands, and the southern Indian Ocean to South Africa' (p.150). The station can intercept signals from almost three quarters of the globe. However, the main volume of the station's work comes from the South Pacific region. Government and military communications between and within South Pacific nations and their communications in these areas with the rest of the world are monitored. Tangimoana can monitor French military communications, between French Polynesia and Paris for example. The main French targets during the life of the station have been communications concerning French nuclear testing. About 10 percent of the station's interception is of special targets right outside the Pacific region for overseas agencies, other UKUSA agencies in particular.

Virtually everything requested by the UKUSA allies is passed on to them by the GCSB, there is no screening process. Intelligence collected and analysed in New Zealand is sent immediately to the American, British, Australian and Canadian agencies and to a range of other military and intelligence addresses in these countries. GCSB staff also say that interesting pieces of New Zealand signals intelligence are regularly sent to the United States naval commanders in the West Pacific, the Commander in Chief of US Pacific Command in Hawaii, individual American military services and others (pp.202-3).

The existence of the GCSB, set up secretly in 1977, and its station Tangimoana was admitted by then Prime Minister Muldoon in Parliament on 12 June 1984. This followed an unfortunate event for the GCSB that year. It happened that peace researcher Owen Wilkes was holidaying in the area of Tangimoana and was taken by a friend to see a new facility run by 'secret squirrels' (p.149). From recent experience, Wilkes recognised the antennae and the purpose they served, and made this public. As a consequence, Muldoon then made the first public statement about ~the GCSB and the Tangimoana station and its supposed purpose (NZPD vol.456 1984, p.245). Hager states, p.20, that 'the brief statement he read was, and remains, the most information the government has ever been prepared to release about the GCSB and the Tangimoana station.'

Muldoon admitted that the GCSB engages in signals intelligence and liaises with the other UKUSA countries but maintained that, 'The New Zealand organisation is under the full control of the New Zealand Government.' He also said that Tangimoana does not report to any centre other than the GCSB in Wellington, and 'does not come under the direction of any Government or external agency, other than the New Zealand Government.' Hager's response to this latter claim is to state that,

In fact, the communications officers in a secure room within the station were regularly receiving directions from the overseas allies and sending them back intelligence collected on their behalf. (p.20)

Muldoon argued the importance of collecting signals intelligence information - intercepting the communications of governments, organisations and individuals in other countries to quote Hager's definition p.20 - for New Zealand's defence and other international policies, and said this had been done by New Zealand 'from the time of the second world war'. He claimed that Tangimoana 'does not monitor New Zealand's communications, nor those of New Zealand's friends in the South Pacific.' As we have seen, this claim is also refuted by Hager as regards the South Pacific in chapter 9 of his book.

The peace movement also believed, at least in earlier times when it was directly relevant, that Tangimoana contributed information to the US Navy that was used in targeting Soviet vessels, both surface and submarine, see for example Peacelink Issue 60, April 1988, pp.10-11, and ref. 9, p.79. Muldoon denied this in his 1984 statement.

Lange, who as Hager points out was to become Prime Minister five weeks later, welcomed this statement by Muldoon and said, 'In particular, I am grateful that he has given an absolutely unqualified assurance, which I believe to be of paramount importance, that the facility is under the full control of the New Zealand Government.' He also welcomed Muldoon's assurance that Tangimoana was not part of any military targeting system, and accepted his claims as to what the station did. The question of how much the Labour governments from 1984 to 1990 knew about Tangimoana and the GCSB will be considered soon, but Hager says in various places in his book that much was kept from the government concerning the operations undertaken by Tangimoana, Waihopai and the GCSB generally. Lange, in a foreword to Hager's book supports this claim saying,

an astonishing number of people have told him [Hager] things that I, as Prime Minister in charge of the intelligence services, was never told. ... it is an outrage that I and other ministers were told so little. (p.8)

Waihopai

As indicated above, the importance of Tangimoana was diminished by the advent of satellite communication. It was to be expected that signals intelligence organisations would want to be able to monitor this channel of communication. The UKUSA system accomplished this by establishing stations capable of intercepting messages transmitted from satellites. Waihopai is the New Zealand station with this function. Hager provides a detailed picture of Waihopai, its nature and its operation in chapter 10 and appendix B of his book, and in other passages. What follows are largely excerpts from Hager's book.

The Waihopai station is situated in the Waihopai Valley near Blenheim, in the north-east corner of the South Island of New Zealand and, according to Hager, is, 'by far the most important intelligence facility in New Zealand' (p.166). It was opened in September 1989. Waihopai and its sister stations in the UKUSA network are targeted on 'all the ordinary telephone calls, faxes, telexes and Internet and other e-mail messages sent by individuals, groups, businesses and governments around the world' (p.166). This is done by intercepting transmissions from communication satellites which are processed to yield individual messages and messages of interest are then identified by computer search for keywords using computers codenamed 'Dictionary computers' programmed with these words; the FLINTLOCK Dictionary for Waihopai, FLINTLOCK being the UKUSA codename for the station.

Around the world UKUSA stations like Waihopai now work as an integrated collection system: GCSB staff automatically receive some intelligence from other stations in the network; and NSA [the National Security Agency, Washington] intelligence staff sitting at Fort Meade outside Washington DC have an automatic, 24-hour flow of raw FLINTLOCK intelligence fed into their computers according to their pre-programmed requirements. (p.167)

The Waihopai station is targeted on Intelsat civilian satellite communications in the Pacific, specifically Intelsat's two primary Pacific Ocean area satellites which carry most satellite communications for the countries of the Pacific and between nations of the Pacific rim. These are two of a series of satellites positioned in a ring around the equator, far out in space about 36,000 kilometres above the earth. They are known as geostationary satellites, because they revolve around the earth at exactly the same rate as the earth is spinning so they sit stationary above a particular point on the equator. The satellites carry tens of thousands of messages.

Waihopai is potentially collecting intelligence from very wide geographical area and on every conceivable subject. What is specifically collected is determined by all five agencies according to the keywords they have placed in the FLINTLOCK Dictionary. (p.169)

New Zealand's area of responsibility in this UKUSA network includes most of the South Pacific from French Polynesia across to and including New Caledonia, Vanuatu and the Solomon Islands. This also includes Fiji, and all the smaller South Pacific nations like Kiribati, Nauru, Tuvalu and Tonga, Antarctica, and some foreign ships in the region. West of this is the area for which Australia is responsible using its base at Geraldton on the west coast, established four years after Waihopia was opened. The South Pacific is very vulnerable to satellite interception because most telecommunications in the area rely on satellite use with most messages sent uncoded and in English except in French areas. However, communications where the source is a national of one of the UKUSA countries are not supposed to be targeted. While the GCSB analysts are told to abide by this rule, it is clear from other sources that the other allies do not.

The GCSB staff see communications from all South Pacific governments, from individuals and political groups, from diplomatic posts, from many companies and international organisations, and from French territories, with an emphasis on military intelligence. They also receive intelligence on the military forces of countries in the South Pacific, and anything on Antarctica. GCSB's long-term interception and analysis of Japanese diplomatic traffic from this region remains important. Some local analysis of data collected before it is sent to other UKUSA agencies has value because of the familiarity the analysts gain with activity in their own area.

The satellite that has been targeted by Waihopai for the bulk of its operational life, Intelsat 701, mostly carries communications from countries outside the GSCB's reporting area, South Pacific countries generally being very small users by international standards. Waihopai also intercepts communications from outside its area when requested to by other UKUSA agencies. This satellite is used by most long distance carriers in North America and the Asia-Pacific region including the Russian Far East.

Intelsat 701 carries some of the main trade communications in the world, almost entirely involving countries with which New Zealand has good relations. New Zealand, through the Waihopai station, is doing the physical spying on some of these countries for the allied agencies, without having any control over what is then done with the intelligence. ... We can only guess at which foreign and military policies of the United States and other allies are being assisted by the spying occurring at Waihopai. ... There is, in practice, no New Zealand control over much of the station's output. (pp.173-4)

A question of considerable interest is whether or not Waihopai spies on New Zealanders. Hager suspects that it does but makes clear that this is difficult to establish. He says, p.177,

The Waihopai station provides an unprecedented potential for spying on New Zealanders' international communications. Its interconnection with a worldwide network of similar stations multiplies this potential. There are no legal impediments and such interception would be almost impossible to prove.

The Prime Minister, Jenny Shipley, sought an inquiry in 1999 into the claim that the GCSB stations operated at the direction of international partners to ensure that the stations operate in New Zealand's interest, rather than for the benefit of overseas agencies. The Inspector-General of Intelligence and Security, Justice Laurie Greig, is reported as saying in the resulting official report that the bureau had comprehensive procedures to ensure that material collected at the request of overseas agencies complied with the bureau's foreign intelligence rules, and that while New Zealand had less influence in the UKUSA alliance than the larger countries, 'that is not to say those weaker members diminish or cede any of their sovereign independence and control over their own affairs and activities'. His report also denies that information supplied to the other UKUSA partners included information on New Zealanders. (The New Zealand Herald 22 July 1999, p.A11) The same article reports Hager as commenting that the report did not go far enough, and that overseas agencies that requested specific surveillance from the bureau's stations had the computer-captured information sent to them automatically. That information was not vetted by bureau staff. In a private communication he said he considered that New Zealand material could be captured as part of a foreign intelligence operation. (22 July 1999)

Brian Rudman, features writer for the Herald, and regular commentator on political and related matters, wrote a scathing critique of the Greig report. (The New Zealand Herald 27 July 1999, p.A13) He sees the report as remarkable 'not for what it says, but for all the pussy-footing that goes on in the saying. ... The reality is this report has ended up as little more than a public relations handout for the spies.' Considering wording in the report which says that it is a cardinal GCSB rule that it does not deliberately intercept communications of New Zealand citizens or collect information of a domestic nature, he comments, 'In other words, the communications of New Zealanders are being snooped on. But not deliberately.' While a report into the activities of the GCSB is needed he says, what is wanted 'is not the one-sided, uncontested and censored document we got. We need a public inquiry in which the spies are made to explain what they do and, more to the point, why they do it'

Since the Waihopai station was first announced, its legality under New Zealand and international law has been a matter for discussion. The station's legality under the 1982 Nairobi Telecommunications Convention is ambiguous, and in relation to New Zealand law, the situation is quite astonishing. A challenge was made by a peace activist to the government in April 1988 concerning its lawful authority to build the Waihopai station pointing out that a licence would be needed to operate it, and that under the Telecommunications Act and Radio Regulations, section 24, no person receiving any radiocommunication not intended for that person could make use of it, reproduce it, or disclose the fact or existence of it, to paraphrase the regulation. There was a significant response in that late in 1988 the Telecommunications Act was amended limiting the discretionary powers of the licensing authority and leaving it virtually no powers to judge or enquire into the purposes or intent of applicants.

The GCSB applied in January 1989 for licences for both Tangimoana, which prior to this had no such licence, and Waihopai, the application requesting that these licences include authorisation for the stations to do the three things stated above which the regulations otherwise forbid. Since 1 April 1989 Waihopai has had a satellite reception only licence covering such frequency bands as allocated to the Fixed Satellite (Space-Earth) Service which allows it to receive radiocommunications not intended for the Licensee and to (p.178):

(a) make use of the radiocommunication or any information derived therefrom;

(b) reproduce or permit to be reproduced the radiocommunication or information derived therefrom;

(c) disclose the fact or existence of the radiocommunication.

There are two striking things about the planning for Waihopai, it was part of a UKUSAwide expansion, and it occurred throughout the initial period of New Zealand-United States conflict over ship visits. The public was at the time being led to believe intelligence ties with the United States had been severed, and was told that the station represented the pursuit of greater independence in intelligence gathering to compensate for this supposed loss. Internally the station was seen, in part, as a demonstration of commitment to the intelligence alliance.

Plans to expand the system for civilian satellite interception were underway by 1984, with Lange first told of the proposal for a New Zealand station late in 1985. He was never told about the degree of integration of the new station into the UKUSA system, instead being 'sold the line' about enhanced independence that he later used in public, together with arguments about cooperation with Australia (p.179). The position taken by the 1984 and 1987 Labour governments concerning Waihopai will be discussed in the next section.

The Lange government initiated a review of external intelligence in 1985, in response to the supposed intelligence cuts. This became closely linked to a parallel review in Australia, reflecting the strong intelligence ties between the two countries and within the UKUSA system. The New Zealand review was presented to Lange in March 1987 but has never been made public. Construction of Waihopai began in April 1988 accompanied by public protests. A sister station at Geraldton in Australia opened in 1993, the two stations were planned in tandem. Geraldton targets Asian and Indian Ocean Intelsat satellites, and targeted the second Pacific Intelsat satellite until the Waihopai station took over this role in 1998 .

4.9 The Problem Installations, the Nuclear Free Policy and the Legislataon

As indicated in the previous section, there are two reasons for examining the nature of these problem installations in the context of the policy in action. First they represent continuing military, or in part military, involvements with the United States and the United Kingdom in a period when such contacts were supposedly severely curtailed as a result of the nuclear free policy. Second they each in separate ways have been seen to be in violation of the spirit if not the letter of the Act. In this section we look at this second problem these installations have posed for supporters of the nuclear free policy.

Black Birch

Wills and Wilkes together with other peace activists saw Black Birch as violating at least the spirit of section 5 of the Act by creating data used for the purpose of nuclear weapon targeting. The more serious question they raised that came to a head in the late 1980s was whether or not some employees at Black Birch were actually violating the actual letter of the law.

Under section 5(1)(b) of the Act: No person who is a New Zealand citizen or a person ordinarily resident in New Zealand shall, within the New Zealand Nuclear Free Zone, aid, abet or procure any person to ... have control over any nuclear explosive device.

The claim was that through their work in producing highly accurate stellar data used by the United States in the guidance of nuclear missiles, employees at Black Birch were aiding persons to have control over nuclear explosive devices. There were two problems with this claim. The first was establishing whether or not the employees involved were citizens or normally resident in New Zealand, the staff at Black Birch were mostly US

Navy employees. The second was whether or not any aid given in controlling nuclear explosive devices was given within the NZNFZ since the data from Black Birch was transferred to the United States before being used in nuclear missile guidance. However, the data was gathered within the NZNFZ. Wills reports that these points were not completely clarified by the peace movement. (private communication 27 November 1998)

Black Birch became a serious issue for the Public Advisory Committee on Disarmament and Arms Control (PACDAC) established in 1987 under the Act. PACDAC is discussed in a separate chapter. The committee considered the matter at a meeting in November 1988 following receipt of copies of the Washington papers obtained by Wills and a briefing paper prepared by Wilkes. Wilkes presented the case against Black Birch, and Brett Lineham of the Ministry of Foreign Affairs argued for it being a peaceful scientific installation. PACDAC found the Washington papers persuasive. In a resolution they said that having read the background material on Black Birch, 'they were persuaded that the data produced there is of importance to the SDI [Strategic Defense Initiative] missile and Trident programmes'. The committee requested that the government answer the questions, 'Does Black Birch contravene the spirit and/or letter of the Act? If it does so, how will the Government respond?' They also recommended that consideration be given to converting Black Birch to civilian control in an attempt to limit the use of the data to non-military applications ^(12,13).

The Crown Law Office was asked for a legal opinion. In March 1989 Foreign Minister Russell Marshall responded to these questions, referring to Crown Law opinion and stating that, 'Black Birch does not contravene the letter or spirit of the Act' ⁽¹³⁾. This opinion is interesting in relation to interpretations of the terms in section 5 of the Act included in guidelines dated 18 December 1990, less than two years later, issued by the New Zealand Ministry of Defence for personnel serving in the Persian Gulf in the 1990s. These interpretations were presented and discussed in some detail in Working Paper No.8, pp.37-38, so are not reproduced in full here. Some points are particularly relevant however.

The guidelines state that the term 'aid' implies giving actual assistance in the commission of an offence, doing something essential to its commission. To 'have control over' a nuclear explosive device is discussed at some length, but is said in short to mean to have the power to fire the device since it is claimed that in section 5 the nature of the authority contemplated by 'control' is authority over not just the disposition, but the use of such devices and weapons.

From these 1990 interpretations it is an offence under the Act to aid those who have the power to fire nuclear missiles. It can be argued that providing vital data required for the guidance systems of nuclear missiles is doing something essential for those who have the power to fire those missiles. It is 'aiding' them in terms of the meaning of 'aid' just given. The acquisition of data at Black Birch subsequently used in missile guidance systems could then be argued to have constituted an offence under section 5 of the Act. However, the Crown Law Office saw it differently.

Wilkes in 1989 wrote that Lange, since becoming Prime Minister,

has cited an April 1982 National Government statement as a principal authority for Black Birch being for peaceful purposes. The Labour position on Black Birch has not been appreciably different from that of National. (ref.12, p.7)

Lange's position was discussed earlier. We will return to this discussion of Black Birch when the operation of PACDAC is considered.

Tangimoana, Waihopai and the GCSB

As stated, both Tangimoana and Waihopai supply military as well as non-military intelligence to the UKUSA system which includes what after 1984 were supposed to be

New Zealand's former nuclear allies, the United States and Britain. Hager estimates very approximately that about 50% of the intelligence information gathered by Tangimoana is military information, but only about 5-10% of that gathered by Waihopai is. (private communication 4 December 1998) How meaningful this description of these allies as 'former' was after 1984, and remains now, has been shown to be very questionable when these intelligence links and the military UKUSA links, and other military interactions in the case of the British, are taken into account. Remember that the United States stated that New Zealand was no longer an ally, but remained a friend militarily in the 1980s.

Tangimoana was also claimed by the peace movement to be supplying targeting information to the US Navy, although Muldoon denied this categorically in his 1984 statement. (NZPD vol.456 1984, p.245) Hager says that he did not make any claim about this in his book because he lacked hard evidence to support this claim. Nevertheless he says, an examination of the US Navy databases that information from Tangimoana goes into makes it at least likely that the information was and is available for targeting. (private communication 4 December 1998)

Lange issued a press statement concerning Waihopai on 2 December 1987. He said,

As a matter of policy - as outlined in the Defence White Paper - this Government is committed to the pursuit of a more self-reliant defence policy. This involves greater independence in intelligence matters.

For years there has been concern about our dependence on others for intelligence - on being hooked up to the network of others and all that implies. This Government is committed to standing on its own feet. While, of course, we will continue to co-operate closely with Australia, especially regarding the security of the South Pacific, it is vitally important that we have our own means of knowing what is going on in our own region.

In 1985 the Government commissioned a formal review of our intelligence community and last year established the Office of a Co-ordinator for Domestic and External Security. ... To further enhance our own intelligence capabilities a defence satellite communication station will be established in the Waihopai Valley, near Blenheim. ... Construction will begin in 1988 and the station is expected to be operational in 1989.

The station will be staffed and operated by the Government Communications Security Bureau. It will be wholly New Zealand owned and controlled. ...

The station will have no connection with early warning or nuclear targeting, nor will it play a communications role for any other country.

The station will mark a new level of sophistication in our independent intelligence capacity. I cannot disclose any further details because to do so would compromise the objectives of the project, which relate directly to enhancing the security of New Zealand. I am bound to follow the well-established practice of not commenting in detail on intelligence matters.

In a later press statement dated 4 May 1988 Lange denied claims by the peace movement of plans for a 'massive second stage of construction' at Waihopai, saying the 1987 press statement 'sets out the true picture'. This earlier press statement referred to only one satellite dish at Waihopai. In a letter to Ms Debra Johanson dated 9 June 1988 declining a request for a television documentary on Waihopai on the grounds that 'It has been the longstanding policy of successive governments not to comment on details of security or intelligence matters', Lange also denied that Waihopai spies on New Zealanders. He

further denied that the activities of the station were in any way 'illegal, of no benefit to New Zealand, or in conflict with our anti-nuclear stance'.

Our nuclear-free policy does not mean isolationism or neutrality; rather our assertion of independence of judgement reinforces our need for independent sources of information to underpin that judgement. (private communication from J Keall MP, 16 June 1988)

Concerning the question of the GCSB spying on New Zealanders, Hager finds this is a difficult question. Tangimoana does when training staff he says, but not routinely, and Waihopai does when it gets New Zealanders overseas communications in the course of other work. However, they are primarily foreign intelligence collectors he states, but he never found out if special projects against New Zealanders, under a Security Intelligence Service (SIS) warrant for example, occur. (private communication 4 December 1998)

Hager discusses the problems posed for a nuclear free New Zealand by the GCSB and these installations in several places in his book, but particularly in chapter five. Again material from his book is presented or summaries of it, although much of relevance has been omitted for brevity. The concerned reader is referred to Hager's book for more detail.

Considering the Labour Government's periods in office from 1984 to 1990 we read, p.217-9 that this was a period of rapid expansion of New Zealand's secret intelligence activities and alliance links.

This was not Labour policy and nor was it pushed by anyone in the government. Much of it occurred without the government even being informed. ... Where the government knowingly agreed to some developments, it believed it was compensating for diminished alliance links after the ANZUS conflict. Unwittingly, Labour oversaw increased integration into the American-led alliance, a situation maintained, with a similar lack of knowledge, by the National government that came to power in 1990 (p.217).

Control of New Zealand intelligence organisations is highly centralised. Usually only the Prime Minister is allowed knowledge of the organisation's operations. Being perhaps the busiest person in the country, the Prime Minister has to rely heavily on the advice of government officials. As discussed elsewhere in these working papers, these officials were not all supportive of the nuclear free policy, and those who opposed it were keen to see it modified or dropped. A senior government official from this period described some of these officials, notably from Foreign Affairs, as 'not just determined but downright nasty'. They were, he said, highly political, sure they were right and very clever at getting the government to do what they thought should happen. 'It is not easy for a single, busy politician to stand up to a determined agenda' (p.219). A senior public servant said that centralising control of intelligence on the Prime Minister suits officials very well because the Prime Minister cannot control them, but their status is enhanced by being able to say that they are acting with his or her authority (p.223}.

It must be remembered that one of the major criticisms of the nuclear free policy soon after its introduction in 1984 was that following the refusal of the Buchanan visit the United States, amongst other retaliatory measures, was claimed to have severed its intelligence ties with New Zealand. Hager emphatically denies this. He says pp.23-4,

This was completely untrue. While intelligence from military sources was cut considerably, most of the intelligence flow from the United States continued uninterrupted. The United States wanted other countries to see New Zealand punished for its nuclear-free policies, but the UKUSA alliance was too valuable to be interrupted by politics.

He states further, pp.244-6 that

the value of the overseas intelligence [received by New Zealand] has been highly overrated. It has done little of value for New Zealand and its disadvantages are never mentioned. It is only secrecy that has allowed the inflated claims of its worth to be made. ... The New Zealand [intelligence] organisations have *functioned as part of* the allied intelligence networks and almost entirely adopted their priorities. (emphasis in the original)

The main targets throughout the Cold War period were, of course, Communists: the Soviet Union, China and independence movements ('Communist terrorists') in Vietnam and various other South East Asian countries. ... Inside the GCSB headquarters too, the priorities have come from outside New Zealand. ... The GCSB spies on the South Pacific nations and territories and indiscriminately passes on their secrets to the outside powers. ...

The Waihopai station, operating as one component of a global interception system, combines 21 st-century technology with 1950s thinking. ...

Membership of such a close alliance assumes an equivalence of interests. It assumes that the countries involved have the same friends and the same enemies. It assumes that they have the same world view and the same objectives for their foreign and defence policies. This is obviously not the case. ...

As New Zealand's nuclear-free policy showed it is very difficult to pursue different foreign and defence policies within an alliance [ANZUS]. Ten years of diplomatic strife between New Zealand and the United States over a piece of nuclear-free legislation, democratically decided and only ever covering New Zealand territory, is a poor advertisement for alliance membership.

Sadly there are no easy options for reform. ... Given the established influence of the overseas allies (and of pro-[UKUSA] alliance government officials within New Zealand), any minor reforms, such as forming a parliamentary intelligence committee, will have an insignificant impact. The only serious option for change is to leave the intelligence alliance.

The reader is referred to Hager's book for justification of the claim that membership of the UKUSA intelligence network has done little for New Zealand and for arguments concerning the disadvantages of membership, although exposure to external influences in the area of foreign and defence policy and in the intelligence field itself are serious disadvantages.

Reviewing the history of the GCSB very briefly by reference to chapter 5 of Hager's book, we read, pp.78-91, that

The GCSB began operating in the renewed Cold War of the 1970s. All the intelligence activities during its early years were oriented to serving the alliance - and, in particular, to supporting the United States' and Britain's preoccupation with Communism. Key targets of the new organisation would be the Soviet Union and China plus any other enemies of their UKUSA allies such as Argentina (in the Falklands War) and Japan (in economic competition with the United States). ... By the 1980s the NSA [the National Security Agency, the American UKUSA agency] was undoubtedly the dominant influence over the GCSB.

Referring to an operation carried out in Melbourne during the 1980s and early 1990s and involving a British signals intelligence base in Hong Kong that was spying on China and Russia he says,

Spying on China and Russia from a foreign base, and under the control of a foreign government, could not have been further from what the official statements were claiming to be the purpose of the GCSB. (p.89)

This was the most blatant example of New Zealand assisting in intelligence collection entirely to serve the UKUSA allies, Hager writes. Coming to the present, we read, p.91, that

By 1996, after perestroika and glasnost, the Cold War orientation of the GCSB has decreased - but only after and following reorientation of priorities by the overseas allies. This change of direction does not make the growing capabilities of the GCSB and the UKUSA alliance more benign. The GCSB still operates as the alliance dictates, but in a sense it is marking time ... until the next Vietnam or Falklands, when it will be ready and willing to serve the alliance once more.

He argues strongly for New Zealand leaving the intelligence alliance, a position supported by others in the peace movement. It is

only one component of the wider alliance between the five UKUSA countries, but it is the deepest and most secret part, helping to perpetuate unequal alliance relations in many other areas of foreign and defence policy. (p.247)

We have already met a range of military UKUSA links. Only by leaving the intelligence alliance will we achieve an independent foreign policy, Hager argues. To achieve this it is further argued here that we need to break the other UKUSA ties as well if we are to be truly independent and open in our foreign policy and defence stance, a position Hager would certainly support.

It should be clear that New Zealand's involvement in this UKUSA intelligence and military system, that ties us to our nuclear allies much more strongly than is normally admitted publicly, is in conflict with the spirit at least of our nuclear free stance which rejects any involvement with the nuclear strategies of those countries. And it has become difficult to separate the military strategy of the United States from its nuclear strategy now that this latter is being expanded to allow the use of nuclear weapons in situations where United States forces are threatened by non-nuclear weapons of mass destruction, chemical and biological weapons. Nuclear weapons have become just part of the general arsenal of weapons it seems.

As a GCSB officer told Hager in an early interview,

The secrecy [about the GCSB] is not for the Russians, it is for the general public. If they knew what the bureau does, it would not be allowed to continue. (p.250)

The GCSB is no longer secret thanks especially to Hager, but also to Wilkes, Wills and others. The question now is, what is New Zealand as an independent nuclear free nation going to do about this alliance involvement.

In the final chapter of this paper we will examine the integrity and morality of Labour's overall nuclear stance in the 1980s. It can be argued that there are, or have been, aspects of each of these three problem installations that do not sit comfortably with the nuclear free policy and legislation, and reflect badly on Labour. This argument cannot be completely dismissed. But as with some other sources of criticism of Labour and its nuclear stance while in government, there are ameliorating circumstances that considerably temper these potential criticisms in the case of these three installations.

We have seen that the government was denied fundamental information in each case, and given advice designed to conceal the real purpose of each of the installations. In these

circumstances, it is considered that while the government under Lange could and should have been more willing to consider the claims of experienced peace researchers, that these claims clashed with official advice, and supposedly informed and reliable advice, being received would have made it very difficult for the government to override that official advice. In the case of the GCSB stations, the high degree of secrecy the organisation imposed placed another major hurdle in the path of the government in determining the true purpose of the two stations. Sensitivity to, and acknowledgement of, quite strong electoral support for continued military contact with the United States undoubtedly also played a part in this period, making Lange and the government reluctant to take steps that could exacerbate the situation between the two countries.

Given these factors, it is considered that Labour was less culpable than some would claim from a very purist position in not taking the steps necessary to remove all elements from the operation of these installations that conflicted with its nuclear free stance.

These installations, and the GCSB have continued to operate under National governments since National came to power in 1990. National also adopted the nuclear free legislation in 1990, and has maintained it. Consequently National is open to the same criticisms that were levelled at Labour, and this situation persists.

4.10 Criticisms

Criticisms to be discussed in chapter 6 that were levelled at Lange for wanting to stay in ANZUS, seen by many as a nuclear alliance, apply to the FPDA and other exercises like Longlook that could have a nuclear component. But such criticisms were much less frequently or widely aired except by the peace movement.

Section 5 of the Act covers the question of exercises with sectors of the military forces belonging to the nuclear powers. Criticisms of clause 5 during the passage of the Bill were discussed in chapter 1 of this paper, and have been discussed earlier in this chapter.

The peace movement has also long been critical of the continued contacts New Zealand has maintained with the military of the nuclear powers through the various UKUSA forums discussed earlier, and the secrecy that has surrounded these contacts. As stated, the peace movement has made many attempts to obtain details of these arrangements and agreements but with limited success. What information has been released, or gleaned in other ways, has been published on a number of occasions. The journal Peace Researcher cited in chapter 3 has carried numerous articles concerning these forums, and concerning many of the issues addressed in this series of working papers.

4.11 Proposal

To resolve these problems it is proposed that New Zealand should review all its military links and contacts with the nuclear powers Britain and the United States, including those discussed briefly here, and others not covered or known about at the time this study was made. The results of this review should be made public through PACDAC or some other suitable channel.

The function of the review would be to establish the purpose of all such contacts, and to establish which of these should be rejected by a country that rejects nuclear weapons and nuclear strategies. New Zealand would, of course, wish to retain contacts important to training for participation in United Nations mandated peacekeeping and humanitarian operations, and other humanitarian operations, that involve joint force actions. Such limits on military contacts would be retained while the Britain and the United States continue to deploy nuclear weapons and advocate nuclear deterrence.

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CHAPTER FIVE

THE PUBLIC ADVISORY COMMITTEE - PACDAC

5.1 The Public Advisory Committee on Disarmament and Arms Control - Sections 16 to 20 - Introduction

Section 16 of the Act called for the establishment of an eight member Public Advisory Committee on Disarmament and Arms Control (PACDAC), and anticipated the appointment of a Minister for Disarmament and Arms Control who, as one responsibility, was to be the chairperson of PACDAC and the person to whom PACDAC reports. The Act was duly implemented, and PACDAC and the ministerial position were established soon after the nuclear policy became law.

The functions and powers of the committee are: to advise the Minister of Foreign Affairs on such aspects of disarmament and arms control as it thinks fit; to advise the Prime Minister on the implementation of the Act; to publish public reports in relation to disarmament and arms control matters and on the implementation of the Act; to make recommendations for the granting of money from funds established for the purpose of promoting greater public understanding of disarmament and arms control matters. A trust fund of \$1.5 million was established from some of the reparation money paid by France in relation to the Rainbow Warrior bombing. PACDAC disburses the interest on this money which was put into a trust, the Peace and Disarmament Education Trust (PADET). The objective of the trust is: To advance education and thereby promote international peace, arms control and disarmament.

To provide some assessment of what PACDAC has been doing and has achieved since its establishment, four members of past committees known personally were asked to contribute their views on the operation and success of this body. They are Dr Rod Alley from the Victoria University of Wellington, Kate Dewes, peace researcher and until recently part-time lecturer and tutor in peace studies at the University of Canterbury, Mary Woodward peace activist, members of the first PACDAC under the 1987-90 Labour Government, and Associate Professor Steve Hoadley from the University of Auckland, member of the second and third committees under post-1990 National governments. They all kindly agreed to do this, and what follows presents or summarises what they wrote.

A much more complete treatment of this topic can be found in a thesis written by Dewes entitled The World Court Project: The Evolution and Impact of an Effective Citizen's Movement, Armidale University, November 1998.

5.2 PACDAC Under Labour 1988-90

Kate Dewes

The most extensive and detailed contribution came from Kate Dewes who presented her experiences as a PACDAC member from 1987 to 1990 in a 1993 paper entitled 'Participatory Democracy in Peace and Security Decision Making: the Aotearoa/New Zealand Experience' ⁽¹⁾. Dewes is a long-time member of the Foundation for Peace Studies and had been active in many local and national peace groups since the mid 1970s. She was the only woman appointed as a full member of the government delegation to the United Nations Special Session on Disarmament (UNSSOD) in 1988 for a whole month, and was tasked by the committee and the Minister for Disarmament to do some soundings regarding support for the World Court Project. A summary of her analysis is presented.

In her view, the eight members of PACDAC were given the statutory responsibility of acting as 'trustees' of the anti-nuclear policy, PACDAC being 'one of the more innovative creations of the Labour Government, established in response to peace movement calls for input into decision-making, and to provide a mechanism which sought greater accountability from our Members of Parliament and bureaucracy'. PACDAC involved itself with a considerable range of issues in this period while Labour was in office. These issues feature in other chapters of this working paper to some extent, so the details are not repeated here. What follows is a selection of quotes from her paper intermingled with summaries of her arguments.

PACDAC was pretty much a first internationally Dewes says. Although there were 'consultative' committees in Canada and Sweden and later in Australia, they did not have the statutory responsibilities that PACDAC has, they were more an opportunity for the appropriate ministry to brief activists a couple of times a year she reports. PACDAC had a much more pro-active position due to the underpinning of the law and its role as 'adviser' to the Prime Minister and the Ministry of Foreign Affairs on the implementation of the Act. The clause 'advises on any matters which it sees fit', 'gave us huge scope' she states. (private communication, 10 March 1999)

PACDAC was seen by the 350 or so peace groups around New Zealand as '*their* committee entrusted with protecting *their* anti-nuclear policy'. These groups participated actively in trying to get a committee not made up of retired military personnel, officials or retired politicians, and succeeded. The appointees were Rod Alley, Dr Robin Briant a member of International Physicians for the Prevention of Nuclear War (IPPNW), Dr Neil Cherry a member of SANA, Kate Dewes, Manuka Henare Maori, member of the Catholic Commission for Justice and Development, Frank O'Flynn a former Minister of Defence, Dame Laurie Salas a member of the United Nations Association and Mary Woodward. All had a long history of working for the nuclear free policy and a commitment to see its integrity upheld. The two Ministers for Disarmament, Russell Marshall and Fran Wilde, who chaired the committee at different times were also well known for their commitment to the anti-nuclear policy. The committee attempted to make its work as participatory as possible involving the peace movement wherever possible, in the security study published by PACDAC and in its contribution to the UN study on nuclear weapons for example.

PACDAC was concerned by what it saw as inconsistencies in New Zealand's voting on nuclear issues in the United Nations, particularly nuclear deterrence. This is examined in the next chapter, but certainly in the mid-1980s New Zealand's performance left room for criticism in this regard. Throughout its first three years, PACDAC presented research to the Ministry of Foreign Affairs that highlighted these inconsistencies, and took other actions to try and improve the situation. The committee also attempted to get a clear statement on New Zealand's opposition to deterrence as global, or just for New Zealand, from then Prime Minister Geoffrey Palmer because of conflicting statements from officials and politicians. A brief meeting was held with Palmer at the end of 1990, but the clarification sought was not received. Dewes thought this made it pointless for PACDAC to try and redraft disarmament resolutions for the government's consideration.

Although by 1989, the Committee succeeded in obtaining changes in the explanations of vote, with specific reference to deterrence, it was impossible to influence the underlying philosophy of the diplomats who were advising the Ministers to support our western allies and vote against the resolutions. Unbeknown to PACDAC, David Lange had already tried to change these votes in 1987 but had found the entrenched attitudes of officialdom too big a hurdle. During 1990, he confirmed that he never received PACDAC prepared papers, nor our recommendations for changes in UN voting patterns.

However, due to PACDAC's vigilance and the efforts of the Disarmament ministers, New Zealand's voting improved markedly between 1988 and 1989. This trend has continued, as discussed in the next chapter.

PACDAC strongly supported the NGO initiative led by former judge Harold Evans of Christchurch to have a government sponsor a resolution in the UN General Assembly requesting an advisory opinion from the International Court of Justice on the legality of nuclear weapons, what became known as the World Court Project. The committee requested the New Zealand Government to take up the case, and won agreement from the Minister of Foreign Affairs at the time, Russell Marshall, to present a paper to Cabinet in February 1989 supported by a background paper from the ministry. However, the actions of the committee met strong opposition from the ministry 'which eventually overtook the decision making process'. ... 'No matter how vociferously PACDAC argued for further consideration of this proposal, we were met with intransigence and weak excuses.' These centred largely around concerns regarding the reactions of New Zealand's traditional allies to support for the proposal.

At the time Dewes wrote her paper, the World Court Project had not reached a successful conclusion. This has now been achieved as discussed briefly in chapter six.

PACDAC contributed to a 1990 United Nations study on nuclear weapons and asked a number of individuals and groups to provide accompanying research especially in relation to the illegality of nuclear weapons and the South Pacific Nuclear Free Zone.

The Black Birch controversy was outlined in chapter four. PACDAC's involvement in this issue was seen by the peace movement as a test of the ability of the committee to play a significant part in domestic problems, as compared with its generally appreciated efforts to scrutinise the government's performance at the United Nations. Owen Wilkes summed this up saying in Peacelink, magazine of the Aotearoa/New Zealand peace movement, for April 1989, p.8,

There are some very good peace activists appointed to the committee, and the Black Birch issue has become an important test of whether PACDAC can serve as a conduit for peace movement concerns, or whether it will be used by the government to co-opt and neutralise key activists.

PACDAC was given copies of the material obtained by Peter Wills (see chapter 4), and passed a resolution requesting that the government answer the questions: Does Black Birch contravene the spirit and/or letter of the Act? If it does, how will the Government respond? As stated earlier, the Crown Law Office found that the installation did not contravene the spirit or letter of the Act. Dewes states that the efforts of PACDAC to challenge the Black Birch operation were, nevertheless, significant enough for the Head of the US Navy Astronomy Division, Dr Hughes, to come to New Zealand to defend the operation during a joint visit to Black Birch by a party including the Minister for Disarmament and Arms Control, then Fran Wilde, and the PACDAC members. (private communication, 10 March 1999) As reported below, Wilde seems to have been convinced by Hughes' arguments concerning the purpose and nature of the operation.

This and other PACDAC actions seem to have had little influence on the operation of Black Birch. The peace movement can not have been greatly encouraged by this Black Birch episode. Nevertheless, the work of PACDAC in conjunction with that of independent peace researchers did, Dewes claims, expose the real purpose of the operation, and hopefully would mean that 'future attempts to secure military agreements will have to be more honest from the outset about motivations and purposes'. How well this hope has been fulfilled is not clear or obvious. From the discussion of the various UKUSA agreements presented in chapter 4, it would seem that little has changed.

This PACDAC was also concerned about the issue of New Zealand forces exercising with its nuclear capable allies, in exercises like the FPDA Starfish exercises discussed in chapter 4, and other exercises. They were deeply concerned that the government would not release to the public documents relating to certain exercises that could have involved visits by nuclear capable warships or aircraft. The documents sought were any clearance request for a visit, but these were refused on the grounds that the Prime Minister's policy was against such disclosure. The NCND policies of the United Kingdom and the United States would be jeopardised by such disclosure, and it was the government's decision to respect the concerns of its friends and allies on this matter. The committee sought reassurance that the documentation denied to the public would be made available to them.

The committee asked the Ministry of Foreign Affairs for a briefing paper on the procedure for granting clearance to visiting ships, and for meetings with the appropriate officials. Two such meetings were held, but a final paper outlining the clearance procedure was not tabled until February 1990, and included no mention of PACDAC in the process, despite PACDAC's statutory responsibility to advise the Prime Minister on the implementation of the Act. The procedure described is to consult with the ministry and to consult appropriate specialist publications ⁽²⁾.

Similar problems with delaying tactics and postponements of meetings with the Prime Minister were experienced by the committee when it attempted to scrutinise the visits of United States aircraft to Harewood, discussed in chapter three. For over a year PACDAC members tried unsuccessfully to have the issue debated properly within the committee. 'They were often promised that it would be put on the next meeting's agenda for full discussion, along with a meeting with Prime Minister Palmer. Finally, the Prime Minister attended and gave us three minutes of his time.' Other promised meetings with the two Christchurch members of the committee did not take place and,

at no time were the real issues of inspection of aircraft and sovereignty dealt with. Cynically, one might support the view that Christchurch has many Labour-held seats [in Parliament] and the income generated by the US base would be adversely affected if the US acted on threats by some Congressmen to remove the base to Tasmania.

The committee placed many other issues on its agenda, on their own initiative or in response to letters from groups and individuals. These included matters not always seen as directly within PACDAC's brief, but 'we reserved the right to discuss whatever we saw fit'. Some issues considered were continued membership of ANZUS, visits by ships carrying radioactive waste from Antarctica, participation in Operation Desert Storm if under US not UN command and the arsenal included nuclear weapons, making the GCSB more accountable, input into the annual defence assessment process established by Labour, and entrenching the legislation.

Responding to far-reaching public concern, PACDAC attempted to put the question of the function and operation of Waihopai on its agenda, but was unable to reach a satisfactory level of debate with the ministry regarding the base and other activities of the GCSB.

PACDAC also became extensively involved in the debate during 1988-89 over the purchase of two frigates, so-called ANZAC frigates since Australia was also building some of the same design for its navy and the New Zealand purchase would form part of an overall construction programme. PACDAC was implacably opposed to the purchase, as was the extra-Parliamentary Labour Party and the majority of the public. However,

The Foreign Affairs and Defence bureaucracies manipulated the frigate debate in grand style. This purchase would cement future involvement in a reactivated ANZUS and they would not allow 'consultative' or public advisory committees to uphold democracy and stymie their process. ... In one case dubbed 'the missing frigate paper' PACDAC members watched in awe as the Defence, Foreign Affairs

and Prime Minister's departments covered up the whereabouts of a PACDAC commissioned paper [dealing with the technical specifications of the ships].

The public advisory committee referred to was one of a number of committees set up by the Labour Party to prepare policy discussion papers, the committee in question considering foreign affairs and security.

The Labour Government did purchase the two frigates. Dewes sees this as 'probably the most unpopular decision by the government and it seriously undermined public confidence in the democratic process'. Evidence is also presented by Dewes of Australian pressure on New Zealand to make the purchase, and Lange, reviewing the decision making process in 1992 said that,

our experience reflected the problem which governments must cope with in most areas of activity. The Government's only advisers on military purchases were the ones with a vested interest in the most expensive hardware.

In effect, he said, both the Australian Government and the NZ military 'had us over a barrel'. It is interesting to note that a proposal to purchase a further ANZAC frigate in 1998 was unsuccessful despite strenuous efforts by the Minister of Defence, Max Bradford, supported by the Australians. This has exacerbated criticism from Australian defence sources of New Zealand's overall defence capabilities.

Over the three years the committee met bi-monthly for at least a whole day, and members could put any item on the agenda they wished and request any papers from the ministry and meetings with government caucus committees. 'PACDAC became a vital conduit for effective transmission of research and peace movement concerns into the decision making process.' Dewes says, however, that,

As documented earlier, it was the bureaucracy which effectively blocked any real movement on key issues raised. They frequently delayed release of research requested, handed out confidential 'draft' documents for recovery later in the meeting, or expected members to read their background papers in three minutes during the meeting. Very few of our recommendations or papers reached the Prime Minister's desk. ... PACDAC was certainly an educating process for all involved and although its tangible effects were few, its ripples were felt by both the public whose concerns it attempted to represent and the decision makers it tried to influence.

Wilkes commented in Peacelink, August 1991, p.20, that 'the original PACDAC did a vast amount of very useful work, and had a significant influence on government policy'. He, presumably, was not too disappointed with the efforts of PACDAC in relation to Black Birch, referring to the earlier quote from him, or did not see the Black Birch question as detracting seriously from the overall performance of this original committee.

Dewes comments that PACDAC used the media effectively, frequently making its own press releases (not necessarily with support from the ministers involved), especially concerning the World Court Project, Black Birch and the frigates issue. (private communication, 10 March 1999)

Dewes in her paper was critical of the 'new look PACDAC' appointed early in 1991 by the 1990 National Government Minister for Disarmament, Doug Graham. The committee included a retired air marshal and a Maori from the armed forces, two 'foreign' (her term) academics, one of whom, Steve Hoadley, reports his PACDAC experiences below, two farmers, both National Party branch functionaries, an ex-National cabinet minister and one woman member from the original committee. Dewes comments that 'sceptical peace movement people have felt that by appointing military advisers to a peace committee, Mr Graham has set a precedent for peace advisers to be appointed to a defence committee^o.

This committee certainly looked quite different from the first committee appointed by Labour. Dewes states that this new committee has not been seeking the views of the traditional peace and disarmament movement, has not been proposing new initiatives, and has been silent on current issues of concern in the disarmament and arms control area. It has spent most of its time allocating its funds and organising visiting speakers. It has supported the establishment of two new centres for strategic studies, and its funding priorities are different from those of the former committee which disbursed funds much more to peace and disarmament groups. We examine the operations of PACDAC under National below.

Dr Rod Alley

Dr Rod Alley, a staff member in the Department of Politics at Victoria University of Wellington, and a member of the initial committee describes his term from 1988 as follows. In 1988 a newly appointed PACDAC began a solid programme of work which included organising research on the status and progress of peace education in New Zealand schools and tertiary institutions (this work was published and subsequently distributed to interested non-governmental organisations); a study on security concepts in an emerging post-Cold War world; continued monitoring of New Zealand's voting record on disarmament issues at the United Nations; supervision of disbursing of the PADET funds; and dialogue with local and visiting disarmament officials. In 1989 and 1990 PACDAC proposed to the government that the question of the legal status of nuclear weapons be submitted to the World Court for an advisory opinion. (Wilde says that PACDAC actually raised this issue as early as March 1988, and held a very significant meeting with the Ministry of Foreign Affairs and others in November 1988, so Alley's dates are too late). The Lange Administration, on the basis of official advice, decided that this proposal was not acceptable. PACDAC also confronted the government over the proposed joint frigate construction that New Zealand subsequently joined with Australia. To the committee this project was unacceptable but again its advice was ignored.

A considerable amount of the committee's time was spent on evaluating the numerous requests coming before it for PADET funding. This entailed liaison with many groups in the community and comprised a process of 'peace capital' formation. This meant that the advances made with the anti-nuclear policy were given an opportunity through well deployed funding to take firmer root and consolidate. This was vital in the development of an effective multi-partisanship of New Zealand's continued anti-nuclear policy.

On New Zealand's security arrangements, the 1988-90 committee attempted to elicit from the government its rationale for the Waihopai, Black Birch and Tangimoana facilities. It also made some attempts to have the Security Intelligence Service placed under closer statutory supervision.

Following the change of government in 1990, the National Government replaced all but one of the previous committee with its own appointees. Continued activities have included providing funding for scholarships funded under PADET auspices; facilitating visits by overseas experts in arms control and international security affairs; publicising disarmament activities through school activities and competitions; and monitoring New Zealand's voting record at the United Nations on disarmament issues. Members of the existing committee have attended major international disarmament conferences, as occurred in 1995 when the five yearly review of the Nuclear Non-Proliferation Treaty (NPT) convened in New York.

The nature of the committee has been primarily shaped by the motivation of its membership and the time they have been prepared to devote to its activities. Although not intimately engaged with PACDAC's work given competing responsibilities, all ministers heading PACDAC have discharged their duties conscientiously. It can be claimed that, like its parent anti-nuclear legislation, PACDAC is now firmly institutionalised in New

Zealand. To play an effective role, PACDAC's performance will require constant scrutiny by the public that it is intended to serve.

Mary Woodward

Mary Woodward, well known peace campaigner and activist, presented an informal comment on PACDAC 1987-90 as follows. I was appointed to PACDAC when it was set up by the Labour Government at the end of 1987. Although the government was elected largely on a mandate to legislate for a nuclear free New Zealand this action was pre-empted by the unexpected urgency of action for a market-led economy. Peace activists had become impatient with the delay and as a lifelong member of the Labour Party I had taken part in a considerable amount of correspondence on the issue, including pressure on the Prime Minister, David Lange, to legislate against nuclear powered ships as well as against nuclear armed vessels.

However, my appointment was, I am sure, made on account of my membership of the Labour Party as I had not taken a prominent role in peace organisations for some time. Most members of PACDAC were acknowledged supporters of the Labour Party and it was no surprise when in 1990 the new (National) Government replaced us with its own sympathisers, only the (justly) respected Dame Laurie Salas remaining. I found the three years a very rewarding and interesting time, mostly because of the personal contacts.

I enjoyed the chance to exchange ideas with other committee members on issues that we all thought were important. I was sorry when the new government did not allow us to have a final meeting together to sum up our experience. We argued on many issues, examined many policies in detail, exchanged information. It was a valuable time for me and I am grateful for the chance the government gave me.

It was also extremely interesting though often painful to have first hand experience of working with permanent staff and officials. I do not think that they welcomed the probing and questioning which we subjected them to as a committee, eg. over Waihopai or the purchase of frigates. The new PACDAC I understand has no mandate to do this so much. I was sometimes angry about the way in which our opinions or questions were treated by officials and the lack of willingness sometimes to take our concerns seriously - especially if they queried received wisdom from an overseas expert. Dr Blix from the [International] Atomic Energy Authority, for example, dismissed out of hand my observation that decommissioning a nuclear power station would be a very tricky if not impossible task by saying in an off-hand way that 'it had already been done a number of times'. The official assigned to our committee declined the material I later offered him (taken from a professional engineering journal) saying that he did not have time for that sort of thing.

We spent a lot of time assigning money to various peace groups. We drew up a guide for ourselves so that a fair proportion went to different groups, eg. Maori, country, small and large groups, and to various types of activity. This was very time consuming and I am not altogether sure that it was a sensible way of using the money available (from Rainbow Warrior reparations of course) because it often went out in a lot of fairly small amounts. The new PACDAC I understand does things differently with less concern about the 'grassroots' activity that we hoped to assist, and more funding of academic type activities. This may make more sense, I am not sure.

Overall, I found the time on PACDAC a great experience. I felt guilty when I left the Labour Party in 1988, as if I were on the committee under false pretences. We all took seriously the chance to become much better informed about issues of disarmament and arms control than we ever could have done without being on the committee. We had mountains of papers on all the issues. Perhaps the officials thought that they would drown us in facts but everyone did their homework between meetings and some of us with a bit more time summarised the stuff for others. I thought it a great privilege to have access to the information.

We worked very hard at being a responsible ADVISORY committee though our advice probably was not taken all that seriously - more likely it was a nuisance to the permanent staff and an embarrassment the good ministers (first Mr Marshall and later Fran Wilde) who took the chair whenever they could. We appreciated them.

The two issues I remember as especially interesting and testing were Waihopai (now unveiled by Nicky Hager) and the frigate purchase. Mr Lange himself spoke to us about this - in reassuring terms!

I valued the time on PACDAC very much and am grateful for the chance it gave me to be involved with good people and important issues and to get a view of how the political process works.

5.3 PACDAC Under National - 1990 On

Associate Professor Steve Hoadley PACDAC 1991-1996: A Retrospective Review, 19 November 1998

The following are personal observations that I hope will provide a perspective on how PACDAC operated in the early-mid-1990s. I was appointed to PACDAC in early 1991 by Don McKinnon, the newly elected Minister of Foreign Affairs, and served two terms, until the end of 1996.

On the new committee were no longer Mary Woodward or Rod Alley but rather Air Marshall David Crooks, Stuart Boag who had won a Mastermind contest on the subject of 'Dreadnaughts', and Professor Ramesh Thakur, a critic of Labour's non-nuclear policy. Also on the committee were three National Party members including a former minister, Hugh Templeton.

The chair was the Minister for Disarmament and Arms Control, Doug Graham. Doug Graham was a sympathetic man, and his brother Kennedy Graham is an international writer and activist on peace issues. But Graham was also Minister of Justice and Minister for Waitangi Treaty Negotiations, so had little time to spare for PACDAC. Consequently, Air Marshall Crooks chaired most meetings until the Minister arrived to ratify the decisions we had made. Crooks was an efficient chair, but his patience with idealistic and insubstantial proposals was limited.

Not surprisingly, PACDAC in its 1991-1996 manifestation broadened the scope of its terms of reference from 'peace, arms control, and disarmament' to include 'security'. We were not warlike, and we did not advocate acquiring frigates or F-16s, but we did concern ourselves more with questions of how New Zealand and the Asia-Pacific might enhance their overall security as well as pursue peace policies.

What did we actually do? Two things occupied most of our agendas. First, we heard briefings from the Ministry of Foreign Affairs, or from visiting experts, on aspects of arms control - nuclear, biological, chemical, and conventional. We questioned the briefers, but from a posture of relative ignorance, and with the knowledge that they were the messengers, not the decision-makers or drafters. We learned a great deal about official policy, and usually concluded that it was reasonable.

But we had almost no impact on policy formation or amendment or execution. PACDAC held one discussion on softening the no nuclear ship visit policy but no consensus emerged so no recommendation was made. Nevertheless we went back to our constituents better informed about, and probably more sympathetic towards, official initiatives, or absence thereof.

Second, we solicited and assessed applications for grants. This was our main activity. Each year we gave away nearly a quarter of a million dollars, the annual interest from the Rainbow Warrior compensation fund.

We considered applications for several categories of grants: MA theses, PhD theses, fellowships to the Peace Research Centre at the Australian National University, and project grants from anyone for anything that promised to encourage, or educate the public about, peace, disarmament, arms control - and security. And we innovated block grants to peace NGOs

The academic grants did help a number of students, and some very good theses were written, on New Zealand peacekeeping, Chinese arms control, landmines, philosophical pacifism, mediation, and ethnic conflict in the trans-Caucasus for instance. Several fellows were sent to Canberra, and I was sent to the United Nations to participate with the team of New Zealand officials negotiating the extension of the NPT in 1995.

However one large grant, to support an applicant's travel and research for a book on New Zealand and Asia-Pacific security, was not followed by the expected book. PACDAC had only rudimentary monitoring and evaluating capacity, and no enforcement capacity, so the incident went unremarked and unresolved.

We gave general grants to a wide variety of NGOs and individuals. These included grants to support publications, displays, school kits, videos, conferences, and overseas visitors. These grants reached the grassroots, we hoped, and we tried to give as many as possible within our terms of reference and budget. We rejected three for every one we chose, particularly those wanting wages, travel funds, or computers. Our basic guideline was whether the activity would educate the wider public about peace and arms control issues.

Perhaps the most exciting grant was to Dr Lawrence Carter who is researching microwaves, thermal imaging, and other techniques to detect buried landmines. His research continues, and if results achieve expectations, not only will landmine detection and removal be speeded but also Dr Carter, the University of Auckland School of Engineering, and New Zealand will be hailed for their life-saving contribution. What more could PACDAC ask for?

Block grants were an innovation reflecting our limitation as a group that met only four times a year. We wanted to encourage dedicated volunteers in established peace groups to use their experience and initiative. We gave large grants to the Foundation for Peace Studies and the United Nations Association, and smaller grants to the Centre for Peace Studies. We asked for, and got, accounts and reports on how the grants were used, and were generally satisfied with the results.

Finally, we initiated a peace essay prize for high school students.

In conclusion, we played a negligible role in advising the Government on policy on arms control and disarmament. However we did play a significant role in allocating Rainbow Warrior funds to deserving students, activists, innovators, and NGOs. The peace education 'output' of PACDAC 1991-1996 cannot be measured objectively. But subjectively, it was very satisfying to help deserving individuals and groups.

Views of PACDAC have been presented from only one member who served during the period after National became the government. To supplement these observations and to gain some idea of how the committee has been operating recently, material is presented derived from the 'minutes of meetings of the committee on 20 August 1997, 13 November 1997, 13 March 1998 and 10 July 1998.

From recent PACDAC Minutes

It is clear from these minutes that as Hoadley indicates the committee, in this period at least, made real no contribution to government policy on disarmament and arms control through discussion of policy or through offering advice, even though he claims they found existing policy 'usually reasonable'. They were provided with papers and reports on international issues, and some of the minutes refer to briefings being given on these issues, but that is the only mention of issues like the landmine treaty, biological weapons, chemical weapons, the test ban treaty and the conference on disarmament.

The vast majority of the time spent in these four meetings appears to have been devoted to matters related to PACDAC's role as a funding agency. Funding covered activities from those proposed by local groups, by more professional or academic bodies, consideration of scholarship applications and the progress of scholarship holders, visiting speakers and programme funding, as discussed by Hoadley. However, despite what he says, there does seem to have been a trend to funding more formal or academically prestigious activities as against funding small local groups for activities less directly associated with disarmament and arms control, but nevertheless aimed at furthering peaceful relations, a form of arms control in the view of many. It is the author's opinion that the committee interpreted this part of their brief too narrowly.

5.4 Comparisons and Comments

The changes reported by Dewes and the activities described by Hoadley in the 1990-96 period appear to describe the way in which PACDAC worked in this 1997-98 period as well, and presumably still works. The committee only meets four times each year now as compared with six times a year earlier. The question this all raises is how well is PACDAC now fulfilling the statutory obligations set out for it in section 17 of the Act. These require in particular, that the committee advise the Minister of Foreign Affairs on aspects of disarmament and arms control as it thinks fit, and the Prime Minister on the implementation of the Act, and publish from time to time public reports in relation to disarmament and arms control matters and on the implementation of the Act.

It would be most surprising if the committee found nothing to advise the minister on relating to disarmament and arms control, and no public reports from PACDAC have been seen for some years.

While it seems the committee that served while Labour was in office did so with mixed success, it does appear to have attempted to fulfil all aspects of its brief as far as possible. It involved itself with matters of public concern in military and security areas, questioning government policy and its implementation. It attempted to put points of view to appropriate officials and ministers. It did publish reports in the areas of security and peace studies, and disbursed the funds available to it.

By contrast, under National the committee appears to have confined itself to a more limited range of activities. Hoadley states clearly that 'we played a negligible role in advising the Government on policy on arms control and disarmament', and the minutes of recent meetings support this observation as applying still. The committee seems to have confined itself much more to the goals of disbursing funds, arranging for overseas visitors and visits by experts.

It is interesting to note that the Minister for Disarmament and Arms Control did not chair any of the four PACDAC meetings for which minutes were obtained. However allowance has to be made for other demands on the time of these ministers, most of whom held, and now hold, other portfolios as well as disarmament and arms control. Refer, for example, to the comments about Doug Graham made by Hoadley. Their duties have also required them to be overseas at times. Still it would have been desirable for McKinnon to have chaired at least some of the four 1997-98 meetings, to have had them arranged at a time when this was possible.

Woodward comments that the minister took the chair 'whenever they could' during her time on the committee. Dewes refers to meeting bi-monthly for at least a whole day 'with the Minister chairing discussion', and Alley says that 'all Ministers heading PACDAC have discharged their duties conscientiously'. This suggests that the minister was more actively involved with PACDAC in chairing its meetings, as required by the Act, during the Labour period than latterly, but this needs further confirmation.

5.5 Criticisms

There were criticisms of the provisions covering PACDAC and its operation in the Labour Bill under clause 17, from the SANA group for example. They wanted the powers and activities of the committee broadened to cover proposed changes to other clauses in the Bill, clauses 9 and 10 in particular, and to cover other concerns in New Zealand that were seen as relating to New Zealand's nuclear free status, concerns already discussed. They wanted the Prime Minister and other appropriate persons to be required to consult with PACDAC as well as being advised by the committee. The committee would receive and make public certificates issued in connection with visits requested under clauses 9 and 10, or if these clauses continued to involve only Prime Ministerial approval, to examine the basis for such approvals, satisfy itself that the Prime Minister had satisfied himself or herself beyond reasonable doubt of the acceptability of each visit, and to publish those findings. The committee would also arrange verification inspections relating to those same clauses as discussed in chapter one. It would act as required to implement clause 15 as modified, see chapter 1 again, in relation to offences under the Act. Members of the committee or their representatives would inspect any installation or activity suspected of or considered to be providing support of any kind for, or involvement of any kind in, nuclear, chemical or biological weapons system. This would have allowed PACDAC to address concerns of the sort discussed in relation to Black Birch and the GCSB installations examined in chapter four. SANA also wanted changes to ensure wide community representation on the committee.

These proposals were not accepted, and representation of the general community on PACDAC has varied, as we have seen.

5.6 Proposal

As stated in the introduction to this chapter, section 17 of the Act requires PACDAC

- (a) To advise the Minister of Foreign Affairs on such aspects of disarmament and arms control matters as it thinks fit;
- (b) To advise the Prime Minister on the implementation of this Act.

It has also been remarked that since National came to power in 1990, PACDAC appears to have made little or no effort to carry out these duties. Prior to this it was active in its advisory role, perhaps not always to much effect, but that is not the point. It did attempt to meet its statutory obligations.

It is proposed that PACDAC should once again be required to take up an active advisory role in the fields of disarmament and arms control, fields in which New Zealand is working very actively. It should also be advising the Prime Minister on the implementation of the Act by considering proposals of the sort made in this paper in relation to United States military flights through Christchurch, and New Zealand's military contacts with the nuclear powers, and other proposals as they arise.

5.7 The Minister for Disarmament and Arms Control

While not a statutory requirement of the Act, soon after it came into force Labour appointed a Minister for Disarmament and Arms Control who, amongst his or her other

duties, was to chair PACDAC. This can be seen as a manifestation of the nuclear free policy in action. The performance of the various ministers is not examined in detail here.

There have been four ministers for Disarmament and Arms Control so far. In 1987 following the enacting of the legislation Russell Marshall was appointed to the position. He was also Minister of Foreign Affairs at the time. Fran Wilde took over from Marshall quite early in 1989 and retained this position until the general election late in 1990 which National won. Doug Graham was the first National appointee as Minister for Disarmament and Arms Control and filled this post until 1996 when the present incumbent, Don McKinnon, took over. Graham held other major portfolios, and McKinnon is also Minister of Foreign Affairs and Trade.

Russell Marshall

Looking at the Labour appointees first, there is little comment from Dewes, Alley or Woodward concerning Russell Marshall and his record as minister. Dewes does write that 'due to PACDAC's vigilance and the efforts of Russell Marshall and Fran Wilde (Ministers of (sic) Disarmament) Aotearoa's [United Nations] voting improved markedly between 1988 and 1989'. Again she says that the two Ministers of Disarmament who chaired the (Labour appointed) committee were well known for their commitment to the anti-nuclear policy. 'They knew many members of the peace movement personally and tried to meet them when visiting other centres.' She also reports that 'press statements were released by the minister after each [PACDAC] meeting', a practice no longer continued. Alley just comments that 'although not intimately engaged with PACDAC's work given competing responsibilities, all Ministers heading PACDAC have discharged their duties conscientiously'. Woodward states briefly that the ministers 'took the chair whenever they could. We appreciated them.' There appears to have been general appreciation of Marshall as minister, with no indications of any feelings of ill will against him.

Fran Wilde

Dewes has rather more to say about Wilde who was a Minister out of Cabinet. She gives credit to Wilde for an active role in relation to United Nations resolutions. She 'encouraged PACDAC to prepare suggestions for new resolutions and for rewording old ones.' Wilde is also reported by her as taking a positive position on the World Court project, despite its rejection by the Labour Government. Her role in the Black Birch controversy seems to have been more equivocal since while the committee were strongly supportive of peace movement claims already discussed, Wilde is reported by Dewes to have been convinced by the arguments of the Head of the US Navy Astronomy Division, Dr Hughes, during a joint visit to Black Birch of the correctness of the American claims concerning the purpose of the installation. Nor was she as opposed to Waihopai and the lack of oversight of the GCSB as was the committee. However, Wilde did initiate regular newsletters covering the activities of PACDAC and disarmament and arms control matters to keep peace groups informed, the only minister to do so, and often sought input from them through these newsletters and other consultations. 'Groups soon learned that they could raise their concerns in letters to PACDAC.' Dewes reports that she organised a significant international conference on Security and Disarmament issues in April 1990 with overseas speakers including Kennedy Graham, Joseph Nye and Carolyn Stephenson. (private communication, 10 March 1999) This was also part of the PACDAC programme, and many activists were also invited. Dewes credits Helen Clark and Wilde with providing the main effort in achieving gender balance in the first committee.

Roger Foley writing in the Evening Post for 12 April 1989 reported on Fran Wilde's performance early in her term as minister. She said, he reported, that no one single issue on the disarmament agenda had priority, but she wanted to be more 'pro-active' rather than 'reactive'. This meant focussing on things that could be achieved, rather than just reacting to proposals coming from other quarters such as Defence. However, he

commented that 'if the peace movement is looking for a firebrand in Ms Wilde, a Joan of Arc ready to take the world by storm, then it will have to think again'.

Wilde did not see the government taking another major step in the disarmament area like the nuclear ship ban, as she saw the peace movement expecting. She saw a more gradual process built around a multiple approach to disarmament with other countries involved. There were two strands to disarmament, domestic and international. For her at the time the major international issues were the long standing drive by Australia and New Zealand to achieve a comprehensive test ban, and the then upcoming review of the NPT. The test ban treaty is now in place, and the NPT has been extended indefinitely. Wilde announced New Zealand's participation in a seismic monitoring exercise designed to test verification methods for a test ban. New Zealand is now committed to maintaining a permanent contribution to an international monitoring system for the test ban treaty.

On the domestic scene, Foley said that she was not willing to pass on a recommendation from PACDAC at that stage (early 1989) that the government seek support in the United Nations for the World Court project but had not ruled the issue out and would raise it with other governments. And Dewes reports favourably on Wilde's contribution to the advancement of this project, as stated. The project has now reached a successful conclusion as discussed briefly in chapter six, but this took until July 1996, well after Wilde's term of office ended. She also appeared to favour the purchase of the two ANZAC frigates 'at this stage' Foley wrote, contrary to the position of PACDAC, on the basis that cooperation with Australia enhanced regional security. Wilde said that disarmament was an endless battle and one had to take a 'catholic' view. 'You go on struggling', she said.

Dewes comments that in her view giving too much credence to the Foley article is being too harsh on Wilde. Wilde, she says, found it very difficult being a Minister out of Cabinet. She and another MP did in the end break ranks with other ministers over the frigate issue and went public over their opposition to the purchase. Both Wilde and Marshall were keen supporters of disarmament, peace education and research, and did a lot to promote these causes. She was on the Council of Parliamentarians for Global Action and worked closely with them concerning United Nations resolutions on disarmament. Wilde appointed a personal disarmament adviser, Laila Harre, during 1989 so she could receive independent sources of advice from international NGOs and from other sources. Dewes sees this as rather significant and it certainly ensured that very different perspectives were explored from what the ministry would have pursued. Wilde also liaised with her Swedish Disarmament Minister counterpart, Maj Britt Theorin about the feasibility of pursuing a United Nations resolution in 1990 on the World Court Project. But there was too much opposition within Sweden, and New Zealand was not prepared to go it alone. (private communication, 10 March 1999)

Overall Wilde appears to have attempted to fulfil the demands of her office actively, but did not always see eye to eye with PACDAC and the peace movement on every issue. This was also the author's impression of Wilde as minister, a hard working parliamentarian, but one whose views the peace movement found not always easy to accept.

Doug Graham

National, having won the election late in 1990, but having switched to unequivocal support for the Labour nuclear legislation early that year, must have been faced with a problem when it came to selecting a Minister for Disarmament since many of its leading parliamentarians had long been opponents of Labour's nuclear policy. They selected Doug Graham, even though a public statement by him in mid-1989 illustrated this problem very clearly.

In July 1989 Graham issued a statement published in The New Zealand Herald under the title 'Peace groups bite the hand that feeds them', vigorously attacking the Labour

Government and PACDAC. He accused the government of using the PADET funds through PACDAC as a 'slush fund' to pay a large number of peace groups to promote Labour's defence policies. The result, he said was a very one-sided debate with Labour portrayed as independent and committed to peace and disarmament, while National was subject to the whims of the United States and Australia. He then argued that, apart from the nuclear ship visit issue, the two had 'similar policies'. Labour through this ship visit policy 'lost the [ANZUS] alliance to make a point. To National, that was foolhardy and irresponsible.' He referred to Labour's 'paid propagandists', meaning the peace groups. The policy of the next National Government he claimed (mid-1989),

will be that nuclear weapons should not be brought into our ports and National would expect our allies to respect that policy. The policy is designed to regain the benefits of collective security including intelligence, training and trade and at the same time to promote stability in our region and thus the cause of peace.

Of course this was not the policy with which National came to the 1990 election having adopted Labour's legislation. But Graham only about 17 months later became Minister for Disarmament, and chair of PACDAC.

Fran Wilde attacked Graham over this statement in an article in The New Zealand Herald for 12 July 1989 in which she rejected completely the claim that PACDAC funds were used as a slush fund for Labour propagandists, citing highly respected organisations that had been funded. She detailed differences between Labour and National in the disarmament area pointing out that Labour had created the ministerial position she held and PACDAC, had passed legislation embodying its commitment to a number of arms control treaties, promoted, signed and ratified the SPNFZ Treaty while from 1975 to 1984 under National this issue had languished, and had introduced peace studies and conflict resolution into schools. She admitted that New Zealand could not claim any direct credit for superpower decisions, any more than it could when it was active in ANZUS. But, she said,

there is no doubt that the New Zealand stand - with strong calls for disarmament by other non-nuclear countries - is having an effect on the international climate of opinion within which the superpowers function.

An article appeared in Peacelink for April 1992 ⁽³⁾ examining Graham's activities as minister about midway through his first three year term of office. This was presumably prepared by the magazine staff since no author is given. It is very critical of Graham, saying 'we can only give him a mark of about nought out of ten'. It refers to his earlier antipathy to the peace movement, and suggests that his task was to do what his government mostly wanted - some sort of disarmament activity that would shut up the peace movement while Don McKinnon got on with the main business of reversing the nuclear free policy. It says that while his first nine months in office saw little action from Graham as minister, he had become much more active since then. 'Sadly, however, there is little of substance behind all this visible activity' the authors claim. Graham is reported as saying that he had met disarmament ministers overseas and not one of them had brought up the subject of New Zealand's nuclear free Act.

They saw a pattern in what to them was his selective choice of those he criticised and those he did not, criticism being generally reserved for enemies of the United States while the superpowers were praised for reducing their arsenals.

Doug Graham obviously sees his job as being to tell us that all sorts of exciting things are happening in disarmament, thanks particularly to the benevolence of the United States. Everything is going well, except that we need better ways of controlling some of the US' enemies - like Iraq and North Korea. There is no need for our nuclear-free act or for the South Pacific nuclear-free zone. New Zealand

will have to become a pro-nuclear ally again before it can have any real impact on nuclear disarmament.

They saw him as supportive of American policies particularly.

Graham, they report, said that the main aim of disarmament education was to disseminate information about progress in international disarmament and arms control. The authors criticised this position because it ignored the matter of outstanding disarmament problems still to be solved, 'and whether our side is contributing to them'. They saw Graham doing the same with PACDAC, reversing its role under Labour of being a channel of advice from the public to government to being a channel for disseminating good news about global disarmament to the public, with the effect of distracting attention *from* very real outstanding problems, and deflecting attention from the major powers that are obstructing disarmament *to* irrelevant third world scapegoats designated by the US'.

Graham spoke on the subject of 'New Zealand's disarmament and arms control agenda: opportunities and challenges' about the same time, on 8 May 1992 ⁽⁴⁾. He presented a very different picture. He saw New Zealand as being able to make a 'real contribution' in these areas, the greatest concerns being in his view the threat of unrestrained arms flows, including the risk of proliferation of weapons of mass destruction. Multilateral institutions would become increasingly important in resolving global problems, he considered, and 'in that context there will be a renewed capacity for independent action and influence on the part of smaller states'. 'To wield influence in this new era New Zealand needs to operate effectively in existing multilateral institutions', he said. These 'offer opportunities not only to contribute in our own right but also to work within coalitions of like-minded countries'. He cited the example of a recent collaboration involving Canada, Australia and the Nordic countries on a joint paper on the future of peacekeeping addressed to the UN Secretary-General.

He discussed a number of major developments in the disarmament and arms control areas, and cited New Zealand's efforts towards trying to achieve a comprehensive nuclear test ban, these having had particular success in 1988 in the level of support reached in the United Nations. He hoped, on the basis of recent developments, to see this achieved by 1995, and stated that New Zealand 'will be doing its level best to accomplish that task'. This goal was not quite achieved, the present treaty being opened for signature in September 1996.

He cited New Zealand's contributions to achieving a chemical weapons convention through carrying out trial inspections of chemical installations to help develop verification procedures. He hoped this convention would be achieved that year. This did not occur until 1993, the convention entering into force in April 1997. New Zealand was also participating in an international group of experts looking at the problem of checking if countries were producing biological weapons, and expected to report in 1993. He referred to New Zealand becoming a member or 'Partner' of the Missile Technology Control Regime in 1988, and supporting the development of the UN conventional arms register.

On the domestic scene, he said that he was pleased with the new directions charted by PACDAC 'in terms of practical and educative activities', referring to the establishment of a university scholarships programme, a secondary school essay competition and a research fellowships programme in collaboration with the Peace Research Centre, Canberra. He saw the possibility of major progress in the arms control area, and said that 'in many, if not most, of these areas New Zealand can make a contribution, working with others, and the government fully intends that it should'. He was referring to an end to nuclear testing and a test ban, the chemical weapons convention, reductions in nuclear arsenals, indefinite extension of the NPT and greater transparency in arms transfers, achievements that, he proposed, would add greatly to our collective sense of security.

Graham was capable of developing some interesting viewpoints. In a speech to the Paraparaumu Rotary Club on 21 March 1994 he suggested that New Zealand might better equip its armed forces in the future with systems for use in a multinational context, thinking of the United Nations as the coordinating body, rather than attempting to achieve self sufficiency or trying to revive the ANZUS alliance. He questioned the appropriateness of traditional alliances in a changed world. This proposal and these views were greeted with considerable hostility by some of Graham's colleagues in Cabinet, the Minister of Defence, Warren Cooper, in particular being very critical (see The New Zealand Herald, 23 March 1994, p.5).

It is considered from contact with Graham during his terms as minister, and from observing his work, that regardless of his statement in 1989, which may in part have been politically motivated, he did try to fulfil the requirements of his office in disarmament and arms control quite conscientiously, but from his own point of view concerning how progress in these areas would best be achieved. He seems to have favoured working through more formal structures like UN agencies and international bodies, and not greatly supported the view that valuable contributions could be made by local, national or international non-governmental organisations like peace groups. He did hold some discussion sessions with some peace groups, although without memorable consequences that are known of. If this view of Graham is correct, it might also explain to some extent the changes he initiated in the way PACDAC was constituted and operated, to a committee of generally more formally qualified members undertaking more formally structured programmes and supporting more formally structured activities. This approach would not have found particular favour with the peace movement however.

Dewes says that Graham moved to support the World Court Project and was receptive to delegations from her and others to discuss it in detail during 1990-95. 'He was much more receptive than Don [McKinnon] who opposed it right up until the end'. He was open to speaking to groups if asked she reports. (private communication, 10 March 1999)

Don McKinnon

Don McKinnon was also an arch critic of the nuclear free policy in the mid to late 1980s and very strongly opposed his party switching in 1990 to support this policy and the legislation. However despite this background he is considered here to have been doing a very creditable job as minister, in particular working actively for nuclear disarmament. When asked if he could supply some information concerning his recent activities as minister, he replied that the most recent description was given in a Ministry of Foreign Affairs and Trade Information Bulletin published in 1997 entitled 'Disarmament and Arms Control' ⁽⁵⁾, produced to mark the 10th anniversary on 8 June of the passing of the 'historic' nuclear free Act. Further information, he said, can be found in the New Zealand Foreign Affairs and Trade Record, formerly the New Zealand External Relations and Trade Record.

The 1997 bulletin gives the New Zealand Government's objectives in disarmament and arms control as to work for the elimination of all weapons of mass destruction and to make significant progress in controlling the proliferation of conventional weapons including achieving a ban on anti-personnel landmines (now achieved).

'New Zealand encourages all practical efforts to promote nuclear disarmament.' Strong support for the World Court Project, a call for discussion of a phased programme of nuclear disarmament and a proposal for the Conference on Disarmament to establish a special committee on nuclear disarmament are cited as examples of New Zealand's actions in this area, and New Zealand is now in a coalition of eight countries, the New Agenda Coalition ⁽⁶⁾, calling for more rapid moves for complete nuclear disarmament and advocating steps to be taken urgently to ease concerns arising from the presence of existing arsenals. New Zealand is supporting efforts to achieve a ban on the production of fissile material for nuclear weapons, and is taking an active role in the implementation of the test ban treaty the bulletin reports. It reiterates Graham's comments about New

Zealand's commitments and contributions to the chemical and biological weapons conventions, and describes continuing involvement in the development of verification measures for the latter convention.

New Zealand can make an important contribution despite its geographical position, and is listened to with respect, the bulletin says, and has enhanced credentials from its opposition to nuclear testing and its support for the SPNFZ and the test ban. Looking at the question of how New Zealand does contribute, the bulletin explains that its contributions are made with limited resources. The International Security and Arms Control (ISAC) Division of the Ministry of Foreign Affairs, established on 15 December 1986 although only reaching its full complement over the course of 1987, comprises five policy officers who prepare policy advice on disarmament issues and represent New Zealand at international meetings. They are in effect the minister's advisers. The ministry also has one officer in each of Geneva, Vienna and the Hague who devote some time to arms control negotiations. Towards the end of 1996 the government announced that the position in Geneva would be upgraded to a full Ambassador to the Conference on Disarmament. New Zealand became a member of this body in June 1996. PACDAC is also discussed in this context of how New Zealand contributes.

New Zealand is a member of the International Atomic Energy Agency the bulletin reports, and was elected onto the Board of Governors in September 1996 for a two year term. Membership enables New Zealand to stress local and South Pacific views on issues of concern such as proliferation threats, nuclear testing and transportation of nuclear waste. New Zealand participated in a recent study of the radiological situation on the French testing atolls of Mururoa and Fangatauafa, and also takes part in a regional arrangement involving shared research into the peaceful uses of nuclear science in the Asia-Pacific region such as in health and industry.

New Zealand ratified the Chemical Weapons Convention on 15 July 1996, and participated actively in the negotiations for the present landmines treaty. Support for the UN Conventional Arms Register continues. New Zealand is a member of four export control regimes designed to screen the export of strategic goods ranging from military goods and missile technology to items relevant to chemical and nuclear programmes. The ISAC Division processes about 250 to 300 applications covering listed goods annually.

Further, from December 1997, amongst other disarmament activities, the government introduced the Nuclear Test Ban Bill to pave the way for ratification and implementation of the Comprehensive Test Ban Treaty; began preparatory work on the international monitoring system for this treaty (New Zealand will host six monitoring stations); supported a South African proposal for the establishment of an ad hoc committee on nuclear disarmament at the Conference on Disarmament; and at the Non Proliferation Treaty 2000 Review Preparatory Committee meeting called on the nuclear weapons states to commit themselves unequivocally to the elimination of nuclear weapons, and highlighted the obligation to do this as affirmed by the International Court of Justice.

Christine Bogle, Senior Policy Officer in the ISAC Division, presented a very positive picture of New Zealand's contributions as a member of the disarmament and arms control community in a 1997 paper presented at a seminar in Auckland to mark the 10th anniversary of the enacting of the nuclear free legislation⁽⁷⁾. Readers are referred to the sources cited above and to this paper for further details of these contributions. It does seem quite clear that New Zealand is now an active participant in international disarmament and arms control programmes. How far New Zealand would have progressed in this work without the creation of the ministerial position, the ISAC Division and PACDAC by Labour and retained by National cannot be assessed, but from what has been presented it is reasonable to argue that these moves made a very positive contribution to New Zealand's progress in these fields.

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CHAPTER SIX

LABOUR'S NUCLEAR STANCE IN THE 1980s: Criticisms, Justifications, Historical Settings, and Support

6.1 Criticisms of the Moral Stance of the Labour Government in the 1980s

As has been indicated, there were criticisms of apparent contradictions in the nuclear related policies of Labour following the 1984 election, contradictions that were interpreted as reflecting badly on the moral stance of the government with regard to nuclear weapons and nuclear deterrent strategies. We have seen comments of this sort from Hamel-Green relating to the stance taken by New Zealand concerning aspects of the SPNFZ Treaty.

P Landais-Stamp and P Rogers, then both in the Department of Peace Studies, Bradford University, in their 1989 book Rocking the Boat: New Zealand, the United States and the Nuclear-free Zone Controversy in the 1980s p.160-162 (ref.1 l, introduction), summarise the criticisms of New Zealand's position post-1984 concerning its membership of ANZUS and how this related to its nuclear free policy. They say (*italics as in the original text*),

We have seen on several occasions how David Lange and other government spokespeople laid great emphasis on New Zealand's nuclear-free policies not being incompatible with membership of the ANZUS Treaty and with an overall foreign policy alignment with the West. However, to opt out of only the nuclear dimension of a security alliance with the United States is not only questionable morally, but is also impossible practically. There is considerable contradiction in the New Zealand policy as it stands. Indeed, the policy makes little moral or practical sense so long as New Zealand remains a member of ANZUS, which - even if not by a strict definition - is clearly a 'nuclear alliance' in a political and strategic sense. The United States global military strategy makes little or no distinction between its nuclear and non-nuclear components. The recurrent problem that arises in relation to ANZUS is that it has come to represent not only a tripartite *treaty*, but also an *alliance* between the three signatories. As a treaty, ANZUS is a legalistic document, but as an alliance it has come to represent a whole host of military, political and economic relationships between the three members. So by remaining in ANZUS, New Zealand has opened itself to the charge that it wants to enjoy the 'benefits' of an alliance without sharing the full costs of membership. Indeed, given that the Labour government showed no inclination to withdraw from the ANZUS alliance, their steadfastness in maintaining the ships-ban could be seen as stubbornness or poor alliance management as much as a principled stand against nuclear weapons.

... A central argument is that the Labour government has maintained that the nuclear ships ban is based, at least in part, on a moral rejection of nuclear weapons and nuclear strategies. This being so it is therefore an equivocation to adopt the nuclear-free moral high ground whilst simultaneously espousing a pro-American foreign policy alignment. Since that alignment has an explicit nuclear component, it is possible to adopt one or the other, but the two together are irreconcilable. It has, in fact, been argued that the political and geo-strategic effect of the ships-ban and nuclear-free policies has been reduced because any contribution they make to world peace, arms control or disarmament is *incidental* and not central to them.

There is then, some merit to the argument that the nuclear ships ban and nuclear-free legislation has not signalled a break from the 'West', nor a challenge to the overall

US military strategy in the Pacific and to assumptions of a Soviet threat to the region.

This passage has been quoted at length because there are still those in New Zealand, indeed in the present government, who strongly advocate a return to full ANZUS membership, a step which would strengthen these criticisms since the United States is still a nuclear power, and ANZUS still retains nuclear weapons in the US Pacific Fleet as elements of its overall strategy, even though the threat from Russia has all but vanished.

These criticisms were taken further in a stinging attack on the Lange government and its nuclear morality by a New Zealand academic, Dr Ramesh Thakur, then Associate Professor in Political Studies at the University of Otago, in a 1989 paper ⁽¹⁾. Entitled 'Creation of the Nuclear-free New Zealand Myth: Brinkmanship Without a Brink', Thakur begins by outlining what he saw as the general perception of the situation between the United States and New Zealand over the nuclear issue. This is of a firmly anti-nuclear Labour-led New Zealand colliding with a bullying United States. Lange's government is generally perceived as having acted with courage in opposing the United States over ship visits, he writes, while the United States is seen as having acted against the democratic preferences of a small ally that was adopting a moral and independent international posture. The United States is also accused of refusing to accept a policy that it had previously found tolerable during the third Labour government of New Zealand (1972-75) and presently finds tolerable in Denmark, a NATO ally.

He is referring to the situation during the term of the third Labour government when nuclear powered ship visits were suspended because of concerns over their safety, but the U S Navy continued conventionally powered warship visits to New Zealand, and to the policy of Denmark which, again for safety reasons, has not seen a nuclear powered vessel in Danish ports since 1964, including US Navy vessels. Nevertheless under their policy of not wanting nuclear weapons in their ports, but of not asking visiting warships to verify their nuclear weapons free status in any way, US Navy and Royal Navy visits have continued on a regular basis. The Danish situation was discussed fully in chapter 2 and was considered in Working Paper No.8, chapter 2, while the 1972-75 New Zealand situation was examined in detail in Working Paper No. 7, chapter one, and revisited briefly in chapter 2 of this paper.

Thakur says that his article has as its primary objective to suggest that the conventional wisdom is a gross oversimplification on all counts: the Labour government did not seek to transform a pronuclear (National government) policy into an antinuclear one; it did depart crucially from the precedents of Denmark and the 1972-75 Labour government; it has not subordinated political expediency to moral compulsions; its political courage is not above suspicion; and its democratic mandate can be variously interpreted.

He then criticises New Zealand as a moral example on a number of grounds. He cites nuclear power, considered by New Zealand in the 1950s and 1960s, but rejected for practical not moral reasons; the weakness of section 10 of the Act in allowing United States military aircraft to use Harewood airport in Christchurch without abandoning the NCND policy; allowing the continued use of nuclear devices for approved medical and research purposes. He says (*italics as in original text*),

Nuclear energy is either moral or immoral; to permit the use of nuclear energy for certain *purposes* is to reopen the debate about whether nuclear deterrence also is not moral because its purpose is to deter nuclear war. If nuclear energy is unacceptable because of certain dangers that can never be guarded against with full certainty, then to permit its application within restricted categories is to insist that other countries take all the risks of development while New Zealand selectively reaps the rewards. A free rider is defensible on political grounds of selfish pursuit of national interests; it is indefensible morally (p.921).

It is considered that in arguing in this way, Thakur has ignored repeated explanations offered by Labour of what 'nuclear free' meant for them and for their policy, namely free of nuclear weapons and nuclear powered vessels.

The 'muddled morality of refusing port visits to warships was evident from the beginning to any who retained critical faculties', he continues. He argues that the government was happy enough for New Zealand ships and sailors to exercise with US warships under the NCND policy, but those same ships would not be allowed within New Zealand waters, and points out that the Buchanan was supposedly to have come from an ANZUS exercise to visit New Zealand. He cites New Zealand support for nuclear testing by its Englishspeaking allies in an earlier age, and the Prime Minister in the early 1950s, Sidney Holland, saying that periodic testing was essential. Official opinion only turned against testing when the Chinese joined the testing parties and the French shifted their test programme to the South Pacific, he says. He does admit that in the 1980s any American or British testing in the South Pacific would also have been opposed 'with equal vigour'.

He cites criticism of the Lange government's insistence that the nuclear free policy was not intended necessarily to influence other countries to follow suit. That it was 'not for export', meant the government was obliged to argue against the very case that people believed to be the policy's best justification, as an example to inspire others and thereby further nuclear arms control. 'A fundamental contradiction had developed at the heart of the nuclear ships policy', as one commentator wrote (see ref.8, introduction, pp.77-78). Thakur cites contradictions in the famous March 1985 Oxford Union speech by Lange ⁽²⁾ in which, he says, Lange having staked out an uncompromisingly moral position condemning nuclear weapons, 'then adopted the morally absurd position that he was not arguing for unilateral nuclear disarmament'.

Thakur then turns to condemnation of the Labour government's morality in other, nonnuclear, areas. These criticisms will not be examined.

Returning to his attack in the nuclear area, Thakur gives three reasons for questioning the courage of the Lange government in the defence dispute with the United States: (1) the latter consistently argued that punitive measures against New Zealand would not be instituted in nonmilitary relations between the two countries; (2) in another international dispute where economic sanctions were imposed on New Zealand it buckled under external pressure, referring to the Rainbow Warrior bombing and subsequent steps taken by the French following the arrest and imprisonment of its agents; (3) the Lange government exploited the dispute with the United States to reap electoral popularity. Here, while he admits that it was not obvious in 1984-85 that the government's policy of risking ANZUS by banning ship visits would prove an electoral asset, by the end 1985 it seemed clear, he says, that the government would not survive politically if it modified those bans. 'In other words, the government did not stay morally honest against tremendous political pressure.' The 1987 election saw strong support for the ship visit policy, he argues, and it was the National Party that showed political courage by trying to act on the courage of its convictions, 'while Labour enjoyed a free ride'. 'In a democratic polity, policy positions *against* voter preference are the most important measure of political courage', he states.

A lengthy argument then follows opposing the proposition that the nuclear ships policy of the Lange government was an assertion of national independence. Thakur claims instead that the United States insisted precisely 'that New Zealand *should* decide just what it wanted: alliance or independence'. His argument again centres around the problem of Labour wanting to ban nuclear weapons from New Zealand, but advocating continued ANZUS membership despite obvious problems with the NCND policy, and with United States perceptions that alliance responsibilities included ship visits under NCND. The United States, Thakur argues, was the one that took the major decisions concerning New Zealand's future role in ANZUS, not the New Zealand government that was not willing to cut its ANZUS ties as a full acknowledgment of its new nuclear free policy.

He then cites the position adopted in 1957 by former Prime Minister, Keith Holyoake, that New Zealand would not store nuclear weapons as the time when New Zealand made the 'substantial decision not to accept nuclear weapons', and says this was accepted by the United States 'then and subsequently.' He continues this line of argument in his final major area of criticism. This is of the claim that in 1984 Labour made New Zealand nuclear free. He cites declarations made by the Holyoake government, the 1957 one, and a further declaration in 1963 that New Zealand would not acquire, store, or manufacture nuclear weapons, or permit their testing in New Zealand.

This criticism can be readily met. Thakur's argument here is very superficial. The emptiness of these declarations by Holyoake, at least as regards the storage of nuclear weapons on visiting US Navy vessels in New Zealand ports, and the complete lack of any attempt by subsequent governments before 1984 to enforce them fully, has been discussed at length in Working Paper No.7, chapter one. Holyoake's intentions may have been genuine. They were not implemented before 1984 when New Zealand did become nuclear weapons free for the first time for many years. Nor did the United States accept his declarations. They continued naval visits with some undoubtedly nuclear armed vessels up to 1984.

Amongst further criticisms, Thakur argues that New Zealand's 1984 policy has made no significant contribution to nuclear disarmament. He quotes Lange describing the basis of the policy as being 'to do everything in our power to halt the spread of nuclear weapons and to encourage their abolition', in a 1987 election pamphlet. 'Judging by results, this remains an empty boast so far', Thakur comments.

To cover all of Thakur's criticisms would require a much more extensive summary of his paper. It is hoped that the flavour and main thrusts of his comments have been conveyed adequately. There are undoubtedly numerous other sources of criticism that could be cited, but it is felt that the material presented from these two sources embodies the major criticisms generally met of the nuclear free policy and its implementation. As will become clear, implementation of the policy has often resulted more from its just being in place than from some actual enforcement of it. Arguments and propositions that counter some of the criticisms we have seen are considered next. It will then be up to readers to formulate their own conclusions concerning these criticisms and their validity.

6.2 ANZUS, the 'Not For Export Question', and the Policy in action

A major contradiction in Labour's position during the 1984 election campaign and after it that concerned both Landais-Stamp and Rogers and Thakur was between Labour wanting a nuclear free New Zealand yet wanting to stay in ANZUS. This will be examined from a number of viewpoints, but first it must be accepted that looking at this from the point of view of the policy in action, simply establishing the nuclear free policy had a very decisive effect on New Zealand's involvement in ANZUS. And moving to legislation resulted in New Zealand effectively being taken out of ANZUS in an operational sense in 1986 by the Americans. New Zealand can no longer participate in any ANZUS activities as far as is known, even though in principle it remains a member of the alliance, not having formally withdrawn. This has resulted without the 1984 or 1987 Labour governments having to make a direct commitment to withdraw. So what the Labour Party, the peace movement, and many others wanted in 1984, withdrawal from ANZUS, has been achieved in effect. ANZUS is effectively dead for New Zealand as long as the legislation stands unchanged.

It is interesting to ponder the question of whether or not this consequence of becoming nuclear free might not have been well thought through by some of those publicly advocating continued membership of ANZUS in 1984. This must be left as a tantalising question. Lange in his book, the only source of extensive comment from someone intimately involved that is known, gives no indication of his having so reasoned until

some years later when he finally accepted that ANZUS was a nuclear weapons dominated alliance and incompatible with a nuclear free policy for New Zealand.

It is also interesting that these accusations of a lack of morality have not been levelled at New Zealand governments post 1990, Labour having been re-elected in 1987. These were National governments from 1990 to 1996, and in all of these, at least some members advocated return to full ANZUS membership while the policy of their government was continued support the 1984 nuclear free policy. Members of the National Party component of the Coalition MMP government from 1996 to August 1998, and the minority National government from then to the time of writing also support a return to ANZUS, and retention of the nuclear free policy. The morality of Lange government may or may not be questionable, but the result as far as ANZUS went of its nuclear stance was, by 1986, decisive.

We will see in the next section that what Labour advocated in 1984 was continued membership of a renegotiated ANZUS in which the military component was downplayed, and New Zealand had a conventional armaments role only. Labour's position on ANZUS becomes more consistent with being nuclear free when coupled with the argument presented in these working papers and elsewhere, see the references in the introduction, concerning the real reason for the United States strong reaction to the nuclear free policy. This is that it had little or nothing to do with New Zealand remaining in ANZUS in some limited role, but was intended to make an example of New Zealand to deter others from following suit. It also makes the refusal of the United States to consider any renegotiation of ANZUS, or of any modified role for New Zealand in the alliance, less tenable.

In terms of the policy in action, and considering the 'not for export' criticism, it is true that no other country has followed New Zealand's example and either adopted a similar policy, or modified a no nuclear weapons but 'trust our allies to honour policy' position, like that of Denmark and others, to a stronger position having seen New Zealand's example. So the policy has not been effective in this sense. This is attributed largely to pressure from the United States and the British in the case of Scandinavian and NATO-countries with such policies, and from the United States in the case of Japan. The case of Denmark is examined in the present paper chapter two. Pressure of this type was applied to New Zealand as discussed in the earlier working papers in this series, and in the book by Landais-Stamp and Rogers (ref.11, introduction). However, international support for the policy was strong in non-governmental organisations, as discussed below, and in this sense the policy was 'exported', with considerable impact according to some commentators.

Issue must be taken also with the assertion by Thakur that the United States took no punitive measures against New Zealand outside the defence area. The United States stopped all high level political contacts with New Zealand until March 1990 when Mike Moore, then a minister in the government met the US Secretary of State, James Baker, the first such meeting since 1986. Baker recommended the resumption of such contacts. This did not happen, however, until February 1994. Further, while the United States did say that there would not be any restriction on trade with New Zealand as a result of the nuclear free policy and the ANZUS rift, and no sanctions were imposed, there was considerable concern within New Zealand that trade might suffer in some less direct way, both with the United States, and with Britain with its problems at the time with the EEC.

This was particularly felt in the export dependent farming and agricultural sectors. Landais-Stamp and Rogers in their book pp.108-10 confirm that there were real fears in New Zealand about trade difficulties with the United States in the early years after the ship visit problem arose. The facts show that there was no impact on trade with the United States which has expanded considerably since 1984. Australia, which has remained a staunch ally of the United States throughout the post-1984 period and did not follow New Zealand's anti-nuclear lead, has suffered trade problems with the Americans

that New Zealand did not experience until 1999 when both countries are being threatened with trade barriers against their exports of lamb to America. But this has nothing to do with nuclear issues.

Again, while they might not strictly constitute measures designed to punish New Zealand, punitive measures, the many forms of pressure exerted by the United States on New Zealand in non-military areas for many years from 1984 to try to obtain a change in the ship visit policy certainly resulted in feelings within New Zealand that the country was being punished for its action in adopting the nuclear free policy. These pressures are detailed in the references given in the introduction, particularly the book by Landais-Stamp and Rogers.

6.3 What David Lange Said

As would be expected, David Lange presents a quite different interpretation of Labour's stance concerning ANZUS in 1984, and the relationship of this to the nuclear free policy. Many comments and references to this are to be found in his book (ref.9, introduction). Only a sample of these are considered here. In chapter 2 of his book, which is worth reading if only for its highly entertaining style, Lange outlines the background to Labour's decision to go to the 1984 election 'pledged to make New Zealand nuclear-free and pledged, as our policy put it, "to renegotiate the terms of our association with Australia and the United States"' in ANZUS. This idea of a renegotiated ANZUS came from the former Labour Prime Minister and Labour's spokesman on foreign policy for the 1984 election, Bill Rowling, and would have seen ANZUS broadened to encompass non-military factors that could affect peaceful relations in the South Pacific region, cultural, political, and economic factors for example. Rowling was invoking the preamble to the ANZUS treaty which states that parties desire to strengthen the fabric of peace in the area. It was considered that Labour could operate quite acceptably with the United States in such a broadened ANZUS and with its nuclear free policy in place. Lange tells us p.36 that any renegotiation would have had to encompass New Zealand's unconditional anti-nuclear stance, and an absolute guarantee of the complete integrity of New Zealand's sovereignty.

Our policy coupled the exclusion of nuclear weapons with an approach to ANZUS that would not unduly alarm the public and formed an honest basis for an accommodation with the United States (p.36).

A Heylen poll in August 1984 showed 60% support for renegotiating ANZUS with only 24% opposed and 16% don't know responses. The same poll gave 76% support for banning the entry of nuclear weapons with 18% opposed to this ban, 69% for the establishment of the SPNFZ against 24% opposed, but only an even division regarding the banning of nuclear powered vessels, 45% for and 46% against the ban. In all cases, the balance of those questioned did not know. (ministry file 59/8/2, 27 August 1984)

Lange in this chapter also discusses the electoral situation in 1984, and the strong support for continued ANZUS membership. He says p.34, that,

Labour could not fight the 1984 election acknowledging that its nuclear-free policy put ANZUS into question. ... Labour needed something more than a declaration that the nuclear-free policy was not incompatible with alliance membership.

He revisits this theme on p.60, saying,

I had campaigned in 1984 on the insistence that we could and would stay in the alliance. I couldn't abandon it without a struggle. ... I thought that if I kept stressing the government's intention to take an active part in ANZUS at the level of conventional armaments, then I had a fair chance of winning the battle for public opinion inside New Zealand. If the Americans, satisfied that New Zealand could

not be swayed into changing its policy, would agree to some form of military co-operation inside the ANZUS framework, our policy would be vindicated. That was the best possible outcome for us. If the worst happened and the Americans simply refused to accommodate us, then at least, in seeking some agreement, I had made an effort.

Hence the hope for a renegotiated, less militaristic and broader, alliance. The United States, however, rejected any renegotiation of ANZUS. Lange says, p.141, that the United States had 'resisted well-meaning attempts by New Zealand to use the ANZUS treaty as a framework for low-level military co-operation', and p.146 quotes US Secretary of State, George Shultz, saying in 1986, 'ANZUS is there and we have no plans to alter it at all'.

This position was spelled out as early as 17 July 1984, immediately after the election, in a press interview with Shultz and others, held after an ANZUS Council meeting in Wellington attended by representatives of the former National Government only even though Labour had by then gained power. When asked if he was open to broadening the scope of ANZUS to make it more of an economic agreement, Shultz replied as follows.

No. ANZUS is not an economic agreement in any sense. It is a security agreement and that is the extent of it and that is the sum and the substance of it and economic arrangements, and cultural arrangements, and all sorts of other ways in which our countries are in contact with one another are separate matters. (ministry file 59/812, 17 July 1984)

It should also be acknowledged that Labour in its stance was definitely reflecting public opinion. The Labour government commissioned a review of New Zealand's defence and security needs late in 1985, including public input and public opinion polling. The results published in 1986 showed that something like 80% of the population would have been happy to see New Zealand in an operational ANZUS alliance if the United States accepted New Zealand's nuclear-free status, as Lange reports, p.159-60. The nuclear free policy had been in effect for two years at this stage, so was well known to New Zealanders.

Lange, in numerous places in his book comments on the theme that the ANZUS Treaty nowhere requires its member states to accept nuclear weapons, or even mentions nuclear weapons, so there was no basic reason why New Zealand could not stay in the alliance as a loyal member but in a conventional armaments role only, see p.60 for example. This claim will be discussed in a subsequent working paper dealing with the nature of the ANZUS alliance, nuclear or not, where parallels with the NATO alliance will be drawn to argue that just as this latter alliance is undoubtedly a nuclear alliance, so is ANZUS. Nevertheless, Lange is strictly correct in terms of the wording of the ANZUS Treaty. Finally, however, he had to admit that he had been wrong in reasoning in this way because, as he says p.180, discussing and quoting from a speech he gave during the 1987 election campaign'

I started by remembering that the Labour Party had campaigned in 1984 on undertaking to renegotiate ANZUS. 'There was certainly no intention of leaving the alliance or becoming a sleeping partner in it, and when I was campaigning in that election I was assertive of the value to New Zealand of the alliance.' At that time, I recalled, I believed that New Zealand could exclude nuclear weapons and remain in an active alliance with a nuclear power. I didn't see the alliance as predominantly nuclear, but events proved me wrong. The alliance was a vehicle of nuclear strategy. 'The ANZUS relationship between the United States and New Zealand is now inoperative exactly because the nuclear element in the alliance has become predominant.' ... I concluded by saying that ANZUS had been unequivocally revealed in the last three years to be a defence arrangement underpinned by a global strategy of nuclear deterrence. 'As long as it retains that

character, it is no use to New Zealand and New Zealand had better make arrangements which are relevant to our own circumstances.'

It is argued in Working Paper No.8, pp.1 1-12, that the nuclear nature of ANZUS should already have *been* obvious in 1984 and earlier, and this has some relevance to Lange's claims concerning the 1984 position of his government. As one American commentator put it, 'there was nothing for the Lange Government to "discover" about ANZUS - only to invent', referring to the question of ANZUS being an alliance involving only conventional weapons, or involving conventional plus nuclear weapons, and defending the latter view. This was published in 1988.

An interesting source of comment on the question of morality in foreign policy is a 1993 Centre for Peace Studies working paper on this topic by Mike Goldsmith who has already been quoted in chapter 2, and who discusses language, logic and morality in foreign policy, and uses the neither confirm nor deny policy as an example to examine ⁽³⁾.

He asserts, p.1, that 'all policy positions stem from, and are underpinned by, moral and ethical claims, as well as practical ones'. He later states, p.20, that 'a policy based on morality, particularly an ambiguous morality, is difficult to abandon completely'. In the above quote from Lange we see him abandoning his 1984 position on ANZUS, and accepting in 1987 a changed view of ANZUS and its relevance to New Zealand. Was his position in 1984 based on moral considerations or not?

Lange made a statement in his 1989 George Herbert Walker Junior memorial lecture delivered at Yale University ⁽⁴⁾ that is relevant to this point and the present discussion. He said,

I have often heard the possession and repudiation of nuclear weapons argued as a moral issue. I have argued it that way myself. But I never will say that the government of New Zealand took its decision to exclude nuclear weapons for moral reasons. In the end we took our decision for practical reasons. We are satisfied that the deployment of nuclear weapons or the threat to use nuclear weapons is not the way to keep peace in the South Pacific. We believe in fact that there is nothing like their presence which is quite as likely to lead to disturbance. The threats which do exist to the region cannot possibly be countered by the presence of nuclear weapons. ...In our environment there is no place for nuclear weapons.

He is here contradicting the first assertion of Goldsmith, at least in relation to the nuclear free policy. Goldsmith comments on this same quote from Lange's Yale speech saying,

Pragmatism is inescapable in foreign policy, of course. But in the former Prime Minister's oft-stated preference for practical solutions, as in the U.S. Air Force operations at Harewood [discussed in chapter 3 of the present paper], there is an element of disingenuousness. The energy that fuelled New Zealand's anti-nuclear stance was, and always had been, a strongly moral one. It suited Lange to distance himself from that impetus sometimes but he was superbly proficient at using it (or gaining credit for it) when circumstances warranted. His resort to pragmatism in the passage just quoted must therefore be read as a rhetorical strategy (p.12).

Lange's earlier statement on the change from 1984 to 1987 in his assessment of the nature of ANZUS also appears to contradict Goldsmith's second claim if Lange's position was a moral one, but this is a difficult question on which to make judgements with any certainty, as the above quote from Goldsmith shows. Goldsmith also asserts that 'morality and practicality reinforce each other in the discourse of international relations' (p. 11), another element to build into the present considerations.

Lange discusses aspects of his Yale speech in his book pp.203-4. It was the famous speech in which he said that ANZUS was dead, and raised the question of New

Zealand's formal withdrawal from the alliance, a move which he describes on pp.204-7 as leading to his resignation as Prime Minister in August 1989, to be replaced by Geoffrey Palmer.

In his book, Lange also discusses the contradiction between New Zealand's anti-nuclear position and its continued support for the West and its military postures. He recounts, pp.195-97 that in the beginning of his term as Prime Minister he was an enthusiast for the approach his diplomats 'struggled constantly' to convey to the United States and its allies, that New Zealand had not abandoned the values of the West.

I knew when the Labour Party became the government that public opinion in New Zealand would not tolerate a sudden departure from the ANZUS alliance, nor would it stand for our being set apart from countries we had traditionally regarded as our friends (p.195).

His professional advisers warned him constantly about the price we would have to pay 'if we went too far in arousing American anger' he says.

It was not in our interest to have the Western world convince itself that we had lurched into non-alignment or anything more suspect. To meet the need, the Ministry of Foreign Affairs invented, and I adopted, a concept it called 'pro-Western regionalism'. In this scheme of things, we would serve Western interests in the South Pacific by any means short of welcoming nuclear vessels. The result was that we locked ourselves into contradiction. Diplomats saw their task as one of isolating the nuclear-free policy and downplaying its importance (p.195).

He goes on to discuss how this influenced New Zealand's voting in the United Nations on some nuclear disarmament issues, a further point of criticism of the 1984 Labour government. The situation was one of inconsistency in New Zealand's position he admits. The test of membership of the Western alliance was belief in the doctrine of nuclear deterrence, and as New Zealand found, 'there wasn't any other test' he says.

We said we were pro-Western, but by the Western alliance's own definition, we couldn't be. By the West's own test, we had left the alliance, but we said we hadn't. ... Because we decided that we must actively identify ourselves with 'Western' interests, we ended up in a kind of international halfway house. Our diplomats went around the world trying to hide the nuclear-free policy. Being seen to be inconsistent was only one result. A constant posture of apology did nothing for our standing internationally. We were too often half-hearted in disarmament forums; having challenged the assumptions of deterrence through our actions. we tolerated it in our words (p.196).

It was membership of ANZUS more than anything that led to inconsistency in New Zealand's policy, he states p.197. It lured conservative diplomats and politicians into thinking a return to the former 'comfortable' relationship with the United States was possible, distorted our perspective with the 'charms of dependence', led us too often into appeasement of deterrence, and caused us too frequently to neglect our real interests.

It offered nothing to New Zealand that was actually worth having. It was fool's gold. The nuclear-free policy deserved a better setting.

He also addresses the question of New Zealand's policy being 'not for export' in chapter 4 of his book. He says, pp.117-18,

There were some in the nuclear-free movement in New Zealand and elsewhere who were disappointed that I did not simply urge the governments of other countries to follow New Zealand's example. While it is possible to be cynical about the willingness of other governments to look for real alternatives to a nuclear defence; I

could hardly foist New Zealand's solution on them. The whole point of our policy was that it was right for our circumstances. It was our judgement, based on our assessment of what was needed for our security. Others had to work out their own way to disarmament. I couldn't do it for them, any more than they could tell me how New Zealand should be defended.

In its shorthand form, this approach came to be summed up in the saying that New Zealand's nuclear-free policy was 'not for export'. This catch-cry was, I know, widely used by our diplomats in their attempts to limit what they felt was the damage caused by the nuclear-free policy. In its abbreviated form, without its accompanying invitation to look for alternatives to deterrence, it became a nonsense. Our policy, in the end, was pointless unless other countries in their turn adopted genuine measures of arms control. What I hoped to do, not by offering answers for others but by describing what New Zealand had done, was to make the point that alternatives were possible. What we needed was the political will to look for them.

It should be noted that in the government's view, New Zealand's 'circumstances' included its geographic isolation in the South Pacific, well removed from the arena of superpower confrontation.

A similar explanation of New Zealand's position was given by Lange to the UN Conference on Disarmament in 1985 in Geneva, following Lange's Oxford Union debate. Here he also explained that New Zealand's analysis of its security situation showed no serious threat to the South Pacific.

New Zealand was not threatened by nuclear weapons, and it was worse than pointless to ask the United States to defend us with nuclear weapons. New Zealand's action in refusing a nuclear defence would not reduce by one the number of nuclear weapons in the world, but it showed that their deployment could be resisted when there was the political will to do it (p.1 16),

He was critical of most existing arms control measures he tells us, but says that, 'Limits to the arms race were possible where the political will existed to impose those limits. In New Zealand there was the will and the opportunity.' In his address to the Conference on Disarmament he argued that countries had a duty to take opportunities to pursue serious and balanced measures of arms control.

In the George Herbert Walker lecture he described the nuclear free policy as 'a practical measure of arms limitation. It is small enough we know, but it is real. ... In one little nuclear theatre the curtain has come down'

Returning here to the impact of official advice, and considering the criticisms advanced by Hamel-Green of New Zealand's part in the SPNFZ treaty negotiations, Lange on p.66 tells us that his officials had warned him at the time the SPNFZ was again being discussed following the 1984 election, that the nuclear free policy 'may constitute a significant complication in the realisation of an effective regional zone'. They said that no matter what New Zealand might say in explanation of its policy, Australia and the United States were likely to suspect that New Zealand's long term goal was 'to have the policy adopted region wide and incorporated in a regional zone. In other words we shouldn't run the risk of hinting that the nuclear-free zone should actually be nuclear free'. This may in some part answer Hamel-Green's criticisms of Lange's position concerning the SPNFZ and ship visits. Lange notes that the officials who advised against the nuclear free policy 'were not unpatriotic. They served their country's best interests as they saw them. They had examined the options open to us, and concluded that the greatest advantage lay in continued deference to the wishes of the United States.'

Thakur criticises Lange for inconsistency and weakness in his Oxford Union speech, in condemning nuclear weapons, but not being willing to support unilateral nuclear disarmament. However, a reading of that speech shows it to be a wholehearted condemnation of nuclear weapons, in which Lange at the same time acknowledged that in Europe,

the nuclear deterrent is maintained in good conscience with the honourable intention of preserving the life and freedom of the people of Western Europe. Those governments are faced with the close presence of an alien and relentlessly oppressive regime and feel it their duty to prepare for their own defiance (sic) by membership in a nuclear club. That is an assessment I understand and respect. I do not here or anywhere argue for unilateral disarmament.

If I make that acknowledgement, I must then deal with the argument that it is the intention which determines the moral character of the action. My contention is that the character of nuclear weapons is such that it is demonstrably the case that they subvert the best of intentions.

There is a quality of irrationality about nuclear weapons which does not sit well with good intentions. A system of defence serves its purpose if it guarantees the security of those it protects. A system of nuclear defence guarantees only insecurity. The means of defence terrorise as much as the threat of attack.

He went on to argue the dangers of nuclear war for the assailant, the defenders, and for the whole world, and to condemn the nuclear arms race that, he argued, was the outcome of irrational attempts by both sides to enhance security by developing ever increasing nuclear arsenals. He discusses this speech, and his speech in Geneva, in his book, pp.112-17.

The only unilateral nuclear disarmament steps taken by the superpowers have, in any case, had very practical rather than moral bases, the removal of obsolete classes of weapons or weapons considered expensive to maintain from their navies for example. See Working Paper No.8, appendix 3.

The interested reader should consult Lange's book for further material relating to these matters. The book gives Lange's own views of things of course, as he admits.

Some interesting insights into the sort of situation Lange and other Labour politicians faced in 1986 are found in a document dated 5 June that year by Hager entitled Notes on Nuclear Legislation and Related Issues. Hager says that Lange reacted badly to anything that sounded like an attack on him or his motives, and that Lange had apparently had a few 'shirty' letters over this issue (the nuclear issue) lately. Hager considered that a policy of constructive support was the only thing that would have much impact. He emphasised the type of pressure they (Labour) could get. He was very disappointed by a 'feeble' speech Lange gave to the International Physicians for the Prevention of Nuclear War (IPPNW) in Europe, but then recounted the 'inside' story according to 'Wellington gossip'.

This was that Lange delivered a 'great' speech in Auckland in which he criticised NATO for basing its defence on 'a threat to blow up the world' (nuclear weapons). The repercussions were 'staggering' Hager wrote. The US apparently threatened to withdraw their ambassador and send home Rowling (New Zealand's Ambassador at the time). The West Germans made it very clear that if Lange went to the IPPNW meeting and made a similar speech it would be the end of their support for New Zealand butter access etc. The result was the IPPNW speech written by the Ministry of Foreign Affairs and the like Hager comments. He said the story was from a 'reliable source'.

Hager also commented that there was a persistent rumour in Wellington the the Ministry of Defence and the Ministry of Foreign Affairs still believed that there would be some kind of 'arrangement' worked out to allow warships to visit again. It seems that they don't really expect the nuclear free legislation to be dropped or substantially watered down but that they envisage some kind of agreement to accompany the legislation which makes 'port access' possible he wrote. This again illustrates the sorts of pressures and the sources of pressures that Labour and Lange faced in the period after 1984 and leading up to the passing of the Act.

Further interesting elements to add to the discussion of Labour's moral stance on ANZUS in the 1980s come from a 1997 paper by Dr James Rolfe, an independent New Zealand defence analyst, published by the Centre for Strategic Studies, Wellington⁽¹²⁾. Rolfe's paper is entitled 'New Zealand's Security: Alliances and Other Military Relationships', and as part of his programme, Rolfe examines the nature of alliances. He quotes, p.6, the author Robert Rothstein saying in his book, Alliances and Small Powers, that an alliance is an instrument of statecraft:

as such [it is] morally neutral. The decision to ally rarely stems from principle. In the normal course of events it simply reflects the expedient calculations at the root of nearly all [policy] decisions.

Later, when discussing possible disadvantages of alliances which include arguments relating to the idea of 'the immorality of alliances generally and with the United States in particular', Rolfe says,

The question of morality has been discussed earlier. To reiterate, alliance membership generally is a morally neutral question. It is a question of how best a state should protect itself. Specific alliances may have a moral dimension, although it is hard to see that any of New Zealand's alliances have been immoral. (ref 12, p.19)

This is in direct contradiction to the position taken by Goldsmith already cited, again illustrating the conflict of viewpoint found in this field. This perhaps reflects the different backgrounds of the three commentators, Goldsmith being an anthropologist, and Rothstein a political scientist, and Rolfe a defence analyst.

Discussing New Zealand's experiences with alliances, Rolfe says p.21, that New Zealand's alliances have either adapted themselves to prevailing circumstances or withered. 'ANZUS adapted, and when it could no longer adapt to meet New Zealand's needs, in effect disappeared.' He speculates, pp.21-22, that,

without a specific threat to focus the mind, the alliances that have survived [for New Zealand] have been those between states with more or less common values and where the alliance itself had been able to reduce the emphasis on 'security' and focus instead on 'cooperation'. If this is so, then it is a path for the future. ... The alliances that remain now provide benefits which could be provided without the concept of alliance being necessarily invoked. Networking, cooperation, information sharing and confidence building in the military sphere may, in the absence of specific threat, be areas to focus on for the future, rather than on the mechanics of forming security relationships with a range of states. But that will be dependent on the international environment in the early decades of the twenty-first century.

As examples of New Zealand's surviving military relationships, he cites the Closer Defence Relationship with Australia and the Five Power Defence Arrangements with Britain, Australia, Malaysia and Singapore, discussed in chapter 4, relationships that have, he says, 'reinvented themselves and continued to grow'.

Rolfe's view that alliances should adapt to emphasise cooperation is very reminiscent of Labour's proposals in 1984 for the renegotiation of ANZUS. How to interpret his statements on the moral element in alliances in relation to the present discussion is left to the reader to consider.

The position taken in these working papers is that alliance relationships do involve moral considerations, and that it would have been most in keeping with the nuclear free policy for Labour to have withdrawn from ANZUS once it became the government in 1984, or certainly in 1986 when the United States effectively suspended New Zealand from ANZUS. Nevertheless, there are the factors discussed, strong support in the electorate that the government represented for continued membership of ANZUS; Labour's 1984 election commitment to renegotiate ANZUS rather than leave it - and the electorate supported Labour knowing this; the historical background to the 1984 policy; and finally the position on alliances and morality presented by Rolfe, that need to be considered. Taking these factors into account, it is considered that the criticisms of Landais-Stamp and Rogers and of Thakur are excessively harsh. Further, some of Thakur's criticisms are not considered to be well reasoned, as was indicated in one case earlier.

Nevertheless, New Zealand did not withdraw from ANZUS under Labour by 1990, and has not done so yet, and this is a matter for concern to those wanting New Zealand to be seen as fully consistent in its nuclear policy. Furthermore, in a paper presented at the June 1997 seminar, Helen Clark said that complacency about New Zealand's nuclear free status and present relative detachment from great power alliances must be avoided by supporters of the nuclear free policy and of withdrawal from ANZUS. She warned that,

The positioning New Zealand achieved has never had acceptance in the defence establishment, and with its encouragement the National Party in government has worked assiduously to revive American interest in New Zealand's defence arrangements. (ref.8)

Eternal vigilance will be needed to maintain the nuclear stance. The future of ANZUS is still unclear. Secretary of State, Madeleine Albright, visited New Zealand in August 1998, the first such visit for 14 years, and indicated that her government was willing to look at ways of enhancing military cooperation with New Zealand despite the impasse over the nuclear free policy (The New Zealand Herald, 3 August 1998, p. AS). But just prior to the visit a senior American official reiterated that the nuclear policy would have to change before New Zealand could be readmitted to ANZUS. (The New Zealand Herald, 30 July 1998, p.A 1)

It should be noted that the same criticisms of Labour relating to ANZUS made by Landais-Stamp and by Thakur also applied, and continue to apply, to the FPDA and the other continuing military contacts outlined in chapter 4 that New Zealand maintained through Labour's term, and still maintains, with the nuclear powers the United States and Britain. But such criticisms have been aired much less frequently or widely, except by the peace movement.

6.4 The Nuclear Free Policy and the ANZUS Stance - Historical Contexts

Landais-Stamp and Rogers temper their criticisms of Labour through consideration of the historical origins of the nuclear free policy and of Labour's position in 1984 on ANZUS membership. The considerations they offer stem largely from an analysis by a New Zealand foreign affairs official, Mervyn Norrish, published in 1986 which we now examine.

A Foreign Affairs Official's View - Mervyn Norrish

An interesting analysis of the ANZUS crisis placing it in a historical context was given in 1986 by a senior foreign affairs official, Mervyn Norrish. Norrish had served in the Ministry of Foreign Affairs for many years, certainly through much of the 1970s and into

the 1980s, prior to the 1984 election, as many documents seen in the ministry files bearing his name confirms. He was Secretary of Foreign Affairs when the Lange government won the election. He had worked under the former National Prime Minister Robert Muldoon in administrations with very pro-ANZUS and pro-ship visit policies, and was very involved in these areas. Late 1984 saw him serving a new government with very different but not unexpected policy position, that impinged on foreign affairs directly.

Lange refers to Norrish in his book p.65. Discussing the role of officials, he says that most of the negotiations with the United States were carried on by senior officials 'who remained at their posts no matter what the colour of the government'. He then comments that like any body of people, this group 'develops its own corporate culture, with its own goals and values. These cannot in the nature of things be [politically] neutral, and they may be at odds with the values and goals of the elected government.' In the case of Norrish, however, Lange says, 'Norrish was model of rectitude. He never let personal feelings intrude on the official advice he was giving. I certainly trusted him to carry out my instructions faithfully, even when those instructions were at odds with the advice he had given me.'

Norrish might have been expected to be sympathetic to the position of the previous National governments on matters like ANZUS and ship visits after his long period with them, so it was interesting to see an article in The New Zealand Herald for 30 April 1986 with the heading 'Diplomat Defends ANZUS Stance', presenting Norrish's views on the ANZUS rift. This article was reporting a speech he had given in Auckland the previous day entitled, 'The Changing Context of New Zealand's Foreign Policy' ⁽⁵⁾ which we now examine.

He begins by addressing the question, how did New Zealand set about breaking away from a world view conditioned by a long-standing position of dependency, and move to a new stance more in keeping with the reality of our position and our interests. The key to this process was, in his view, trade. 'Whatever may have been true in Queen Victoria's time, trade these days doesn't automatically follow the flag, and nor should it.' He then recounts how even in 1853, some people were predicting the importance for New Zealand of trade with the Asia-Pacific region, and asks why it took so long for New Zealand to start developing these trade links. This he traces to the long dependence of New Zealand for much of its trade on export of wool, meat and dairy products, primary commodities, to Britain. This is a situation usually described by economists as 'colonial', he says, a term used to denote the sort of dependent economy where a country depends very heavily on supplying a few primary products to just a few markets. He then argues that the term 'colonial' carries overtones of other sorts of dependency, political and constitutional, and that in New Zealand's case, 'the economic and the other elements did for a long time go hand in hand'.

This view, Norrish tells us, was expressed as early as 1938 by John Beaglehole when he was looking for a reason why New Zealand had not by then developed an independent character in the way Australia and Canada had. What Beaglehole concluded was that 'New Zealand psychologically has remained a colony because economically it has remained a colony.' 'There you have it I think', remarks Norrish. The breaking away from this 'straitjacket' of New Zealand being, and thinking of itself as being, an economic colony he attributes in part to Britain's entry to the European Community which forced New Zealand to seek new markets, but also to action long before British entry, and initiated by New Zealand itself, to diversify its markets. By 1973, he says 'we were already embarked upon many of the paths that are leading now to a fundamentally altered trading profile.'

He says, writing in 1986 remember, that in the last few years, 'we have just about broken out of the "colonial" economic mould', and then argues that this led to an adjustment in New Zealand's foreign policy to acknowledge the national characteristics and sensitivities

of new trading partners. But as well as these practical implications for foreign policy, there are still more fundamental implications, in the long run more closely related to the development of New Zealand's national identity, he claims. Referring back to Beaglehole's statement, Norrish felt that beyond doubt the colonial psychology was now behind New Zealand as well as the colonial economic dependency. 'A sense of colonial dependency is no longer influential in the way New Zealand views the world.'

He attributes this new independence and confidence in New Zealand's dealings with the outside world to other factors besides the shift in trading relations, to a growing acknowledgement of New Zealand as a Pacific nation, and to the transition of power in government to the post-war generation, giving the example of cabinet with a much younger age profile. A fundamental point in all this, he claims, is that the evolution of New Zealand's foreign policy had little or nothing to do with party politics, but derive from profound currents 'of history, of geography, of cultural identity'.

Coming to the subject under discussion in this chapter, we find Norrish saying that while some claim that New Zealand's traditionally bipartisan foreign policy was being overtaken by the actions of the Lange government,

the principles underlying the conduct of New Zealand's external relations in 1986 seem to me to be squarely in the mainstream of the evolutionary process I have been describing. ... The dispute with the United States over port access for nuclear-armed ships is a case in point. This is one foreign policy issue that benefits from being looked at in a longer time frame than many have been prepared to accord it. There have been times when the historical perspective of some of those weighing in to the debate has seemed to extend to all of about twenty minutes.

The ANZUS dispute was important to New Zealand he agrees, but if viewed in terms of New Zealand's own nationhood, and in the perspective of history, 'the answer we get may be a bit unexpected'.

New Zealand has arrived at the point where it is prepared to say to a valued friend, a powerful ally, 'This is how we propose to run our affairs; it is a bit different from before; but we believe you should be willing to fit in.' The United States has not found it easy to do so. Indeed, for reasons which have more to do with its relations with other countries than with New Zealand, it has displayed a degree of displeasure. But New Zealand has stood firm. And when the dispute comes to be viewed in a proper perspective I think its true significance to New Zealand will be seen to lie in New Zealand initiative, rather than in the American response.

Whatever you may think of the ship visits policy on its own, we are moving into a rather new stand on defence and security issues which takes fuller account of present-day realities here in the South Pacific. I believe that is a sensible course for New Zealand to take. Not only that, but it is in the present Western interest as well. Over time, the Americans and our other friends will no doubt come to accept that that is so.

Norrish then returns to his theme of the basic importance of profitable trading relations to enable New Zealand 'to afford the luxury of a foreign policy. Or a defence policy. Or any other worthwhile sort of policy either. A new web of relationships is emerging that takes account of that fundamental reality. Our trading interests are focusing on the Asia-Pacific rim.'

This does not mean, he says, that New Zealand should be willing to see traditional friendships lapse, or exclude old friends. 'We shall continue to need them.' He sees New Zealand adjusting to its new markets, and in doing so its commercial policy ran ahead of its foreign policy. 'What we are engaged in doing now is catching up on the foreign policy side.'

Norrish has been quoted at some length both because of the intrinsic interest of his analysis, and because he is an informed source steeped in knowledge of, and experience in, New Zealand's foreign policy, who at the same time was outside the major political governmental groups involved in the period of interest. He worked with them both, National and Labour. In this sense, he can be seen as a relatively dispassionate commentator.

While trade developments were, undoubtedly a factor in New Zealand moving to much more independent stance in trade, foreign affairs and defence, other major factors also played a basic part in this transition. However, this is not the place for an extended discussion of New Zealand's historical development from colony to nationhood, although we will examine this a little further soon. First it is important to acknowledge that this shift has occurred, and to appreciate that New Zealand becoming nuclear free should not be seen as an aberration as some have suggested, but should be seen in its historical context as a further manifestation of New Zealand's increasing maturity, reflecting an increasing independence in foreign policy, and regional orientation in defence and security policy. Nor was it merely an attempt by Labour to win the votes of the antinuclear lobby in 1984 because, as Lange pointed out it, was not at all clear that concerns over the impact of a nuclear free policy on ANZUS might not dominate thinking in the electorate. Further, Labour scarcely needed to pursue risky election policies in 1984, because support for the National Party was already very low at the time.

Second, Norrish implies that the United States should have been willing to accept a modified, non-nuclear, role for New Zealand in ANZUS if it wanted the alliance to continue relatively unchanged. And there would have been little effect on ANZUS activities in practice, apart from some restrictions on ship visits. As we have seen, there would have been no restrictions on New Zealand forces exercising with their American counterparts in ANZUS exercises, a major class of activity that linked the two forces. The other links that were restricted by the United States, reduced intelligence links, personnel exchanges, and training of New Zealanders in American military establishments, would not have been compromised by New Zealand having a nuclear free policy.

A Labour Party Historical Perspective - Helen Clark

Helen Clark, now the Right Honourable Helen Clark, Leader of the Labour Party, the largest opposition party, first entered Parliament in 1981, having had earlier involvement with the Labour Party and a long interest in New Zealand's foreign policy. She outlines these interests and involvements in one ⁽⁷⁾ of two papers that will be referred to in the following discussion ^(6,7). She has also been a longstanding supporter of a nuclear free New Zealand.

These papers from around 1987 provide a range of viewpoints of direct interest for the present discussion, some of which we will consider. Clark also places the 1984 nuclear free policy in a historical context, but a rather different one from that presented by Norrish. She traces the origins of the nuclear free policy back to the beginnings of the Labour Party in 1916, which since that time has seen Labour campaigning for an independent role for New Zealand in world affairs, calling for New Zealand to work actively for disarmament and peaceful conflict resolution and, in the present post-war era, calling for recognition that New Zealand is a Pacific country. She quotes former Prime Minister Norman Kirk saying in the 1960s that the time had come for New Zealand 'to stand on its own two feet', and refers to him as a powerful voice for an independent role for New Zealand in world affairs, views endorsed by his successor as Prime Minister, Bill Rowling. In his address to Labour's 1983 conference which, she says, gave only qualified support to ANZUS membership, Rowling said,

The foundation on which our foreign policy must rest is clearly stated in our determination to maintain our absolute independence and political integrity. Our

task is therefore to produce foreign policy which underlines that situation - a policy which tells the world that our decisions will be made in Wellington - not in Washington, nor in London, nor Canberra. The kind of independence which we will maintain under a Labour Government will not be negotiable. Neither will our non-nuclear stance which will be an important element of that policy ⁽⁷⁾.

The inference to be drawn, Clark argues, is that if a choice had to be made between New Zealand's independence and its alliances, independence would be preferred.

These three factors, Labour's desire for an independent foreign policy, its emphasis on disarmament, and its growing Pacific identification, came together in the 1970s and 1980s to reinforce a strong anti-nuclear position she states, Labour having reiterated its intention to ban nuclear weapons from New Zealand at the 1978, 1981, and 1984 elections. The policy appeared in its fully developed form in Labour's 1984 election manifesto with the pledge to renegotiate ANZUS already discussed, requiring acceptance of New Zealand's anti-nuclear stance, the promotion of the SPNFZ, of equal partnership, and an absolute guarantee of the complete integrity of New Zealand's sovereignty.

This did not happen, requiring as it did acceptance of New Zealand in ANZUS in a nonnuclear role only, a solution to the ANZUS problem that Clark also saw as completely acceptable in the period following the 1984 election, see Working Paper No.8, p.21 for example. It is the view of the author that Helen Clark is a person of unquestionable integrity. If she stated that it was her belief at that time that ANZUS could encompass a nuclear free New Zealand, this is accepted without question as a true statement of her belief, even if it was based on what is here considered to be an incomplete understanding of the nature of ANZUS. That Clark discussed a conventional role only for New Zealand does, however, imply some degree of appreciation by her of the contribution of nuclear weapons to ANZUS. This is seen as adding weight to Lange's claims that in the early 1980s he also saw this as an acceptable structure for ANZUS, before finally acknowledging later in that decade that ANZUS was indeed a nuclear weapons dominated alliance.

Clark saw benefit at the time in what she called 'qualified alignment' in ANZUS, as a 'semi-ally' of the United States, in that it showed New Zealand's intention to place unequivocal qualifications on its alignment, and invite the Americans to accept them, a move that would be seen by many as positive, she wrote. Labour has now moved much further from this position on ANZUS, and in its 1996 defence policy states that,

Labour will work to promote comprehensive security within the South Pacific region through diplomacy, trade, aid, economic and environmental cooperation, and, where appropriate, military cooperation. This will be done while recognising that New Zealand's past military alliances such as ANZUS are no longer an appropriate basis for meeting our region's post-Cold War needs. (G Braybrooke, Labour spokesperson on defence, private communication , 9 December 1997)

In these papers Clark also discusses what she saw in 1987 as other positive aspects of the nuclear free stance. She saw the legislation and associated initiatives taken by the Labour government as providing a firm basis for New Zealand's future disarmament work. A Minister of Disarmament was to be appointed 'to give focus at Cabinet level to the development of disarmament policy. A new division of the Ministry of Foreign Affairs has been established to work on disarmament questions.' And with these greater resources available, Clark looked to a more active involvement by New Zealand in United Nations disarmament issues, the potential for this having been recognised by the government Select Committee on Foreign Affairs and Defence in an October 1986 report.

The break from ANZUS that arose because of the nuclear free policy also generated the conditions for new thinking about the purposes and needs of New Zealand's defence force, freed from the constraints of thinking in terms of operational integration with

American forces, she says. She quotes Johan Galtung, well known commentator on such matters as writing,

The more a country is a client country, the less able will its military establishment be to think in different terms. For the superpowers have done the thinking for them and their task has been to participate in staff meetings, U.S. or Soviet training colleges and so on ⁽⁷⁾.

The 1987 Defence Review saw a focus on greater self reliance in defence matters, a national and South Pacific regional focus in defence planning, and greater cooperation with Australia where practicable. This, she states, brought New Zealand's defence posture very much into line with the government's desire to see New Zealand's foreign policies reflect its geography and a New Zealand perspective on world affairs. She quotes Norrish saying that 1986 may well be seen by historians as the year when New Zealand finally moved away from basing its foreign relations and foreign policies on traditional factors and adjusted to present-day realities. Clark confirmed that the nuclear free policy should not be seen as an indication of hostility to the United States.

Turning to the significance of the nuclear free policy, Clark says that the policy has attracted a great deal of attention in New Zealand and internationally. She argues that critics of the policy describe it as silly, naive, irrelevant, without impact, and say that New Zealand's voice cannot be heard where it counts on the question of nuclear disarmament.

Then, scarcely pausing for breath, those same critics will say that New Zealand's non-nuclear initiative is deeply destabilising in the Pacific and further afield to the extent that it even imperils the arms control talks between the superpowers in Geneva. They can't have it both ways ⁽⁶⁾.

The legislation also opened the way for greater public input on disarmament and arms control issues through the establishment of the Public Advisory Committee on Disarmament and Arms Control, she stressed.

Clark's overall position was that the policy of qualified alignment presented for the 1984 election

was not an aberration, as some outside forces may suggest, but rather consistent with the long-term development of Labour thinking on international issues. The policy's historical continuity does not make it any easier for its foreign opponents to accept, but an appreciation of it may make it easier for them to understand ⁽⁷⁾.

Further statements of her position, and of those of other Labour parliamentarians in the 1984 government, on the significance of the policy can be found in Working Paper No.8 dealing with the passage of the legislation through parliament. It should be noted that Lange also emphasises the shift in Labour's thinking to greater emphasis on regionally oriented defence policies and concerns in his book, as some of the sections quoted indicate.

6.5 Further Support for the Effectiveness of the Nuclear Free Policy

The nuclear free legislation was ten years old on 8 June 1997. To mark this important occasion, the Centre for Peace Studies and the Auckland branch of the Foundation for Peace Studies Aotearoa New Zealand held a joint seminar on Saturday 7 June at which a number of papers were presented, many containing material relevant to the present discussion ⁽⁸⁾.

The Policy and Nuclear Disarmament

Well known and respected peace researcher Nicky Hager discussed the peace movement origins of the legislation, a subject about which he has extensive knowledge based on his long involvement with the campaign for a nuclear free New Zealand. Considering criticisms of the nuclear free policy, he addressed the question of its contribution to nuclear disarmament, and the claim that there was not a single nuclear weapon less in the world as a result of the policy. His response was,

The obvious reply is: if the policy has been ineffectual, why did New Zealand's former nuclear-armed allies take such violent exception to it? I believe that the widely publicised example of a small, western-leaning country breaking ranks and condemning nuclear weapons was very significant in helping to end the Cold War. It is hard to plot the influence and effects of ideas, but New Zealand's nuclear free stand was talked of continually in discussions about nuclear weapons during the crucial years in the late 1980s when the Cold War was thawing and brought to an end.

He stressed the role of pro-ANZUS officials in attempting to manipulate the policy to be more acceptable to the United States. He told the seminar that,

Throughout the years of nuclear free campaigning I always used to say that our main opposition was not some group like the RSA [Returned Services Association] or National Party, but the Ministry of Foreign Affairs -- public servants paid by New Zealanders supposedly to represent their aspirations and interests around the world. This was not an "idle criticism -- over and over I was crossing tracks with bureaucrats who were intent on getting their Minister to understand how small New Zealand is in the world and how much it is in our interests to buy favour by doing whatever the big powers expect of us.

He also emphasised the pressure from, and reactions of, New Zealand's former allies as a result of the policy being introduced. He said,

Also, we should never forget the ugly spectacle of New Zealand's big friends and allies' total indignation that New Zealanders might choose to have a different opinion from them. The heaviness, condescension and contempt poured on New Zealand for a democratically decided policy should serve as a reminder of how utterly un-equal relationships like ANZUS always were and will be.

These comments contradict rather the claim by Thakur that no non-military punitive measures were taken against New Zealand by the United States, in the sense discussed earlier.

Former MP Richard Northey recalled the enormous inspiration New Zealand's example was to the Australian peace movement, speeches during a visit in 1985 drawing very large audiences. 'We were all cheered continuously to the echo of crowds of over a hundred thousand each.' Nevertheless, Australia did not follow New Zealand's example.

Christine Bogle, a senior policy officer in the International Security and Arms Control Division of the Ministry of Foreign Affairs and Trade, reported on the current disarmament scene and New Zealand's role in it. She said that, 'In many ways the Act is the platform on which New Zealand's involvement in disarmament and arms control issues for the following decade was based.', and reminded people that the Act implemented five arms control treaties.

This list represents the most significant global and regional disarmament achievements that had been reached in 1987. The Act therefore consolidated New Zealand's commitments. As well as setting in concrete our status as an anti-nuclear

nation, the Act also gave us the credentials to participate in the global nuclear disarmament arena.

I think this is an important point. The Act is not just about unilateral measures to prevent nuclear weapons entering New Zealand. It also placed New Zealand in the thick of global work on nuclear disarmament.

She then pointed out that the legislation goes beyond just nuclear disarmament through the inclusion of the Biological Weapons Convention in the five treaties it implements.

The Act was designed to establish an active disarmament and arms control policy on a wide range of issues, not just nuclear. The Act also set the stage for an ongoing engagement in these issues.

She continued to discuss New Zealand's present extensive involvement now. 'And so ten years down the track, where have we got to? Have we lived up to the aspirations contained in the legislation. I firmly believe that we have.' The reader is referred to her paper for details ⁽⁸⁾.

A Ministry of Foreign Affairs bulletin, 'Disarmament and Arms Control' issued in December 1986 suggests an active involvement in nuclear and other disarmament issues at that time as well. However, as indicated earlier, there was considerable dissatisfaction in the peace movement with New Zealand's voting behaviour in the United Nations on nuclear weapons related and disarmament issues.

Nuclear Free New Zealand in the UNited Nations

Owen Wilkes, well known peace researcher published a study of this question in November 1985 ⁽⁹⁾, confirming that despite the events of 1984 and 1985, New Zealand still voted with the United States on a considerable number of these issues. At that time, he wrote, 'New Zealand under a Labour government is also in the big league of opponents to arms control and disarmament in the General Assembly' having named the United States as by far the most consistent opponent, closely followed by Britain, and then France. He found a slight improvement in 1984 compared with 1983 under National, but only very slight. Even so, 'our voting in the UN seems to make a mockery of our proclaimed non-nuclear stance', he wrote. It is no wonder, he reports, that in her annual report to Congress the now retired US Ambassador to the UN, Jeanne Kirkpatrick, listed NZ as among 'the strongest allies the US has in the UN'.

However, in a later July 1990 repeat study ⁽¹⁰⁾ he presents a different picture. Further studies in 1986 showed little improvement in 1985, he reports, but an August 1987 article was able to proclaim with modest satisfaction that 'New Zealand (at last!) starts to vote for disarmament'. He attributes this change to pressure on the government from certain peace groups. Wilkes in his 1990 study presents an analysis of New Zealand's voting on 41 General Assembly (UNGA) disarmament resolutions, 18 being directly nuclear weapons related. These are disarmament resolutions that tend to be raised year after year by the same nations, making it fairly easy to make rough voting comparisons from year to year. His voting tables show New Zealand voting 'yes' for 14 of the 18 nuclear weapons resolutions in 1989, compared with 10 out of 15 in 1986. This is a change from 67% in 1986 to 78% in 1989, some improvement. Overall in 1989 New Zealand voted 'yes' for 34 of the 41 resolutions, or 83%, compared with 64% in 1986 in voting on 22 resolutions.

Looking at New Zealand's support for the United States in its voting, support in the sense that New Zealand voted the same way as the Americans, both yes, no or abstain, Wilkes found voting agreement in only 27% of the cases in 1989, 11 out of the 41 resolutions. Applying the same analysis to voting tables he supplies for 1985 and 1986 in his two studies, we find agreement in 39% and 41% of cases respectively, or about 40% in this period. This was a drop from about 40% in 1985/6 to 27% agreement in

1989, quite a significant change. And in most of those cases in which New Zealand voted with the United States in 1989 'we vote with the US because on those resolutions the US is voting the way the peace movement would want it to anyway', Wilkes remarks in his 1990 study. There definitely appears to be an evolutionary pattern here, showing greater independence from big power influence in New Zealand's voting, with a big increase in instances of New Zealand voting yes when America voted no or abstain.. Wilkes concludes in his 1990 study that 'our voting record in the UN is something we can be reasonably proud of. It is vastly different from that of 1985 ... '.

A more recent and much more wide ranging study of New Zealand's voting behaviour in the General Assembly was published in 1994 by Adrian Wills who completed this work as a research fellow with the Centre for Peace Studies ⁽¹¹⁾. He examined New Zealand's voting in the 47th session of the General Assembly, from September to December 1992, coinciding with the time when New Zealand was elected to the Security Council, to see which countries New Zealand appeared to be voting with on a range of issues. Wills' study covered much more than just disarmament issues, but special attention was given to votes relating to nuclear weapons and disarmament resolutions. He also compared the voting patterns of New Zealand, Australia, and the United States over a 12 year period 1981-82 to 1992-93, the 36th to 47th sessions.

Looking first at New Zealand's voting in general, Wills' findings show New Zealand voting considerably and increasingly more often with the UNGA majority from the 40th session in 1985-86 than it had in the period from the 36th session in 1981-82. But from the 44th session in 1989-90 on, a slight decline in this pattern set in, coinciding with the election of the National government in 1990. A sudden and sustained convergence in voting with the United States was also apparent from the 45th session in 1990-91. However, he says that a closer examination of the type of resolutions on the UNGA agenda since the 45th session shows that a decline in the number of disarmament and nuclear weapons resolutions, which had been prevalent throughout the 1980s, was the chief factor in the overall convergence between New Zealand and the United States from 1990. The resolutions no longer being voted on were those on which the two countries had previously been opposed, with New Zealand voting yes. This also explains the dropping off in convergence between New Zealand and the UNGA majority in the same period. Wills gives numerical measures of these changes, but to introduce and explain them would require more space than seems justified in this discussion.

Considering disarmament and nuclear weapons resolutions only, Wills' analysis shows that New Zealand moved to vote with the UNGA majority much more strongly on these issues from 1985-86, the 40th UNGA session, and continued to do so increasingly strongly, this trend peaking in 1989-90, the 44th session with a slight drop after this to the 1992-93 session, the 47th session. The United States, by contrast, voted quite consistently and strongly against the majority from 1983-84 to 1988-89, the 38th to the 43rd sessions, but less markedly so subsequently to the 47th session. These changes resulted in an increasing divergence in voting by the two countries, this already being quite marked by 1987 and even stronger in 1989, as Wilkes reported, but less marked subsequently to 1992-93.

While admitting that analysing UNGA voting patterns is complex, Wills states 'there has been evidence to suggest that these patterns follow general foreign policy alignments and are therefore a valid indicator of foreign policy behaviour'. He says that,

... as a sovereign state, New Zealand exercises foreign policy independence through its vote in the UNGA. It tends to vote similarly to a bloc of non-nuclear 'northern' countries that share a degree of ideological convergence which is distinct from that of the Third World majority. New Zealand votes more often with non-aligned countries than it does with its most powerful ally; the United States. Any question of the United States influencing New Zealand's vote therefore seems highly questionable based on the evidence presented here. (ref.11, p.26)

This respect and admiration, and the economic aspects of being nuclear free are undoubtedly factors that generate support within New Zealand for a nuclear free New Zealand. However, it is considered here that the moral value of the nuclear free identity is the major factor for most New Zealanders who see the legislation as encapsulating their longstanding anti-nuclear aspirations, aspirations based on a strong moral rejection of nuclear weapons because of their obscenely destructive nature. This is certainly the author's conclusion from nearly 20 years experience in the peace movement. The overseas respect is significant, of course, and counters the 'not for export' criticisms to a considerable extent. The fundamental point that emerges is that the nuclear free position and identity is now part of the New Zealand psyche for the majority of New Zealanders, in a sense another way in which the policy has been in action.

Support from the Business Community

Earlier some concern was indicated within sectors of the New Zealand business community following the 1984 election in case the United States should introduce some trade related measures against New Zealand because of its anti-nuclear stance. This concern quite quickly changed, in some areas at least, to a realisation of the advantages for business from coupling the nuclear free image with the clean green image to exploit the growing demand for pollution free goods, especially nuclear pollution free, which grew following the Chernobyl disaster. Costello has examined this trend, and traces the promotion of the image, and countries responding to it, back to at least 1988, citing examples of Middle East buyers purchasing New Zealand products because of the clean green nuclear free reputation, and a New Zealand bottled water company in 1989 labelling its product 'Nuclear -Free' on the bottle tops instead of using its normal label depicting clear mountain streams (p.85).

The outdoor clothing industry has praised the economic value of this reputation New Zealand has. When the nuclear powered ships issue was raised by the government in 1991 in the run up to the preparation of the 1992 study, the President of the New Zealand Society of Soil Science, H Powell, wrote to National MP Don McKinnon, then strongly opposed to the legislation, to explain that the real issue at stake with nuclear powered ship visits was not the safety of the ships, but the fact that, 'The security of our "clean-green" image as a primary producer is threatened by any acceptance of nuclear propulsion (or armaments) within our territory.' (Costello, p.110) Others in the primary production area expressed similar views, she reports.

Two prominent and influential New Zealand organisations were particularly supportive of retaining the nuclear free identity, she continues (p.111). These were Federated Farmers, generally considered a relatively conservative organisation, and an organisation called Business for a Nuclear-Free Economy, founded in September 1992, and seeking support from the business community 'to protect New Zealand's nuclear-free identity, and thus the economic advantage which this identity bestowed upon the country'. Both were concerned that the government might, at that time, be considering allowing nuclear powered vessels to visit again, besmirching New Zealand's clean green image. Overseas consumers were willing to pay a premium for that image, the second group claimed.

Indications of support from business interests in other countries have also been seen, Germany being the example cited, but not being the only example by any means. Recognition of the relatively unpolluted nature of New Zealand products continues, and is becoming an increasingly important factor for many export areas as global concerns with pollution escalates.

We see the policy in action in a rather different way here.

International Support

Costello also discusses support New Zealand and New Zealanders received from a range of international sources (pp.67-73). As she says, hostile feelings towards the United States engendered by its bullying tactics over the nuclear free policy (Costello pp.57-8)

were to some extent negated by the strength of support received from sections of the American people, urging New Zealand not to buckle under their government's pressure, and through the goodwill expressed. Some Americans showed their support by deliberately buying New Zealand products. She also cites a street survey in San Francisco early in 1985 as showing that this support came not only from peace and other groups, but was found amongst the general public as well.

New Zealand, she reports, had innumerable supporters overseas from a broad range of countries and organisations. She gives examples from Australia echoing the comments from Richard Northey earlier, from Scotland, Norway, Canada, Germany, England, Greece, and other European countries. In addition to the countries she cites, the Scandinavian countries have long been supportive. Groups in India, Japan and some other Asian countries have also given support. New Zealand was seen again as a world leader, and praised for this role, and its importance for nuclear disarmament.

While direct expressions of support may have waned in number since the early years following the introduction of the nuclear free policy, Helen Clark reported in June 1997 a manifestation of support she experienced during a recent visit to China. (*The New Zealand Herald*, 7 June 1997, p.A17) The Chinese see New Zealand as more independent from the United States than is Australia, and as a country with a mind of its own. For this reason, China respects New Zealand, and prefers New Zealand to Australia, said Bryce Harland, New Zealand's first Ambassador to China in a 1997 article. (*The New Zealand Herald*, 11 November 1997, p.D2) In her statement Clark also describes the nuclear free status as a 'cornerstone of New Zealand's foreign policy'.

Support from these various sources has been forthcoming despite any possible questions or criticisms concerning Labour's stance on ANZUS, or on other matters. These criticisms do not appear to be an issue of sufficient import to shift supporters of the nuclear free status for New Zealand away from their position. This was shown within New Zealand in 1987 when Labour won the election despite high levels of dissatisfaction amongst Labour voters because of other Labour policy shifts, particularly on economic policy. As Lange says in his book, p.161,

At first, support for the policy was very closely linked to patterns of political support. If you voted Labour, you supported the nuclear-free policy because that was part of being Labour. In time, this pattern altered. After the 1987 general election, the popularity of the Labour Government shrivelled. Support for the nuclear-free policy didn't follow it downwards because by then, nuclear-free New Zealand had taken on a life of its own. In 1989, when it was getting hard to find anyone who'd admit to being a Labour voter, over eighty per cent of the population declared themselves to be in favour of the nuclear-free policy. Those numbers spoke volumes. There wasn't any going backwards.

As we have seen in the preceding chapters there have been criticisms of, and problems with, the policy, and the policy in action. Nevertheless, support for the nuclear free policy remains very high within the country, and with rapidly increasing international support for complete nuclear disarmament, and the reductions and withdrawals of nuclear weapons that have occurred, New Zealand's nuclear free stance no longer seems so extreme or unusual.

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CONCLUSION

This paper has attempted to examine how effective this nuclear free policy and legislation has been since 1984. That it has had some impact is shown in a certain sense by the large number of overseas scholars who have come to study aspects of the legislation. Such studies by New Zealand scholars appear, on the other hand, to have been notably lacking.

Before briefly reviewing the findings from this study, it must be emphasised again that the most frequently discussed consequence of the policy, the ANZUS rift, is not a manifestation of the policy or legislation. There is nothing in Labour's 1984 policy or in the Act calling for New Zealand to modify or suspend its ANZUS membership. The suspension in 1986 of New Zealand's membership by the United States was an impact of the policy, not a manifestation of the policy in action.

Overall the legislation has achieved its major goals, and as a consequence can, from a pragmatic viewpoint, be said to have been operating satisfactorily. New Zealand has been kept free of nuclear weapons and of nuclear powered vessels. That this was a consequence of decisions by the nuclear powers rather than of direct application of the provisions in sections 9 to 11 for refusing visits by potentially nuclear armed vessels or aircraft or of nuclear powered vessels is, in a sense, not the main issue. Nuclear powered vessels and very probably nuclear armed vessels were seen in New Zealand ports prior to July 1984. They have not been seen since then. New Zealand has, in the terms of the policy, been made nuclear free.

However, while there have been no known legal breaches of the legislation, there are areas in which actions by governments since July 1984 can be argued to have been less than satisfactory from a truly nuclear free nation. Such a nation would be expected to have pledged itself to work for nuclear disarmament, and to be strongly opposed to nuclear deterrence. While New Zealand's position on nuclear disarmament is now well established, it has proved difficult to establish the level of official opposition to the nuclear deterrence policies of New Zealand's traditional allies, as we have seen to some extent.

This difficulty can be argued to manifest itself in some of the problem areas we have considered in this paper. The unwillingness of New Zealand governments since 1984 to reject links with the British and American military is one contentious area. This refers to links not related to activities New Zealand must be prepared to train with others in and participate in, peacekeeping and other UN mandated humanitarian activities and the like. Another is the continued acceptance of the channel flights transiting Christchurch, despite their questionable purpose, and despite evidence that their regular presence is not essential for Operation Deep Freeze.

On a lesser scale perhaps is the problem with the present operation of PACDAC which is no longer fulfilling its statutory advisory duties.

The proposals section that follows brings together proposals made in this paper that would help to overcome these problems which relate more to perceived failures to honour the spirit of the nuclear free policy than to any breaches of the embodying legislation.

All might appear well for the nuclear free policy and for New Zealand remaining nuclear free, but the warning given by Helen Clark that was cited in chapter 6 is repeated here. Those who want to see New Zealand remain nuclear free must not be complacent.

Support for nuclear disarmament and support for the nuclear free legislation represent two quite different positions. National has long declared its support for nuclear disarmament to be as strong as that of Labour. But National did not adopt the legislation

until 1990. While it has since then in government defended the legislation on a number of occasions, it is not clear how widespread this support is within National.

We have also seen evidence of a gradual warming of defence relations with the United States, as recently as June 1999. This will be welcomed in some circles, but to defenders of the nuclear free policy should sound a warning. If defence relations and contacts are restored to a high level, a development Bradford would clearly welcome, this would tend to marginalise the legislation. This could lead to renewed pressure for the Act to be at least modified, and the obvious modification would be to repeal the ban on nuclear powered vessels. The US Navy could then return to New Zealand ports, and the Act would effectively be sidelined in all major respects, particularly if New Zealand was allowed to resume exercises with the American military. The final outcome of such a programme could be the restoration of full ANZUS membership for New Zealand. While the warming of relations that is occurring may have no hidden motivation, the United States does not easily give up on removing an irritant like New Zealand's nuclear policy. Improving defence relations could be part of a long term campaign by the United States to gradually and finally undermine this policy by enfoldng New Zealand in its global defence structure once again, rather than by the bullying seen in the mid-1980s.

Lange commenting on this on the tenth anniversary of the passing of the legislation said that 'The two countries who did the most to seal-in the anti-nuclear policy were the United States and France with their reprisals. They set it in place'. He spoke of their hostility and aggressive response to the policy which has, he said, earned New Zealand respect and helped to stiffen global opposition to weapons of mass destruction. He was proud of the nuclear-free raw he said, despite the costs. 'It's a development in New Zealand's history which was responsible internally for a surge in manhood.' (The New Zealand Herald 9 June 1997, p.A16)

Even the present level of warming of relationships with the United States will be seen by many supporters of the nuclear free position of New Zealand as weakening this position. And of course, these developments run counter to the proposal made in chapter four.

Should these developments occur, and Helen Clark has warned of support for just such developments within official circles, New Zealand would no longer be seen internationally as a nuclear free country of any significance. It would be seen as having largely abandoned its anti-nuclear stance, and its status as a nuclear free nation and staunch advocate of nuclear disarmament would be seriously jeopardised in international fora like the United Nations.

Clark said in 1994 that Labour was not interested in resuming bilateral military ties with the United States even if anti-nuclear obstacles to better defence relations were removed. She saw no point in New Zealand vessels even exercising with the US Navy thousands of miles from New Zealand's anti-nuclear inshore waters, and Labour would not seek to revive 'operational involvement' by New Zealand in ANZUS. She outlined other defence goals. (The New Zealand Herald 18 April 1994, p.1) There is no reason to think that Labour's position has changed.

New Zealand's nuclear free policy is at present in good health. But from what has been presented in the three working papers published in this series so far, and from other sources cited, it is clearly a controversial policy. Like all controversial policies it is constantly under the threat from its opponents. Its supporters, both within New Zealand and elsewhere, must appreciate this.

PROPOSALS

A number of proposals for modifying the implementation of the Act, or relating to problems experienced with the implementation of the Act, have been made in this paper. They are brought together in this section of the paper, some in slightly modified form. The sections of the Act to which they relate are indicated

Sections 9 to 11, a Proposal for Solving the NCND Problem, p.35

The New Zealand Government should urge those countries operating NCND policies to abandon these policies in times of peace, and if it was considered necessary, to reinstate NCND in times of crisis. Reinstatement might be seen as necessary if the nuclear powers decided that their navies needed the protection that NCND apparently offers and, in the case of the United States, if it decided that its navy should be re-equipped with nuclear weapons now held in storage. This proposal would not appear to compromise the nuclear navies in any way since the warships involved are now free of nuclear weapons apart from deep sea ballistic missile submarines, and it is universally accepted that these are nuclear armed. So there is nothing to hide here apart from the detailed movements of these vessels, which are kept well concealed.

Section 10(3) and Blanket Clearances for US Military Aircraft, p.65

1. The New Zealand Government should, at the termination of the present annual blanket clearance period, 31 December 1999, revoke all existing blanket clearances for United States military aircraft. These should be replaced by a blanket clearance only for military logistics transport aircraft of the Government of the United States providing logistic support for the United States Antarctic Program, to use the wording of the blanket clearance issued on 10 December 1997 for the 1998 year, and assuming the wording for the 1999 year is the same. These would be aircraft travelling on to the Antarctic or returning from there.

All other United States military aircraft wishing to enter New Zealand for any reason should have to apply for individual diplomatic clearance, including those transporting dignitaries, carrying high priority cargo, in support of aeromedical evacuations or search and rescue, or in support of other United States research projects, or visiting for maintenance, to list the categories of activity given blanket clearance at present. This was the practice for many years in the past for some of these categories of visiting aircraft according to ministry files.

2. The New Zealand Government should demand the lifting of the NCND policy for all United States military aircraft given diplomatic clearance to enter New Zealand. These will be for the very large part aircraft visiting Christchurch in relation to ODF which should be cleared of NCND for the reasons given already. Dropping NCND for the small number of visiting military aircraft remaining should then not be a serious problem. If the preceding NCND proposal should be adopted this proposal would be unnecessary in normal times.

Clearance for the channel flights should be kept to a minimum annually, and only granted if cargo directly related to ODF is being carried or is to be collected. Cargo for installations like the American Embassy would have to be dealt with by arranging for this to be carried on flights serving ODF requirements.

Section 5(2) and Military Contacts with Nuclear Powers, p.94

It is proposed that New Zealand should review all its military links and contacts with the nuclear powers Britain and the United States, including those discussed briefly here, and others not covered or known about at the time this study was made. The results of this review should be made public through PACDAC or some other suitable channel.

The function of the review would be to establish the purpose of all such contacts, and to establish which of these should be rejected by a country that rejects nuclear weapons and nuclear strategies. New Zealand would, of course, wish to retain contacts important to training for participation in United Nations mandated peacekeeping and humanitarian operations, and other humanitarian operations, that involve joint force actions. Such limits on military contacts would be retained while the Britain and the United States continue to deploy nuclear weapons and advocate nuclear deterrence.

This review would consider formal withdrawal from ANZUS and the 1~PDA.

Section 17 and the Functions of PACDAC, p.106

Section 17 of the Act requires PACDAC

- (a) To advise the Minister of Foreign Affairs on such aspects of disarmament and arms control matters as it thinks fit:
- (b) To advise the Prime Minister on the implementation of this Act.

It has been remarked that since National came to power in 1990, PACDAC appears to have made little or no effort to carry out these duties.

The government should ensure that PACDAC once again be required to take up an active advisory role in the fields of disarmament and arms control, fields in which New Zealand is working very actively. It should also be required to advise the Prime Minister on the implementation of the Act by considering proposals of the sort made in this paper, and other proposals as they arise.

APPENDIX ONE

The Nuclear Free Zone, Disarmament, and Arms Control Act 1987

- sections one to twenty-five only



ANALYSIS

	<i>Public Advisory Committee on Disarmament and Arms Control</i>
	16. Establishment of Public Advisory Committee on Disarmament and Arms Control
	17. Functions and powers of Committee
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1987, No. 86

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:

(a) The South Pacific Nuclear Free Zone Treaty of 6 August 1985 (the text of which is set out in the First Schedule to this Act):

- (b) **The Treaty Banning Nuclear Weapon Tests in the Atmosphere, in Outer Space and Under Water of 5 August 1968** (the text of which is set out in the Second Schedule to this Act):
- (c) **The Treaty on the Non-Proliferation of Nuclear Weapons of 1 July 1968** (the text of which is set out in the Third Schedule to this Act):
- (d) **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 text of which is set out in the Fourth Schedule to this Act):
- (e) **The Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction of 10 April 1972** (the text of which is set out in the Fifth Schedule to this Act):

[8 June 1987]

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

1. Short Title—This Act may be cited as the New Zealand Nuclear Free Zone, Disarmament, and Arms Control Act 1987.

2. Interpretation—In this Act, unless the context otherwise requires,—

“Biological weapon” means any agent, toxin, weapon, equipment, or means of delivery referred to in Article 1 of the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction of 10 April 1972 (the text of which is set out in the Fifth Schedule to this Act):

“Foreign military aircraft” means any aircraft, as defined in section 2 of the Defence Act 1971, which is for the time being engaged in the service of or subject to the authority or direction of the military authorities of any state other than New Zealand:

“Foreign warship” means any ship, as defined in section 2 of the Defence Act 1971, which—

- (a) Belongs to the armed forces of a state other than New Zealand; and

(b) Bears the external marks that distinguishes ships of that state's nationality; and

(c) Is under the command of an officer duly commissioned by the Government of that state; and

(d) Is manned by a crew under regular armed forces discipline:

"Immunities", in relation to any ship, aircraft, or crew member, means immunities enjoyed under international law by ships, aircraft, or crew members of a class to which that ship, aircraft, or crew member belongs:

"Internal waters of New Zealand" means the internal waters of New Zealand as defined by section 4 of the Territorial Sea and Exclusive Economic Zone Act 1977:

"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, whether assembled, partly assembled, or unassembled; 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:

"Passage" means continuous and expeditious navigation without stopping or anchoring except in as much as these are incidental to ordinary navigation or are rendered necessary by distress or for the purpose of rendering assistance to persons, ships, or aircraft in distress:

"Territorial sea of New Zealand" means the territorial sea of New Zealand as defined by section 3 of the Territorial Sea and Exclusive Economic Zone Act 1977.

3. Act to bind the Crown—This Act shall bind the Crown.

4. New Zealand Nuclear Free Zone—There is hereby established the New Zealand Nuclear Free Zone, which shall comprise:

(a) All of the land, territory, and inland waters within the territorial limits of New Zealand; and

(b) The internal waters of New Zealand; and

(c) The territorial sea of New Zealand; and

(d) The airspace above the areas specified in paragraphs (a) to (c) of this section.

*Prohibitions in Relation to Nuclear Explosive Devices
and Biological Weapons*

5. Prohibition on acquisition of nuclear explosive devices—(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) Manufacture, acquire, or possess, or have control over, any nuclear explosive device; or
- (b) Aid, abet, or procure any person to manufacture, acquire, possess, or have control over any nuclear explosive device.

(2) No person, who is a New Zealand citizen or a person ordinarily resident in New Zealand, and who is a servant or agent of the Crown, shall, beyond the New Zealand Nuclear Free Zone,—

- (a) Manufacture, acquire, or possess, or have control over, any nuclear explosive device; or
- (b) Aid, abet, or procure any person to manufacture, acquire, possess, or have control over any nuclear explosive device.

6. Prohibition on stationing of nuclear explosive devices—No person shall emplant, emplace, transport on land or inland waters or internal waters, stockpile, store, install, or deploy any nuclear explosive device in the New Zealand Nuclear Free Zone.

7. Prohibition on testing of nuclear explosive devices—No person shall test any nuclear explosive device in the New Zealand Nuclear Free Zone.

8. Prohibition of biological weapons—No person shall manufacture, station, acquire, or possess, or have control over any biological weapon in the New Zealand Nuclear Free Zone.

9. Entry into internal waters of New Zealand—(1) When the Prime Minister is considering whether to grant approval to the entry of foreign warships into the internal waters of New Zealand, 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.

(2) The Prime Minister may only grant approval for the 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 the internal waters of New Zealand.

10. Landing in New Zealand—(1) When the Prime Minister is considering whether to grant approval to the landing in New Zealand of foreign military aircraft, 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.

(2) The Prime Minister may only grant approval to the landing in New Zealand by any foreign military aircraft if the Prime Minister is satisfied that the foreign military aircraft will not be carrying any nuclear explosive device when it lands in New Zealand.

(3) Any such approval may relate to a category or class of foreign military aircraft, including foreign military aircraft that are being used to provide logistic support for a research programme in Antarctica, and may be given for such period as is specified in the approval.

11. Visits by nuclear powered ships—Entry into the internal waters of New Zealand by any ship whose propulsion is wholly or partly dependent on nuclear power is prohibited.

Savings

12. Passage through territorial sea and straits—Nothing in this Act shall apply to or be interpreted as limiting the freedom of—

- (a) Any ship exercising the right of innocent passage (in accordance with international law) through the territorial sea of New Zealand; or
- (b) Any ship or aircraft exercising the right of transit passage (in accordance with international law) through or over any strait used for international navigation; or
- (c) Any ship or aircraft in distress.

13. Immunities—Nothing in this Act shall be interpreted as limiting the immunities of—

- (a) Any foreign warship or other government ship operated for non-commercial purposes; or
- (b) Any foreign military aircraft; or

- (c) Members of the crew of any ship or aircraft to which paragraph (a) or paragraph (b) of this section applies.

Offences

14. Offences and penalties—(1) Every person commits an offence against this Act who contravenes or fails to comply with any provision of sections 5 to 8 of this Act.

(2) Every person who commits an offence against this Act is liable on conviction on indictment to imprisonment for a term not exceeding 10 years.

15. Consent of Attorney-General to proceedings in relation to offences—(1) No information shall be laid against any person for—

- (a) An offence against this Act; or
- (b) The offence of conspiring to commit an offence against this Act; or
- (c) The offence of attempting to commit an offence against this Act,—

except with the consent of the Attorney-General:

Provided that a person alleged to have committed any offence mentioned in this subsection may be arrested, or a warrant for any such person's arrest may be issued and executed, and any such person may be remanded in custody or on bail, notwithstanding that the consent of the Attorney-General to the laying of an information for the offence has not been obtained, but no further or other proceedings shall be taken until that consent has been obtained.

(2) The Attorney-General may, before deciding whether or not to give consent under subsection (1) of this section, make such inquiries as the Attorney-General thinks fit.

Public Advisory Committee on Disarmament and Arms Control

16. Establishment of Public Advisory Committee on Disarmament and Arms Control—There is hereby established a committee to be called the Public Advisory Committee on Disarmament and Arms Control.

17. Functions and powers of Committee—(1) The functions of the Committee shall be—

- (a) To advise the Minister of Foreign Affairs on such aspects of disarmament and arms control matters as it thinks fit:

- (b) To advise the Prime Minister on the implementation of this Act:
 - (c) To publish from time to time public reports in relation to disarmament and arms control matters and on the implementation of this Act:
 - (d) To make such recommendations as it thinks fit for the granting of money from such fund or funds as may be established for the purpose of promoting greater public understanding of disarmament and arms control matters.
- (2) The Committee shall have all such powers as are reasonably necessary or expedient to enable it to carry out its functions.

18. Membership of Committee—(1) The Committee shall consist of 9 members, of whom—

- (a) One shall be the Minister for Disarmament and Arms Control, who shall be the Chairman; and
 - (b) Eight shall be appointed by the Minister of Foreign Affairs.
- (2) Each member of the Committee appointed under subsection (1)(b) of this section shall be appointed for such term not exceeding 3 years as may be specified in the instrument of appointment, but may from time to time be reappointed.
- (3) Any such member may be removed from office for incapacity, neglect of duty, or misconduct proved to the satisfaction of the Minister of Foreign Affairs, or may resign by notice in writing to that Minister.
- (4) The functions and powers of the Committee shall not be affected by any vacancy in its membership.

19. Procedure of Committee—Subject to any directives given by the Minister of Foreign Affairs, the Committee may regulate its procedure in such manner as it thinks fit.

20. Remuneration and travelling expenses—(1) The Committee is hereby declared to be a statutory Board within the meaning of the Fees and Travelling Allowances Act 1951.

(2) There shall be paid to the members of the Committee, out of money appropriated by Parliament for the purpose, remuneration by way of fees or allowances, and travelling allowances and expenses, in accordance with the Fees and Travelling Allowances Act 1951, and the provisions of that Act shall apply accordingly.

21. Money to be appropriated by Parliament for purposes of this Act—All fees, salaries, allowances, and other expenditure payable or incurred under or in the administration of this Act shall be payable out of money to be appropriated by Parliament for the purpose.

Amendments to Marine Pollution Act 1974

22. Interpretation—Section 2 (1) of the Marine Pollution Act 1974 is hereby amended by inserting in paragraph (a) of the definition of the term “dumping”, after the word “sea”, the words “or into the seabed or the subsoil of the seabed”.

23. Application of Part II of Marine Pollution Act 1974—Section 20 (1) of the Marine Pollution Act 1974 (as substituted by section 4 of the Marine Pollution Amendment Act 1980) is hereby amended by repealing paragraph (b), and substituting the following paragraph:

“(b) All ships and aircraft that dump waste or other matter—

“(i) In New Zealand waters; or

“(ii) Into the waters of the exclusive economic zone of New Zealand (as described in section 9 of the Territorial Sea and Exclusive Economic Zone Act 1977); or

“(iii) Into the waters above the continental shelf of New Zealand; or

“(iv) Into the seabed or the subsoil of the seabed below any waters described in subparagraphs (i) to (iii) of this paragraph.”.

24. New sections inserted—The Marine Pollution Act 1974 is hereby amended by inserting, after section 21 (as enacted by section 4 of the Marine Pollution Amendment Act 1980), the following sections:

“21A. Offence to dump radioactive waste—

(1) Notwithstanding anything to the contrary in this Act, the persons mentioned in subsection (2) of this section commit an offence if—

“(a) Any radioactive waste or other radioactive matter is, for the purpose of dumping, taken on board any ship or aircraft—

“(i) In New Zealand; or

“(ii) In New Zealand waters; or

“(iii) At any offshore installation or fixed or floating platform or other artificial structure to which this Part of this Act applies; or

- “(b) Any radioactive waste or other radioactive matter is dumped from any ship or aircraft—
 - “(i) Into New Zealand waters; or
 - “(ii) Into the waters of the exclusive economic zone of New Zealand (as described in section 9 of the Territorial Sea and Exclusive Economic Zone Act 1977); or
 - “(iii) Into the waters above the continental shelf of New Zealand; or
 - “(iv) Into the seabed or subsoil of the seabed below any of the waters described in subparagraphs (i) to (iii) of this paragraph; or
 - “(c) Any radioactive waste or other radioactive matter is dumped into the sea from any offshore installation or fixed or floating platform or other artificial structure to which this Part of this Act applies; or
 - “(d) Any radioactive waste or other radioactive matter is dumped from any New Zealand ship or home-trade ship or New Zealand aircraft into the sea, other than a part of the sea within any of the waters described in subparagraphs (i) to (iii) of paragraph (b) of this subsection.
- “(2) The persons who are guilty of an offence under subsection (1) of this section are as follows:
- “(a) In any case to which paragraph (a) or paragraph (b) or paragraph (d) of that subsection applies, the owner and the master of the ship, or (as the case may be) the owner of the aircraft and the person in possession of the aircraft:
 - “(b) In any case to which paragraph (c) of that subsection applies, the owner of the offshore installation or fixed or floating platform or other artificial structure and the person having control of its operations.
- “(3) For the purposes of this section and section 21B of this Act, waste or other matter (including sewage sludge, dredge spoil, fly ash, agricultural waste, construction and building material, and ships) shall be regarded as non-radioactive if it—
- “(a) Has not been contaminated with radionuclides of anthropogenic origin; or
 - “(b) Has been contaminated with radionuclides of anthropogenic origin but those radionuclides result exclusively from the dispersal of global fallout from the testing of nuclear explosive devices; or
 - “(c) Is not a source of radionuclides which occur naturally and which offer a potential for commercial utilisation; or

“(d) Has not been enriched in natural or artificial radionuclides.

“(4) Every person who is guilty of an offence under this section—

“(a) Is liable on summary conviction to a fine not exceeding \$100,000; and

“(b) Is also liable to pay such amount as the Court may assess in respect of the expenses and costs that have been incurred or will be incurred in removing or cleaning up or dispersing the waste to which the offence relates.

“(5) Nothing in paragraphs (a), (b), and (d) of section 22 (1) of this Act or in paragraph (a) of section 22 (2) of this Act applies in respect of the dumping of radioactive waste or other radioactive matter.

“21B. **Offence to store radioactive waste**—(1) Every person commits an offence who stores radioactive waste or other radioactive matter—

“(a) In New Zealand waters; or

“(b) In the waters of the exclusive economic zone of New Zealand (as described in section 9 of the Territorial Sea and Exclusive Economic Zone Act 1977); or

“(c) In the waters above the continental shelf of New Zealand; or

“(d) In the seabed or in the subsoil of the seabed below any of the waters described in paragraphs (a) to (c) of this subsection.

“(2) Every person who is guilty of an offence under this section—

“(a) Is liable on summary conviction to a fine not exceeding \$100,000; and

“(b) Is also liable to pay such amount as the Court may assess in respect of the expenses and costs that have been incurred or will be incurred in removing or clearing up or dispersing the waste or the matter to which the offence relates.”

25. Permits—(1) Section 22B of the Marine Pollution Act 1974 (as enacted by section 4 of the Marine Pollution Amendment Act 1980) is hereby amended by inserting, after subsection (4), the following subsection:

“(4A) The Minister may require that any application for a permit shall be accompanied by a certificate from the Director of the National Radiation Laboratory that the waste or other

matter which is the subject of the application is non-radioactive within the meaning of section 21A (3) of this Act.”

(2) Section 22B of the Marine Pollution Act 1974 (as so enacted) is hereby further amended by inserting, after subsection (6), the following subsection:

“(6A) Notwithstanding anything in this Act, no permit shall authorise the dumping of radioactive waste or other radioactive matter.”