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WORKING PAPER NO. 8

NUCLEAR FREE NEW ZEALAND:

1987 - FROM POLICY TO LEGISLATION

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ABSTRACT

This is the second 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 each of these events.

The first working paper in the series, Working Paper No.7, Nuclear Free New Zealand - 1984 New Zealand Becomes Nuclear Free July 1997, argues that New Zealand did not become truly nuclear free, free of nuclear weapons, until 1984 when Labour put its nuclear policy into effect, despite frequent claims that former Prime Minister Keith Holyoake had made New Zealand nuclear free in 1957. Also disputed are claims that New Zealand banned visits by nuclear armed and powered vessels during periods prior to 1984. Events subsequent to the election in 1984 that finally saw the nuclear policy implemented for the first time early in 1985 when the USS Buchanan was refused permission to visit are followed using new material relating to this incident released late in 1996 under the Official Information Act. The paper concludes with an extensive chronology of events relating to the nuclear policy from the 1984 election to the the tenth anniversary of the signing into law of the legislation an 8 June 1997, and a table comparing a number of factors related to the nuclear issue as they were in 1984/5 and as they are now, 1995/7.

The present paper follows the passage of the nuclear free policy into law on 8 June 1987, nearly three years after Labour came to power promising to enact this legislation. The passage of the nuclear free Bill through Parliament is followed in summaries of the debates, and by examining the manoeuvres of the various political parties involved in respect of the Bill. Evidence is presented supporting the claim that ANZUS has always been seen by the United States as a nuclear alliance, part of American global deterrence strategy, despite claims to the contrary in the 1980s by the major political parties in New Zealand.

The reactions of New Zealand's major allies to the legislation are examined and analysed. Arguments are presented to support the claim that these reactions arose from concerns that the legislation might seriously undermine the operation of the American and British neither confirm nor deny policy (NCND) then in force, by encouraging other non-nuclear nations to adopt similar policies.

One consequence of the move to legislation was the suspension by the United States of its security obligations to New Zealand under the ANZUS treaty, amounting to a suspension of New Zealand from active participation in ANZUS. The legality of this suspension is examined in chapter three.

Finally, chapter four presents a new analysis of the motivation for the switch by the National Party early in 1990 to supporting the legislation, and looks at the present state of support for the nuclear free policy and legislation in the New Zealand Parliament.

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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CONTENTS

ACRONYMS - ABBREVIATIONS

ANZUS	Treaty between Australia, New Zealand, and the United States
FPDA	Five Power Defence Arrangements
MMP	Mixed Member Proportional representation
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
NPV	Nuclear powered vessel
NPW	Nuclear powered warship
NZPD	New Zealand Parliamentary Debates
PACDAC	Parliamentary Advisory Committee on Disarmament and Arms Control
SAS	Special Air Service
SPNFZ	South Pacific Nuclear Free Zone
USG	United States Government
USN	United States Navy

INTRODUCTION

This is the second 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. It examined and debunked claims that New Zealand had been made nuclear free much earlier 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.

It also presented new material concerning events in late 1984 and early 1985 that related in particular 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 among these 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.

The first working paper in the series also includes an extensive chronology of events related to the nuclear policy and the Act from July I984 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 which is considered 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 of Foreign Affairs and Trade 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 this 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. This working paper, tracing the path from policy to legislation, will also present 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 National Government elected in 1990 nevertheless commissioned a further review of the safety of nuclear powered vessels published in December 1992, but by 1995 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 World Court Project. New Zealand post-1984, the people and the politicians, will be the subject of a later working paper.

United States forces in the Pacific have been declared free of nuclear weapons apart from the eight 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 l 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. 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 the series.

United States Government opposition to our anti-nuclear legislation has also not changed, at least officially. On 20 Apri1 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 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.'

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. 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 the Royal Navy visit in June 1995. Material is also cited 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, and the implications of this are discussed.

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 second working paper in the series, 1987 - From Policy to Legislation, considers the reasons for proceeding to legislation, and the passage of the resulting Bill through the New Zealand Parliament to its appearance as the Act. Reactions to the legislation, and its

interpretation in various contexts, are considered. Prior to the Bill becoming law, the United-States had in August 1986 suspended its security commitment to New Zealand under the ANZUS Treaty in response to New Zealand's determination to proceed to legislation. They had earlier indicated that they viewed proceeding to legislation very seriously. The legality of this suspension is also examined. Finally, the present state of political support for the Act is reviewed in the light of the continued American opposition to it. A number of authors have already examined aspects of the development and implementation of the nuclear free policy, see refs. 7-13 below.

Copies of a number of documents released recently by the Ministry of Foreign Affairs and Trade 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 were withheld, even now.

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CHAPTER ONE

THE PASSAGE OF THE BILL

1.1 Legislation - Why?

The 1980s had already seen legislation presented to the New Zealand Parliament embodying nuclear free policies prior to the July 1984 snap election. A bill entitled the Prohibition of Nuclear Vessels and Weapons Bill was introduced by Bruce Beetham, then Leader of the Social Credit Party, on 3 August 1983 and was referred to the Disarmament and Arms Control Committee. Richard Prebble, then a Labour MP, presented a second bill, The Nuclear Free New Zealand Bill, on 12 June 1984, but the National Government defeated the motion to have it introduced by one vote, even though two of its members voted for its introduction. The Beetham Bill, as the 1983 Bill became known, was reintroduced by Garry Knapp on 19 September 1984, its passage having been disrupted by the snap election. It was referred to the Disarmament and Arms Control Committee and subsequently in July 1985 to the Foreign Affairs and Defence Committee. Then in December 1985 it was deferred to the next session of Parliament along with the Nuclear Free Zone Bill, but no record has been seen of any considerations of it by that Committee which on 16 October 1986 reported on the Nuclear Free Zone, Disarmament, and Arms Control Bill as it was at this stage. The detailed history of these two earlier bills can be found in the New Zealand Parliamentary Debates (NZPD) for this period.

Labour's 1984 election platform included the promise that New Zealand's nuclear free status would be written into 1aw, and many New Zealanders, particularly in the peace movement but in other quarters as well, were anxious to see this achieved as quickly as possible. The Labour Party, as distinct from the Labour Government, was also seeking the introduction of the legislation as quickly as possible. An interesting account of the position of the Labour Party in this period is given by Margaret Wilson, then President of the party and now Professor of Law at the University of Waikato in chapter 4 of her book, Labour in Government 1984-1987 [(1)].

There were two clear reasons for this concern. First, the defeated National Party was at the time very strongly opposed to Labour's anti-nuclear policy as an examination of New Zealand Parliamentary Debates and many other documents from the time shows. Should National become the government after 1984 it would be much more difficult for them to repeal legislation than to reverse policy. Repealing or modifying legislation would also emphasise adversely what might be seen as National support for nuclear deterrence and nuclear weapons strategies.

Second, the peace movement had long been against New Zealand's continued membership of the ANZUS Alliance. By contrast there was quite strong and continuing support in the wider community for maintaining defence ties with the United States preferably while also recognising New Zealand's anti-nuclear position, this reflecting to a considerable extent recollections of the Pacific war period. Labour had argued that the ship visit bans in its policy should not necessarily result in a breakdown of ANZUS. As the 1984 New Zealand Parliamentary Debates show, National challenged this and predicted the breakdown that followed, and culminated in the 1986 suspension by the United States of its defence obligations under ANZUS to New Zealand.

The peace movement was suspicious of the sincerity of some in the new Labour Government concerning the anti-nuclear policy because of Labour's conflicting concern not to trigger a breakdown of ANZUS. As nuclear free legislation, the public would

have access to the courts to challenge actions by the Government seen as contravening this legislation, the admission of a suspect US Navy vessel for example. This mechanism has never been fully tested, but the possibility at least exists with the legislation in place.

Lange gives these same two reasons for proceeding to legislation even if, as he says in a recent article 'at a measured pace' [2], echoing the discussion in chapter ten of his book, Nuclear Free - The New Zealand Way [3]. Yet the 1984 policy did not become law until June 1987, with the Labour Government still in power. Lange presents an account of events in the intervening period in his chapter ten. From his account, this delay resulted largely from Labour's wish to try to get the United States to accept New Zealand as a non-nuclear ANZUS partner, a partner rejecting involvement in any nuclear aspects of ANZUS activities, and to develop an acceptable formula covering nuclear weapons capable ship visits that did not conflict with the US neither confirm nor deny (NCND) policy. Both endeavours failed.

That the United States saw the legislation as exacerbating the problems presented by the policy is made clear by Professor Henry Albinski, then Professor of Political Science and Director of the Australia-New Zealand Studies Centre at the Pennsylvania State University, in a paper published in 1988 in ANZUS in Crisis: Alliance Management in International Affairs, [4] in which he says p.86,

> Washington felt that it was bad enough to have a such a ban [on nuclear armed and powered vessels] at all. Legislation would, however, virtually foreclose a constructive search for a way out of the impasse and would make it far more difficult for a succeeding New Zealand Government to rescind the ban.

He goes on to present official American views of Lange's offer to consider American comments on a draft of the proposed legislation saying these were seen as a charade, not a serious effort to find a way out of the ship visit impasse, since Labour insisted that the non-nuclear policy was not negotiable.

Helen Clark, now Leader of the Labour Opposition, in correspondence dated 15 August 1995 concerning the delay in the legislation being passed, says that she does not think there was any basic reason for the delay. In her experience if the Minister involved has a lot of time to put into a matter, legislation can be achieved relatively quickly. David Lange was also Prime Minister in the 1984-87 period, and had many matters to deal with. She recalls spending quite a lot of time on submissions relating to the legislation in 1986, and suggests that 'perhaps the passage of time helped consolidate public support for the legislation' (private communication).

N Hager, long-standing and widely recognised peace researcher and activist, considers that the legislation might not have been passed even in 1987, since the United States and Britain having failed to stop the policy, then urged that at least the policy not be enshrined in legislation. They saw legislation as a serious step in entrenching the policy as indicated above, and at that time applied pressure on the basis that this was 'the new line that New Zealand must not cross'. Hager considers that the Labour Government followed public opinion at that time for electoral reasons, and if a worrying election had not been coming up, might not have passed the legislation even in 1987 because of this pressure from these nuclear allies (private communication, 12 July 1995).

The sections of the 1987 New Zealand Nuclear Free Zone, Disarmament, and Arms Control Act, referred to as the Act below, of most concern in this study are presented in full as Appendix One. Their main aspects are summarised here for reference. The operation of the 1984 anti-nuclear policy and the subsequent Act is examined fully in a subsequent working paper, but some of the reactions to the policy and the Act are considered to some extent in this paper.

The Act implements in New Zealand the South Pacific Nuclear Free Zone Treaty (SPNFZ) of 6 August 1985, and a number of disarmament and arms control treaties.

The Nuclear Free Zone This is defined in section 4 of the Act as all the land territory and inland waters within the territorial limits of New Zealand, the internal waters and territorial sea of New Zealand, and the airspace above all these areas. The territorial sea and internal waters are defined in the 1977 Territorial Sea and Exclusive Economic Zone Act. The relevant portions of this Act are presented as Appendix Two for reference.

To manufacture, acquire, possess, or have control over nuclear explosive devices within the zone These activities are prohibited by section 5(1) for New Zealand citizens or persons normally resident in New Zealand, as is aiding and abetting or procuring any person so to do.

Involvement with nuclear weapons outside the zone - exercising with nuclear equipped military forces Section 5(2) prohibits involvement of any sort outside the zone by New Zealand servants or agents of the Crown. This includes New Zealand's military forces, so this section effectively prohibits any joint military exercises that involve nuclear weapons.

Stationing, storing, deploying or transporting nuclear weapons; testing of nuclear weapons These are prohibited within the zone by sections 6 and 7 respectively.

Biological weapons Any involvement with these within the zone is prohibited by section 8.

Visits by nuclear armed vessels The mechanism governing visits by foreign warships that might be carrying nuclear weapons is spelled out in section 9. It requires that the Prime Minister must be satisfied, on the basis of all relevant information and advice, that warships will not be carrying nuclear weapons at the time they visit before permission to enter New Zealand's internal waters can be granted.

Visits bv foreign military aircraft The same mechanism applies for these visits and is presented in section 10. However there is an important proviso in this case, that an approval may apply to certain categories or classes of foreign military aircraft, including those used for logistic support for a research programme in Antarctica, Operation Deep Freeze. This reflected a long standing arrangement between the United States and New Zealand.

Visits by nuclear powered vessels These are cornpletely banned from New Zealand's internal waters under section 11.

Contravening the Act This can result in imprisonment for up to ten years.

Radioactive waste and radioactive material The Act also prohibits transporting radioactive material or waste for the purpose of dumping it, dumping such material or storing it in New Zealand waters, the waters of New Zealand's exclusive economic zone or above its continental shelf, or in the seabed below these waters. The regulations governing radioactive material within New Zealand itself are laid down in the Radiation Protection Act 1965 with subsequent arnendments (see the Reprinted Statutes of New Zealand, vol.18, p.673). This Act is currently under review.

1.2 Passage of the Bill - Procedure

Some elements in the study covered by these working papers are pivotal. The ANZUS alliance is one. The Act is another. Both dominate the considerations that follow and are examined in detail. It is important in relation to the Act to begin with a study of the

passage of the legislation through Parliament examining its various readings and committee deliberations. The debates over the Bill as it then was prior to it being passed to become the Act, traverse the whole gamut of argument concerning the nuclear issue, ANZUS, and New Zealand security that raged from the mid-1980s to 1990 when National reversed its position on the legislation, and that continues still over ANZUS and New Zealand's future security although with less fire and urgency.

These debates were quite lengthy, particularly for the second reading, and are only summarised here. All summaries of debates given here are, of course, selective and subjective. Interested readers are strongly encouraged to consult the full reports in the appropriate volumes of New Zealand Parliamentary Debates. These are:

Introduction of the Bill and First Reading:	NZPD vol 468 10 December 1985,	pp.8910-8930
Report of the Foreign Affairs and Defence Committee:	NZPD vol 475 ,16 October 1986,	pp.4994-5004
Second Reading:	NZPD vol 477 12 February 1987,	pp.6978-7022
resumed:	NZPD vol 478 17 February 1987,	pp.7084-7112
In Committee: (voting on amendments)	NZPD vol 480 7 May 1987,	pp.8810-8814
Third Reading.	NZPD vol 480 4 June 1987,	pp.9276-9298

See also Supplementary Order Papers No.83 17 February 1987, and No.106 7 May 1987 for amendments not detailed in vol 480, pp.8810-8814. Details of the procedures followed in the passage of a Bill through the New Zealand Parliament can be found in a number of sources, for example Parliamentary Practice in New Zealand by D McGee[5].
There are two editions of McGee's book, the original one published in 1985 and a more recent 1994 edition. Little difference in procedure for the passage of bills has been found between the two editions at the level of detail of interest here. The 1985 edition was produced nearer the time the Bill was passing through Parliament, so reference is made to this edition.

McGee explains that once Parliament has agreed to read a bill, the Clerk of the House of Representatives (Parliament) merely reads the Short Title of the bill and this constitutes it being read. He also explains, p.222, that during the passage of a bill the main parts or portions of it are referred to as 'clauses', but once the bill becomes law they are called 'sections', as was done above. Accordingly, in the discussion of the passage of the Bill that follows, these same sections are referred to as clauses.

Included with the summaries of the various debates are some comments. To distinguish these from the summaries they are given in italics.

The Bill was passed in June, the Act is dated 8 June 1987. It was debated by a Parliament consisting of the Labour Government with 55 members, the National Party with 38 members, and the Democratic Party with two members, from the record in NZPD vol 477 1986-87. A fourth party, The New Zealand Party, also contested the 1984 election and supported the Bill, but did not win any seats in Parliament. Only National opposed the Bill. Arguments both for and against the Bill were generally repeated by various speakers from the parties throughout the series of debates. Some sections of these debates are considered worth quoting at length, but in general the arguments presented are only summarised.

Of course such debates only manifest part of the activity at any time in Government and official circles.' In his book, particularly chapter 14, Lange comments on the role and

influence of diplomats in attempts to resolve the nuclear issue, particularly at the international level. He says p.193, 'The contest between politics and diplomacy ran right through the history of New Zealand's nuclear-free policy.' The policy was, he says, 'a powerful symbol. As such it fitted uneasily into the subtle nuances of diplomacy.' Diplomats were generally speaking happier when politicians kept their 'sticky fingers' out of their country's international relations he claims on p.193, and goes on to highlight the significance of the behind the public scenes work of diplomats. They did, he says on the same page, tell politicians that contact with political leaders in other countries was very important.

> The truth of it was that with a few rare exceptions, most international political contacts were formalities, mere showpieces. They put the seal of approval on work done in advance by the country's professional negotiators. ... Large international conferences were totally stage managed.

He states, p.194, that 'Left to themselves, our diplomats would certainly have surrendered the nuclear-free policy'.

Nevertheless what politicians say is on record, and seen and noted by the public. The public expects their statements to present the positions of the politicians and their parties, and from what Lange says they should also present to a considerable extent the advice and instruction received from their diplomats. Parliamentary debates should, consequently, reflect this behind the scenes and publicly not readily accessible diplomatic activity. Further, whether they are the authors of their own statements or are presenting what their diplomats have prepared, politicians are accountable for these statements. Parliamentary debates warrant some attention for these reasons, but further because the arguments presented in them are of considerable interest in the light of subsequent developments.

Claim and counter-claim, accusation and counter-accusation, concerning the possible development of nuclear power generation in New Zealand, and the rejection of this energy option figured in these debates. These are not examined here since this would constitute a distraction from the main factors of concern in the present study. Nuclear power has not been developed in New Zealand, and all the indications are that this will not happen for a very long time, if ever.

1.3 Introduction and First Reading of the Bill - 10 December 1985

The Bill was introduced to Parliament by David Lange as Minister of Foreign Affairs. This is normally an opportunity for the Minister in charge to explain briefly the purpose of a bill, and for other members of Parliament to raise questions about its contents so they can be better informed about it and about the government's intentions. It is not generally the time for a debate on the principles of the bill, McGee says, this comes later. In the present case the debate did not follow this pattern, the Opposition clearly having made up its mind on the principles and purpose of the present Bi1l. The debate in this reading also follows a very set pattern at this time, with Government and Opposition members speaking alternately for up to five minutes, apart from the Minister who introduced the bill and the first Opposition speaker. The Opposition did not, however, oppose the introduction of the Bill in this case, as can happen with very controversial bills according to McGee. The rules governing the passage of bills may change following the introduction of MMP when multi-party parliaments may be the norm.

Lange began by saying the Bill gives the sanction of law to the exclusion of nuclear weapons from New Zealand, and hence to New Zealand's disengagement from any nuclear strategy for the defence of New Zealand.

The latter statement rejects nuclear deterrence, but only for New Zealand, manifesting the 'not for export' aspect of the New Zealand Government's position at this time, a position widely criticised by the peace movement and others. Lange argues in his book pp.l15-118 that this criticism was unfair since it omitted his arguments for the policy being right for New Zealand but not easily applicable directly in other areas of the world not so isolated geographically as New Zealand and with serious security problems. His view was that other countries should look for alternatives to deterrence appropriate to their own circumstances. It must be recalled that this was in the mid 1980s.

Lange claimed the Bill promoted an active and effective contribution by New Zealand to disarmament and arms control, and enacted into law the provisions of the disarmament, arms limitation, and control treaties to which New Zealand was a signatory. He then outlined three broad objectives of the Bill, and the import of the clauses in the Bill. The Bill, he said, enacts into law those provisions of the South Pacific Nuclear Free Zone Treaty (SPNFZ) that require legislative sanction, thereby permitting New Zealand's ratification of the treaty. It gives legislative sanction to New Zealand's obligations in respect of the arms limitation treaties to which New Zealand is already a party. Finally it establishes a nuclear free zone in New Zealand.

The Bill has 24 clauses. Lange then explained the thrust of these clauses. The first substantive provision is clause 4 which defines and establishes the New Zealand nuclear free zone on land, in New Zealand lakes and rivers, in its territorial seas, and in its air-space. It reflects fully the geographical scope of the obligations anticipated for parties to the SPNFZ. Clause *5* specifically implements Article 3 of the SPNFZ which obliges parties to the treaty to renounce the manufacture, possession, or control of nuclear weapons, and to desist from assisting or encouraging any other state to obtain nuclear weapons. This obligation, which is similar to those accepted by New Zealand under the non-proliferation treaty, is imposed by the Bill on the New Zealand Government. Clauses 3 and 4 ensure that the obligation is fully complied with by the Crown and by agencies of the State. (It would appear from what he said next that this should read clauses 4 and 5.) It is a sanction that prevails throughout the world. It is a complete undertaking that the New Zealand Government and its armed forces will never have possession or control of nuclear weapons anywhere in the world. Clause 5 takes New Zealand's responsibilities further than the minimum requirements of the SPNFZ by also applying to private citizens.

Clause 6, modelled on Article 5 of the SPNFZ, essentially prohibits the stationing of nuclear weapons in New Zealand. It establishes firmly and unconditionally that New Zealand will not in any circumstances play host to nuclear weapons. Clause 7 prohibits nuclear testing, and implements Article 6 of the SPNFZ and the provisions of the test ban treaty of 1963. Clause 8 is a prohibition on biological weapons, and implements the provisions of the 1972 Biological Weapons Convention. Lange then comments that the clauses he has described so far are either required by, or absolutely consistent with, the provisions of the disarmament and arms control treaties to which New Zealand has been party for many years or, in the case of the SPNFZ, will soon ratify.

He then turned to the key clauses 9 to l l. He stressed that clauses 9 and 10 place the responsibility for decisions on the admission of foreign warships into New Zealand's internal waters or the landing of military aircraft in New Zealand on the Prime Minister, but with no provision for any criminal sanction for a breach of the provisions in these clauses, a point he was open to argument on. This point was raised a number of times subsequently and the existing position confirmed later. He also stressed that no requirements are placed on the captains of any visiting foreign warships or aircraft. Clause 11 lays out a total ban on nuclear powered vessels in New Zealand's internal waters. Clause 12 recognises New Zealand's obligations under international law for ships exercising innocent passage, and protects the humanitarian rights of ships and

aircraft in distress. *For reference, clause 13 deals with immunities.* Clause 14 and 15 relate to offences against the Act.

Clause 16 established a new Public Advisory Committee on Disarmament and Arms Control (PACDAC) which Lange looked upon to give new impetus to public awareness of he processes of disarmament and arms control and to give greater cohesion to New Zealand's overall involvement in those processes. He expected that the collective experience of the committee's members would contribute greatly to the advancement of the purposes of the Bill. The Committee has the functions of advising the Prirne Minister on the implementation of the Act, advising the Minister of Foreign Affairs on such aspects of disarmament and arms control as it thinks fit and publishing reports on the implementation of the Act and on disarmament and arms control matters. Clause 18 setting out the Committee membership anticipated the appointment of a Minister for Disarmament and Arms Control which was made soon after.

Lange had stated earlier that the considered views of the Committee would necessarily be included when making decisions under clauses 9 and 10. This has never been necessary yet as far as is known.

'I make it absolutely clear', he said,

> that notwithstanding speculation, and not withstanding all the concern that has been expressed, [by the peace movement in particular, and by some politicians, about the Bill being too weak] 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. The price of not having nuclear weapons in New Zealand is the price, as the Government acknowledges and as the previous [National] Government did, that ANZUS is not a nuclear alliance and that we are not part of a nuclear command structure.

Lange's legal training and experience give weight to this claim.

The question of the nature of ANZUS figured frequently in these debates and elsewhere through the 1980s and early 1990s. The proposition that ANZUS is not a nuclear alliance is challenged in a later working paper, and was abandoned by Lange himself subsequently. He says in his book p.180 that he gave only one speech about ANZUS and the nuclear free policy during the 1987 election campaign, recalling in it that in 1984 he did not see the alliance as predominantly nuclear, and campaigned on keeping New Zealand in the alliance, with New Zealand, excluding-nuclear weapons but remaining in an active alliance with a nuclear power. 'But', he says,

> *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." After describing the many efforts which had been made to reconcile the irreconcilable, 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."*

Yet apart from the effective suspension of New Zealand, nothing had changed in the structure or operational character of ANZUS from 1984. If anything the American nuclear elements in it would have been given less emphasis in 1987 than in 1984 with the easing of superpower tensions. Why Lange did not see ANZUS as a nuclear alliance in 1984 is not clear from this. The 'events' he refers to were, presumably, the

continued refusal by the Americans to accept his Government's position on ANZUS with New Zealand participating in a completely non-nuclear capacity, and arguments put forward by the Americans that presented ANZUS as part of a global structure of alliances based on conventional and nuclear deterrence.

For statements of his United States view the reader is referred to papers by W Tow, then Assistant Professor of International Relations at the University of Southern California, and H Albinski in the publication ANZUS in Crisis cited earlier [4]. Albinski states on p.88 for example,

> *The United States disagreed with the New Zealand Labour Government's opinion that ANZUS had always been a 'conventional' weapons alliance and that New Zealand's new ship visit policy was therefore consistent with an established tenet. The essence of the American view had been that the United States developed and deployed strategic and tactical nuclear weapons before ANZUS was signed. For over thirty years both Australia and New Zealand, under various governments, had not challenged the notion that ANZUS was part of a global deterrent strategic framework, even if Australia and New Zealand themselves neither owned nor housed such weapons. In this sense there was nothing for the Lange Government to 'discover' about ANZUS - only to invent.*

Albinski is referring to a global nuclear or conventional plus nuclear deterrent framework. Tow in his paper p.57 states that,

> *In general, as America entered the 1980s, ANZUS was regarded by the United States as one of he few remaining assured components of the post-war American system of extended deterrence. The Reagan Administration sought to upgrade the alliance's profile within the overall context of rebuilding United States' global military capabilities at each possible level of potential warfare.*

The emphasis was added by Tow, who makes it clear that these levels include the nuclear level, as does Albinski, who also says p.89,

> *The United States further maintained that it was not a meaningful or open course for New Zealand to offer not to be defended under an American nuclear umbrella in exchange for its policy of barring nuclear powered or nuclear-armed ships from its waters, and the entire structure of he alliance could be undermined by such New Zealand actions. In the language of the United States chief of Naval Operations, 'The benefits of security, resulting from the forward-deployed U.S. presence, are extended to all members of the Western alliance, in fact, to all in the free world whether they overtly seek it or not'.*

The Chief of Naval Operations in question was Admiral James D Watkins who stated this in 1985, see Foreign Affairs, vo1.64, 1985, p.169.

It is argued below and in subsequent working Papers that the nuclear element in the ANZUS-alliance was dominant from its inception, and is still a major element. Further, it is difficult to accept that most concerned politicians were not aware to some extent of the longstanding nuclear aspects and involvements of the alliance, regardless of the treaty document not saying anything about nuclear weapons. It is difficult to believe that they did not have access to the same type of material that will be presented to establish the nuclear nature of ANZUS. Lange's claim that in 1984 he did not see ANZUS as predominantly nuclear is questionable.

The remaining clauses of the Bill of concern here dealt with details of the operation of PACDAC, the dumping of radioactive waste.

The Bill was then debated for the full time allowed, normally two hours for this reading. Labour spokespeople David Lange, Geoffrey Palmer also a lawyer, as Deputy Prime Minister, Richard Prebble, Frank O'Flynn as Minister of Defence, Helen Clark and Fran Wilde presented the following arguments in support of the Bill, speaking turn and turn about with Opposition speakers who strongly criticised the preceding Labour speaker or speakers and presented their own arguments.

Labour said it is a historic Bill, and the debate one of historic proportions. The introduction of the Bill marks a proud day for New Zealand, and the eyes of the world are on us. The importance of the Government's no nuclear weapons policy could scarcely be exaggerated which is why the Bill was creating so much interest and why the Government is being subjected to a fair amount of pressure from various sources. The nuclear free policy was part of the Government's [1984] election manifesto and the Government will not abandon it. It is important because of the dangers of nuclear war and because the nuclear arms race is not slowing.

The Bill asserts the deep seated abhorrence of nuclear weapons by New Zealanders, and has the support of 75% of them. They do not see nuclear deterrence as relevant to New Zealand. The Bill represents a decision made democratically over a period of years not to have nuclear weapons in New Zealand. It means New Zealand is completely disengaged from any nuclear strategy for its defence, and the legal exclusion of nuclear weapons is the only means by which the public can be absolutely assured of this. The Bill represents nothing new. Government policy has been implemented by executive action. But the Government considers that a policy of such importance should be in the statue book.

The Bill puts New Zealand first. It is not in our interest to have nuclear weapons here. They do not increase our security and they increase the chance of our being involved in a nuclear war. But New Zealand is a loyal member of the Western alliance and will honour its commitments to ANZUS. Government policy for the [1984] election was to stay in ANZUS and it has no intention of withdrawing. The nuclear policy is compatible with ANZUS, nothing in the Treaty or the spirit of it requiring New Zealand to accept nuclear weapons. The Bill will take New Zealand out of ANZUS only if the United States so decides. It is not the will of New Zealand, but this Government asserts its sovereignty in our own country and is not about to be told what to do. The Bill is carefully crafted not to compromise the NCND policy. If other countries interpret it otherwise that is their business. To say being nuclear free is incompatible with ANZUS is trying to impose a different interpretation of the treaty on the Government and we will not bow to such pressure. However the Government acknowledges the different strategic circumstances in Europe and possibly elsewhere, and our nuclear policy may nof be appropriate or possible in other places. We have not set out to influence anyone.

These claims about the nature of ANZUS are seen as either evasive, or as expressing the true assessments by the Labour speakers of the possibilities of staying in ANZUS, in which case these speakers appear not to have been well informed concerning the nature of ANZUS and hence not to have thought through the likely United States reaction to the Bill. They also undoubtedly reflected Labour's concern that an electorate still supporting ANZUS might otherwise be alienated. If as claimed above ANZUS has always been a nuclear alliance, the fact that the Treaty does not explicitly require New Zealand to accept nuclear weapons was, and is, not the issue. The issue is that ANZUS is not an alliance to which a truly anti-nuclear country could then, or can ever, belong while it contains nuclear elements and the United States remains a nuclear power It is worth noting in relation to these debates that the NATO Treaty document, on which the ANZUS Treaty was closely modelled, also contains no direct reference to nuelear weapons. Yet NATO is accepted universally as being a nuclear alliance.

Labour's arguments continued. Clause 9 will get the most attention. Any decision under it must be credible in terms of the anti-nuclear policy and will be because for a

decision by the Prime Minister to be credible is vital to the credibility of the Government.

Criticising the position of the National Opposition and responding to its attacks on the Bill, Labour replied in the following terms. Those who oppose the Bill oppose New Zealand's disengagement from a nuclear strategy for our defence and acquiesce to having nuclear weapons in New Zealand. The Leader of the Opposition, Jim McLay, is invited to say he will authorise nuelear weapons in New Zealand - which goes to the heart of the Bill. He did not lead the debate on the Bill [Warren Cooper did] because the issue is anathema to him and has been damaging to his public standing. The Opposition wants it both ways. It says it supports the SPNFZ but opposes clauses in the Bill that keep nuclear weapons out of New Zealand. The Opposition opposes nuclear weapons except when an ally wants to bring them here. This is illogical and the New Zealand public will not accept it. By opposing the Bill the Opposition puts foreign interests ahead of New Zealand's interests, because National believes it is in the interests of foreign governments to let nuclear weapons into New Zealand. The Opposition is so wedded to support for nuclear deterrence that it has let our defence forces run down seriously.

The former [National] Government admits ANZUS is not a nuclear alliance but says the United States will not send vessels here because of the [nuclear] policy and that would be the end of ANZUS. They will not send them because they know they cannot send vessels with nuclear weapons. So the Opposition would let the vessels and nuclear weapons in. They must realise that the Bill, together with the SPNFZ, is an effort to keep the South Pacific nuclear free and to avoid superpower confrontation in the region.

The Opposition case was opened by Warren Cooper, Opposition Spokesperson on Foreign Affairs, followed by the Leader of the Opposition, Jim McLay, Jim Bolger, Deputy Leader, and Doug Kidd. In brief their position was that National also opposes the nuclear arms race and wants arms control and disarmament as they have from the time of Holyoake, invoking the argument discussed in the first working paper in this series, but respects nuclear deterrence. They do oppose nuclear weapons, but breaking up alliances as the Bill does will not help disarmament. They ratified the Partial Test Ban Treaty and Non Proliferation Treaty, and have supported a comprehensive test ban against the opposition of the United States and other countries, and have made their position known through representation and action at United Nations disarmament conferences. They support the SPNFZ.

The Bill does not make New Zealand or the world safer or reduce the number of nuclear weapons or level of superpower tension, and we have now lost the possibility for input on arms control to our western partners. In the Bill, Labour has taken over what National did on arms control and disarmament and a nuclear free South Pacific in the United Nations and elsewhere, and added clauses 9, 10 and 11. Labour is isolationist. The Bill weakens the Western alliance so weakens superpower stability. The Opposition believes the world would be more peaceful if New Zealand stays in the Western alliance. People are worried about New Zealand's defence because of the effect of the Bill on ANZUS. They, particularly the young, expect the Government to give the country security.

National will repeal these offending clauses and clause 5(2)(b) if it becomes the Government. Clause 5(2)(b) will stop contact with the United States and the Royal Navy for New Zealand's military which we need to have the capability to maintain New Zealand's sovereignty. So while the Opposition supports most of the Bill, these clauses will cut us off from the Western alliance. Because of the Bill our allies, Australia, the United States and Britain have disengaged from us, and ANZUS is dead. Labour cannot ban the ships of our allies and have ANZUS, and National would repeal the bans and allow the ships back in. The Bill is the most flagrant breach of ANZUS possible. If the Government had sat down and tried to work out the most provocative act possible to

alienate the United States, Australia, and the United Kingdom, the Bill, particularly clauses 9, 10, and 11 would have been the product of that search. New Zealand has the sovereign right to ban any weapons, nuclear or other, and the Government has done this in banning nuclear armed or powered vessels. But the Bill takes one giant provocative step forward and enshrines this in 1aw, a stand diametrically opposed by New Zealand's allies and the Western alliance. The Bill is designed to be provocative to our allies. It adds nothing to New Zealand's position so must have another motive because it is so provocative. This is to follow Labour Party policy and take New Zealand out of ANZUS or get New Zealand pushed out. That is the deliberate intent of the Bill.

The Bill does not stop nuclear ships entering Cook Strait and New Zealand's territorial sea, so it is just a grand gesture. It preys on the fears of New Zealanders that the only options are to die in a nuclear war or to have a nuclear free zone here. It is dishonest, Parliament should choose the step that gives the greatest contribution to world peace. How will the Prime Minister know if a ship is nuclear armed. No-one will know if a ship is nuclear armed during a visit under Labour or National policies. The Labour left wing will not trust the Prime Minister concerning ship visits. But the United States will not send ships. The British have said they will not and the French will not, so we are isolated from these countries.

The Government has yielded to the Labour left wing, communists and those favouring neutrality. The Bill is designed to deflect publie concern if Labour's free market economics fails. They will then criticise National for snuggling up to the bomb. We accuse Labour of snuggling up to pacifists, anti-Americans, and the Soviets. Labour has acquiesced to the Soviet Union. Clause 11 is pathetic, pushed by the Labour left. Why are chemical weapons not included in the Bi1l. The Americans will take the Operation Deep Freeze base to Australia.

These arguments warrant examination in the light of the history of National's position. Since their 1975 election victory, they had argued that access to New Zealand ports for US Navy vessels was essential for ANZUS under Article 2, of the treaty which deals with the individual and collective capacity of the ANZUS members to resist armed attack, and in 1976 readmitted nuclear powered vessels. In the present debates the Bill was labelled by them as the Death of ANZUS Bill. Then in 1990 came the switch by National to full support for the legislation. No matter what reasons they give to justify this switch, reduction of superpower tension, progress on nuclear disarmament, there is a serious logical problem they cannot avoid. This is that while falling in behind the legislation, National at the time, and for some considerable time after 1990, still wanted New Zealand back in ANZUS. Yet the legislation they now support had been described by them in very strong terms during these debates on the Bill as making this impossible. They must, presumably, be depending on some softening of the position of the United States which has not yet happened. They were, of course working to win the 1990 election, which they did, and to win some of the anti-nuclear votes of Labour supporters disillusioned by Labour's change of economic direction was quite important to National at the time.

The Democratic Party was represented in this debate by Garry Knapp. They were clearly upset that by claiming that the 'opposition' opposes the Bill, the support from the Dernocratic Party was not being acknowledged by the Government. The Dernocratic Party gives qualified support for the introduction of the Bill, Knapp said. He rebuked the Government for its handling of the ANZUS question saying the Government has a mandate from the people for the rejection of nuclear weapons and nuclear powered vessels. However, there has been confusion in the public mind on ANZUS, and National has capitalised on that confusion trying to raise the fears of New Zealanders that there will be no life after ANZUS, but it is a fairly recent document. If it goes it will not be a disaster. It is not right for the Government to ignore the issues surrounding ANZUS, and the Government should have educated the public about those issues. It would have avoided the problems it is now facing.

Those problems, Knapp continued, are manifested in clause 9, and the Democratic Party has reservations about this clause, although we have only just seen the Bill. We are concerned that clause 9 is not strong enough, for example if there was a National Prime Minister, since National will not seek a change of policy from the United States. The mechanism for approving ship visits should, for example, include approval by PACDAC. The Bill is a genuine attempt by the Government to introduce its policy and not compromise the United States or Britain. New Zealand's freedom is at stake, to be blackmailed by others or maintain our sovereignty.

Parliament then voted on the motion that the Bill be introduced. The vote was 48 ayes from Labour and the Democratic Party, and 30 noes from National. The Bill was introduced and read a first time. Lange then moved that the Bill be referred to the Foreign Affairs and Defence (Select) Committee, which was agreed to.

1.4 Report of the (Select) Committee

The Select Committee stage is an important one in the passage of a bill McGee says. The Committee can consider the bill at large, its principles as well as its details, since Parliament has not yet given its blessing to the bill. This happens when the bill is read for a second time. The Committee is also required to call for submissions on the bill, and to consider proposed amendments to the draft bill, most of which come from the Government and are drafted by a Parliamentary Counsel, for recommendation to Parliament for adoption. The Select Committee cannot itself make amendments.

The considerations of the Select Committee, referred to as the Committee earlier, were reported to Parliament on 16 October 1986 by Helen Clark as chairperson, ten months after the Bill was introduced. Discussing the progress of the Bill, Clark said that public submissions had been called for by 4 April 1986 allowing time for the summer holiday, and recognising that a defence inquiry was calling for submissions at the same time which could involve concerned groups and individuals. Some 1236 submissions were received, 1071 from individuals; 62 from peace groups; 32 from branches or sectors of political parties; 30 from church organisations or churches; 4 from environmental organisations; and 37 from a variety of other organisations. Of these, 1225 were broadly in favour of the objectives of the Bill, although many wanted it strengthened in some way, she said. A series of public hearings commenced in April 1986, and 35 oral submissions were heard. A total of 30 hours and 55 minutes was spent hearing submissions, considering the evidence, and deliberating on the Bill, which was reported back, Clark stated, after thorough scrutiny, and with proposed amendments that reflected that thorough consideration. It should be noted, she said, that the Opposition opposed the Bill in the Committee and will do so at every stage in the House.

Turning to the recommended amendments, and to some of the key issues that dominated the hearings she said some were concerned that chemical weapons were not included as weapons to be banned from New Zealand. The reason was that at the time no clear definition of the term 'chemical weapon' in an international convention was available, as there was for 'biological weapon'.' When an international convention banning chemical weapons was established the Act could be amended accordingly. Clause 2 was modified to include a definition of 'immunities' so there could be no misunderstanding of what is meant by this term in clause 13 of the Bill.

Clause 5 was supported by 203 submissions while another 140 recommended some rewording, generally to extend the range of activities that New Zealanders or permanent residents would be prohibited from undertaking within or outside the nuclear free zone. The Committee declined to make any more reference to such matters in the Bi1l. It recommended amending clause 5,(1)(b) and 5(2)(b) so their provisions are identical to the 'aid and abet' provisions in section 66 of the Crimes Act for reasons of interpretation

by the courts when necessary. In clause 6 the Committee recommended wording be added so that it is clear that the internal waters of New Zealand are covered.

Most submissions agreed that clauses 9 and 10 were at the heart of the Bill, and should be strengthened. For example, 669 submissions wanted the standard of proof required by the Prime Minister for the absence of nuclear weapons on warships extended from 'is satisfied' to a test of 'beyond reasonable doubt'. Some argued that persons other than the Prime Minister should make the decision, or that others should also be involved, and PACDAC was suggested, or a judicial review of any decision. After consideration, the Committee decided to leave these clauses unaltered in the belief that they would prevent the entry of nuclear weapons as they stood.

Considerable time was devoted to clause 12 dealing with the passage of vessels through territorial seas and straits. There was considerable public debate over the power New Zealand has to ban vessels it believes are carrying nuclear weapons. After receiving advice on international law, the Committee decided New Zealand could be seen in breach of its international legal obligations if it sought to include in domestic legislation a general prohibition on nuclear weapons in its territorial seas.

Parliament then debated the reporting back of the Bill, going over rnany of the arguments presented earlier. Former Prime Minister Robert Muldoon reiterated the termination of ANZUS criticisms, and said the Opposition would vote against the reporting back of the Bill. He did add a new criticism, that the Bill was extraordinarily badly drafted, and that some changes this necessitated were ludicrous. He accused peace groups of being riddled with communists. Geoffrey Palmer responded that the draft Bill was not badly worded otherwise it would have required much more than the relatively minor and insubstantial changes that were made, to improve the Bill and to effectuate its purpose, not to change it. It was drafted by the Chief Parliamentary CounseL

Discussing clause 6 and criticism that it will cause some difficulty to New Zealand's allies, Palmer said that this was not correct. A ship will enjoy sovereign immunity in New Zealand's waters under the policy through clause 13 he said. No military person who comes to New Zealand on a ship that has been permitted to come here can be subject of any legal process in New Zealand. The claim that the Bill will prevent their coming was described as hogwash.

Garry Knapp stated that he intended to move amendments to clauses 9 and 10 at the appropriate time as they had not been amended by the Committee despite the large number of subrnissions calling for them to be strengthened. He referred to the Clayton's anti-nuclear stance of Japan as an example of what New Zealand had to avoid to have legislation with integrity.

National 'MP John Luxton questioned the 669 submissions that all had an identical request relating to clauses 9 and 10, suggesting that there had been collusion in getting this support for the Bill, and that much of the very high level of apparent support had been organised, and therefore did not fairly reflect the views of the community.

The other contributions to this debate added nothing new of any great consequence and are not included. Parliament divided on the question that the report do lie upon the table. There were 44 ayes and 26 noes. The motion was agreed to.

1.5 The Second Reading

According to McGee, this is the stage at which Parliament is asked to adopt, in principle, the bill before it, only changes in detail being normal subsequently. Amendments recommended by a Select Committee are deemed to be adopted and read into the bill when the bill is read a second time by Parliament. The second reading of

the Bill began on 12 February 1987, and was very extended, continuing until 10.30 pm that day and resurning on l7 February. Many of the arguments already heard were repeated, although by different speakers in some instances. Only new arguments, or significantly different interpretations of previous arguments, are presented here.

David Lange moved that the Bill be read a second time, and reiterated many of the points he made when introducing the Bill. He also said the Bill is an essential element in the arrangernents New Zealand is making for its own defence, to be announced shortly. Quoting the United States Secretary of State as saying emphatically that if countries accept visits from Arnerican vessels they will from time to time be nuclear armed, he claimed that the former Minister of Foreign Affairs, Warren Cooper, has said that nuclear vessels and weapons had come to New Zealand from time to time under the previous Administration. Referring to the Opposition pointing to Denmark as a non-nuclear country that does not have trouble with the United States, Lange reminded them that no nuclear powered vessel had visited that country since 1963 *(it was actually since 1964)* and invited the Leader of the Opposition to give an idea of the American perspective. It was not forthcoming. He again challenged the Leader of the Opposition to 'come to a point of principle' and either pledge there will be no nuclear weapons in New Zealand or say that the Opposition will observe the NCND rule which would be inviting nuclear weapons into New Zealand.

Lange argued for the importance of nuclear free zones saying they reduce the risk of nuclear war by putting limitations on the deployrnent of nuclear weapons. They act, he said, as a serious restraint on the projection of nuclear force, and this goes to the heart of what constitutes real arms limitation. They are not created to protect their inhabitants from the consequences of global nuclear war, but reduce the risk of nuclear war by putting limits on the deployment of nuclear weapons. The United States, he claimed, has refused to sign the protocols of the SPNFZ because it thinks the zone will encourage further limitations on its ability to project its nuclear affairs.

Here Lange is admitting that he considers the United States to be projecting its nuclear strategies into the South Pacific. He has just said that accepting US Navy vessels, and this would be under ANZUS, means nuclear weapons coming here from time to time at least. It is then very difficult to see how he could have seen ANZUS as anything but a nuelear alliance at this time.

Jim Bolger, now Leader of the Opposition, led the response. He clairned that the presentation of the Bill at this time was politically motivated and related to the timing of the forthcoming elections. Its objective was to woo the electorate with a policy it perceives to be popular. The Government, he said, will confuse the issue of nuclear arms and the visits of allies' ships, which are of concern to New Zealand. The Government's policy is hypocritical in claiming it will replace its lost support from the United States with support from Australia, knowing that Australian defence capacity is totally dependent upon the umbrella of the United States, and that Australia accepts United States arms on its soil. The Government's great rnoral policy is: 'If you can't see them, it is morally justified.' Bolger argued. It is all right if the weapons are in Australia because New Zealanders cannot protest there.

He criticised Lange for having indicated to the Americans in 1983 while in Washington that he was coming back to New Zealand to change the Labour Party's policy, and the then New Zealand Arnbassador in Washington, Wallace (Bill) Rowling, for telling the Government that its nuclear weapons policy was an anachronism.

Lange in his book pp. 32-34 discusses the basis for Bolger's criticism. This was a difference in position on nuclear powered but not nuclear armed ships between the Labour Party and Lange, which in 1983 had Lange proposing a change in policy to drop opposition to such visits if acceptable safety standards were met. Lange says that 'there then followed a hard-lesson in practical politics in which I scarcely opened my

mouth before the argument was lost.' He was newly appointed Leader of the Labour Party, replacing a well loved and respected Bill Rowling and, he says, 'My desire to alter the nuclear free policy was met with deep suspicion; I had not Prepared the ground. It was a misjudgment.' To avoid public dispute within the Party damaging Labour's election prospects, Lange said, 'I bowed to the inevitable and accepted that there were to be no qualifications on our nuclear-free policy.'

He also presents in his book, pp.34-36 and pp.103-5 background to Bolger's comment concerning Rowling. There was pressure from within the Labour Party for New Zealand to withdraw from ANZUS, a longstanding position in the non-Parliamentary Party, but this was seen as leading to 'electoral disaster' by Lange. Bill Rowling, Labour spokesperson on foreign affairs, proposed an alternative which was to review ANZUS and broaden its scope to include cooperation between its partners on economic, cultural and political issues, reducing the importance of the military side of the relationship. This was a proposal Rowling developed earlier in the 1980s based on the preamble to the ANZUS Treaty which stresses the responsibility of the parties to strengthen peace in the Pacific area.

The Party accepted this and Labour went into the 1984 election with a policy of making New Zealand nuclear free and renegotiating the 'terms of our association with Australia and the United States', but on the clear basis that this must encompass 'New Zealand's unconditional anti-nuclear stance' and an absolute guarantee of the complete integrity of New Zealand's sovereignty.' This change to ANZUS did not happen. Then in 1985 in relation to the Buchanan incident, Rowling, now the Washington Ambassador, was also taken aback by the way events had developed, saying to the Americans that when he left New Zealand a short time earlier he had thought that a ship visit 'was something that my Government could agree to ... '. The reply from Wellington to Washington concerning this situation was that this was not to be because of the force of public opinion sparked by some 'lamentable leaks and other manoeuvres', referring to leaks about the Buchanan, and reiterating that the no nuclear weapons on ships in New Zealand ports policy was non-negotiable.

Jim Anderton, then a Labour MP, in a general debate in Parliament on 19 November 1986 said that the Opposition was talking nonsense concerning what Ambassador Rowling had said in Washington by quoting him out of context. Rowling had been asked about New Zealand's views on nuclear power and the impact of the Chernobyl disaster. He replied that Chernobyl had obviously made New Zealanders and other people think again about reactor safety. This was the context the Opposition did not explain, Anderton pointed out. The transcript of Rowling's comments continues, Anderton said, 'Questioned separately on the issue of nuclear propulsion the ambassador confirmed that a prohibition - that is, on nuclear propelled vessels coming to New Zealand - was an integral part of the present policy, and the Present mood of New Zealanders was not one for change.' The ambassador expressed the personal view that, '... there was an anachronistic element in the present policy on propulsion. There was a vast difference between a propulsion unit and a nuclear weapon, and at some time in the future New Zealanders would have to come to grips with such differences.' (NZPD vol. 475 1986, pp.5444-5445)

Frank O'Flynn then took up the debate for the Government and pointed out that Bolger had been reported in newspapers on 30 May 1986 as having stated that a National Government would admit allies' warships without question and that those ships might be nuclear armed or nuclear powered, and would accept NCND. He stated further that when asked if the effect would be to admit nuclear armed or nuclear propelled ships Bolger replied 'with commendable gravity: "Could be, because we won't know".' O'Flynn rejected National's repeated claim that New Zealand had always been nuclear free.

He referred to the origins of the policy which he described as lying in the long-continued testing of nuclear weapons by France at Mururoa, and subsequent responses and actions by New Zealand, both public and Government. Recently aversion to all matters nuclear has been increased by the Rainbow Warrior bombing and the Chernobyl disaster, he said. The case of Denmark again figured in his presentation, as it had in Bolger's. This is discussed subsequently in detail, as Denmark has been cited by proponents and opponents of the Act in support of their positions.

Citing Government advisers, most strategists and Paul Dibb in Australia, O'Flynn argued that there was no immediate threat to New Zealand, and that while Dibb claimed ANZUS was a deterrent to high level threats from a capable external power, taken to mean Russia, this was a nuclear deterrent. So the only defence New Zealand had lost through the nuclear free policy was a nuclear defence, and New Zealand had neither asked for, nor wanted a nuclear defence. Deterrence he saw as having become 'simply the synonym for escalation' with each superpower looking to negotiate from a position of strength and increasing its nuclear arsenals. However, he again stated that the Government did not claim to be leading the world, I 'had merely 'made a decision for New Zealand in New Zealand's strategic circumstances.', *the not for export position of the Labour Government strongly opposed by the anti-nuclear movement.*

Robert Muldoon, Prirne Minister from 1976 to 1984, followed referring to the ANZUS Pact Destruction Bill in contrast to claims by Lange that New Zealand could have'no ship visits and stay in ANZUS.` He stated that while he was still Prime Minister American Secretary 'of State George Shultz had told him at the ANZUS Council meeting in 1984, 'No ship visits no ANZUS ; and repeated this publicly in 1985 after the Buchanan incident. Lange was endeavouring to mislead the people Muldoon said.

He also said that the Labour Government had misled the people about New Zealand's relationship with Australia where the Labor Party was opposed to ship visits before their 1983 election, but now accepted that this is a maritime region and the United States maritime deployment is critically important. The Australian Minister of Foreign Affairs, Bill Hayden, said of the Australian Labor Party,

> ... We do not think that we can ask them to have two navies - a conventional one for xhis part of the world to visit us, and another navy largely nuclear powered and nuclear capable for the rest of the world. Accordingly, we do not ask questions about their vessels which come to Australia. We accept that, recognising that it is quite overtly apparent that they will be nuclear powered, and quite implicit that most of them are going to have some sort of nuclear capability. Now your Government will not accept that, and therefore there is a difference.

He praised Hayden and the Australian Prime Minister, Bob Hawke, for standing up to the left wing of the Party, in contrast to the New Zealand Labour Government.

Muldoon quoted Hayden as saying while in New Zealand in 1986 that Australia could not have two defence forces, one for the ANZUS relation with the United States and another for some kind of trans-Tasman relationship with New Zealand, as Lange and O'Flynn were claiming. *It should be noted that New Zealand does now have the Closer Defence Relationship agreement,CDR, with Australia, despite the continuing ANZUS rift.*

He also claimed that there would be damage to New Zealand trade as a result of the nuclear policy because of the difficulty it was causing governments in other countries with strong anti-nuclear groups that wanted their countries to follow New Zealand's example. Japan and Germany were cited as possibly becoming antagonistic towards New Zealand. *Loss of trade, even with the United States, did not eventuate.*

Helen Clark contrasted the Opposition's apparent willingness to accept nuclear weapons on US Navy ships with Labour's interpretation of ANZUS as allowing conventional ships and conventional defence within ANZUS, this not being invalidated 'simply because the United States does not share the same view.' She reviewed the strong support for Labour's policy shown in the submissions received by the Select Committee. New Zealanders, she said, have a very grave concern about nuclear war, 48% saying that it was a present worry, and 86% agreeing that New Zealand should actively promote world-wide nuclear disarmament. This, she claimed, New Zealand - a small State isolated in the South Pacific - could best do by starting at home which,

> is what the Bill does. By declaring our country a nuclear-free zone we give ourselves much more credibility in urging those countries that have nuclear weapons to do something about seriously negotiating their elimination. That remains the key motivation behind the Bill.

Clause 5 she saw as very important 'because it emphasises the Government's determination not to haveNew Zealanders engage with nuclear defence strategies'. The subsequent operation of this clause is examined in the next chapter. She also defended the retention of the mechanism in clauses 9 and 10 allowing the Prime Minister to decide that visiting warships and aircraft are not nuclear armed as satisfactory to prevent nuclear weapons from entering New Zealand which, she said, is 'the central objective of the Bill', and defended the nuclear powered ship ban on safety grounds.

Carry Knapp spoke next for the Democratic Party, reaffirming their support for the Bill. He said that nothing in the Bill deals with ANZUS or seeks to break any arrangement New Zealand has with the United States. He blamed hawks in the Pentagon for the American decision to break links with New Zealand and said that many Americans in high places did not agree with this decision of their Administration. At least this action did release New Zealand from 'the somewhat tainted morality of the actions of the Pentagon in recent years' he said, referring to Bolger's comments on the morality of Labour. He also suggested that it was up to the Australians to deal with 'any form of immorality in their position on continued links with the Americans, and called on them to re-examine their policies. He looked to continuing contact between New Zealand and Australia.

He was proud, he said, that the New Zealand Democratic Party has had its longstanding view reflected in the legislation. Rather than abrogating international responsibilities, he saw the action the House and the Government was taking as one that could be termed 'parliamentary action, because two parties are moving in the same direction. That gives a parliamentary mandate', reflecting the kind of moral leadership the world needs. He was proud to part of the enactment of such historic legislation through a rare event - a true Parliamentary decision, he said.

He accused the National Opposition of playing on the fears of New Zealanders in their claims concerning the isolation of New Zealand's armed forces from both the United States and Australia. The situation was, he stated, that it was the previous National governments that had let the armed forces run down to a 'shockingly parlous state' through too much reliance on ANZUS,

> the idea that America will defend us, will provide the equipment, the nuclear umbrella, and the collective security needs of New Zealand should they be needed. It has been claimed that that approach has worked in the past.

The truth was, he said, that history shows that our forces have not been well prepared in the past.

It is time to put aside the issues of ANZUS, and make a commitment to armed forces that will meet the real security needs in the South Pacific was his view. 'The threat

today is whether the human race can feed the starving and come to terms with issues of that kind.' He spoke of a shrinking world in which trade and understanding one's fellows is the future.

He again criticised the clause 9 and 10 mechanism and indicated that he would be proposing amendments to them to strengthen this mechanism.

Other speakers from the two main parties followed, with those from Labour reiterating many of the arguments already presented and thanking the Democratic Party for its support. Richard Northey made it clear that clause 5(2)(b) would not prevent the Opposition from advocating an involvement by New Zealand with nuclear weapons as a National speaker had suggested, the provisions in that clause being typical of those in industrial relations or immigration legislation and these not being interpreted to mean that a person may not advocate a change to the law. He also pointed out that the Bill divests New Zealand of a relationship with nuclear waste as well as nuclear weapons, a point not much stressed. Anne Fraser argued that nuclear weapons do not stop wars. She spoke of the hopelessness of young people all over the world because of the nuclear threat, and the hope that New Zealand's stand had given. The Soviet threat was exaggerated she said. There had been claims since 1850 that the Russians were coming and they had not come yet. She made reference to the study of the effects of a nuclear winter on New Zealand that the Government had commissioned.

National speakers stressed the 40 years of peace nuclear deterrence had given the world and the damage the government's policy and Bill were doing to the stability needed to maintain that situation, all over relatively infrequent visits by allies' ships. They stressed the strength of Soviet forces in the Pacific. The claim was repeated that it was National that declared New Zealand a nuclear-free nation in 1960,

> ... New Zealand will remain nuclear-free, and the National Party will continue to work for nuclear disarmament and peace. That has been the National Party's policy, and it will continue to be.

Reference was presumably being made here to pronouncements, from 1957 on by the former Prime Minister Keith Holyoake.

Opposition to the Bill from The Returned Services Association was cited. It was claimed that nuclear propulsion would be a very important element in the future security of the Pacific, and the Bill isolated New Zealand from this reality which will apply to conventional struggles when nuclear weapons are gone.

Parliament then adjourned at 10.30 pm on 12 February, and resumed the debate on l7 February. The previous arguments were all traversed and amplified by various speakers. This whole debate was very extended and interested readers are again urged to consult the records for detail omitted here, and for important points quite possibly overlooked.

Of interest in this second portion of the debate were points made by Jim Anderton for the Government, and National MP Simon Upton . Anderton drew attention to the point that through the legislation, formal endorsement is given to the United Nations disarmament findings of 1979 which stated,

> Enduring international peace and security could not be built on the accumulation of weaponry by military alliances, nor be sustained by a precarious balance of doctrines of strategic superiority.

Therefore, he said,

> it is not enough for New Zealand to condemn nuclear weapons; the structure, organisation, and ideas that underpin them must be attacked as well.

He advocated a defence policy that was part of a foreign policy that uses aid, fair immigration policies, and trade to promote economic and social justice in the South Pacific and give stability in the region. The Bill is a positive step towards this he asserted. He also said that 'the torch to rally the world against nuclear weapons must now be carried by the small nations of the world' effectively contradicting the not for export' position on the Bill of some other speakers. ,

Upton commented that it was unusual for the House to have the opportunity to debate what was effectively a foreign affairs issue since the Bill raises serious questions about New Zealand's future in the world, its foreign relations and its defence policy. He countered suggestions from Labour that the future would see a new American Administration with a policy more favourable to the government's position. He also claimed that New Zealand's policy was much more extreme than those of the peace movements in Europe or Britain which did not look to sever links with NATO. He congratulated Anderton on his candour in admitting that the policy was for export, and pointed out that,

> If Government members were truly against nuclear weapons they would say that being in an alliance with a country that possess them taints the alliance. I should have thought that was honest. Even being allied to Australia, which is allied to America, would be too much. That would be the honest policy - if the Government held to that its case would have much more credibility.

And strong supporters of the Bill should be advocating leaving ANZUS formally. He criticised the mechanism of trusting the Prime Minister to decide the nuclear armed status of ships and aircraft as nothing more than a 'trust rne' policy, and said that to be truly honest and logical the Government should outlaw all nuclear capable ships.

These points made by Anderton and Upton were cogent points in relation to a Bill that was very strong, stronger than many of its movers apparently desired in its impact on ANZUS, but that in some respects was being interpreted by its presenters in a way that skirted some important aspects of the issues it was supposed to address, the problem of nuclear weapons in the world and New Zealand's involvement with them. As a consequence of the position New Zealand had adopted it had a moral obligation to reject all involvement with nuclear weapons, even the most minimal, and to work for global nuclear disarmament to the fullest by encouraging other countries to follow its example and declare themselves nuclear free. Nevertheless, and despite all criticism, New Zealand was the only country to adopt such a policy as legislation and enforce it, and remains the only country to do so. Further, there is some merit in the argument that it was important enough for Labour to win the 1984 election and thereby be able to establish the anti-nuclear policy, that some compromise on ANZUS membership be accepted to avoid possibly alienating a considerable proportion of the electorate still favouring retention of the alliance. Lange discusses this period and this need for compromise in chapter two, pp.33-36 of his book. The Labaur Party as distinct from its Parliamentary leadership strongly favoured withdrawal from ANZUS, as it had done for some time.

Parliament then voted on the rnotion which was passed with 46 ayes and 31 noes, a majority of fifteen. The Bill was then read a second time.

1.6 Consideration by a Committee of the Whole House

McGee tells us that at this stage the whole Parliament goes into cornmittee to give a bill's provisions detailed consideration, to examine it clause by clause and decide whether its detailed provisions properly incorporate the principle of the bill agreed to on

second reading. This is the 'In Committee' stage that was held on 4 May 1987 for the Bill. At this stage members also vote on further amendments to the bill. These are generally first circulated to members in what are called Supplementary Order Papers, but additional amendments can be proposed by members of Parliament during the proceedings. Two Supplementary Order Papers were circulated for the Bill, No.83 dated 17 February 1987 containing amendments to clauses 9 and 10 proposed by Gary Knapp aimed at strengthening these, and No.106 dated 7 May 1987 containing amendments proposed by Lange. Most amendments on Supplementary Order Papers come from the Minister in charge of a bill, David Lange in this case. Amendments proposed by the Select Committee were discussed earlier.

The Bill was then considered clause by clause. Clause 1, Short Title, was voted on and agreed to by 40 votes to 22, and clauses 2 to 4 were agreed to. An amendment to clause 5 was moved by Kidd which was to delete subclause (2) prohibiting servants of the Crown being involved with nuclear weapons outside the New Zealand nuclear free zone. This was lost 39 to 21, and the clause as amended in Supplementary Order Paper 106 was agreed to. This amendment deleted the words 'incite' and 'counsel' from subclauses 5(1)(b) and 5(2)(b), so they read, no person shall ... aid, abet, or procure any person to manufacture, acquire, possess, or have control over any nuclear explosive device.

While no explanation of the amendment is given in the Supplementary Order Paper, it is clear that to have not removed the words 'incite' and 'counsel' from 5(1)(b) and S(2)(b) would have inhibited the freedom of those who believe that involvement with nuclear weapons would be good for New Zealand to advocate a change to the law. By contrast, to 'aid', 'abet', or 'procure' ... imply direct actions on the part of the individual concerned to involve New Zealand with nuclear weapons through some other party.'

Doug Kidd moved a further amendment, this time to clause 6, to have the words 'or internal waters' deleted.

Clause 6 prohibits the stationing of nuclear weapons in the areas specified, and it is vital to this clause that the words 'or internal waters' be included. These waters are defined in the Territorial Sea and Exclusive Economic Zone Act of 1977, see Appendix 2, and include our harbours. To have removed these areas from clause 6 would have destroyed the purpose of the clause.

The amendment was voted on and lost 39 to 22, the clause was then agreed to, as were clauses 7 and 8.

The controversial clause 9 dealing with visits by foreign warships that might be nuclear armed was the subject of an amendment by Jim Bolger which was to add the following subclause:

> (3) Any such approval may relate to a category or class of foreign military warship and may be given for such period as specified in the approval.

Inclusion of this subclause would have restricted the power of the Prime Minister to decide the acceptability of visiting warships on an individual basis, a power fundamental to the operation of the Bill. It was quite possible at this time that while many American warships were undoubtedly nuclear armed, some of a certain category or class might be so armed while others were not, although a decision on which were and which were not nuclear armed would have been di,fficult. This amendment would have produced a situation reminiscent of the procedure operated by New Zealand governments from 1970 to 1984 whereby a blanket clearance was given annually for all visits requested by the United States for conventionally powered warships.

The amendment was lost by 40 votes to 22, as was the ammendment by Knapp in Supplementary Order Paper 83 requiring the Prime Minister to have verification that a visiting warship was free of nuclear weapons, and to produce this if required by any member of the Foreign Affairs Select Committee. The clause was then agreed to by 40 votes for to 22 against.

Clause 10 was agreed to by 39 votes to 22 with an amendment in Supplementary Order Paper 106 included. This covered landing in New Zealand by aircraft associated with Operation Deep Freeze in Antarctica. Knapp's amendment, identical to that proposed for clause 9, was lost. Clause 1 l was agreed to by 39 votes to 22, and clauses 12 to 16 were then agreed to unchallenged. All other clauses were agreed to with some amendments set out in Supplementary Order Paper 106 relating to the Public Advisory Committee on Disarmament and Arms Control, and to the clauses covering the durnping of radioactive waste. These latter are fairly lengthy and will not be considered here. They are now incorporated in the Act, and can be examined there and in Order Paper 106 to see the thrust of the amendments.

The Bill was then reported with amendrnents. It is clear that National was attempting to weaken the Bill at this stage through the amendments proposed by Kidd and Bolger, although with little hope considering Labour's majority of 17 in Parliament at the time. There is no record in NZPD, Hansard, of any debate during this stage. This is attributed by B Bowden in her booklet Parliament and the People,1984, to earlier practice when the Speaker, who was appointed by the King, was expected to report to the monarch what was said in Parliament. Parliament wishing to have a time when they could discuss a bill frankly, developed the Committee stage which is under the control of the Chairman of Committees. McGee p. 265 confirms that these debates are not reported in Hansard.

1.7 The Third Reading, and Royal Assent

Lange moved that the Bill be read a third time on 4 June 1987, saying that the purpose of this reading was to review the Committee stage. McGee states that during the third reading debate, members must confine themselves to the general principles of a bill as it has emerged from the Committee of the whole House. It is also used as an occasion to record arguments advanced during the unreported Committee stage. This debate is in the nature of a summing up, McGee says.

Debate was again vigorous, and the Speaker had to remind members several times to not broaden the debate beyond summing up the debate in the Committee stage. The arguments advanced covered ground already summarised. Readers are again referred to NZPD for details. Labour was criticised for its position on American military flights through Christchurch in connection with the Operation Deep Freeze base, and clause 10 in the Bi1l. Helen Clark reiterated Labour's position that New Zealand makes its own judgement as to whether or not warships or military aircraft are carrying nuclear weapons, and said that,

> When vessels or aircraft have a weapons system that can deliver a nuclear weapon the assumption must be rnade by New Zealand that nuclear weapons will be on board that vessel or craft. That was the test applied in the case of the Buchanan.

Lange stressed the importance of enshrining the nuclear policy in legislation thereby making it necessary for any future government wanting to reverse the nuclear policy to face both an election, and face subjecting its legislative process for repeal to the scrutiny of an informed Parliament and the public. O'Flynn, nevertheless, expressed concern that passage of the Bill would not render the policy totally beyond reversal, showing his concern regarding National's position at that time.

The motion that the Bill be read a third time was passed 39 to 29. It then went to the Governor-General for Royal Assent, and became law on 8 June 1987. McGee should be consulted for details of the procedure in this final stage.

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4. Bercovitch J. Ed. ANZUS in Crisis Alliance Managernent in International Affairs. MacMillan Press, London, 1988

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CHAPTER TWO

REACTIONS AND INTERPRETATIONS

2.1 Introduction

Interpretation and implementation of the legislation began immediately it was in place. In particular, the question of exceptions to various sections had been worked through by foreign affairs officials, and on 4 June 1987 Mervyn Norrish, Secretary of Foreign Affairs at that time, sent a 6 page memo to Lange detailing the cases for exceptions to the ban on nuclear armed vessels or aircraft. A copy of this memo follows p.41, at the end of this chapter. It recommended exceptions for military aircraft from Australia and Canada, both countries having undertaken binding legal obligations in international law prohibiting their armed forces from acquiring or possessing nuclear weapons. Special arrangements were recommended for Australian warships.

Finally, quite lengthy and interesting arguments were given for establishing exceptions for two classes of non-combat United States military aircraft under section 10(3), which relates to special approval for certain categories or classes of aircraft:

(a) Those supporting the US Antarctic programme, Operation Deep Freeze.

(b) Those off loading high priority cargo for American installations in New Zealand (the US Embassy and/or the Black Birch observatory) or dignitaries visiting New Zealand with the prior knowledge of the New Zealand Government.

To justify these exceptions it was argued that these aircraft are 'non-combat', not designed for combat, and for category (a) operations that Antarctica is a demilitarised zone so transportation there of nuclear weapons is prohibited.

A significant proportion of the US non-combat military flights through New Zealand, the 'channel flights' discussed in Norrish's' memo p.4 going to and from Australia via Christchurch, fall in category (b). They appear to have a primary purpose other than those stated in (b), a purpose that objectors to US military aircraft visiting New Zealand claim is, or has in the past at least been, associated with American nuclear strategies even though the aircraft may not have been transporting nuclear weapons . The suspicion is that they carry intelligence or other information to American bases in Australia, material possibly involved in United States nuclear weapons related programmes. This it has been claimed is against the spirit, and even the letter, of the Act.

Norrish's argument was that Australia prohibits the stationing of, or transportation of, nuclear weapons on its territory, so these channel flights would not be carrying nuclear weapons. Further, very high level security arrangements are always maintained by the United States for American aircraft carrying nuclear weapons, and these are not observed when channel flights land at Christchurch. These arrangements are detailed in a 1981 United States Air Force document obtained by Dr Peter Wills under the US Freedom of Information Act, and their absence at Christchurch supports Norrish's claim. Other arguments put forward by Norrish can be seen in the document.

Lange signed documents certifying for twelve months from 8 June 1987, the date the Act became law, approval for landing by Australian and Canadian military aircraft, and for the two categories of United States non-combat military aircraft. He certified that he was satisfied that none of these aircraft would be carrying 'any nuclear explosive device when landing in New Zealand'. Copies of these documents are also included. These approvals have been renewed annually since 1987. Information supplied by the Ministry of Foreign

Affairs and Trade, referred to as the 'ministry' below, on 19 December 1997 states that until 30 May 1996, annual approvals covering the period 1 June of one year to 30 May of the following year were submitted and approved by the Prime Minister of the day. At some point the beginning of each period was changed from 8 June to 1 June. A move was made to calendar years in 1996 and the approval given on 1 June 1996 ran to 31 December 1997. On 10 December 1997 and pursuant to section 10(3) of the Act, having considered all the relevant information and advice available to her including information and advice concerning the strategic and security interests of New Zealand, the newly appointed Prime Minister, Jenny Shipley, signed approvals for the period 1 January 1998 to 31 December 1998 for the following categories of military aircraft:

a) Military logistics transport aircraft of the Government of the United States of Arnerica being used:
- i to provide logistic support for the United States Antarctic Program;
- ii for the transportation of dignitaries visiting New Zealand with the prior consent of the New Zealand Government or for the transportation of high priority cargo for United States Government installations in New Zealand;
- iii for or in support of aeromedical evacuation flights to or from New Zealand;
- iv for or in support of search and rescue flights to or from New Zealand;
- v to provide logistic support to the United States Government National Aeronautics and Space Administration research projects being carried out in or from New Zealand with the New Zealand Government's approval;

b) Military logistics transport aircraft of the Government of the United States of America's New York Air National Guard and USN VXE6 squadron visiting New Zealand for the purposes of maintenance;
c) Military aircraft of the Government of Australia;
d) Military aircraft of the Government of Canada.

The Prime Minister also certified in accordance with section 10 that she was satisfied that none of the above aircraft will be carrying any nuclear explosive device when it lands in New Zealand. Notifications of the flights will have to be provided by the countries concerned. An opportunity to inspect the originals of these approvals was offered.

This detail has been included as it is the most current form of the original 1987 approvals, and includes some extensions of those original approvals.

2.2 ANZUS, Neither Confirm Nor Deny, and Sections 9 and 11 of the Act

The strong reactions to the anti-nuclear policy and the legislation from the United States, and to a lesser extent the United Kingdom, referred to briefly in the Introduction, were accompanied by extensive criticism in public by those countries of New Zealand's position. Again the United States was the major source. These public criticisms from the Americans focussed exclusively on the nuclear armed and powered ship visit bans in sections 9 and 11 of the Act. They have been documented and discussed by other authors, see refs.7-13 of the Introduction, and elsewhere [(1)], and will not be quoted extensively here. The concentrated focus on just these two sections of a wide ranging piece of legislatlon is of considerable interest, however, and will be examined some detail. Other sections of the Act rnay have been the subject of confidential discussion, evidence of this has not been seen. There had been what amounted to warnings of strong reactions to restrictions on US Navy visits from the late 1970s as Labour's opposition to nuclear powered or armed warship visits hardened. Evidence of this was seen in ministry files from 1979 on, for example.

The United States had another problem with the anti-nuclear policy. Their reactions to it were being watched closely by other countries that also had policies banning nuclear weapons from their ports, but that accepted US Navy visits under an understanding that the United States would honourtheir policies so no challenge concerning the nuclear

armed status of these vessels was necessary. Concerns over the consequences should some of these other countries follow the New Zealand example were expressed by several speakers at what was described as the first ever meeting on ANZUS of'the Subcommittee on Asian and Pacific Affairs of the Committee on Foreign Affairs, House of Representatives, Ninety-ninth Congress, 18 March 1985 [2]. The two speakers Professors W Tow and H Albinski quoted in chapter l also discuss these concerns quite extensively, see ref.4 chapter one. And these concerns continued over the last decade as US Ambassador Beeman confirmed in an article in The New Zealand Listener, June 17 1995. Even so there were suspicions in these non-nuclear countries that the US Navy might at times bring nuclear weapons into their ports. Japan, Denmark and Norway in paracular were very interested in the developing US-NZ situation.

United States concern over this problem and the subterfuge surrounding the workings of the NCND policy, are clearly shown in a press release issued by the US Information Service at the US Embassy, Wellington, 2 July 1986. It dealt with a meeting between US Seeretary of State George Shultz and David Lange in Manila concerning ANZUS and New Zealand's anti-nuclear policy, and reflected issues raised by journalists subsequently. One issue was the apparently different treatment New Zealand was receiving compared to Denmark and some other countries with no nuclear weapons policies, a matter raised by David Lange. The answer given in the press release is,

> Prime Minister Lange is incorrect. As the New Zealand Government has been informed on numerous occasions and we have said publicly, no other government makes judgement as the Government of New Zealand is proposing to do regarding a ship's possible nuclear armament. The Government of New Zealand's approach is unacceptable as it would undermine our NCND policy and would weaken global deterrence. By requiring your Prime Minister to satisfy himself a ship has no nuclear explosive devices before admitting it, legislation as now drafted would lead us, for the first time in the history of our alliances, to an unacceptable dilemma: either we would conform to the law and -render NCND useless; or we (or your Prime Minister) must deliberately flaunt the laws of New Zealand. Our allies, many of whom share your nuclear phobia to one degree or another, plus many neutral nations, have refrained from putting us in such a position because they universally recognise that it would render effective alliance cooperation impossible or degrade our deterrent posture.

The reason for the great sensitivity shown by the United States to this interest from other countries in its response to New Zealand's actions has been analysed extensively [1,3,4,5].The conclusion drawn is that the NCND policy was used by the United States, especially the US Navy, and by other nuclear powers to take nuclear weapons covertly and freely wherever they wished regardless of the policies of the other countries involved, often their military allies. The problem with the New Zealand policy was that it severely restricted this freedom, since it requires the New Zealand Government to decide for itself the nuclear armed status of vessels requesting permission to visit. Should the United States accept such intrusive action from one country, other countries might consider similar policies. The only other course, as the press release implied, would have been for the US Navy deliberately to make false declarations, or provide misleading information, concerning the nuclear armed status of its vessels to convince New Zealand that they were free of nuclear weapons and could be admitted. These assertions are considered again in a later working paper.

New Zealand's policy also represented a withdrawal of support by an ally for United States Pacific and global nuclear deterrence strategies. The American foreign policy establishment did not in the view of Professor Tow, well known political commentator, see New Zealand's ship bans as a principled stand. Rather, he says in a 1989 paper,

> Washington ... regards the ANZUS imbroglio as an unwarranted disruption of its Asian-Pacific strategy at the very time when the Reagan administration had set out to rebuild the United States' global military power.' (6)

This was in itself unacceptable to the United States, but worse, it could have led to a withdrawal of support by other important allies opting to share New Zealand's 'nuclear phobia'.

According to well known peace researcher N Hager, reactions in Australia were stronger than in Japan, Denmark and Norway. An Australian Labor Government promising to ban nuclear ship visits had been elected in 1983 with Bob Hawke as Prime Minister, a year before Lange's Government came to power. Unlike the New Zealand Labour Government, it had backed down on this policy soon after taking office. It is therefore not surprising that Hawke's government was embarrassed by the New Zealand stand. Public activism against nuclear armed and powered ship visits, including New Zealand style on-water protests, grew rapidly in Australia after the New Zealand policy came into force, accompanied by strong criticism of Hawke's government for having reneged on its pre-election policy.

For some years after New Zealand's policy came into force, political sources in Wellington reported that Hawke's Government kept pressure on the United States to take a hard line against New Zealand, Hager says. Australia did not want New Zealand to appear to be getting away with a policy it had not been prepared to stand by itself. Lange on page 83 of his book recounts how in January 1985 he received a letter from Hawke marked "Top Secret and sealed with wax on all four sides' saying Australia was committed to ANZUS and he believed that the treaty obliged it to accept visits from American naval vessels. He said that there would be strains in the ANZUS relationship if New Zealand insisted on special treatment. Lange quotes Hawke as saying,

> We cannot accept as a permanent arrangement that the ANZUS alliance has a different meaning and entails different obligations for different members.

Lange saw this as saying,

> New Zealand was not to disturb the delicate balance of Australian public opinion by failing to take up our share of the burden of deterrence.

Lange returns to this letter on page 86 saying that as it was commonplace in Australia for sensitive government documents to end up in the newspapers, 'there soon appeared in the press the letter I had received, all bound up with sealing wax, from Prime Minister Hawke.' This, he says, 'didn't help', referring to negotiations going on at that time over a possible visit by an American warship, see the first working paper in this series for details.

Hawke in a news release dated 25 January 1985 responded to what he describes as false, misleading and damaging reports about the letter. He said that he would not depart from the practices and principles of his government by releasing copies of private communications with foreign governments. The facts he said are, however,

> that on 10 January, after consultation with my colleagues the Ministers for Foreign Affairs and Defence, I wrote to Mr Lange to inform him that I would be visiting the United States in early February for talks with President Reagan and senior members of his Administration. I said that I expected the Americans to want to discuss in some depth the state of and prospects for the ANZUS alliance. At the same time I indicated that it was important, from Australia's point of view, that I should explore at first hand United States thinking on this key matter.

> I informed Mr Lange that, in developing views for my talks in Washington I would value his thoughts on ANZUS and, in particular, on the longer term management of the question of ship visits. I stressed that I had no wish or intention to act in any way as an emissary. But I knew that the New Zealand and United States Governments had had a number of bilateral exchanges on the subject, and that it would be helpful to have his judgement on where the matter now stood and the prospects of an agreed outcome.
>
> I noted that Australia, as I knew Mr Lange would understand, had important and direct interests at stake, notably the future of the ANZUS alliance and of two of Australia's most important bilateral relationships. He would recall that, when the ALP Government came to power in 1983, we made it an early objective to initiate a review of ANZUS, in association with our Treaty partners. We had firmly concluded from that review that ANZUS continued to serve fundamental Australian security interests.
>
> I went on to say that, in the light of this unequivocal conclusion, the Australian Government would need to continue to make it clear that, whatever New Zealand's position or policies might be, Australia, as a sovereign nation which must protect its fundamental security interests, had its own well-known and clearly expressed position on visits by United States warships and the importance of maintaining the neither confirm nor deny principle. We could not accept as a permanent arrangement that the ANZUS alliance had a different meaning, and entailed different obligations for different mernbers.
>
> I said that Australia would be avoiding any public statements which cast doubt on whether the U.S. was applying its policy of neither confirming nor denying that warships were carrying nuclear weapons in particular cases and, as New Zealand's alliance partner, saw it as important that the New Zealand Government should do the same.
>
> I indicated that I was leaving Australia on 2 February for meetings on 6 and 7 February, and I understood that in late January he and his colleagues would be taking important decisions on the question of ship visits. If time constraints permitted, I would greatly welcome any views he might wish to let me have before I left. Similarly, I wanted Mr Lange to have an indication of the very broad lines of my thinking before my meetings in Washington. ...
>
> As the facts I have outlined above indicate, the letter in no way departs from established Australian policy on these matters. (Australian Foreign Affairs Record vol.56 1985, pp.51-52)

Regardless of this, Wellington based Hager recounts that during this period he was repeatedly told by government members and officials of behind the scenes pressure from Australia on the issue. For example, Australia was said to have insisted that the United States refuse high level political contact with New Zealand, and to have disagreed with the partial resumption of these contacts which occurred in March 1990. The Australian Government is s aid to have insisted on this to maintain its public credibility in Australia, and as United States 'payback' for its 1983 reversal of its nuclear free election pledge (private communication 26 September 1995).

Pressure was by no means only one way as an incident in December 1983 shows. This is described in an article entitled 'The Hayden Papers' by well known author and journalist Brian Toohey [(7)] prepared from documents from the term of former Australian Foreign Minister Bill Hayden that had become available. The incident centres around a visit to Sydney in December 1983 by the British aircraft carrier HMS Invincible.

The ship was capable of carrying nuclear weapons, and a request was made for dry dock facilities to be made available for it. Toohey reports as follows. Defence Minister Gordon Scholes 'had the temerity to suggest' that the ship would not be allowed into dry dock with nuclear weapons on board as this constituted taking nuclear weapons onto Australian soil, against Australian policy. This produced a very strong reaction from the United States. 'Reagan's Secretary of State, George Shultz, hit the roof.' Shultz's staff drafted a statement that was sent to Hayden by the US Embassy in Canberra on 15 December to form the basis of a press release which the Embassy presumed would be issued in Hayden's name.

The statement did not just suggest points it would like to see covered, but actually spelt out word for word what the Australian Government should say. It began,

> The Australian Labor Party and this Government [this was Shultz speaking on behalf of the Australian Government not of the US Government] have gone on record as supporting the routine visits of naval ships of our ANZUS allies, particularly the British.
>
> Visitation by allied vessels is perfectly consistent with our obligations as a sovereign nation that has voluntarily entered into mutual security agreements to protect fundamental interests. The provision of necessary repair facilities is an implicit obligation under these arrangements.

It included the statement,

> As a matter of record we wish to state that this [Australian] Government does not require assurances that allied governments reveal whether their ships carry nuclear weapons. Both the US and British Governments have a policy of neither confirming or denying the presence of nuclear weapons. We understand and respect the reasons for this policy.

The last statement in this paragraph banished a challenge to NCND that Hayden in Opposition had 'been impertinent enough to make' Toohey says.

After some manoeuvring by Hawke in an attempt to make the situation look less like capitulation to the Americans, Scholes finally had to announce on 26 February 1984 that ships could come into Australian dry docks without any questions being asked about nuclear weapons. The most humiliating aspect of the Scholes statement Toohey says was the way in which it repeated many of the exact words wanted by Shultz (ref.7 p.8). Scholes was removed as Defence Minister shortly afterwards.

Two factors need to be considered when attempting to determine the basic cause for these strong reactions by the United States and the British to sections 9 and 11 of the Act. The first concerns alliance obligations. The United States argued strongly and repeatedly that by restricting ship visits New Zealand abrogated some of its ANZUS responsibilities and could not remain a full member of the Alliance. As was argued briefly in chapter 1 and is argued in detail in a later working paper, this reflected, and continues to reflect, the American view of ANZUS as part of their overall conventional plus nuclear deterrence structure, and of New Zealand as opting out of this. There were no similar statements from the British, regarding the Five Power Defence Arrangements for example, and as will be discussed New Zealand's contribution to these continued unchanged.

The second concerns the neither confirm nor deny policy. The United States and the British would not accept another country making decisions about the nuclear armed status of any of their naval vessels, even though the New Zealand Labour Government said it would not ask navy captains to make statements about nuclear weapons on their vessels, and would not make refusals of ship visit requests public [(1)].

The claim made here, which Hager supports, is that the real factor underlying the strong United States and British reactions to the anti-nuclear policy, and particularly to the introduction of much more enduring legislation, was not directly any abrogation of alliance responsibilities. It was the unique mechanism developed covering visits by potentially nuclear armed vessels. Unlike the policies of almost all other countries with nuclear armed ship bans, this mechanism does challenge NCND since acceptance of a visit labels the visiting vessels as free of nuclear weapons, at least in the judgement of the New Zealand Government. There was no mechanism the Labour Government could have found to satisfy its nuclear allies except a 'trust them' policy like those of Denmark, Norway and Japan. But this form of compromise would have been widely condemned in New Zealand, and not accepted.

It is further argued that United States claims and actions against New Zealand in relation to ANZUS were made and taken to put pressure on New Zealand to modify or repeal the Act because of its impact on NCND. They did not reflect any serious concerns on the part of the United States over alliance security arrangernents apart from a restriction on the free movement of nuclear weapons, a vital element of United States nuclear deterrence strategy. Material supporting these contentions is presented in a subsequent working paper.

The unequivocal ban on nuclear powered vessels was also, and still is, an irritant to the United States since some, although not many, of its nuclear capable vessels that visited before July 1984 were nuclear powered. The seriousness of this ban for the US Navy is considered in a subsequent working paper in the series, as are arguments for the ban and its continuation.

These claims if correct provide a basis for understanding the continued concentration by the United States in its criticisms on the ship visit aspects of the anti-nuclear policy and the Act, almost to the exclusion of all other aspects. The ship visit bans were what the United States and the British wanted removed to allow NCND to continue to operate freely without any challenge that might reveal its real use. If New Zealand had opted for a Danish style policy there might well have been no ANZUS rift. Nuclear weapons capable vessels would very likely have continued visiting New Zealand in spite of the ban on nuclear powered vessels, as they did Denmark which has not seen a nuclear powered vessel since 1964 but has had regular visits by other US Navy ships. And New Zealand might have remained in ANZUS as Denmark has in NATO. The Danish-New Zealand comparison is considered further in a subsequent working paper.

Under the existing legislation, the government could, in principle, be challenged in court if it was suspected to have contravened sections 9 or l 1 of the Act. This situation has not arisen.

2.3 Sections 5 and 6 of the Act

Section 5 contains important restrictions on New Zealand citizens and military personnel and their involvement with nuclear weapons, while section 6 imposes severe restrictions on the presence of nuclear weapons within New Zealand's nuclear free zone. Yet not a lot of comment is seen about these section. Why is this?

Section 5 was criticised by National MPs during the passage of the Bill debates. Doug Kidd, for example, said that under section 5(2)(b) it seemed to him that New Zealand would not be able to send members of its armed forces on transfer and exchange with the Royal Navy or United States forces, if they were invited. For example, he said,

> Year after year our army personnel are attached to the British Army of the Rhine. That army will not change its order of battle or the structure of its forces to make sure that our troops do not gain the experience in an environment in which,

> although we are represented by exchanged officers and have no personal responsibility, nuclear weapons are deployed. (NZPD vol 468 1985, p.8928).

What were the impacts of section 5(2)(b)?

Section 5 and the Americans

Publicly voiced criticism by the Americans of the ship visit bans has been extensive and prolonged, coming from many sources. Visits by the US Navy ceased. The British voiced similar critlcisms but were much less vocal. Royal Navy visits also ceased until 1995. By contrast, public criticism has not been seen from the United States of section 5(2)(b) which is a key section for military relations between New Zealand and a nuclear power. This section prohibits all participation by New Zealand military forces in activities involving nuclear weapons, thereby prohibiting their direct participation in nuelear strategies including nuclear deterrence which, to be most effective, would involve the deployment of nuclear weapons, particularly in a maritime region.

Further, it effectively prohibits New Zealand forces from exercising with the nuclear forces of another country should those exercises involve nuclear weapons directly. There have been instances, one case is discussed below, which have required the interpretation of this section to be clarified. But it would have been difficult prior to 1992 for a New Zealand government to justify New Zealand naval units maintaining regular exercises with the largely nuclear capable US Navy under any interpretation of section 5.

This was not possible in any case as the United States cancelled all bilateral exercises with New Zealand forces following the Buchanan incident early in 1985, and has refused to participate in multilateral exercises involving New Zealand forces. These restrictions still stood as of late 1997 even though American forces in the region, including the US Pacific Fleet (excluding ballistic missile submarines, unlikely to participate in normal exercises) have since 1992 been guaranteed to be free of nuclear weapons. This termination of exercises has never been attributed by them to the inclusion of section 5(2)(b) in the Act as far as is known, although by so doing they could have attributed the problem of joint or multilateral exercises to New Zealand's actions. The British certainly envisaged problems with this section'as we will see.

What is interesting about American reactions to this section when considering the real motive for their strong reactions to the Act is the lack of public criticism by them of section 5(2)(b). Despite having terminated military exercises themselves, particularly ANZUS exercises, they would have been expected to object to this section both on general and specific grounds. Joint peacetime exercises are normally considered a vital element in maintaining military strategies and alliances in an operational state, and this has certainly been the case for the US Navy for most or all of the period since the early 1980s [8,9]. Naval exercises associated with ANZUS were certainly seen as very important by New Zealand, and were New Zealand a valued member of ANZUS should have been so seen by the United States.

The lack of publicly expressed concern with section 5(2)(b) from the United States is again considered to reflect the real source of American concern with the legislation, its impact on the NCND policy and, through this or directly, on their global nuclear strategy. As is argued in a later working paper, New Zealand was not seen as of great strategic value by the United States, and ANZUS exercises were much less important for the US Pacific Command than for the New Zealand Navy. The Pacific Command has many other opportunities for exercises. It was involved in 87 operational exercises in 1987 for example [9]. The possible restriction of ANZUS exercises with New Zealand resulting from section 5(2)(b) was not stated to represent any form of abrogation of ANZUS responsibilities as the restriction of ship visits was, because these exercises were not vital to United States strategic planning in the way NCND was.

The stress placed here on the lack of public reaction to section 5(2)(b) is considered by N Hager to be over emphasised. He was in close contact with officials in government and in government departments during the critical 1986-87 period when the legislation was being drafted and states that he was definitely told that section 5 was on the list of sections the Americans wanted changed before the legislation was finalised. He says the United States did push privately against section 5, and Labour felt under pressure to change it. He considers that the lack of public criticism was perhaps because sections 9 and 11 were where all the public controversy had been and, of course, where the issue had come to a head over ship visits.

He also considers that if asked, the Americans would have said that the loss of joint exercises did represent an abrogation of ANZUS responsibilities resulting from New Zealand's own actions. It was just that section 5(2)(b) was less important to them at the time than the ship visit sections. He speculates that some officials might well have been telling them that the wording of 5(2)(b) was loose enough not to be a problem in the light of continuing exercises with the Royal Navy (private communication 3 April 1996). Readers must form their own conclusions about this.

Refusing to exercise with New Zealand forces is interpreted here as another way the United States attempted to exert pressure on New Zealand to abandon its anti-nuclear stance, and thereby remove the obstacle to the operation of NCND the legislation represented. It also conveyed a message to others possibly tempted to copy the New Zealand exarnple and further threaten NCND, see for example the 18 March 1985 ANZUS Hearing cited earlier p.68, testimony by Professor W Tow. He said, again discussing only the port call bans that,

> Washington is severing most ANZUS functions in the interest of signaling to New Zealand or to other potentially restless United States security affiliates in Europe or Asia that a price must be paid if a US ally elects to be selective as to what security interactions it will or will not undertake.

He had earlier stated, when criticising New Zealand's view that ANZUS had never been a treaty with nuclear implications that,

> The United States on the other hand has indicated, and the Reagan administration has indicated strongly, that alliance politics in general must be a complete security politics, incorporating both nuclear and conventional levels (p.67).

He was countering arguments put forward by New Zealand that participation in ANZUS could, for New Zealand, be exclusively at conventional defence levels. But in so doing he once again pointed up United States concerns over challenges to its nuclear policies and the free movernent of its nuclear weapons. Unquestioning acceptance of visits by US Pacific Fleet vessels that were nuclear armed in accord with general US Pacific strategy was the nuclear weapons related contribution New Zealand could make to ANZUS, and to United States strategy in the region. The United States did not want this contribution to disappear.

This situation has now reached an intriguing stage. The only vessels in the US Pacific Fleet likely to visit New Zealand are acknowledged to be free of nuclear weapons in normal peacetime circumstances. Yet in one of a number of visits to New Zealand by high level American military personnel since 1994, the then US Commander-in-Chief in the Pacific, CINCPAC Admiral Richard Macke, while visiting in August 1995 is reported to have said that joint exercises could not go ahead until 'the unfinished business' - New Zealand's anti-nuclear stance - was resolved. He made it clear that he was now referring to the continuing ban on visits by nuclear powered vessels[10]. More recent statements of this position were cited in the introduction, including a direct statement from the United States Embassy in March 1997.

Here the United States has put nuclear powered vessel access ahead of alliance exercising. As will be discussed in a subsequent working paper, in the nine years 1976 to 1984 inclusive, 39 different vessels from the US Pacific Fleet visited on 42 occasions and made 72 port calls. Of these vessels only 7, or 18%, were nuclear powered. They made 9 visits, 21% of the total, and l0 of the 72 port calls. On the basis of past visits, a loss of 14% of port access or 18% of vessel access appears to have been seen up to this time at least, late 1997, as more important than resumption of joint exercises, throwing the question of why into even stronger focus. The answer given here again is that New Zealand's legislation still includes a challenge to NCND and to nuclear deterrence, and the United States will not tolerate any such direct challenge. As was mentioned there have been hints that NCND might be abandoned, and there has been one small thaw in the exercise situation. New Zealand was permitted to send four observers to a joint eight nation exercise in Australia in August 1995 (11). This exercise, Kangaroo, includes Arnerican forces and earlier included New Zealand forces.

Section 5 and the British

The British also operated the neither confirm nor deny (NCND) policy prior to and since 1984, and still do. They also objected strongly to section 9 of the Act on the same grounds as the Americans, but no comments from them have been seen regarding section 11. They responded quite differently from the Americans regarding exercises. Joint exercises with New Zealand were terminated but only within New Zealand waters (12). Annual exercises with Australia, New Zealand, Malaysia and Singapore under the so-called Five Power Defence Arrangement or FPDA, held outside New Zealand waters, continued after 1984. In particular for the present discussion, FPDA naval exercises continued unchanged, and have at times since 1984 seen ships from the Royal New Zealand Navy exercising with nuclear capable vessels from the Royal Navy.

How do these observations relate to the arguments presented so far concerning the real basis for the strong reactions by the United States to the legislation? The Royal Navy has no nuclear powered surface ships so any concern with section 11 could relate only to their nuclear powered submarines. Records show that none of these have visited New Zealand since at least 1958, so section 11 holds no challenge for the Royal Navy on the basis of past records. The British did have nuclear capable vessels and still have nuclear capable ballistic missile submarines. Section 9 posed the same problems for them as for the United States, and they reacted in the same way, until 1995 when visits were recommenced, surface ships of the Royal Navy by then being free of nuclear weapons. However, few of their nuclear capable vessels operate in the Pacific, or in exercises like the FPDA exercises.

Records obtained from the Royal Navy, presented in a later working paper, show that in the period 1981 to 1995 these annual exercises have included nuclear capable Royal Navy units on only four occasions in the 11 years prior to 1992 when tactical nuclear weapons had been removed from all Royal Navy vessels. The issue of section 5(2)(b) and its possible conflict with joint exercises was not a major problem for the Royal Navy, and New Zealand governments had ruled that these exercises with Royal Navy nuclear capable units did not violate section 5(2)(b) as they did not involve exercising with nuclear weapons directly.

The British did express concern that sections 5(2)(a) and (b) could prevent New Zealand forces from training with British forces. This arose in relation to annual exercises in Europe known as LONGLOOK with the British Army of the Rhine for example, the exercises referred to by Doug Kidd who was quoted earlier. Peter Jennings in his book The Armed Forces of New Zealand and the ANZUS Split: Costs and Consequences (13) p.19, reports Sir John Fieldhouse, Chief of British Defence Staff and Admiral of the Fleet at the time, as stating in a 1986 press conference that ' ... in my view the legislation ... will inhibit New Zealand officers and ratings from carrying on the normal, traditional patterns of activities'. In practice, the LONGLOOK training exercises, dating from 1976, have continued in spite of the legislation, as New Zealand Ministry of Defence Annual

Reports show, and no change in other military contacts with the British is known apart from port calls. The impact of the Act on military exercises is considered in other working papers in this series.

New Zealand Forces in the Persian Gulf
The New Zealand Government in November 1990 decided to send a medical team and two airforce Hercules aircraft to join the US-1ed multinational force in the Persian Gulf. This was seen as contravening the Act under section 5(2)(b), since American nuclear weapons were believed to be deployed on land and on warships in the Gulf region, and New Zealand forces could become involved with them. The Campaign for Nuclear Disarmament asked the Attorney General to allow them to bring a charge against the Prirne Minister and the Cabinet of conspiring to offend against the Act, but consent was denied.

The Ministry of Defence drew up a set of guidelines relating to section 5 for their personnel serving in the Gulf. They are dated 18 December 1990. Since 1991 New Zealand has provided personnel to serve with the UN Special Commission (UNSCOM) which operates in Baghdad. N Hager obtained a copy of the guidelines in January 1991. They make interesting reading, and show that section 5, and the Act itself, are not taken lightly by the military. They first present section 5 in its entirety and then the definition of a nuclear explosive device as given in the Act, and point out that the definition does not include any separable means of delivery or transport, so that these would not constitute such a device.

Section 5 reads,

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 an nuclear explosive device.

The guidelines then present what are considered to be the meanings of terms in section 5.

Acquire is seen as meaning receiving or coming into possession of, and denotes : physical possession rather than any form of constructive (ie. imputed) possession.
Possess means to hold or have. It does not have an extended meaning which enables possession to be inferred from control over a nuclear explosive device or knowledge of its existence or location.
Have control over a nuclear explosive device is discussed at sorne length, but is said in short to mean to have the power to fire the device, since it is claimed that in section S the nature of the authority contemplated by 'control' is authority over not just the disposition, but the use of such devices and weapons. This is open to challenge, as are sorne of the other interpretations of terms presented in these guidelines.

Section 5(2)(b) is seen as presenting the greatest difficulties of interpretation. The difficulty lies, the guidelines say, 'in ascertaining what is prohibited by way of

assistance, encouragement or inducement of persons to take the primary actions the subject of the prohibitions'.

Aid is interpreted as implying as giving actual assistance in the commission of an offence, doing something essential to its commission.
Abet One who 'abets' is interpreted in the guidelines as one who instigates or incites another in the commission of an offence. 'That is to say, while the other is actually committing the offence, the abettor is urging him or her on or inciting him or her in the commission of the offence.' This is an interesting interpretation because Lange deliberately had the term 'incite' deleted from this section, and a possible reason for this was suggested as being to preserve the right of those who support nuclear weapons to encourage others to the same belief. The Collins English Dictionary, 1986, defines 'abet' as meaning to assist or encourage, especially in crime or wrongdoing. It gives 'incite' as to stir up or provoke to action, and 'instigate' as to bring about as by incitement or urging. Chambers Encyclopedic Dictionary, 1994 edition, gives very similar definitions for all the terms. These two latter terms, 'incite' and 'instigate' appear to have somewhat different meanings from those given for 'abet'.
Procure means to produce by endeavour - you set out to see that it happens and take the appropriate steps to produce that happening, according to the guidelines. The implication, they say, is that another person is induced to do something that he would not otherwise have done voluntarily.

To be guilty of an offence against section 5(2)(b) of aiding, abetting or procuring a person to have control over a nuclear explosive device, it is considered that a person subject to the Act must:

(a) provide some instrument or service essential to enable another person to exercise 'control' over such a device; and
(b) foresee that the instrument or service will probably have that result.

The guidelines say that mere presence at the time an offence is being committed without more will not generally bring a person within the definitions of aiding, abetting or procuring. There needs to be some positive and causative act on the part of such a person which contributes in a material way to the commission of the principal offence. Under the heading 'General Comment' they say that,

> The application of the various tests to likely factual situations is difficult and ultimate certainty as to the legal position on a set of givenfacts is an elusive goal. It is possible, however, that NZ service personnel might be called on to assist in the movement or protection of nuclear devices rather than the separable means of transport of them. This could arise in an emergency assistance or disablement situation. Such actions, in close proximity to nuclear devices, are highly likely to infringe section 5(2)(b).

The conclusion reached is that,

> Simple participation in a multinational force in the Gulf is not in breach of the Act. In particular situations, however, NZ service personnel could be said to come within the prohibitions of section 5(2)(b). Careful consideration should therefore be given to the guidance given above and, if there is any doubt as to the lawfulness of a given situation, and time permits, clarification of the legal situation should be sought through the NZ National HQ from HQ NZDF.

These guidelines have been presented in detail because they show the seriousness with which at least this section in the Act is regarded by New Zealand's military. They also present the first situation known in which a possible breach of the Act is discussed. They are not considered to be very clear, or easy for defence personnel to follow, and their legal interpretation in terms of the Act would be interesting to clarify.

Other military units have served in the Gulf since 1991. The frigate HMNZS Wellington joined the trade blockade there in October 1995 and served for three months under the control of the US Navy Commander in the region. Another frigate HMNZS Canterbury was assigned this duty for two and a half months from September 1996. By 1995 the US Navy units in the Gulf were free of nuclear weapons, so these assignments did not present problems with the Act. However, the involvement of New Zealand military units in maintaining the sanctions imposed on Iraq has been strongly criticised by some involved in the Gulf situation [(14)], and by others.

An article entitled 'Anti-nuclear law blocks Govt desire to revive defence links' by Kevin Taylor published in the Christchurch newspaper, The Press, on 30 September 1997, p.11, reports amongst other things comments by Helen Clark and Caroline Forsyth, spokesperson for the Ministry of Foreign Affairs and Trade concerning section 5(2)(b). According to the article, Helen Clark interprets this section as ruling out exercises with nuclear capable forces altogether. However, Caroline Forsyth states that it is 'important not to read more into this clause [section] than it contains'. The issue was given careful consideration before frigates were sent to the Gulf, she says, and the Government was satisfied there was no possibility of breaching the Act. It is also not envisaged the section would impede increased defence cooperation with the United States, she is reported as saying. She says the section does not say that any association with other forces, whether for training or exercises is prohibited.

As pointed out in the first working paper in this series, Lange's Labour Government very soon after the 1984 election, in October that year, ruled that exercises with nuclear capable units were allowed under the anti-nuclear policy, as long as no direct manifestation of nuclear weapons in training or otherwise was involved. The Act, while worded more explicitly, does not spell out more restrictions than contained in the original 1984 policy, and statements made concerning its intent. It is argued in these working papers that under the policy and legislation New Zealand has, a truly anti-nuclear country would shun all contact with countries that continue to deploy nuclear weapons and maintain nuclear policies and strategies.

New Zealand was again invited early in 1997 to contribute to a United States led coalition of military forces assembled in the Gulf to confront, if not attack Iraq. Problems with United Nations weapons inspectors having access to all sites in Iraq had become critical. This even involved President Clinton telephoning Prime Minister Shipley about the issue. It seerns New Zealand becomes acceptable militarily to the Americans in appropriate circumstances, despite the Act. The New Zealand Government agreed to provide a small contingent of forces consisting of about 20 of New Zealand's Special Air Service (SAS) troops and a few Orion aircraft, see for example The New Zealand Herald of 17 February 1997, p.l.

This was a decision that was hotly debated in Parliament since the United States actions did not have United Nations sanction at that time, and diplomatic efforts to avoid military action were still under discussion. The speed with which the National led coalition Government responded is interpreted as a manifestation of National's continuing desire to please the Americans and get New Zealand back in ANZUS as rnuch as manifesting any real concern with the situation in Iraq. It appears at the time of writing, March 1998, that diplomatic efforts have achieved a solution to the crisis and avoided military action for the present at least.

Section Six

As far as is known, section 6 has also never figured in public discussion of the Act in the way sections 9 to 11 have. Yet it can be interpreted as posing a direct challenge for nuclear armed ship or aircraft visits. It reads,

> 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.

There is no restriction to New Zealand citizens or persons normally resident in New Zealand here.

This means that no vessel rnay transport nuclear weapons into New Zealand ports (internal , waters) or inland waters, and no aircraft may land in New Zealand while carrying nuclear weapons, thereby transporting them on land in New Zealand. Section 6 effectively constitutes a second ban in the Act on nuclear armed vessels and aircraft visiting New Zealand, and storing nuclear weapons within the country while there. If a US Navy ship had been shown to be nuclear armed while in a New Zealand port, difficult with NCND in place, the Prime Minister could have been challenged under section 6 as well as section 9, and the United States captain and crew charged with breaching the Act under section 6, if the legal status of US Navy vessels in foreign ports allowed this. Again the situation never arose.

This section did figure along with section 5 in debates in Parliament during the passage of the Bill, and Geoffrey Palmer, then Prime Minister, cited section 6 in Parliament when questioning the credibility of the 1990 switch by National to support for the Act. National had earlier argued for a ban based on New Zealand trusting its nuclear allies to acknowledge the wishes of New Zealanders and not to bring nuclear weapons into their ports, but with no direct challenge to NCND. Palmer cited section 6 saying,

> One cannot have a 'trust me' policy and follow that [section 6]. One cannot have a policy that says 'People can bring in weapons and whether they do or whether they don't we won't know and we won't care', because that would be exposing people to criminal liability.

Palmer has a legal background. He went on to question whether National if it became the government would repeal the Act to accommodate its earlier policy (NZPD vol 505 1990, p.73). National became the government but did not repeal or amend the Act. The political scene from 1984 on is considered in more detail in another working paper in this series.

Section 6 has never been mentioned as a problem for ship visits, for the US Airforce in relation to Operation Deep Freeze, or for ANZUS. Once again it is argued that the reason for this is that it was NCND, not ANZUS, that was the source of United States and British concerns with New Zealand's legislation. Section 6 was not a problem for NCND since it does not, include any enforcement mechanism like that in section 9, and could be ignored just as theDanish and Japanese non-nuclear policies were ignored by the US Navy and the Roya1 Navy [(1)].

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Mr Williams - for your files
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59/202/20
59/201/20
59/203/20

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4 June 1987

Prime Minister

NEW ZEALAND NUCLEAR FREE ZONE, DISARMAMENT AND ARMS CONTROL BILL

The Nuclear Free Zone Bill will have its Third Reading today and will receive the Governor General's assent and enter into force shortly thereafter. Upon its entry into force, there will be a legal requirement that you, in your capacity as Prime Minister, should turn your mind to the question of entry into New Zealand by foreign warships and foreign military aircraft.

2 Warships and military aircraft from most foreign countries are subject to the normal requirement under international law that diplomatic clearance be sought for a visit well in advance.

3 There have been four exceptions made by New Zealand over the years to that requirement. The exceptions, as they currently operate, are as follows:

(a) Australia: Warships and military aircraft are exempt from diplomatic clearance. Clearances are sought through service channels for warship visits. Notification through service channels are given for aircraft visits.

(b) Canada: Military aircraft are exempt from diplomatic clearance and may visit on the basis of notifications to MFA and Defence. Warships, however, are subject to case by case requests for diplomatic clearance.

(c) UK: Visits by military transport aircraft operate on a notification basis. The government's agreement has been sought on a case by case basis for visits by UK warships ie effectively diplomatic clearance on a case by case basis.

/(d) USA:

MFA

(d) USA: Warships and combat aircraft are subject to case by case clearances. Non combat aircraft are subject to a modified clearance regime ie: blanket clearances are 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.

4 These arrangements will need to be reconsidered in the light of the provisions of the Nuclear Free Zone Disarmament and Arms Control Act when it enters into force.

5 Australian and Canadian Aircraft

Section 10(3) of the Act permits you as Prime Minister to grant approval to a category or class of foreign military aircraft provided that you are satisfied that such aircraft will not be carrying any nuclear explosive device upon landing in New Zealand. You are required in considering this matter to have regard to all relevant information and advice concerning the strategic and security interests of New Zealand.

6 Australia and Canada have undertaken binding legal obligations in international law which prohibit them or their armed forces from acquiring or possessing nuclear explosive devices. Both countries are party to the Treaty on the Non-Proliferation of Nuclear Weapons and Australia is also party to the South Pacific Nuclear Free Zone Treaty. All of the information and advice available to officials confirms that Australia and Canada scrupulously conform to those obligations.

7 The 1987 Review of Defence Policy indicated that "The defence relationship with Australia is of particular importance ... New Zealand shares with Australia common strategic interests in the South Pacific and maintains formal defence ties with Australia." It also referred to the "valuable experience" provided by cooperation with the Canadian armed force.

/8 In

8 In the light of the foregoing, we would tender the following advice:

(a) It is inconceivable that Australian or Canadian military aircraft would be carrying any nuclear explosive devices upon landing in New Zealand.

(b) It is very much in New Zealand's strategic and security interests that defence cooperation with Australia and Canada continue without the formality and delay associated with ad hoc diplomatic clearances.

(c) That military aircraft from Australia and Canada constitute a category or class within the meaning of Section 10(3). A draft determination relating to Australian and Canadian Aircraft is attached for your consideration.

Signed 8/6/87 12.40 pm

Australian Ships

9 Section 9 of the Act has no equivalent to Section 10(3) relating to aircraft. Normal rules of statutory interpretation would lead to the conclusion that there is no scope for a "blanket clearance" for ships. On the other hand the information and advice set out in paragraphs 5-8 above with respect to Australian aircraft are equally applicable to Australian ships.

10 It would be inappropriate in light of the close operational cooperation between the New Zealand and Australian navies to require the institution of formal diplomatic requests for clearances. Accordingly, we recommend that a system be established whereby each RAN request to the RNZN for an operational clearance for a RAN ship visit is routed to you for consideration in terms of the Act. An alternative would be for you to consider the possibility of delegating your power under clause 9 in respect of Australian ships. Even though visits by Australian ships are often organised at short notice, the sailing time is such that neither of the above options should present impossible operational problems.

UK Ships and Aircraft

11 Given the fact that the UK is a nuclear weapon state ad hoc approvals will be required in respect of warships and military aircraft.

/US

US Ships and Aircrafts

12 The only question arising immediately is the landing in New Zealand of certain non-combat US military aircraft. These aircraft visit New Zealand under current clearances for two purposes:

(a) To support the US Antarctic programme;

(b) To offload high priority cargo for US installations in New Zealand (the US Embassy / the Observatory at Black Birch) or dignatories visiting New Zealand with the prior knowledge of the New Zealand government.

13 Section 10(3) provides that you may approve the landing of a category or class of aircraft and it specifically indicates that military aircraft operating in support of an Antarctic research programme may constitute such a category. However, you may only grant the approval if you are satisfied that such aircraft will not be carrying any nuclear explosive device upon landing.

14 The following information and advice would seem relevant to this question.

First, these aircraft are "non-combat", ie 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.

Secondly, the aircraft fall into two categories:

(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.

Thirdly, Antarctica is by virtue of the Antarctic Treaty a demilitarised zone. The transportation then of any bombs, let alone nuclear explosive devices, is prohibited.

/Fourthly,

Fourthly, In respect of Aircraft en route to or from Australia, it is highly relevant that Australia is a party to the South Pacific Nuclear Free zone Treaty and in implementating that Treaty 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. Thus it would be a criminal offence for a US nuclear weapon to be transported from a US transport aircraft to a US vessel in an Australian port or to a US Combat Aircraft, or even to another US transport aircraft. Given that a weapon could not be unloaded in Australia or New Zealand the only stopping points for "Channel Flights" - it is inconceivable that one would be transported from the US and back again simply as an exercise.

Fifthly, extremely high security (including armed guards) is invariably provided for nuclear explosive devices in transportation. The total lack of security in respect of US aircraft visiting Christchurch is further corroboration of their non nuclear mission. Also relevant in this regard is the fact that nuclear weapons, when being carried by air, are not mixed with other cargo and the most direct route is used. Not by any stretch of the imagination could a stopover in New Zealand be regarded as a "most direct route" given the capability of US transport aircraft to fly direct from US Airbases in the region to any relevant destination.

Sixthly, corroboration is also provided by the fact that New Zealand agricultural quarantine personnel inspect the aircraft and by the fact that New Zealand personnel are responsible for loading and unloading such aircraft. These opportunities for visual inspection and handling of the cargo create such a risk of detection that even the negligible possibility of a covert unguarded transportation of a nuclear explosive device must be ruled out.

15. You are required, in terms of Section 10 of the Act to have regard to relevant information and advice including information and advice concerning the strategic and security interests of New Zealand. The advice and information tendered in paragraph 14 above is in response to this requirement. As to the strategic and security interests of New Zealand, the Defence Review indicated that Antarctica is

/of

of "considerable strategic significance" for New Zealand. It 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.

16 A further relevant fact is that by virtue of the 1958 Agreement between New Zealand and the United States there is a Treaty obligation, binding in international law, to admit aircraft operating in support of Operation Deep Freeze. As to Section 10(3) quite clearly these aircraft come within the meaning of a "category or class" because such aircraft are specifically identified in the section. Aircraft visiting New Zealand to offload high priority cargo for US installations or dignataries visiting New Zealand with the prior knowledge of the New Zealand government 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(8) our advice is that these aircraft also constitute a "category or class" within the meaning of that provision.

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

18 The above represents a synthesis of the advice and information available from officials of different departments. In the event that you decide to grant any approvals notification would be given in the form of a Standard Note to the relevant Embassies and High Commissions.

Signed
12.10 pm
8/6/87

M Norrish
Secretary of Foreign Affairs

Encs

PRIME MINISTER

NEW ZEALAND NUCLEAR FREE ZONE, DISARMAMENT
AND ARMS CONTROL ACT 1987

I, David Russell Lange, Prime Minister of New Zealand, having considered all the relevant information and advice available to me, including information and advice concerning the strategic and security interests of New Zealand, hereby approve the landing in New Zealand of foreign military aircraft in the following categories for twelve months from today's date:

(a) Military aircraft of Australia,

(b) Military aircraft of Canada,

and I hereby certify that I am satisfied that no such aircraft will be carrying any nuclear explosive device when landing in New Zealand.

David Lange

8th June 1987

PRIME MINISTER

NEW ZEALAND NUCLEAR FREE ZONE, DISARMAMENT AND ARMS CONTROL ACT 1987

I, David Russell Lange, Prime Minister of New Zealand, having considered all the relevant information and advice available to me, including information and advice concerning the strategic and security interests of New Zealand, hereby approve the landing in New Zealand of foreign military aircraft in the following categories for twelve months from today's date:

(a) United States military aircraft being used to provide logistic support for the United States Antarctic Research Programme,

(b) United States military aircraft being used for the transportation of dignitaries visiting New Zealand, with the prior consent of the New Zealand Government, or for the transportation to New Zealand of high priority cargo for US installations in New Zealand,

/and

and I hereby certify that I am satisfied that no such aircraft will be carrying any nuclear explosive device when landing in New Zealand.

David Lange

8 th June 1987

CHAPTER THREE

THE LEGALITY OF THE SUSPENSION

3.1 Introduction

The United States responded in August 1986 to Labour's determination to embody the nuclear free policy in legislation. Lange tells us in his book p.145 that Australian Foreign Minister Bill Hayden and US Secretary of State George Shultz arranged to meet in San Francisco during that month for talks that replaced the annual meeting of the ANZUS Council, New Zealand having already been suspended from these meetings. Lange says on p.148 that Shultz and Hayden issued a joint statement from their meeting announcing that New Zealand's policy detracted from the ANZUS members' ability to maintain and develop their individual and collective capacity to resist armed attack, a reference to article 2 of the treaty. They added, Lange continues, that the United States could not be expected under these circumstances to carry out its security obligations to New Zealand, and was suspending its security obligations to New Zealand under the ANZUS Treaty, 'pending adequate corrective measures'.

This was a serious action for New Zealand amounting to the suspension, with the agreement of Australia, of United States ANZUS relations with New Zealand. It is also an interesting action from a legal standpoint, since the treaty contains no mechanism allowing one or more members to suspend or terminate treaty relations with another treaty member. The only mechanism provided whereby a member can leave the alliance is by giving formal notice of intention to withdraw in twelve months time from the ANZUS Council. No statement from the Americans has been seen providing a legal basis for their action, and Lange on p. 200 of his book says the action 'has no basis in international law'. So was, and is, the actionlegal? And why has this question received so little attention?

3.2 The Suspension - Is it Legal or Not

The answer to the second question is not known, but the legality of the suspension was discussed to some extent by J C Woodliffe in an article published in the International and Comparative Law Quarterly, in July 1986 [(1)]. He bases his argument on the Vienna Convention on the Law of International Treaties, which was elaborated by the United Nations Conference on the Law of Treaties in Vienna March 1968 to May I969, and adopted 23 May 1969. This lays down agreed mechanisms covering matters relating to international treaties, including grounds for the suspension from a treaty of one member by another member. Woodliffe cites article 60 of the convention, 'Terrnination or suspension of'the operation of a treaty as a consequence of its breach', in relation to the American action. This article states that,

> (2) A material breach of a multilateral treaty by one of its parties entitles: ... (b) a party specially affected by the breach to invoke it as a ground for suspending the operation of the treaty in whole or in part in the relations between itself and the defaulting state.

A material breach of a treaty is defined for the purposes of this article as consisting in: '(b) the violation of a provision essential to the accomplishment of the object or purpose of the treaty.'

Woodliffe reports the United States as claiming that the ban on nuclear armed or powered vessels imposed by New Zealand constituted a ban on all their warships because of the NCND policy, despite denials of this by the New Zealand Government. This ban, in their view, jeopardised the effectiveness of ANZUS strategy in relation to the build-up of Soviet naval power in the region, and constituted a serious breach of the treaty that went to the core of mutual obligations of allies - interpreted by Woodliffe as a reference presumably, he says, to article 2 of the treaty. However, he goes on to say that 'The somewhat elastic language used in the ANZUS pact makes evaluation of the respective arguments [regarding the legality of the suspension] necessarily tentative.'

In support of the American position he cites the ANZUS Council communique issued at the end of the 1984 Council meeting on 17 July as reaffirming that access by allied aircraft and ships to the airfields and ports of the ANZUS members was 'essential to the continuing effectiveness of the alliance'. The full text of the communique can be found in the Australian Foreign Affairs Record vol.55 July 1984, pp.685-689. Statements by National speakers during the passage of the Bill debates referred to similar declarations being made in ANZUS Council communiques regularly in the early 1980s. The Council met in Washington in July 1983, and the cornmunique issued noted

> the importance to the alliance and the region of security considerations, including access by Allied aircraft and ships to airfields and ports in accordance with the sovereign right of states to receive such visits.

The full text of the communique can be found in New Zealand Foreign Affairs Review vo1.32-33 No.3 July-Sept 1983, pp.18-23.

The 1982 communique includes an even stronger statement. This was the thirty-first Council meeting and was held in Canberra, 21-22 June 1982. The full text of the communique can be found in New Zealand Foreign Affairs Review voL\ l.32-33 No.2 April-June 1982, pp.26-30. Referring to the alliance partners it states that,

> In particular they confirmed the high priority each partner placed upon a regular and comprehensive programme of naval visits to each other's ports, as well as to friendly ports in the Asia/Pacific region generally. They recognised the importance of access by United States naval ships to the ports of its Treaty partners as a critical factor in its efforts to maintain strategic deterrence and in order to carry out its responsibilities under the terms of the Treaty. In this regard the Australian and New Zealand members declared their continued willingness to accept visits to their ports by United States naval vessels whether conventional or nuclear-powered. They noted and accepted that it is not the policy of the United States Navy to reveal whether or not its vessels are armed with nuclear weapons.

The 1982 communique was issued while the National Government was in power, and even though the 1984 ANZUS Council meeting followed the election in which Labour became the government, they had not taken office at the time of the meeting which was attended by former National Government representatives. The first working paper on this series provided material showing that the 1976 to 1984 National governments invoked ANZUS obligations under article 2 to justify allowing nuclear powered and nuclear armed vessels to visit New Zealand, and vehemently denied any involvement with strategic nuclear weapons despite the reference to 'strategic deterrence' in this 1982 communique which, by inference, would be taken to refer to strategic nuclear deterrence. If this inference is correct, it would link ANZUS directly into United States global nuclear strategies at that time, and emphasise the nuclear nature of ANZUS. The emphasis on a relationship between ANZUS and specifically United States strategies appears to have diminished since 1982 in these Council communiques.

Did Labour Governrnents also make similar commitments? A Labour Government was in power in 1974 but the ANZUS communique from the Council meeting in February that

year, given in New Zealand Foreign Affairs Review vo1.24 No.l, p.32 and No.2, p.6, says nothing about ship and aircraft access being vital to ANZUS. The Australian Foreign Affairs Record, vo1.46 May 1975, pp.288-89, gives the text of the 1975 communique which again makes no reference to ship and aircraft access. The 1976 communique, to be found in New Zealand Foreign Affairs Review vo1.26 No:5, pp.28-30, states that the Council welcomes the decision by Australia and New Zealand to permit the resumption of nuclear powered warship visits by the US Navy, and agreed that 'this was a natural part of the cooperation under the ANZUS treaty'. Conventionally powered US Navy ships had been visiting New Zealand for some years prior to this, and through Labour's term in government, and of course Labour was aware of the content of the communiques right up to 1984.

Woodliffe refers to these communiques as underlining the parties' understanding of their treaty obligations, but they have another significance in relation to the 1969 Vienna convention. Article 31 of the convention, 'General rule of interpretation', states that a treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.

> (3) There shall be taken into account, together with the context: (a) any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions; (b) any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation ... .

It would seem that the repeated agreement by the members at ANZUS Council meetings that access for allied ships and aircraft was vital to the operation of the alliance could be argued to constitute a 'subsequent agreement' in terms of article 31(3)(a) above, and actual access argued to constitute 'subsequent practice' in terms of 31(3)(b) above. If this is correct, the ship and aircraft bans imposed by Labour in 1984 would constitute grounds for the United States suspending New Zealand from ANZUS. On the other hand, Labour only banned nuclear armed or powered vessels, and nuclear armed aircraft, and the ANZUS communiques do not refer to vessels or aircraft so armed, although the 1982 communique records NCND being accepted by New Zealand, as it was by National from 1976 to 1984.

The situation is complex and confusing. Legal opinion is needed to establish whether or not the American suspension is legal, and Woodliffe does not come to any definite conclusion. Furthermore, the 1969 convention appears to have more to say about the ANZUS situation. Article 27 deals with internal law and the observance of treaties, and states that a party rnay not invoke the provisions of its internal law as justification for its failure to perform a treaty. This could be taken to imply that New Zealand cannot invoke provisions of the Act to justify its failure to meet ANZUS obligations to allow allied warship visits, if allowing these ship visits is accepted as a legitimate ANZUS commitment.

Article 29 is concerned with the territorial scope of treaties, and states that unless a different intention appears from the treaty or is otherwise established, a treaty is binding upon each party in respect of its entire territory. If New Zealand accepts allowing warship visits as an ANZUS obligation, can these be banned from New Zealand's internal waters as they are in the Act if nuclear armed or powered, and New Zealand expect to remain in ANZUS? Or can it be argued that ANZUS does not impose any obligation concerning accepting nuclear armed or powered vessels, and that New Zealand has always been willing to accept other warships.

Finally, article 45 deals with the loss of a right to invoke grounds for invalidating, terminating, withdrawing from or suspending the operations of a treaty under articles 46 to 50, or 60 and 62. Articles 46 to 50 and 62 are not relevant here. Article 45 states that a state may no longer invoke article 60 if, after becoming aware of the facts: 'it shall have expressly agreed that the treaty is valid or remains in force or continues in operation, as

the case may be.' No member state has yet said that ANZUS is no longer in operation, and the United States did not act to suspend New Zealand until August 1986, over two years after the 1984 nuclear free policy came into operation in July 1984. So can it be argued that the Americans could no longer in 1986 invoke the 1984 ship ban as grounds for suspending New Zealand, and they reaffirmed the operation of ANZUS at the July 1984 Council meeting.

The legality or otherwise in international law of this suspension remains to be established.

3.3 A New Zealand Legal Opinion - Jerome Elkind

Associate Professor Jerome Elkind, member of the Law Faculty of the University of Auckland at the time he wrote, offered his answers to the two questions set out above, namely was the suspension legal, and why has it received so little attention. He says he believes the answer to the second question is that the United States was unwilling to publicise an action the legality of which was highly doubtful. As to the first question, and with reference to article 60 cited above, Elkind says that while the United States and Australia might have had views as to what is essential to the object or purpose of the ANZUS Treaty, New Zealand obviously had very different ideas about it. A breach of a treaty is usually a voluntary action by a state which no longer wishes to be bound by the treaty. An involuntary action, to be taken as a breach of a treaty, would have to involve sorne quite serious behaviour which is fundamentally inconsistent with the treaty.

Article 60, he continues,

> refers to a breach of a treaty. As to whether New Zealand breached the treaty, clearly New Zealand cannot be taken to have voluntarily violated the treaty. So the question must be whether New Zealand's actions can be regarded as serious enough to be an involuntary violation. The issue was, is ANZUS a nuclear alliance? New Zealand claimed that it was not. Australia and the United States claimed that it was. However, New Zealand was never allowed to put its views. When answering the question, was there a breach, it is essential that the views of both parties be heard.

Remember, a New Zealand Labour government has not been represented at an ANZUS Council meeting since Labour was elected in July 1984, including the Council meeting held that month of that year, when New Zealand was represented by the ousted National Ministers of Foreign Affairs and Defence who could hardly have been expected to put the views of the newly elected government as that government would have wished.

As to statements by members at ANZUS Council meetings, Elkind says that,

> These can be no more than individual views of senior military figures. They cannot be regarded as conclusive of whether a State which has undergone a change of Government is in breach of the treaty despite what representatives of the previous Government may have said. I do not believe that they can be regarded either as subsequent agreement between the Parties or subsequent practice unless ANZUS Council members can be taken to be official representatives of the various States. In fact it strikes me as highly suspicious that the previous Government was allowed to state its views while the views of the new Government were systematically ignored [at the 1984 ANZUS Council meeting when Labour was the government but National members attended]. Furthermore you say that a Labour Government was in power in 1974 but that ANZUS cornmuniques said nothing about ship or aircraft access being vital to ANZUS. Is it not suspicious that this issue suddenly became important after a National Government was elected in 1975?

You say that Woodliffe does not come to any definite conclusion about the legality of the American suspension of New Zealand from ANZUS. I suspect that this is

> because he cannot come to the conclusion that he would like to corne to (private communication, 29 August 1996).

It should be remembered that, as already discussed, National had from 1976 stressed the importance of access for US Navy vessels as an ANZUS responsibility to justify their admission, particularly for nuclear powered warships.

David Lange was asked to comment on this question of the legality of the suspension, but did not do so.

3.4 Another New Zealand Opinion - Stuart McMillian

The only other discussion of this question seen is given by Stuart McMillan in his book, Neither Confirm Nor Deny The nuclear ships dispute between New Zealand and the United States [(2)], pp.52-54 where he presents a brief analysis very much along the same lines as given above in terms article 60 of the Vienna convention. In fact, he says, the legal case that by stoppmg the visits of nuclear ships (McMillan's expression for nuclear armed or powered ships), New Zealand was not fulfilling the obligations set out in article 2 of ANZUS, so the United States was justified in invoking the Vienna convention, was never made. He argues that,

> the New Zealand Government could have argued with considerable justice that it was indeed willing to effect self-help, give mutual aid, and develop an individual and collective capacity to resist armed attack and that the United States was the one in breach of the treaty, having withdrawn its willingness to train with New Zealand forces. It might also have disputed any argument that access to New Zealand ports for nuclear ships was essential to the defence of the Pacific. Under such circumstances, it would have been very difficult for the United States to prove that a 'material breach' had occurred.

He points out that there is also the question of where such a legal proceeding might have been held. The most obvious place is the International Court of Justice at the Hague, but the United States has not been noted for abiding by the decisions of this court. McMillan concludes that,

> The United States acted unilaterally in regard to ANZUS. This leaves one with a sense of disquiet, lest the precepts of international law be not observed.

3.5 Conclusion

Whether there is any basis in law for New Zealand's suspension from ANZUS remains unclear. What is clear is that this action was another manifestation of American displeasure with New Zealand for taking actions seen by the United States as undermining alliance support for its nuclear strategies in the Pacific.

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CHAPTER FOUR

THE PRESENT

4.1 Introduction

The defence constraints that followed the introduction of the anti-nuclear policy and ANZUS breakup were, if is here claimed, designed in part to punish New Zealand, but also to put pressure on New Zealand to give up its dangerous precedent setting nuclear armed ship visit mechanism that could have been contagious and have undermined the real use of NCND. Any consequences of New Zealand no longer fulfilling its commitments as a military ally and ANZUS partner, the conventional explanation for the constraints and rift, were of secondary importance, New Zealand having little strategic significance for the United States. As N Hager suggests, the defence cuts were, as time went on, playing almost totally to a non-New Zealand audience, to stop other dominoes like Japan and Denmark falling to the New Zealand pattern. The cuts, he says, were clearly counterproductive in New Zealand and hurt most the loyal supporters of the United States, namely the New Zealand military. The United States at this time probably did not care that their actions were not helping to move public opinion in New Zealand, their NCND concerns overriding other factors. So what is the position now?

Before looking at the present situation, a new explanation is presented of what may in part have triggered one of the major political developments since 1984, the switch in March 1990 by the National Party to supporting the legislation. It should be clear even from the summaries of the passage of the Bill debates that National was then bitterly opposed to the major clauses in the Bill and tried to take the teeth out of them, as we have seen. This 1990 switch represented a very big step for National, and generated strong reactions against the move from some of its stalwarts. Former Prime Minister Rob Muldoon declared himself ashamed to be a member of the Opposition, 'I never thought I would ever be ashamed to be a part of the National Party caucus. But I am today.' he said (The New Zealand Herald 9 March 1990, p.l). As Prime Minister, Muldoon figured very prominently in the 1976 to 1984 era as a staunch supporter of ANZUS and of unfettered access to New Zealand ports for the US Navy, see working paper No.7. And well known National MP and Minister in subsequent National governments, Don McKinnon, resigned his position as defence spokesperson for National in protest at the change.

4.2 The 1990 Switch by National - A Re-examination

Prior to this, National had adopted a policy that while it also opposed the presence of nuclear weapons in New Zealand it would not challenge the NCND policy of its nuclear allies, but would trust them to honour New Zealand's wish to be nuclear weapons free and not bring nuclear weapons into New Zealand's ports on visiting warships. By early 1990 even National MPs were openly expressing dissatisfaction with this position, widely seen as unrealistic by the New Zealand public. The call from the National MPs was for a genuinely non-nuclear stance that reflected the country's anti-nuclear sentiment, see for example The Evening Post for 22 February 1990 p.3.

The reasons given for the change in policy by National to one of full support for the existing legislation were presented in a press release of 8 March 1990 by the then Prime Minister, Jim Bolger. He said that the policy review was prompted by,

a number of significant strategic changes in international relations, including:

> Progress in super-power negotiations on arms reductions, new verification requirements, and surveillance technologies;
>
> The eclipse of Warsaw Pact communism in Eastern Europe and the prospects of further changes in global alliance structures;
>
> Shifts in defence arrangements between the United States and other Pacific Rim states, such as the Philippines, South Korea, and Japan;
>
> The new potential for international agreement on a South Pacific Nuclear Free Zone;

And most recently:

> A significant improvement in relations between the United States and New Zealand as demonstrated by last week's meeting between United States Secretary of States James Baker and New Zealand's Minister of Foreign Affairs [in the Labour Government] Mike Moore.

We welcome this particular change. We consider that the Baker-Moore meeting, after four years without any high-level political contact between the governments of New Zealand and the United States, confirmed that there is an understanding of New Zealand's firm desire to remain free of nuclear weapons.

All the events I have just referred to lead us to the conclusion that an unambiguous assurance that New Zealand will remain nuclear-free can now be provided by an incoming National Government.

The National Party has always been steadfastly opposed to nuclear weapons and committed to the concept of effective mutual defence alliances, arrangements, and understandings with countries which share our views on international affairs.

Now we have come to the point where we consider that it is no longer necessary to maintain the ambiguity of the 'neither confirm, nor deny' stance on nuclear weapons in order to have effective defence arrangements for New Zealand. The provision for the 'neither confirm, nor deny' stance on nuclear weapons will be eliminated from our defence policy and we will give New Zealanders a clear guarantee that this country will remain nuclear-free - that is free of both nuclear weapons and nuclear powered vessels - under defence arrangements made by the next National Government.

It follows that the New Zealand Nuclear Free Zone, Disarmament, and Arms Control Act will be retained intact by the next National Government.

The State Department of the United States said New Zealand had misinterpreted this Baker-Moore meeting and expressed regret at National's change, a change generally interpreted within New Zealand as an attempt by National to win over some of the anti-nuclear support from the by then very unpopular Labour Government.

National won the October 1990 election. It also won the following election in 1993 when it again pledged to maintain the Act unchanged. The position of the coalition government elected in 1996 is considered in section 4.2 that follows. However, the 1990 National Government did not altogether honour the pledge given above that 'the Act will be retained intact', and consideration of its action that could have led to a move to modify the Act leads us to the thrust of this re-exarnination of their 1990 switch.

There was another possible reason for the switch by National at this time, hinted at by National's spokesperson on disarmament in 1990, Doug Graham. He was reported in The New Zealand Herald for 13 March 1990 p.3 as saying that,

> it seemed likely the United States might remove nuclear capability from much of its fleet. If the United States did remove nuclear capability from surface vessels then its 'neither confirm or deny policy' would become unnecessary.

This did happen but not until September 1991, over a year later. But as stated in the Introduction the United States did not and has not abandoned its NCND policy.

It is interesting to examine some earlier events in relation to Graham's suggestion that the US Navy might remove its surface nuclear capability. An article appeared in The New Zealand Herald for 8 May 1989 headed 'National set to campaign over ally Navy visits'. It dealt with National's campaign for the 1990 election and the nuclear issue. The statements of interest in the article came from National MP Doug Kidd. He said that the United States was unilaterally removing tactical (short range) nuclear weapons from its Navy. He said that he had been briefed on the matter by United States Navy officials late in 1988, and also produced a New York Times article of a week earlier backing up his statements. This article said the US Navy was 'quietly phasing out the three types of short range nuclear missiles it would uses for warfare at sea', and gave reasons for this decision. No documents were seen in the ministry files examined relating to these briefings. But a telegram from the New Zealand Embassy in Washington dated 27 September 1989 does support Kidd's claims, and together with his statements in May 1989 supplies the basis for what could have been National's nuclear policy strategy in 1990.

This telegram reports discussion held during a visit to Washington by Don Mackay, a Ministry of Foreign Affairs official in 1989, with 'a range of US officials', and with W Arkin, a very well known and respected independent researcher working for Greenpeace and the Washington based Natural Resources Defense Council, to discuss naval disarmament and naval nuclear issues. Of importance here is what is referred to as the denuclearisation of the US Navy. The report says that this is already happening unilaterally.

> The US has taken 1100 tactical nuclear weapons (anti-submarine, anti-ship, and anti-air missiles) off its naval vessels. They have done this for practical reasons i.e. the weapons were aging and were expensive to maintain and they can do a better job with modern, precise conventional weapons without the tremendous administrative costs that nuclear weapons bring e.g. security, crew size, space costs, command and control processes. *Besides, since USN policy is to deploy in a state of combat preparedness i. e. with its nuclear weapons on board, [consider the case of the Buchanan!]* the commander does not see them as useful because the circumstances in which he is free to use them are so narrow even supposing a war will in future be fought at sea. A secondary motivation is the political side benefits of a reduction in the US nuclear arsenal.
>
> Arkin suggested that, with the exception of Tomahawks [sea launched cruise missiles] and bombs there were unlikely to be new nuclear weapons on USN ships. ... Arkin forecast that from around mid 1991 (as a result of the withdrawal of tactical nuclear missiles) there would no longer be USN nuclear capable frigates or destroyers other than the Spruance and Burke classes. Cruisers would remain nuclear capable using the Tomahawk.
>
> With greater clarity about which classes of vessels are likely to be nuclear armed, there will surely ultimately be ramifications for the NCND policy (and even DOD [US Department of Defense] people have intimated to us that this policy may

> ultimately need adjustment). *But for the foreseeable future none of our interlocuters, either USG [US Government] or NGO, saw abandonment of the policy because of the breadth of anti-nuclear sentiment among US allies.*

This is a very interesting document for several reasons, and sections considered to be especially significant have been italicised. First, this meeting took place in 1989 when New Zealand was still out in the cold militarily as regards the United States. Yet here are New Zealand and American officials meeting in Washington and discussing that most sensitive of subjects, US naval nuclear weapons and future plans for them, not something people in New Zealand would have expected to be happening. A copy of the telegram is included as Appendix Three. Second, the telegram refers to US Navy ships deploying with their nuclear weapons on board. So it would definitely not have been possible for New Zealand officials to have guaranteed the Buchanan free of nuclear weapons in March 1985 without prior knowledge that this would be the case. Third, the 'breadth of anti-nuclear sentiment among US allies' is given as the reason for maintaining the NCND policy. This supports the contention in these working papers that NCND was largely a screen for the covert movement of nuclear weapons, particularly naval nuclear weapons, through the ports of non-nuclear allies of the United States and elsewhere.

Fourth, and the crucial point here, the telegram confirms that there were suggestions around before 1990 from a number of sources that part way through the term of the post-1990 New Zealand government the US Navy might have removed all nuclear weapons from most of its naval vessels likely to want to visit New Zealand. In fact it did more than Arkin predicted, and on 27 September 1991 announced that all tactical nuclear weapons, including nuclear armed Tomahawk cruise missiles, would be removed from all surface ships and attack submarines and bombs from carrier and land based aircraft, leaving only its large deep sea ballistic missile-submarines nuclear armed, as they still are.

The nuclear policy strategy that might have been followed by National in its election campaign was to gamble on the US Navy becoming essentially nuclear weapons free during the 1990 to 1993 electoral period. National could then back Labour's nuclear weapons policy despite its challenge to NCND, with the nuclear armed ship visit problem soon disappearing.

This left the nuclear propulsion problem, section 11 of the Act. National strategy here became clear in October 1991 when very soon after the American 27 September announcement, Bolger, saying it would be churlish not to respond, announced that a committee of qualified scientists was to be set up to review the question of the safety of nuclear powered ships. A possible change to the Act to allow visits by such vessels was hinted at despite public opposition to any change to the legislation. This review went ahead and the resulting report from the committee was published by Department of the Prime Minister and Cabinet in December 1992 with the title, The Safety of Nuclear Powered Ships [(1)]. It got a very poor reception from the public in New Zealand, and was strongly criticised by members of the scientific and professionally qualified community. The Centre for Peace Studies, held a seminar in July 1993 to examine these criticisms. The papers presented were published as Occasional Paper No.l, The Safety of Nuclear Powered Ships: Critiques and Analyses of the 1992 Reporti [(2)]. The committee's report rapidly disappeared from public discussion, but is gaining mention again as indicated in section 4.2 below.

So did National have a strategy in 1990 based on expectations of the September 1991 announcement neutralising section 9 of the Act, and with plans to scuttle section 11 with this safety review? This is suggested as a possibility that gave National more confidence in taking the quite major step in 1990 of adopting Labour's nuclear free legislation, and then repealing section 11 so that it could work its way back into ANZUS by readmitting the US Navy. Perhaps someone will confirm or deny this at some future time.

4.3 The Present

The United States having promoted a failure to meet ANZUS obligations as the reason for breaking off defence relations with New Zealand is now in the situation of having to continue with this argument even though the problem of NCND and New Zealand's legislation has effectively disappeared for them. They still refused as of late 1997 to send a conventionally powered naval vessel. American statements about New Zealand's legislation now concentrate instead on the only objection they have left relating to ship visits, the nuclear powered ship ban. They still never object directly to any other aspect of the legislation, and their arguments about the impact of this ban are considered to be exaggerated in New Zealand's case as indicated in chapter two.

A fundamental question for New Zealand is whether or not it should be seeking renewal of its former status as a full member of ANZUS. Support for a return to ANZUS, as still stated by the United States to be its wish, is considered by the author to be weakening in New Zealand, a conclusion supported by Hager from verbal contacts. It is countered by a statement from the United States Ambassador Josiah Beeman published in The Press, Christchurch, for 30 Septernber 1997 p. 1l, in which he is reported as saying in August that 70% of New Zealanders want a return to ANZUS according to opinion polls. He also said according the The Press that 70% also want to retain the anti-nuclear legislation, a position that 'demonstrated a schizophrenic attitude', and that he did not think the anti-nuclear law would change. This question of support for ANZUS will be considered again in a later working paper, as are events since 1994 that appear to reflect a softening of the United States position on military relations with New Zealand.

The same Press article reported further that the Ministry of Foreign Affairs and Trade says the government accepts that a renewed ANZUS relationship was impossible while the current anti-nuclear law was in force. Ministry spokeswoman, Caroline Forsyth is quoted as saying,

> It has also made clear that changes to the legislation are not under consideration.

The signals from government sources are, however, somewhat mixed. The Minister of Defence, Paul East, speaking in May 1997 to the Special Air Service said he believed the 'extreme anti-nuclear swing' in public opinion might be starting to return to the centre, and suggested he would be looking for evidence to support this feeling. He felt that young people in particular, 'who have an international outlook will start to generate renewed debate on such issues', referring to New Zealand's place in the world and what he sees as deleterious effects in this area through the anti-nuclear policy and its impact on New Zealand's military relationships with the United States. He has been hinting at the possibility, or hope, that military exercises with the United States might resume in the near future, but the nuclear free policy is an impediment. The question here, as The Press says, is 'how much of an impediment?'

November 1997 saw a major event in New Zealand politics. In a not unexpected move, Ms Jenny Shipley, a senior Minister in the National-New Zealand First Coalition Governrnent ousted the Prime Minister and Leader of the National Party, Jim Bolger, by gaining majority support in the National Party caucus for the change. She became Prime Minister on 8 December. After her first foreign media interview, the Sydney Morning Herald ran a headline, 'Shipley would consider end to nuclear ban', and reported her as saying she would be prepared to propose an end to the 12-year ban on nuclear powered warships but only in extreme strategic circumstances. Ms Shipley reacted quickly, and The New Zealand Herald for 12 November 1997 p.A4, reported her as reassuring the New Zealand Parliament that 'her Government has no intention of reviewing the ban on nuclear-powered warships'. The report says that she told Australian journalists that the issue would not be addressed by the Government. In Parliament she said,

> At no stage did I raise any such suggestion the New Zealand would ever contemplate under a National-New Zealand First Government lifting such a ban.

In a transcript of the interview, provided by the Sydney paper, Ms Shipley was asked about the prospect of revisiting the ban. Her reply is quoted by The New Zealand Herald as,

> If you go out on the streets you will find it's not even an issue. I don't believe it is an issue that will be addressed again by a New Zealand Government. But, more importantly, if I ever thought as a minister or Prime Minister that it became strategically important, of course I would raise it with the population. But the advice I have received in technical terms is that that is extremely unlikely so I do not expect that it will be a political matter that will be raised again.

The New Zealand Herald for 4 November 1997 reported the recent visit of Strove Talbott US Deputy Secretary of State under the headline 'US Envoy sidelines ANZUS'. Talbott was quoted in the Introduction to this paper, but it is appropriate to repeat his remarks here. He said, according to the Herald, that ANZUS would not resume until the anti-nuclear issue was resolved. 'I for one look forward to the day, whenever it comes, when this issue passes into history and we can resume a fully normal security relationship.' The anti-nuclear issue was 'unfinished business' between the two countries he said, but relationships between them are in excellent shape despite constraints caused by the anti-nuclear stance. He praised New Zealand as proving it was a good international citizen through its peacekeeping efforts and its work in the Bougainville conflict, and praised its support for the United States in its dispute with Iraq over United Nations weapons inspection teams.

It would seem that the position is quite clear, and that the nuclear free legislation is secure, but the Right Honourable Helen C1ark, Leader of the Labour Party and Leader of the Opposition in Parliament, and long time and very active supporter of a nuclear free New Zealand, is not so certain. In a speech to a joint seminar held on 7 June 1997 by the Centre for Peace Studies and The Peace Foundation to mark the tenth anniversary of the Act becoming law on 8 June 1987 [3], she said when discussing the challenges before supporters of the legislation now,

> My first message is to avoid complacency about our nuclear free status and our present relative detachment from great power alliances. 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 interests in New Zealand's defence arrangements.
>
> In February this year, the Minister of Defence, Paul East, went to Hawaii and visited nuclear-powered and nuclear-capable warships. Recently in a speech to the New Zealand Special Air Service Group Regimental Mess Dinner at Hobsonville, Mr East attacked New Zealand's strong nuclear free stance, describing the moves in the 'eighties as an "extreme anti-nuclear swing". He indicated that he saw no reason other than anti-nuclear feeling in New Zealand why nuclear-powered warships should not return.
>
> That must not be allowed to happen. The price, however, of maintaining our nuclear free stance will be eternal vigilance. Legislation can always be amended by a parliamentary majority. ... It is important that those dedicated to preserving the nuclear-free legislation as it is work to ensure that a majority against aspects of it is not built up in Parliament as the National party works to weaken New Zealand First's policy [which was, at the time of writing, to retain the nuclear free legislation intact].

Discussing the present security situation in the region she said,

> The simple truth is that there will not be a replay of World War II in the Pacific, and that the need for conventional alliances like ANZUS has long since passed.
>
> So where are the government and the defence forces seeking to lead us now?
>
> The answer is, I fear, back into an outdated alliance structure where we would spend on equipment not to meet our own needs, but rather to impress others and to ensure that our defence units could slot in as modules to larger allied arrangements for which there is no obvious purpose.

Helen Clark was speaking as a very experienced politician with an intimate knowledge of the inner machinations of parliament. On more positive note, she said in a statement published in The New Zealand Herald for 7 June 1997, again to mark the tenth anniversary of the Act becoming law,

> Our nuclear-free status is now a cornerstone of New Zealand's foreign policy and our main political parties are committed to protecting the integrity of the policy. It is such an integral and accepted part of our defence and foreign policy framework that few people challenge its merits any longer. ... The nuclear-free policy has helped New Zealand to forge a greater sense of independence and nationhood. That independent streak is respected, as I discovered on my recent visit to China where New Zealand is seen as a country with a mind of its own.
>
> It is also demonstrated in our commitment to peacekeeping work, to our strong profile on disarmament issues, and our active role in the United Nations.

In her remarks on China, she was contrasting views in China concerning the independence of New Zealand from the United States compared with Australia and Japan both of whom have recently renewed security agreements with the United States, seen by some in China as a move to contain China within a United States based security structure.

These comments were echoed more recently by Bryce Harland, New Zealand's first ambassador to China from 1973 to 1975 and now Director of the Institute of International Affairs, in one of a series of articles on China published in The New Zealand Herald. The 11 November 1997 issue of the Herald p.D2 reports him as saying that despite our small size, New Zealand has had, and will continue to play, important roles where China is concerned, and the Chinese respect us for it. New Zealand has a preferred position in its relations with China, benefiting from its anti-nuclear stance. He said that Chinese preferred New Zealand to Australia, and gave the following reasons.

> It is partly because we're small, but the other reason is quite interesting. Australia has recently been tightening its security alliance with the United States, and Japan has done the same thing. The Chinese see those as movements towards a containment policy by the US. The US denies this, of course. With our anti-nuclear policy still in place, nobody can think New Zealand is a mere ally of the US.

It is an amusing twist that New Zealand, which in the 1980s strenuously shunned any association with the idea that The Soviet Union, the communist superpower of those tirnes; was looking favourably on New Zealand for establishing and maintaining an independent non-nuclear stance against the will of the United States, is now undoubtedly enjoying being favoured by the present communist superpower China, for exactly the same reason.

Speaking at the 7 June joint seminar, Christine Bogle, Senior Policy Officer in the International Security and Arms Control Division of the Ministry of Foreign Affairs and

Trade, also gave a very positive view of the place of the legislation in New Zealand's international affairs. Speaking for Colin Keating, Deputy Secretary in the ministry who was ill at the time of the seminar, she described the role of the legislation by saying [4],

> 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. ... The nuclear free legislation is very much a part of the broader Disarmament and Arms Control picture.

She went on to discuss in very positive terms New Zealand's stance and actions in the areas of nuclear and non-nuclear disarmament, pointing out that the Act

> was designed to establish an active disarmament and arms control policy on a wide range of issues, not just nuclear.

Recent actions by New Zealand in the United Nations and elsewhere confirm and support her claims, and present a picture of New Zealand as a country strongly behind a wide range of major disarmament initiatives. It is interesting to look back from here at the debates during the passage of the Bill, and the conflicting claims made about the contribution, or lack thereof, that the legislation would make to disarmament, particularly nuclear disarmament.

Considering nuclear disarmament, a United Nations press release, GA/DIS/3081, 14 October 1997 reports New Zealand's representative at the General Debate of the UN First Committee (Disarmament and International Security), Clive Pearson saying,

> Seven countries had so far ratified the CTBT [Comprehensive Test Ban Treaty], which remained a priority far New Zealand, as it was a step towards nuclear disarmament. ... There should be no doubt that this treaty, and its State signatories, meant business. ... There had never been a better time to engage in nuclear disarmament. ...The fact that they [nuclear weapons] have not been used for 50 years does not mean that the risks are in any way lessened as time goes by. The longer we retain them, the greater the temptation of others to acquire them.

Once more we have a very positive and seemingly clear picture of New Zealand as a strong advocate of a position on nuclear weapons and nuclear disarmament entirely in keeping with the spirit of the legislation.

On the other hand, we see unrelenting insistence from the United States that the legislation must change if security contacts are to improve significantly, in particular if ANZUS relationships are to be restored. And there are undoubtedly those in government, and in government ministries, who quite genuinely see a restoration of ANZUS ties as very important for New Zealand.

Max Bradford, newly appointed Minister of Defence in Jenny Shipley's Cabinet, was reported in The New Zealand Herald of 29 December 1997 p.A5 as saying when discussing defence debate in New Zealand, or the lack of it,

> We tended to be captured by the anti-nuclear brigade and that has flowed over to an unwillingness to face up to having an effective Defence Force.

He also said that he would like to see the defence relation with America rebuilt,

> But it would appear that while the nuclear issue is in the minds of some in the bureaucracy of the US administration, there is going to be a barrier to a resumption of the full relationship.

When questioned about these statements concerning the 'anti-nuclear brigade', he replied, that he could confirm that his position with respect to the nuclear free legislation' 'is that of the Government's'. He then referred to the 1992 report on the safety of nuclear powered ships saying that 'this is an issue which has at times been dominated more by emotion than logic', and that the comments in the 29 December Herald reflect this.

> They are not intended to convey anything other than my own reading of how the issue played out in public coupled with as expression of regret, as Minister of Defence, that the net effect of its impact on the New Zealand Defence Force has been the loss of exercise opportunities with a consequent overall diminution in defence capability (private communication, 4 February 1998).

The question of the response to the 1992 report, emotive or otherwise, was fully addressed in the 1993 Centre for Peace Studies 1993 Occasional Paper. The question of the impact of the Act on New Zealand's defence forces will be examined in detail in a subsequent working paper. However, the important points to note in Mr Bradford's statements are his attitude to the nuclear powered ship visit section of the legislation, both in itself and as a barrier to renewed United States defence contacts and his desire for renewing those contacts. In both respects, his position appears to underline Helen Clark's warnings and statements just quoted concerning preserving the Act unchanged, and in relation to ANZUS and future New Zealand membership.

New Zealand at present has a 120 member MMP Parliament consisting of 44 National members, 37 from Labour, l7 from New Zealand First, 12 Alliance members, 8 from the ACT Party, one from United, and one independent member. Of the five major parties represented, only the ACT Party has come out against the nuclear free legislation as it stands. ACT's Leader, Richard Prebble has called recently for a review of the legislation which he has described as a 'Cold War legacy'. This is a surprising position to see Prebble taking since he himself introduced a private members bill to make New Zealand nuclear free some 13 years earlier. With ACT's present level of representation, this is not a serious threat to the survival of the legislation.

While the future of the legislation does seem secure at present, the warning from Helen Clark should not be ignored. Eternal vigilance must be the message to those who want to see the legislation maintained as it stands now.

As suggested in working paper No.7, an alternative, which it is hoped might come to pass under more favourable political circumstances is to have the legislation entrenched. This would then require a 75% majority in Parliament to agree to any subsequent modification to the Act, but the same majority would be required to secure entrenchment, unlikely with the government of November 1997. Some authorities on such matters consider, however, that even entrenched legislation could be overturned by a determined government in New Zealand's case. But at least entrenchment would seem to offer some increased protection to the Act, being a disincentive for governments to seek change since any action to overturn entrenched legislation would be seen as a very strong rejection of that legislation. The question of the acceptability of a return to ANZUS by a nuclear free New Zealand will be considered further in a later working paper.

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APPENDIX ONE

The Nuclear Free Zone, Disarmament, and Arrns Control Act 1987
- sections one to twenty-five only

ANALYSIS

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 1963 (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."

APPENDIX TWO

The Territorial Sea and Exclusive Economic Zone Act 1977
- extracts only

Sections 3 and 5(1) have been replaced- see the appropriate amendments. See also section 6A in the amendments sheets included.

REPRINTED ACT

[WITH AMENDMENTS INCORPORATED]

TERRITORIAL SEA AND EXCLUSIVE ECONOMIC ZONE

REPRINTED AS ON 1 OCTOBER 1991

INDEX

In this index "(n)" after a page number indicates that the enactment is referred to in a note on that page.

ANALYSIS

TERRITORIAL SEA, CONTIGUOUS ZONE, AND EXCLUSIVE ECONOMIC ZONE ACT 1977

AMENDMENT ACT SINCE REPRINT:—

1996 No. 74. In force 1/8/96 by s. 1(2) of that Act See "General Reference" below.

REFERENCES:—

1994 No. 104 (Maritime Transport Act 1994). In force (in its application to this Act) 1/2/95 by s. 1(2) of that Act and R. 2(a) of Regulations 1994/272.

1996 No. 88 (Fisheries Act 1996). In force (in its application to this Act) 1/10/96 by s. 1(2) of that Act and R. 2 of Regulations 1996/255. See s. 322(1) of that Act as to the provisions of that Act, in so far as they are in force, prevailing over the provisions of this Act to the extent of any inconsistency between the provisions. See also s. 326 of that Act as to all regulations made under s. 22 of this Act deemed to be validly made under s. 299 of that Act. See ss. 322 to 370 of that Act for other savings and transitional provisions.

GENERAL REFERENCE:—

1996 No. 74. See s. 5(4) of that Act as to every reference to the "Territorial Sea and Exclusive Economic Zone Act 1977" being read as a reference to the "Territorial Sea, Contiguous Zone, and Exclusive Economic Zone Act 1977".

REGULATIONS:—

Exclusive Economic Zone (Foreign Fishing Craft) Regulations 1978/63.

Exclusive Economic Zone (Interim Measures for New Zealand Fishing Craft) Regulations 1977/247.

Exclusive Economic Zone (Licence Fees and Royalties) Regulations 1988/243.

Territorial Sea and Exclusive Economic Zone Act Commencement Orders: 1977/245 and 1978/62.

ANALYSIS ALTERATIONS:—

Territorial Sea, Contiguous Zone, and Exclusive Economic Zone Act 1977

6A. Straight baselines

PART IA

THE CONTIGUOUS ZONE OF NEW ZEALAND

8A. The contiguous zone

11 to 26. Repealed

29. Repealed

32. Onus of proof in respect of certain offences

32A. Repealed

"Prescribed" means prescribed by regulations made under this Act:

"Shellfish" includes every description of molluscs, crustaceans, and echinoderms found in New Zealand fisheries waters, and their young or spawn, but does not include oysters:

"Take" includes—

(a) To take, catch, kill, attract, or pursue by any means or device; and

(b) To attempt to do any act specified in paragraph (a) of this definition:

"Total allowable catch", with respect to the yield from any fishery, means, the amount of fish that will produce from that fishery the maximum sustainable yield, as qualified by any relevant economic or environmental factors, fishing patterns, the interdependence of stocks of fish, and any generally recommended subregional, regional, or global standards.

(2) For the purposes of this Act, permanent harbour works that form an integral part of a harbour system shall be treated as forming part of the coast.

In subs. (1):

"New Zealand fisheries waters": The Fisheries Act 1983, being the corresponding enactment in force at the date of this reprint, has been substituted for the repealed Fisheries Act 1908.

"New Zealand fishing craft": The Civil Aviation Act 1990, being the corresponding enactment in force at the date of this reprint, has been substituted for the repealed Civil Aviation Act 1964.

PART I

THE TERRITORIAL SEA OF NEW ZEALAND

3. The territorial sea—The territorial sea of New Zealand comprises those areas of the sea having, as their inner limits, the baseline described in sections 5 and 6 of this Act and, as their outer limits, a line measured seaward from that baseline, every point of which line is distant 12 nautical miles from the nearest point of the baseline.

4. Internal waters—The internal waters of New Zealand include any areas of the sea that are on the landward side of the baseline of the territorial sea of New Zealand.

5. Baseline of territorial sea—(1) Except as otherwise provided in section 6 of this Act, the baseline from which the breadth of the territorial sea of New Zealand is measured shall

S. 2(1) "Licence" and "Licensee". **REFER:** s. 316(1) of 1996 No. 88. These definitions are to be repealed, but see s. 1(2) of that Act as to that provision coming into force by Order in Council.

S. 2(1) "Master". **REFER:** s. 316(1) of 1996 No. 88. This definition is to be repealed, but see s. 1(2) of that Act as to that provision coming into force by Order in Council.

*29-42 S. 2(1) "New Zealand fishing craft" and "New Zealand Government ship". **RPLD & SUBSTD** by s. 203 of 1994 No. 104 as follows:—

" 'New Zealand fishing craft' means a fishing craft—

(a) That is a New Zealand ship within the meaning of section 2 (1) of the Maritime Transport Act 1994; or

(b) That is an aircraft registered in New Zealand under the Civil Aviation Act 1990; or

(c) In which no person who is not a New Zealand citizen has any legal or equitable interest (except by way of security only for any advance made by him or her to the owner):

'New Zealand Government ship' means a ship that belongs to Her Majesty or is held by any person on behalf of or for the benefit of Her Majesty; but does not include a ship that is set aside for or used by the New Zealand Defence Force:".

S. 2(1) "Owner". **REFER:** s. 316(1) of 1996 No. 88. This definition is to be repealed, but see s. 1(2) of that Act as to that provision coming into force by Order in Council.

S. 2(1) "Shellfish", "Take" and "Total allowable catch". **REFER:** s. 316(1) of 1996 No. 88. These definitions are to be repealed, but see s. 1(2) of that Act as to that provision coming into force by Order in Council.

83-88 S. 3. **READS** as amended by s. 3(1) of 1996 No. 74:—

"3. The Territorial sea—The territorial sea of New Zealand comprises those areas of the sea having, as their inner limits, the baseline described in sections 5 and 6 [and 6A] of this Act and, as their outer limits, a line measured seaward from that baseline, every point of which line is distant 12 nautical miles from the nearest point of the baseline."

94 ctd
p. 882/03 S. 5(1). **READS** as amended by s. 3(2) of 1996 No. 74:—

"(1) Except as otherwise provided in section 6 [or section 6A] of this Act, the baseline from which the breadth of the territorial sea of New Zealand is measured shall be the low-water mark along the coast of New Zealand, including the coast of all islands."

be the low-water mark along the coast of New Zealand, including the coast of all islands.

(2) For the purposes of this section, a low-tide elevation that lies wholly or partly within the breadth of sea that would be territorial sea if all low-tide elevations were disregarded for the purpose of the measurement of the breadth of the territorial sea shall be treated as an island.

6. Baseline of territorial sea adjacent to bay—In the case of the sea adjacent to a bay, the baseline from which the breadth of the territorial sea is measured—

(a) Where the bay has only one mouth and the distance between the low-water marks of the natural entrance points of the bay does not exceed 24 nautical miles, shall be a straight line joining those low-water marks; and

(b) Where, because of the presence of islands, the bay has more than one mouth and the distances between the low-water marks of the natural entrance points of each mouth added together do not exceed 24 nautical miles, shall be a series of straight lines across each of the mouths so as to join those low-water marks; and

(c) Where neither paragraph (a) nor paragraph (b) of this section applies, shall be a straight line 24 nautical miles in length drawn from low-water mark to low-water mark within the bay in such a manner as to enclose the maximum area of water that is possible with a line of that length.

7. Bed of territorial sea and internal waters vested in Crown—Subject to the grant of any estate or interest therein (whether by or pursuant to the provisions of any enactment or otherwise, and whether made before or after the commencement of this Act), the seabed and subsoil of submarine areas bounded on the landward side by the low-water mark along the coast of New Zealand (including the coast of all islands) and on the seaward side by the outer limits of the territorial sea of New Zealand shall be deemed to be and always to have been vested in the Crown.

8. Regulations in territorial sea—Where no other provision is for the time being made by any other enactment for any such purposes, the Governor-General may from time to

32 New s. 6A. INSD by s. 2 of 1996 No. 74 as follows:—

"[6A. Straight baselines—(1) Subject to section 6 of this Act, in the following circumstances the method of drawing straight lines joining points may be employed in drawing the baseline from which the breadth of the territorial sea is measured:

(a) Where a river flows directly into the sea:

(b) Where the coast is highly unstable because of the presence of a delta or other natural conditions:

(c) Where the coast is deeply indented:

(d) Where there is a fringe of islands along the coast in its immediate vicinity.

(2) For the purposes of subsection (1) of this section, the points between which straight lines may be drawn are,—

(a) In a case where a river flows directly into the sea, a point at each side of the river's mouth on the low-water line of the river's banks:

(b) In a case where the coast is highly unstable because of the presence of a delta or other natural conditions, points along the *furtherest* seaward extent of the low-water line:

(c) In any other case, points that are appropriate in the circumstances.

(3) Where it is necessary to determine the points between which straight lines may be drawn for the purposes of paragraph (b) or paragraph (c) of subsection (2) of this section,—

(a) The following rules shall be observed:

(i) Straight baselines shall not depart to any appreciable extent from the general direction of the coast:

(ii) Sea areas lying within straight baselines shall be sufficiently closely linked to the land of New Zealand to be internal waters of New Zealand:

(iii) Straight baselines shall be drawn to and from low-tide elevations only where lighthouses or similar installations, which are permanently above sea level, have been built on the low-tide elevations or where the drawing of baselines to and from such elevations has received general international recognition; and

(b) Economic interests peculiar to the region concerned, the reality and the importance of which are clearly evidenced by long usage, may be taken into account.

(4) Where, in a case where the coast is highly unstable because of the presence of a delta or other natural conditions, a straight line has been drawn pursuant to this section, that line remains the baseline, notwithstanding any subsequent regression of the low-water line, until it is changed in accordance with this Act.

Cf. United Nations Convention on the Law of the Sea, articles 7 and 9]".

Note: it would appear that the word "furtherest", indicated above in italics, has been mis-spelt and should read "furthest".

77 New Part IA (s. 8A). INSD by s. 4 of 1996 No. 74 as follows:—

"[PART IA

[THE CONTIGUOUS ZONE OF NEW ZEALAND

[8A. The contiguous zone—(1) In this section, the term 'marker' means the line that, pursuant to section 3 of this Act, marks the outer limits of the territorial sea of New Zealand.

(2) The contiguous zone of New Zealand comprises those areas of the sea having, as their inner limits, the marker, and, as their outer limits, a line measured seaward from the marker, every

APPENDIX THREE

27 September 1989 telegram from the New Zealand Embassy Washington to Wellington

The telegram was marked CONFIDENTIAL.

[redacted] 59/8/2

C[redacted] 27 SEP 89 MESSAGE NUMBER: I 28412 PAGE

FROM: WASHINGTON CHARGE CODE: 888

TO : WELLINGTON 02576-PRIORITY

URGENT

RPTD:	NEW YORK	00535-ROUTINE	:GENEVA	00404-ROUTINE
:	CANBERRA	00559-ROUTINE	:MOSCOW	00130-ROUTINE
:	THE HAGUE	00050-ROUTINE	:OTTAWA	00526-ROUTINE
:	TOKYO	00249-ROUTINE	:LONDON	00314-ROUTINE
:	BONN	00075-ROUTINE		

LD : SERT (DIS EUR AMER SPA AUS NAD UNC EAB)

SUBJ: VISIT OF MACKAY : NAVAL DISARMAMENT

FROM FILE 50/3/7

SUMMARY (U/L)

OUR DISCUSSIONS ON NAVAL NUCLEAR DISARMAMENT QUESTIONS POINTED TO THE FOLLOWING CONCLUSIONS
A) THE MULTILATERAL PROCESS IS NOT GOING ANYWHERE
B) THE BILATERAL PROCESS WILL CONTINUE UNDER THE RIGHT CONDITIONS, I.E. IF THE E[redacted] CLIMATE CONTINUES TO IMPROVE, THE NUCLEAR ALLERGY AND PUBLIC PRESSURE ARE MAINTAINED AND CUTS IN DEFENCE SPENDING CONTINUE.
C) THE US IS MAKING A NUMBER OF UNILATERAL MOVES FOR PRACTICAL REASONS WHICH WILL AFFECT ITS NAVAL NUCLEAR CAPABILITIES.

REPORT (U/L)

2 IN THE COURSE OF DON MACKAY'S VISIT WE TALKED ABOUT NAVAL NUCLEAR ISSUES WITH A RANGE OF US OFFICIALS AS WELL AS WITH WILLIAM ARKIN OF GREENPEACE AND THE NRDC. WE SOUGHT US VIEWS ON A NUMBER OF RECENT DEVELOPMENTS E.G. SWEDEN AND NORWAY'S HEIGHTENED INTEREST, THE US/SOVIET INCIDENTS AT SEA AGREEMENT, THE SOVIET OFFER ON SLCMS, THE US DECISION TO REMOVE VARIOUS TACTICAL NUCLEAR WEAPONS FROM ITS NAVAL VESSELS AND THE BLACK SEA VERIFICATION EXPERIMENT.

3 THE HISTORICAL US OPPOSITION TO NAVAL ARMS CONTROL DERIVES FROM THE VIEW THAT, AS AN ''ISLAND'' NATION (OR AT LEAST COASTAL) A STRONG NAVAL CAPABILITY IS ESSENTIAL TO THE DEFENCE OF THE US AND ITS ALLIES. THE NAVY HAS HAD A VERY STRONG INFLUENCE ON POLICY AND THERE HAS AS YET BEEN LITTLE CHALLENGE TO THE ACCEPTED WISDOM THAT NAVAL DISARMAMENT IS NOT IN US NATIONAL INTERESTS. FURTHER, ACCORDING TO ARKIN (GREENPEACE), WHO IS SOMETHING OF A NAVAL EXPERT, THERE IS LITTLE IN NAVAL ARMS CONTROL THAT WILL MAKE US FORCES MORE EFFICIENT OR BETTER OPERATING. THE GAINS WOULD LARGELY LIE ELSEWHERE E.G. IN AN

[redacted]

IMPROVED SUPER-POWER CLIMATE, OR BETTER MANAGED RELATIONSHIPS WITH US ALLIES OR GREATER REGIONAL STABILITY. NEVERTHELESS ACDA CONCEIVED THAT PROSPECTS FOR NAVAL DISARMAMENT CAN NOT BE EXCLUDED. THE PROSPECTS ARE NOT GOOD, AS THE US HAS BEEN SO CONSISTENTLY UNENTHUSIASTIC, NOT JUST IN THE CFE PROCESS. THERE IS HOWEVER AN INTEREST IN CBMS AND IT WAS LIKELY THEY WOULD CONTINUE.

MULTILATERALISM (U/L)

4 ALL OUR INTERLOCUTORS, WHETHER USG OR NGO, AGREED THAT THE US WOULD NOT ACCEPT A MULTILATERALISING OF THE PROCESS OF NAVAL DISARMAMENT. THE US/SOVIET INCIDENTS AT SEA AGREEMENT IS SEEN AS A WAY OF INTRODUCING GREATER STABILITY INTO THE RELATIONSHIP BY DEALING WITH A NUMBER OF PRACTICAL ISSUES. BUT OFFICIALS ARGUE THAT EACH COUNTRY'S CONCERNS ARE UNIQUE AND THAT OTHERS E.G. THE FRG HAVE RECOGNISED THIS BY NEGOTIATING SPECIFIC BILATERAL INCIDENTS AT SEA AGREEMENTS. MULTILATERALISING THIS PROCESS WAS SEEN BY OFFICIALS AS INIMICAL TO US INTERESTS SINCE IT WOULD BRING NAVAL ISSUES ONTO THE ARMS CONTROL AGENDA AND COULD OPEN THE DOOR TO CONSTRAINTS THE US IS NOT READY FOR. THEY WARNED US THAT PRESSURE COULD HAVE THE EFFECT OF HARDENING THEIR POSITION. MOREOVER THE NGO'S ACCEPTED THAT AS LONG AS THE US SEES MULTILATERALISM AS BEING CONTRARY TO ITS INTERESTS IT WILL GO NOWHERE.

DEVELOPMENTS IN THE US (U/L)

5 ON THE OTHER HAND, AS ARKIN POINTED OUT, EVEN DESPITE THE PREDOMINANCE OF THE CONSERVATIVE VIEW THERE IS A SIGNIFICANT BODY OF OPINION THAT THINKS THAT NAVAL DISARMAMENT WILL HAVE TO HAPPEN. CERTAINLY, AS YOU NOTE, THERE IS A LOT MORE THINKING ON THE ISSUE THAN THERE WAS FIVE YEARS AGO. ARKIN CLAIMED THAT THE INEVITABILITY OF MOVEMENT IS RECOGNISED IN STATE, DOD AND EVEN IN DEFENCE, WHICH IS NOT TO SAY THAT THE NAVY'S ARGUMENT IS NOT VALID. BUT IT IS NOW SEEN AGAINST A WIDER CONTEXT IN WHICH THERE HAVE BEEN INTER ALIA IMPROVEMENTS IN E-W RELATIONS, A REDUCTION IN THE PUBLIC PERCEPTION OF THE SOVIET THREAT, A STEADY INCREASE IN THE NUCLEAR ALLERGY, THE BUDGET DEFICIT AND PUBLIC PRESSURE FOR NUCLEAR DISARMAMENT AS A RESULT OF ALL THESE THINGS.

6 THERE ARE A NUMBER OF POSSIBILITIES WHICH BEAR ON NZ'S INTERESTS:
A) DENUCLEARISING NAVIES (WHICH IS ALREADY HAPPENING IN PART)
B) CONFIDENCE AND SECURITY BUILDING MEASURES AT SEA (WHICH IS ALREADY APPLYING), AND
C) LIMITATIONS ON THE SIZE OF NAVAL FORCES (A MORE UNLIKELY PROPOSITION, UNLESS IT IS DONE UNILATERALLY). IN THE BILATERAL NEGOTIATIONS THE SOVIETS HAVE GIVEN UP ANY IDEAS OF IMPOSING LIMITATIONS ON THE SIZE OF US NAVAL FORCES, (THOUGH BECAUSE OF REDUCED INVESTMENT THEIR OWN CAPACITY IN THE PACIFIC IS WEAKENING IN COMPARISON WITH THE ALLIED CAPACITY I.E.6 US AIRCRAFT CARRIERS, A JOINT US/JAPANESE FORCE OF 200 SUBMARINES AND THE HUGE COMBINED FORCES OF US/JAPAN/CHINA).
THEY ARE INSTEAD FOCUSSING ON CONFIDENCE AND SECURITY BUILDING MEASURES AS A BASE FROM WHICH TO BUILD FURTHER AGREEMENTS.

[redacted]

7 THE ENUCLEARISATION OF THE US NAVY IS ALREADY HAPPENING, UNILATERALLY. THE US HAS TAKEN 1100 TACTICAL NUCLEAR WEAPONS (ANTI-SUBMARINE, ANTI-SHIP AND ANTI-AIR MISSILES) OFF ITS NAVAL VESSELS. THEY HAVE DONE THIS FOR PRACTICAL REASONS I.E. THE WEAPONS WERE AGING AND WERE EXPENSIVE TO MAINTAIN AND THEY CAN DO A BETTER JOB WITH MODERN, PRECISE CONVENTIONAL WEAPONS WITHOUT THE TREMENDOUS ADMINISTRATIVE COSTS THAT NUCLEAR WEAPONS BRING E.G. SECURITY, CREW SIZE, SPACE COSTS, COMMAND AND CONTROL PROCESSES). BESIDES, SINCE USN POLICY IS TO DEPLOY IN A STATE OF COMBAT PREPAREDNESS I.E. WITH ITS NUCLEAR WEAPONS ON BOARD THE COMMANDER DOES NOT SEE THEM AS USEFUL BECAUSE THE CIRCUMSTANCES IN WHICH HE IS FREE TO USE THEM ARE SO NARROW EVEN SUPPOSING A WAR WILL IN FUTURE BE FOUGHT AT SEA. A SECONDARY MOTIVATION IS THE POLITICAL SIDE BENEFITS OF REDUCTION IN THE US NUCLEAR ARSENAL.

8 ARKIN SUGGESTED THAT, WITH THE EXCEPTION OF TOMAHAWKS AND BOMBS THERE WERE UNLIKELY TO BE NEW NUCLEAR WEAPONS ON USN SHIPS. HE PREDICTED A REDUCTION IN THE NUMBER OF BOMBS - WHILE AT PRESENT THEY ARE DEPLOYED ONLY ON AIRCRAFT CARRIERS THEY COULD THEORETICALLY ALSO BE DELIVERED BY HELICOPTER FROM CRUISERS, ATTACK SUBMARINES AND DESTROYERS. OVER TIME ARKIN THOUGHT THEIR USE WOULD BECOME JUST AS MUCH STIGMATISED AS OTHER NUCLEAR WEAPONS. ON THE OTHER HAND, HE SAW THE USE OF TOMAHAWKS CONTINUING SINCE THEY ARE A NEW WEAPON.

9 ARKIN FORECAST THAT FROM AROUND MID 1991 AS A RESULT OF THE WITHDRAWAL OF TACTICAL NUCLEAR MISSILES, THERE WOULD NO LONGER BE USN NUCLEAR CAPABLE FRIGATES OR DESTROYERS OTHER THAN THE SPRUANCE AND BURKE CLASSES. CRUISERS WOULD REMAIN NUCLEAR CAPABLE USING THE TOMAHAWK.

10 WITH GREATER CLARITY ABOUT WHICH CLASSES OF VESSELS ARE LIKELY TO BE NUCLEAR ARMED, THERE WILL SURELY ULTIMATELY BE RAMIFICATIONS FOR THE WIDER POLICY (AND EVEN DOD PEOPLE HAVE INTIMATED TO US THAT THIS POLICY MAY ULTIMATELY NEED ADJUSTMENT). BUT FOR THE FORESEEABLE FUTURE NONE OF OUR INTERLOCUTORS, EITHER USG OR NGO, SAW ABANDONMENT OF THE POLICY BECAUSE OF THE BREADTH OF ANTI-NUCLEAR SENTIMENT AMONG US ALLIES.

US/SOVIET BILATERAL NEGOTIATIONS (U/L)

11 THE WYOMING SUMMIT FROM 22-23 SEPTEMBER ADVANCED THE BILATERAL AGENDA ON NAVAL DISARMAMENT IN RESPECT OF THREE ISSUES

A) SLCM

B) AGREEMENT ON RULES GOVERNING INNOCENT PASSAGE THROUGH TERRITORIAL WATERS.

C) AN APPROACH FOR RESOLUTION OF THE NORTHERN PACIFIC MARITIME BOUNDARY ISSUE.

SLCM'S (U/L)

12 THE TWO SIDES HAVE AGREED FOLLOWING THE WYOMING DISCUSSIONS TO TAKE SLCMS OUT OF START, SINCE THE PROBLEMS OF VERIFICATION ARE SEEMINGLY IMPOSSIBLE AND WILL HOLD UP A TREATY

[redacted]

NORTHE PACIFIC MARITIME BOUNDARY ISSUE (U/L)

16 THIS IS THE BARING STRAIT DELIMITATION ISSUE. WE DID NOT GET A CLEAR STEER ON HOW FAR OFF AGREEMENT ON THIS ISSUE IS BUT IT HAS BEEN GIVEN A PUSH BY THE MINISTERIAL COMMITMENT AT THE SUMMIT.

17 WE WILL CONTINUE TO REPORT ON ISSUES OF NAVAL DISARMAMENT AS APPROPRIATE.

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28/09/1945LT AOB/PFC

WSH 6309

TORW 29/09/89 11:57:08