

AN ASSESSMENT OF
THE SOUTH PACIFIC NUCLEAR FREE
ZONE TREATY

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Chapter I

TREATY OR NO TREATY

Focus

On August 6, 1985, eight leaders of the South Pacific Forum (SPF) formally signed the South Pacific Nuclear Free Zone Treaty (SPNFZ). Those who signed were Australia, Cook Islands, Kiribati, Fiji, New Zealand, Tuvalu, Western Samoa and Niue. Fiji and the Cook Islands deposited their instrument of ratification at the same occasion. Of the five countries that did not sign only Vanuatu said that it would not sign the Treaty at all. Papua New Guinea (who later in the year signed), indicated that due to constitutional requirements, it could not do so at the time. Nauru, Tonga and Solomon Islands were also of the same view. The Treaty requires that eight members ratify it for it to become registered with the United Nations.

The Treaty which contains sixteen articles, three protocols and four annexes, commits signatories to prohibit the storing, testing and dumping of nuclear wastes in the parties land and ocean jurisdiction. The Treaty further requires the signatories to renounce nuclear warfare and forbids assisting such warfare. But members can decide independently whether to allow foreign nuclear ships and warplanes to use their harbours and airports.

Statement of problem

Since 1985 however, the Treaty has been marred by dissension amongst the signatories themselves and a growing skepticism has

arisen from proponents and opponents alike about its worth. At the 1985 SPF just before the eve of its signing, Vanuatu's Prime Minister Fr. Walter Lini rejected the draft proposal of the Treaty saying that it was not "comprehensive enough". Lini was later to expand on his opposition by charging that nothing in the Treaty would stop American and Soviet vessels from steaming through the zone (1). He inferred that it was not what Pacific islanders wanted. The Solomon Islands who had expressed endorsement of the Treaty at the Rarotonga Forum later in 1986 called the Treaty "useless", indicating that it would not agree to anything short of a total ban on nuclear arms in the Pacific region (2). The Cook Islands who had ratified the Treaty in 1985 took a complete turnabout in 1986. At a meeting in May, the Prime Minister of the Cook Islands Sir Thomas Davis threatened to sever his tiny nation's ties with the Treaty should it restrict American access to the region (3). The Government of Papua New Guinea has also indicated its unhappiness with the Treaty suggesting that it may review its stance.

This growing skepticism about the SPNFZ Treaty (often called the Treaty of Rarotonga), has heightened tensions in the region, and one which will prove the solidarity of the SPF. As David Robie notes when pointing out a likely rift in the SPF, "it could become another source of irritation between Melanesian nations and Polynesian countries" at the 1986 SPF in Suva, Fiji (4). He further speculates that it could see corrosion of the traditional Pacific Way of reaching agreement by consensus.

The objective of this paper is essentially fourfold: (a) to

review the SPNFZ Treaty; (b) to identify key factors in the Treaty that appears to have retarded common agreement amongst the Treaty partners; (c) to carry out a comparative study of the SPNFZ Treaty with the only other treaty in existence relating to general arms control efforts, namely the 1967 Treaty of Tlatelolco proscribing nuclear weapons in Latin America; and (d) to examine Vanuatu's opposition to the Treaty.

Before delving into these however, a look into the historical background of the SPNFZ Treaty might be warranted in order to allow the reader to follow and consequently formulate his or her own opinion on the subject.

Chapter II
HISTORICAL PERSPECTIVE OF THE NUCLEAR FREE ZONE CONCEPT
IN THE SOUTH PACIFIC

A regional concern.

Since the atom bombs on Hiroshima and Nagasaki ended the Pacific war, the region has been used to develop and test nuclear weapons. The U.S. began testing in 1946 at Bikini Atoll in the Marshall Islands and it exploded its first hydrogen bomb on Enewetak Atoll in 1952 (5). Over the next six years, some 66 test were carried out at Bikini and Enewetak (6). From there the U.S. moved its tests to Johnston Island near Hawaii. Britain also conducted an extensive program of atmospheric test in the Pacific. It exploded some twelve atom bombs on Australian territory and then moved its tests to Christmas Island where it exploded its first thermonuclear device in 1957. As a consequence of the Partial Test Ban Treaty, the U.S. and Britain ceased testing in the Pacific in 1963. France remains the only state which continues its nuclear tests in the region. It established a test site on Moruroa Atoll in French Polynesia in 1963 and detonated its first atmospheric explosion there in 1966 (7). Over the subsequent nine years, some 41 nuclear devices were exploded in the atmosphere at Moruroa Atoll. In all, it has been estimated that the U.S., Britain and France have exploded 213 nuclear devices in the atmosphere of the Pacific (8).

Regional opposition to nuclear testing began in the early

1970s, specifically against continued French testing at Moruroa. The Labour Governments of Australia and New Zealand together with the Government of Fiji took the issue to the International Court of Justice and a boycott was placed in Australia and New Zealand on links with France. In the face of growing opposition, French atmospheric testing ceased and in 1975 the French took its tests underground in Moruroa.

It is not only in the area of nuclear testing that Pacific states have opposed. The dumping of radio-active waste and missile testing have also been of concern, particularly in the late 1970s and 1980s. When a panel of four Japanese scientists met with Pacific leaders in 1980 in Guam to explain that country's proposal to dump nuclear waste in the North-Western Pacific Ocean, leaders told them that they wanted no part of any dumping (9). Whilst there are no current programs for dumping radio-active waste in the Pacific, U.S. and Japanese studies have explored the possibility (10). Such suggestions have been strongly opposed by South Pacific states and in deference to their views, Japan has given some assurances that its disposal programs will take regional opinion into account (11).

Three nuclear powers- the U.S., China and the Soviet Union use the Pacific for missile testing. The Soviet Union and China have used international waters within the region for splash down points in their missile testing programs. The U.S. however makes the most extensive use of the Pacific for missile testing. It maintains permanent testing facilities on Kwajalein Atoll in the Marshall Islands (12). The Kwajalein facilities monitor missile

trajectories and impact accuracies and can launch ABM's for test purposes (13).

As mentioned earlier regional opposition to nuclear activities (specifically testing) had aroused vocal condemnation in the early 1970s. Leaders of South Pacific states have taken every opportunity in international meetings to voice their concerns. The SPF began condemning testing in 1973 at their meeting in Suva. There have also been public outcries over the issue. These have come through organised citizen movements such as the Nuclear Free Pacific Movement, the Against Testing on Moruroa (ATOM) group and the Pacific Concerns Resource Centre. Organizations in the region such as the Pacific Islands Conference of Churches, the Pacific Trade Union Congress and some seventy other organization in the region. Trade unions in the region have been especially radical in it's stance. It has gone as far as refusing the loading and unloading of French merchant shipping in South Pacific ports at every opportunity.

While much of the regions protests over the nuclear issue has met with some success (in so far as forcing France to conduct it tests underground and postponing radio-active waste proposals), the feeling is that it is still short of what the countries in the region had wanted. The French Government's reluctance to cease all testing only angered Pacific leaders. This frustration drove them to find other measures, one of them being a declaration of a Nuclear Free Zone (NFZ).

The next section thus examines some of the proposals that was pursued. Two of them - the New Zealand initiative of 1975

and the Australian proposal of 1983 are of special importance here: The New Zealand proposal whilst not succeeding in having a Treaty, nevertheless did provide the impetus for a NFZ concept in the region. The Australian proposal which learnt some lesson from the defunct New Zealand initiative led ultimately to the 1985 SPNFZ Treaty.

Even before we look into these initiatives however, it is perhaps useful to clarify two points. These relate to the concept of a NFZ itself and the interchangeable usage of the term Nuclear Weapons Free Zone (NWFZ).

NWFZ as a term is widely established in United Nations and other international usage, for example in Latin American and Antarctica Treaties. The drafters of the SPNFZ Treaty decided to delete the term weapon in their Treaty for in their view it would contradict the other issues addressed in the Treaty, notably the peaceful uses of nuclear energy and especially the dumping of nuclear waste. It seemed to them that it would be more appropriate therefore not to use the term weapon in the title.

The concept of NFZ is a fairly new one. Ramesh Thakur in examining the concept notes that it "arose from the desire of non-nuclear countries to disengage, on their own terms from the nuclear madness of the major powers. It denotes a zone which a group of states may establish by a treaty whereby the status of total absence of nuclear weapons to which the zone shall be subject is defined and a system of verification and control is set up to guarantee compliance" (14). He continues that the "three

essential characteristics of such a zone are non possession, non deployment and non-use of nuclear weapons" (15). Its goal is to "isolate a region from an outbreak of nuclear war. Subsumed within this broad objective are subsidiary goals of reducing the probability of war, decreasing the harmful effects if war should nevertheless occur, and lowering the costs and burdens of the arms race" (16). Nuclear free zones can also be seen as essential components in confidence-building structures that strengthen the possibilities of peace (17). He then concludes that proponents of the concept "are convinced that such zones can contribute to the goals of general and complete disarmament, of curbing the proliferation of nuclear weapons, of enhancing the security of zone members by ensuring the total absence of nuclear weapons from their territories, and providing the means for obtaining security assurances from the nuclear powers against the threat or use of nuclear weapons against members of the zone" (18).

The New Zealand Initiative.

In 1975 at the 5th SPF meeting in Tonga, Forum leaders gave unanimous support to a New Zealand proposal for the establishment of a NFZ in the South Pacific. As a result of general endorsement of the idea by Forum members, New Zealand with Fiji wrote to the United Nations Secretary General requesting that an item of a South Pacific Nuclear Weapons Free Zone (SPNWFZ) be included on the agenda of the 30th session of the General Assembly (19). Accompanying the letter was a draft resolution calling on member states of the United Nations to "endorse the idea of establishing

a NWFZ in the South Pacific in cooperation with the nuclear powers and with the possible assistance of the UN Secretary General" (20). The resolution in short called for the banning of nuclear weapons in the region and an end to all testing.

Even before the resolution was to be tabled at the December 1975 General Assembly, it received a chilly reception, particularly from the United States. U.S. concern was partly based on the belief that a NFZ in the South Pacific would curtail the freedom of movement of its military ships and aircraft in the region. Secondly it feared that as the only nuclear weapons state which deploys in the South Pacific, the NFZ would in effect have unilaterally restricted it while not imposing similar constraints on its strategic adversaries- the Soviet Union and China (21). Thirdly the U.S. was concerned about its security alliance under ANZUS which is in itself a security arrangement that oversees the South Pacific region. As noted by Greg Fry, the ambiguities in the New Zealand proposal heightened U.S. concerns:

From the U.S. point of view, the proposal was seen as open-ended on the question of what constitutes nuclear presence in the region. The New Zealand Government's reported claim that it would not affect transit did not placate American fears on the matter. New Zealand assurances were negated by its reference to such a proposal was also vague on the question of boundaries... this would also have concerned the U.S. because of the possibility of its American territories being considered part of the region (22).

When the resolution eventually came for the General Assembly vote on 11th December 1975, it was unanimously supported by a vote of 110 for the resolution, none against and 20 abstentions (23). Of the five major nuclear weapon states, only China voted in favour of the resolution. Britain, France, Soviet Union and the U.S. expressed general sympathy, but abstained on the vote because of fears for their rights on high seas (24).

The New Zealand initiative however was not pursued further due to a change of Government in the country in 1975 (25).

According to Fry and Mediansky the New Zealand proposal's failure to materialize into an action package was due in part to Australian reluctance to go along with some issues in the proposal, namely, reservations that it would disadvantage U.S. strategic interests and its security arrangements in the South Pacific. They also pointed out that the New Zealand proposal was deficient in other ways, including the broad and ill defined nature of its presentation. In all, however, its greatest deficiency proved to be that it aroused the concern of Washington which in turn aroused Australian doubts (26).

The Australian Proposal.

Like all South Pacific states, Australia has had a history of denouncing French nuclear testing in the region. The platform of the Australian Labor Party which came to office in March 1983 was committed to a wide range of arms control objectives (27). Among these were a pledge to promote zones of peace and nuclear free zones in the Indian and Pacific oceans (28). Angered over

continued testing in April 1983, and building on the outcry of South Pacific island states, Australian government statements started mentioning moves to revive the Nuclear Free Zone concept (29). At the 13th South Pacific Forum at Canberra in August 1983, Australia formally presented its proposal.

The Australian proposal essentially sought to ban the use, testing or stationing of nuclear explosive devices in the South Pacific and provide that no South Pacific country would develop or manufacture, or receive from others, or acquire or test any nuclear explosive device (30). The proposal however recognizes the unqualified security arrangements including access to its ports and airfields by vessels and aircraft of other states (31).

The architects of the Australian proposal evidently took care to avoid arousing U.S. opposition particularly where it would disadvantage its strategic installations in Australia as well as its security link under ANZUS. Hence as noted by Mediansky, the "Australian Government presented its SPNFZ proposal as a "political concept" aimed at furthering the objectives of arms control within the provisions of the Non-Proliferation Treaty. The main objective being to establish a broadly endorsed regime to oppose French testing as well as to ban dumping and the acquisition, storage or deployment of nuclear weapons" (32). The proposal did not call for the prohibition of existing nuclear weapons and weapons related involvement of the nuclear weapons states such as port calls and other arrangements that support the military posture of nuclear powers in the region. Australian government officials gave repeated assurances

on transit rights, port calls and the continued adherence to existing security agreements.

The 13th SPF whilst commending the Australian proposal reserved its initiative on the proposal and simply stated that Australia had provided "a valuable contribution to establishing the objectives which a zone concept would seek to achieve" (33).

Chapter III

THE SPNFZ TREATY.

Encouraged by the positive acknowledgment from island states and New Zealand on its initiative, Australian officials between the period of the Canberra Forum began to press for concerted backing to its proposal. Thus by the time of the 15th SPF in Tuvalu most states in the Forum had been convinced about moving the proposal a step further. The Tuvalu Forum in its final communique stated that it had "agreed on the desirability of establishing a nuclear free zone in the region at the earliest possible opportunity in accordance with the principles set in the Australian working papers that had been circulated to the Forum members" (34).

The 1984 SPF Mandate.

The Tuvalu SPF in August 1984 appointed a Working Group of officials "to meet as often as may be required to undertake an examination of the substantive legal and other issues involved in establishing a nuclear free zone in the region with a view to preparing a draft of a treaty for consideration by the Forum meeting in 1985" (35).

In addition the Forum also directed the Working Group to examine the proposal by Nauru to strengthen the London Dumping Convention noting that "the dumping and disposal of nuclear waste in the region was intolerable, and that Forum governments were

strongly committed to this aspect of the convention and protocols being negotiated under the auspices of the South Pacific Regional Environmental Programme (SPREP)"(36).

The Forum appointed Australia to chair the Working Group and directed that all members of the Forum would be entitled to take part in the Working Group.

In addition to its mandate, the Forum also agreed on a set of principles they felt were of importance in their wanting a treaty. These were:

i) South Pacific countries should enjoy peaceful, social and economic development free from the threat of environmental pollution.

ii) South Pacific countries acknowledge existing international treaties such as the Charter of the United Nations, the Nuclear Non-Proliferation Treaty, and the Law of the Sea Convention which contribute to these objectives.

iii) South Pacific countries should be free to live in peace and independence and to run their own affairs in accordance with the wishes and traditions of their people.

iv) There should be no use, testing or stationing of nuclear explosive devices in the South Pacific.

v) No South Pacific country would develop or manufacture or receive others, or acquire or test any nuclear explosive device.

vi) Nuclear activities of South Pacific countries should be in accordance with applicable international principles and treaties, notably the Non-Proliferation Treaty and take into account regional arrangements.

vii) South Pacific countries retain their unqualified sovereign rights to decide for themselves, consistent with their support for these objectives, their security arrangements, and such questions as access to their ports and airfields by vessels and aircraft of other countries.

viii) The importance of the principle of freedom of navigation and overflight encompassed under international law (37).

The Working Group Meetings.

The Working Group held five sessions between November 1984 to June 1985. From the Group, a Legal Drafting Committee was appointed. Officials from 13 of the 14 member countries of the Forum (including the Federated States of Micronesia which is an Observer) took part in all of the sessions.

While much of the Working Group's overall approach to the task was assisted by the Australian draft proposal, it also drew on the provisions of existing international agreements prohibiting the proliferation of nuclear weapons and established demilitarised and nuclear weapons free zones, notably the Nuclear Non-Proliferation Treaty (NPT), the Treaty of Tlatelolco, the Antarctic Treaty, the Seabed Arms Control Treaty and the Partial Test Ban Treaty. The Working Group gave particular attention to Article VII of the NPT which recognizes the right of any group of states to conclude regional treaties so as to assure the total absence of nuclear weapons in their respective territories. Most

South Pacific Forum countries are parties to the NPT and it was considered that a SPNFZ Treaty would contribute to strengthen global security and the international non-proliferation regime of which the NPT is the corner stone (38).

The Working Group was of the view that the Treaty ought to reflect broad and key concerns of the people of the Pacific. This concern was a need to prevent the region from becoming a theatre of super - power rivalry. It was recognized that a nuclear free zone could not of itself fully meet the this concern and that the region would inevitably be affected by developments in other parts of the world.

The First Meeting

The First Meeting of the Working Group which met from 13 - 16 November 1984 in Suva, Fiji, was devoted wholly on organizational and procedural matters. The Working Group at this first session appointed a Legal Drafting Committee. This Committee met at Suva from 17 to 21 December 1984. Apart from this single session, the Legal Drafting Committee worked in parallel with the Working Group throughout the negotiations.

The Second Meeting

The Working Group convened again in Canberra, Australia, meeting from 29 January to 1 February 1985. All of the Forum members participated with the exception of Tonga. Kiribati and Solomon Islands who had not been able to attend the first meeting were now present.

The Second Meeting devoted its time to reviewing the draft text of the Treaty which was earlier scrutinized in December by

the Legal Drafting Committee. One issue the meeting took some time over was the use of nuclear materials for non-peaceful purposes. On this the meeting felt that the proposed Treaty should address it comprehensively. It felt that there were points on this factor that would create difficulties, for example, research programs or where military uses paralleled civilian uses.

The question of nuclear-related facilities was also extensively discussed. The meeting was told by the Australian representative that Australia shared with the United States a number of military facilities which did not contain weapons of any sort and which in the view of the Australian Government were an essential contribution to world peace. The Australian representative told the meeting that in Australia's view, it saw no need of creating a provision in the proposed Treaty that would affect Australia's obligations with regard to these facilities. The Australian representative noted however that these facilities included some risks especially in an all out nuclear war.

The Third Meeting

By the time of the third meeting at Wellington, New Zealand from 3 to 10 April 1985, the discussions over the draft Treaty had become vigorous. The subject of major discussion was the article on the dumping of nuclear waste. Some countries were of the view that this article may not be relevant in the proposed Treaty since a Convention on the Environment was being negotiated at the same time which would therefore adequately cover the issue. Despite these reservations however, it was agreed that an

article on dumping would be included. The Federated States of Micronesia proposed to the meeting for its territory to be included in the zone boundary, and also requested for provisions in the proposed Treaty to allow that country to sign it. The meeting did not see any compelling reason to not allowing the country's territory into the boundary of the zone, but was reserved about the request to sign the proposed Treaty. The difficulty as far as the meeting was concerned relates to the matter of a sovereign power to enter into treaty arrangements. In this case, the Federated States of Micronesia was not a sovereign state as that term is understood under international law.

After amending several clauses in the draft proposal, it was agreed to have another meeting.

The Fourth Meeting

The fourth meeting took place at SPEC Headquarters from 13 to 21 June 1985. Kiribati, Tonga and Niue did not send representatives. The fourth meeting in effect was one of "ironing-out" basic disagreements and going over amendments that were referred to the Drafting Committee during the last meeting.

The Fifth Meeting

The fifth meeting was again held in Suva, from 10-13 June 1985. Kiribati, Tonga and Niue were again absent. The meeting in effect concluded discussions on outstanding issues and had a draft text of a Treaty ready for the Forum meeting being held in Rarotonga in August.

Chapter IV
AN EXAMINATION OF THE ISSUES

In drafting the Treaty, the Working Group took into consideration certain key concerns. Foremost was the fact that a nuclear free zone could not of itself fully meet the geographical, legal and substantive limits to which the actual obligations imposed by a treaty were inevitably subject to.

In focusing on the issues involved, a number of constraints were noted. These constraints were of three kinds; legal, practical (in terms of verifiability), and tactical. The legal constraints included the rights of all states in international law to the freedom of the seas and of the airspace above the high seas. Here the Working Group felt that any attempt to ban transit through the high seas of the region by ships capable of carrying nuclear weapons would be legally impossible. The practical constraints was that even if the treaty came into force, the proposed parties do not have, and are unlikely to have in the foreseeable future the capability to effectively monitor and verify such a ban. It was felt that an attempt to apply one would amount to no more than an exhortation leading to international skepticism about a treaty as a whole. The third constraint concerns weighing the desirability of having a treaty which stood a strong chance of securing the support of most if not all of the nuclear weapons states. In other words, the choice was whether to have a treaty although having limitations would nonetheless

include strong prohibitions as against a treaty which though even broad in what it sought to prohibit would in practical terms be ineffective.

After reviewing these constraints, the general approach taken by the Working Group was expressed in the phrase "stretching the fabric of the treaty to its widest possible extent".

Boundaries of the Zone

Article 1(a) sets the boundary of the zone of which an annex was attached to the treaty proper to describe and explain the coordinates of the zone. In considering this provision of the treaty, the Working Group decided on two approaches. The first approach was termed an "incomplete patchwork approach, that is with the zone confined to the territories of countries which adhere to the treaty. The second approach was termed the "diagrammatic approach", that is , with a boundary line circumscribing the Forum countries as well as large areas of high seas and abutting the existing nuclear weapon free zones in Latin America and Antarctica. The latter was considered preferable because, it was easier to visualize, clearly identified the region to which the zone is intended to apply, and would contribute to the development of a mosaic of present and planned nuclear weapons free zones.

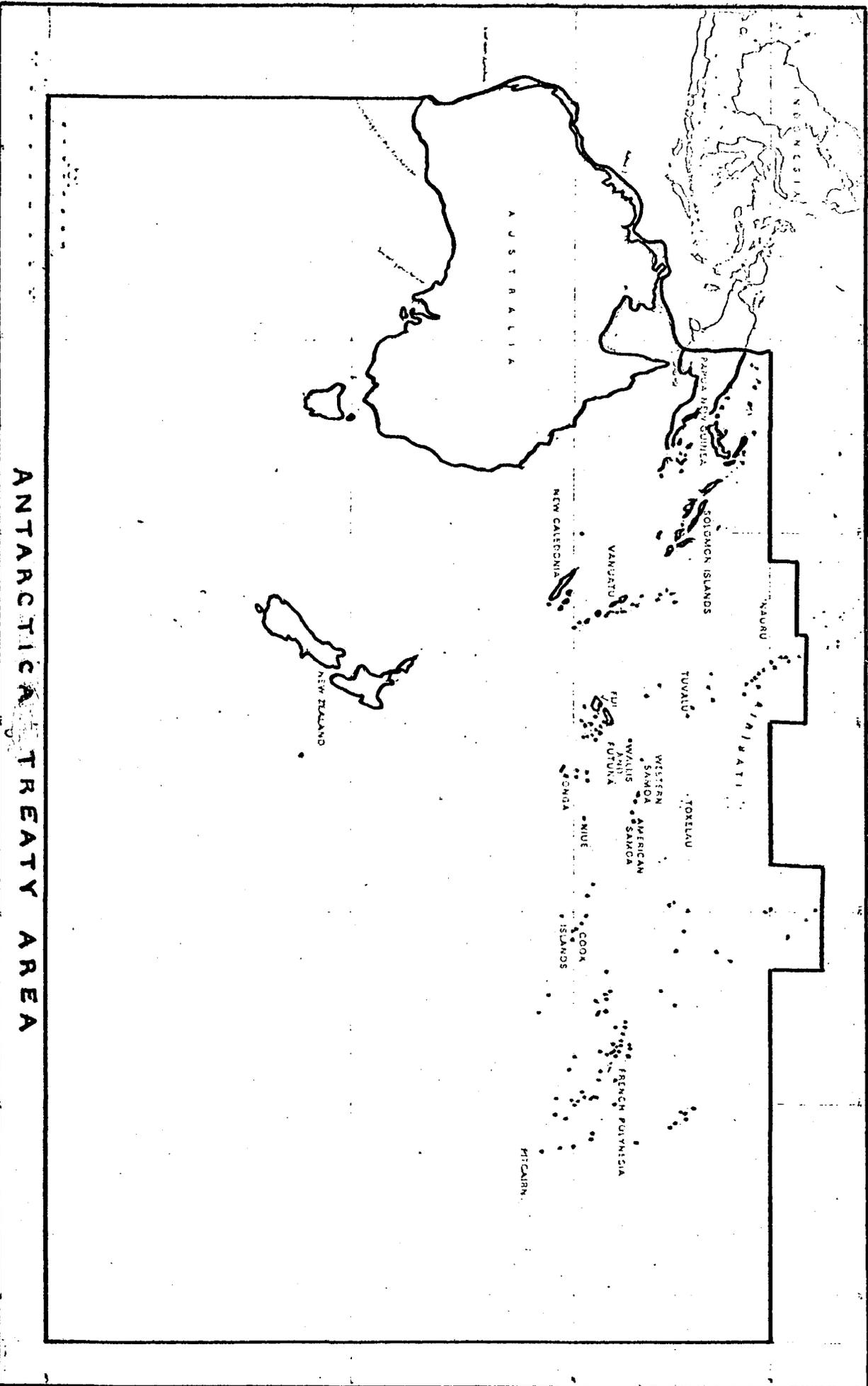
The fact however remains that Forum countries (like other countries) are only able in relation to their own territories to a much more limited extent, in areas of jurisdiction outside their territory to undertake treaty obligations affecting the

action of other states. As the editorial piece in Island Business rightly put it, "the nuclear navies of Russia and America will be able to steam their radio active waste where they please through the region whenever they wish if they want to" (39). Beyond that, Forum countries can only undertake treaty obligations in relation to their own actions and activities on their own ships and aircrafts.

The other major consideration the Working Group had on this Article was the borders of the zone, particularly the northern border. Some countries were of the view that the zone should extend well north of the equator to include the US Trust Territory just as it extended east to include the French territories. Here concern was expressed about the need to be consistent vis a vis France and the US. The alternative chosen was for the initial northern boundary of the zone not to go beyond the Exclusive Economic Zones of the northern - most Forum members, namely Nauru and Kiribati. This reflected concerns that, inclusion of the US Trust Territory in the zone could complicate the on-going negotiations on the constitutional future of this area, especially since nuclear issues were a major element in these negotiations (40). The Working Group considered that this did not apply to the French Territories where the issues facing the movement for independence was different. Moreover, the reason for an eastern border that went beyond the eastern-most Forum member was to have the SPNFZ abut the Latin American NWFZ. There was no similar zone to the north, while to the south there was the Antarctica zone and to the west

ILLUSTRATED MAP: SPNF-2

(Australia and also part of the Indian Ocean Nuclear Free Zone are not shown.)



ZONE OF APPLICATION OF THE TREATY FOR THE PROHIBITION OF NUCLEAR WEAPONS

the proposed Indian Ocean Zone of Peace and the proposed South East Asian NWFZ.

Some countries felt that the zone should simply comprise the South Pacific Commission area boundary. However in the end it was decided to have the zone as shown in the illustrative map.

Consideration was also made on the position of territories of Forum members outside the zone, specifically the Antarctica territories of Australia and New Zealand and the Indian ocean islands of Australia. It was felt that the rigorous provisions of the Antarctica Treaty especially its verification and non-military use articles would not be necessary or desirable to apply the SPNFZ provisions to these territories. As to Australia's Indian Ocean islands, they were included in the zone.

Another major issue that arose from discussion of the boundaries of the zone was whether the zone could accurately be described as the "South Pacific Nuclear Free Zone". Some preference was expressed for the term "Pacific" to make clear that the equator did not restrict the zone, and to reflect long established usage of the term in some Forum members own domestic legislations on nuclear policies. It was felt however that since the term "South Pacific" was generally of an international usage and that it was fairly reflective of some of the regions organizations such as the South Pacific Commission, the South Pacific Bureau for Economic Cooperation and the South Pacific Forum itself, the term South Pacific should be retained. Vanuatu and Nauru held reservations on the matter, because in Vanuatu's

view the "people of the Pacific understood this term better than the term South Pacific" (41).

Discussion on the appropriateness of the term "Nuclear Free" was also an issue. It was felt that it was beyond the powers of Forum members even if they wished to do so, to exclude all things nuclear from the zone and moreover whatever was to be done in the zone would remain part of a world in which nuclear weapons exist and peaceful uses of nuclear energy were widespread. In this connection, no freedom is absolute and that the term "nuclear weapon free zone" was widely established in the United Nations and other international usage for example the Latin American and Antarctica zones which do not preclude transit or visits by nuclear armed ships. The view was expressed that "nuclear free" appropriately reflected long established popular usage in Forum member countries.

Renunciation of Nuclear Explosive Devices

The issue of the renunciation of nuclear explosive devices was of some contention to the drafters of the treaty. Here the problem concerned the means of transport or delivery of a nuclear weapon or device and whether these should be excluded from the definition of a nuclear explosive device if they were separable and not part of the device. It was agreed that the term "nuclear explosive device" was adequate since technically and in non-proliferation terms, distinguishing between "peaceful nuclear explosive devices" and "nuclear explosive devices" was nigh impossible.

It was agreed that parties to the treaty should not manufacture, acquire, possess or have control over any nuclear explosive device inside or outside the zone. Thus the provision under Article 3 prohibits parties to the treaty from receiving assistance to manufacture nuclear devices, supplying nuclear material, equipment or technology to any country for use in explosive devices.

The provision under which parties to the treaty would not undertake to cooperate in activities which they did not wish to take place in the South Pacific region is incorporated under Article 3(c). This clause is meant to be understood as to relate to any "deliberate action either positive or permissive to facilitate such activity. It was understood to exclude actions which have other intended purposes but might intentionally and incidentally assist the activities mentioned" (42).

Peaceful Nuclear Activities

The Working Group addressed the question of peaceful nuclear activities. It was judged desirable to define the conditions to apply to the transfer of nuclear items and to require that such transfers take place under International Atomic and Energy Agency (IAEA) safeguards and in accordance with strict non-proliferation conditions. The Working Group considered that endorsement of this principle would help encourage its universal acceptance.

Prevention of Stationing of Nuclear Explosive Devices

As sovereign states most countries of the SPF have their

respective policies on stationing nuclear devices. With the exception of New Zealand and Vanuatu, all countries of the SPF allow nuclear powered ships and aircraft to its ports and airfields.

Although Article 5(1) states that Forum members should undertake to prevent the stationing of nuclear explosive device in their territory, Article 5(2) leaves it to each sovereign state the right to decide for itself whether to allow visits by foreign ships to enter its ports and airfields, transit of its airspace by foreign aircraft and navigation of foreign ships in its territorial sea not covered by the right of innocent passage. The question that arises is how do one define stationing? It was accepted that the definition should be rigorous and should cover the emplantation, emplacement, transport on land or on internal waters, stockpiling, storage, installation and deployment of nuclear explosive devices in the territories of the parties to the treaty.

The issue of a time element to cover the duration or pattern of port visits was also addressed. The Working Group in their consideration of the issue noted that the right of countries to decide on port access was unqualified. It was felt that the utility of such a time frame was questionable since the circumstances of port visits varied considerably.

Prevention of Testing of Nuclear Explosive Devices

Article 6 merely reaffirm the countries of the Forum's opposition to the testing of nuclear explosive devices in the

region.

Prevention of Dumping at Sea

Mindful of the fact that the dumping of radio active wastes would be incorporated into the SPREP Convention, the inclusion of an article on dumping in the treaty was seen as to assist rather than impede the SPF objective in an outcome of the SPREP negotiations. Hence the treaty provides that countries of SPF undertake not to dump inside nor outside the treaty zone and to support the Convention on the Environment that were being negotiated under SPREP.

Consideration was given to the possibility of a fourth protocol to the treaty which would invite potential dumpers to undertake commitments against dumping in the zone. During the meetings of the Working Group the prevalent view was that this would be inconsistent with the Forum objective of a successful outcome to the SPREP negotiations. In the light of these views it was agreed not to propose a protocol. One of the preoccupation of the Working Group was to avoid creating two different dumping regimes in the region (one under SPREP and the other under the SPNFZ). The concern was that both documents should preclude any and all dumping at sea of radioactive material such as would give rise to concerns on the part of the SPF.

Control Systems

Article 8 establishes a control system for the purpose of verifying compliance with obligations to the treaty. The bases of

the verification system are the International Atomic Energy Agency (IAEA) safeguards to verify the non-diversion of nuclear material from peaceful uses to the manufacture of nuclear explosive devices and a system of possible challenge on-site inspections controlled by a Consultative Committee comprising representatives of all parties to the treaty.

The treaty partners did however agree to provide for more informal bilateral and multilateral consultations in order to clarify any questions that may arise about the implementation of the treaty.

Consultations, Review and Amendment

The treaty establishes a Consultative Committee to hear complaints by parties over breaches of obligations to the treaty. The drafters of the treaty felt that by having a Consultative Committee there would be no need to institutionalise a regular review of the treaty. The treaty also includes an amendment provision under which proposals for amendment would be considered by the Consultative Committee and would require consensus support to be adopted.

Withdrawal

The Working Group in its discussions were at odds whether to have a withdrawal clause should be provided in the treaty. Some thought that a withdrawal clause was unnecessary and some argued that it was the sovereign right of a state to withdraw from a treaty.

The Protocols

The Protocols seek undertakings by:

- (i) France, the United Kingdom and the United States to apply key provisions of the Treaty to their territories within the zone;
- (ii) the five nuclear weapons states not to undermine the Treaty and not to use or threaten to use nuclear weapons against parties to it or the territories in (i); and
- (iii) the five nuclear weapons states not to test nuclear weapons anywhere within the zone.

Role of Director of SPEC

The treaty ascribes several functions to the Director of SPEC including that of Depositary, as well as a role in circulating reports and making arrangements for the convening of the Consultative Committee.

The Vanuatu Stand

Since its signing Vanuatu has been one of the most ardent critic of the SPNFZ Treaty. At the 16th Forum in Rarotonga, Prime Minister Lini defended his country's position and explained why he couldn't sign the Treaty. There was he said provisions in the Treaty that Vanuatu was unhappy about and they were crucial to a comprehensive SPNFZ.

In respect of the boundary of the zone, he pointed out that since New Caledonia, Wallis Futuna and French Polynesia were

included in the zone, the French Government was likely to regard the treaty as being directed solely against France. On the title of the treaty he said that "the South Pacific Nuclear Zone did not convey the intended meaning of the scope of the treaty. In Vanuatu's view the title could have been more realistically referred to as the Pacific Nuclear Weapons Free Zone Treaty" (43). He also had reservations about the Article relating to nuclear explosive devices since no appropriate definition of delivery systems had been incorporated. On the issue of peaceful uses of nuclear materials, Vanuatu's belief was that it was morally unacceptable for parties to provide nuclear materials such as uranium for nuclear weapons states. This of course was an obvious reference to Australia, who was the only exporter of uranium in the region. It was pointed out that Vanuatu was not a party to the NPT. In regards to provisions on the prevention of stationing of nuclear explosive devices, Vanuatu held reservations on Article 5(2) of the Treaty since in her view, there was a desirability of incorporating a time element which would be used as a basis to differentiate between port calls and stationing. Vanuatu was also concerned that although Article 7 substantially covered the issues of dumping at sea, the notion of disposal was not covered. It felt therefore that this issue should have been addressed substantively in the Treaty rather than in the SPREP Convention. Finally it was concerned that the Treaty had not addressed the need to ensure against possibilities of abusing rights of high seas freedom.

In order to grasp Vanuatu's reservations, it would seem

appropriate to examine the Treaty itself to see whether the seed of the problem lay there. On the question of the boundary of the zone, the Treaty in fact has not excluded US interest such as American Samoa. Neither did it exclude Britain's interest in the case of Pitcairn Island. One could argue therefore that the Treaty was not anti-French. With regards to the use of the term Pacific, there seems to be some sense in retaining its usage Vanuatu says, because there could be a probability that countries north of the equator may someday wish to associate themselves with the Treaty. On the other hand there does not seem to be any real urgency to it, since there is room to amend the Treaty if it was so desired in the future. On the question of delivery systems, the Working Group in fact had difficulty in categorizing the means of transport or delivery systems. the problem was the Treaty as it stood could allow the installation of facilities such as rocket launchers, or activities such as missile testing in the zone. In that respect there was no way of knowing whether these missiles were carrying nuclear warheads.

Some observers have tried to deduce some reasons for Vanuatu's stand in not signing the Treaty. Some attribute it to inconsistencies in overall Vanuatu Government policies. Others say it is due to the anti-colonial hangover which those in the policy decision areas still retains, whilst others argue that it is based on a moral obligation which the Vanuatu Government is genuinely committed to upholding. Whichever it may be, the Treaty was certainly tested on the eve of its signing.

Chapter V

THE SPNFZ TREATY AND THE TREATY OF TLATELOLCO; A COMPARATIVE STUDY.

The 1985 SPNFZ Treaty is modeled on the Treaty of Tlatelolco, signed on February 14, 1967 by thirteen Latin American states. The Treaty which is longer than the SPNFZ Treaty (31 Articles and 2 Protocols), constituted the first successful effort at creating a nuclear free zone for an inhabited portion of the earth.

Although this Chapter is primarily concerned with examining the differences and similarities between the two Treaties, it also looks briefly at past attempts to introduce the concept of a nuclear free zone into the two regions. In this connection it is interesting to note that there were indeed parallels between previous Latin American proposals and the ill-fated New Zealand proposal. Some pertinent questions that could be raised in regards to this are: What factors promoted the effort to denuclearise the two regions? Conversely, were the factors that promoted the effort necessarily the same? What retarded some of the earlier proposals? Were the goals the same in each of the two regions? We examine these questions in the first instance.

As noted in Chapter II, the first concrete effort to set about nuclear free zone in the Southwest Pacific was that by New Zealand. In the case of Latin America, it had taken three proposals before a Treaty was finally negotiated. These proposals were the Costa Rican proposal of 1958, the Chilean

proposal of 1960, and the Five President's Declaration of 1963, the latter eventually forging the path towards negotiation of the Treaty of Tlatelolco. The first two proposals which called for general arms control or arms limitation on the part of all Latin American countries were rejected by the Organization of American States (44). One could generalize that the fate that befell the Costa Rican and the Chilean proposals were of some par with what happened with the New Zealand proposal of 1975. According to Stinson and Cochrane, the Costa Rican and Chilean proposals did not have support from the Latin American states because it did not evoke much interest, particularly political support, and that the proposals were presented rather bluntly. In the case of the New Zealand proposal, the SPF did in fact support it, until the US came into the picture. The US opposition and the lack of Australian support eventually sealed its fate. Mediansky argues also that another reason why the New Zealand proposal did not receive favourable response from its allies was the broad and ill-defined nature of its presentation (45).

It is perhaps opportune to ask, what were the factors that retarded the Costa Rican, Chilean and New Zealand proposals? Several factors appear to be responsible. Whitaker and Jordan offer a few of them: security, US policy and prestige considerations. In the case of Latin American countries, the authors argue that national security has not been the major concern of the Latin American countries, given the fact that they have not been subject to any serious external military

threat since early in the nineteenth century. Their present military weakness has left the burden of hemispheric defence to the US (46). Likewise in the case of the South Pacific, security has not been of particular concern save perhaps the threat from Indonesia against Papua New Guinea. The South Pacific states also see their security interests served by the US, in particular the ANZUS alliance. In both regions however, security concerns have not been a factor in calling for a nuclear free zone treaty.

With respect to US policy; in Latin America, US policy stressed regional or collective defence. Latin America was seen by the US as a region that might affect not only the security of Latin America, but the security of the US as well (47). With reference to the two arms control proposals, the US took a somewhat ambivalent position. The US did not support the Costa Rican proposal, although it did not reject it either (48). The US endorsed the Chilean proposal but did so without any real enthusiasm (49). The US position on nuclear free zones in the South Pacific is generally one of acceptance, as long as it did not disturb 'necessary security arrangements', and were capable of adequate verification (50).

Just as there were factors that worked against the Costa Rican, Chilean and New Zealand proposals, there were also factors that promoted the effort to ban nuclear weapons from the two regions. In both regions, while security considerations is considered imperative, by the same token it was felt that the use of nuclear weapons was considered a security threat.

Differences in the two Treaties

1. Zones of the Treaties

The geographical extent of the Treaty of Tlatelolco is in an article by itself (Article 4), whereas the Treaty of Rarotonga's definition is encompassed in Annex 1 which is attached to the Treaty proper. According to Golblat and Lodgaard of the Stockholm International Peace Research Institute (SIPRI), the geographical extent of the Treaty of Tlatelolco is considerably larger than the Treaty of Rarotonga (51). They point out that although the Treaty of Rarotonga sets the borders of the zone to the east to meet with the Treaty of Tlatelolco and to the south to the border of the Antarctica demilitarised zone, it bans the presence of nuclear weapons only within territories of South Pacific states up to the 12 mile territorial sea limit. The Rarotonga Treaty did not seek through additional Protocols or otherwise to have nuclear prohibitions applied to the larger ocean area. The zone of application of the Treaty of Tlatelolco however include large areas in the Atlantic and Pacific Oceans in addition to the territories of the countries. In this respect international law regarding the freedom of the seas did not stand in the way of banning nuclear weapons from the high seas under the Treaty of Tlatelolco. Goldblat and Lodgaard then infer that there seems no reason why it should have been an obstacle in introducing a similar restriction voluntarily in a separate document under the SPNFZ Treaty (52).

2. Explosions for peaceful purposes

The Treaty of Tlatelolco permitted nuclear explosions for peaceful purposes (Article 18). The Treaty of Rarotonga however bans such explosions (Article 4). To the drafters of the Rarotonga Treaty, no distinction could be drawn between tests for peaceful purposes and tests for warlike purposes.

3. Prevention of Dumping

The Treaty of Tlatelolco placed no ban on the dumping of radio-active wastes and other radio-active materials at sea. The Treaty of Rarotonga bans this under Article 7. This is perhaps the more innovative provision of the Treaty of Rarotonga.

4. Principal organizations to ensure compliance with the Treaties

The two Treaties designate their respective bodies to be a watch-dog for the treaty. In the case of the Treaty of Tlatelolco the principal organ is the Agency for the Prohibition of Nuclear Weapons in Latin America, referred to as the Agency (Article 7). Within this Agency, two other bodies are established; a Council and a Secretariat. Their role is set out under Article 10 and Article 11 respectively. On the other hand, under the Treaty of Rarotonga, there is only one principal organ, that being the Consultative Committee. Instead of a specific Article being designated for this Committee, its functions are set forth in Annex 3.

5. Measures in the event of violation of the Treaties

The Treaty of Tlatelolco unlike the Treaty of Rarotonga expands on the steps which it will take on the matter of Parties

violating the Treaty. In the case of the Treaty of Tlatelolco, if a contracting party is not complying with its obligations, it is made known to that party. If further found that non-compliance has constituted a violation, it is taken to the Security Council of the United Nations and thereafter to the General Assembly of the UN. These steps are not included in the Treaty of Rarotonga.

Similarities in the two Treaties

The Treaties of Tlatelolco and Rarotonga do not ban testing within the zones of delivery systems for nuclear weapons. Neither do they ban access to ports and airfields of vessels and aircraft carrying nuclear weapons. Both treaties provide in an additional protocol for an undertaking by the nuclear weapons states not to use or threaten to use nuclear weapons against the parties. In the view of Goldblat and Lodgaard, this requirement was probably warranted in the Treaty of Tlatelolco, however, this could have been left out of the Treaty of Rarotonga given the fact that all nuclear weapons states have already unilaterally made non-use pledges (53).

Chapter VI

REVIEW AND COMMENTARY

The signing of the SPNFZ Treaty in August 1985 did not complete the effort to have a nuclear free zone in the South Pacific. Major hurdles remain - to have the rest of the SPF members sign the Treaty, ratification of the Treaty by the signatories and compliance by the major nuclear weapon states of the Protocol to the Treaty.

As mentioned in Chapter 1, several countries have renounced the Treaty, whilst others are thinking of defecting on their earlier commitment. There is also a third group whose position is still in the balance. Of the first group, we have Vanuatu and the Solomon Islands who have voiced their dissatisfaction with the Treaty for reasons that it was "watered down". It could be added that Vanuatu may have been perturbed at the manner in which the Treaty was hastily passed by the SPF in Rarotonga. Evidence of this was during the debate on whether the draft treaty proposal was to be "adopted" or "opened" for signature. The Prime Minister of Vanuatu had raised the point on what was meant by the word "adoption". He pointed out that in light of his country's reservations, he would not be able to sign the Treaty. He asked for clarification on the differences between the words "adoption" and "endorsement". The Vanuatu Prime Minister added that it was important that "consensus should be reached on all issues regarding the draft treaty". The Working Group he said had

concluded a draft, but he was unsure as to whether consensus was reached to the extent that the Forum could approve it. Hence, if there was an approval of the Treaty by the Forum, he would wish to disassociate Vanuatu from such a decision" (54). In the ensuing debate, Papua New Guinea's Prime Minister, Michael Somare suggested that the draft treaty be "endorsed" rather than "adopted" in view of the reservations by Vanuatu and keeping with the tradition of reaching decisions on the basis of consensus. He recommended that the Forum endorse the draft treaty which would enable member countries with strong reservations time to consider and study carefully the text before they added their signatures. The Australian Prime Minister then recommended that in the spirit of consensus, his country would not insist on the word "adoption" but if the word "endorsement" allowed opening the Treaty to signature then he was willing to sign it. The matter ended on that note and the draft proposal was opened for signature (55).

The Solomon Islands position was also made known at the Rarotonga Forum (Solomon Islands being represented by its Deputy Prime Minister Hon. Paul Tovua). Solomon Islands noted at that Forum that although it supported a nuclear free zone, it wanted clarification on some areas, notably, a) Australia's stance on its export of uranium, b) the question of France and its territories in the treaty area, c) the precise conditions of dumping, and d) the international rights of navigation on the high seas (56). He further indicated that he had no mandate to sign the treaty at Rarotonga Forum.

The position of the Cook Islands^{is} somewhat confusing and contradictory. At a meeting in Suva in May 1986, the Cook Islands Prime Minister Sir Thomas Davis claimed that ratification of the Treaty would mean the end of the ANZUS defence alliance between Australia, New Zealand and the US. The New Zealand Foreign Minister, Mr Palmer in criticizing the comments noted that the Cook Prime Minister's views on the subject " was extraordinary, because the Cook Islands was one of the first countries to ratify the nuclear free zone Treaty" (57).

The third group which has yet to take a stand is Nauru and Tonga. According to David Robie, " Nauru has strong anti-nuclear views while Tonga has a conservative stance and is anxious not to upset the US" (58).

With respect to ratifying the Treaty, only three countries have done so at the present time- Cook Islands, Fiji, and Niue.

Compliance by outside powers (nuclear weapon states) is still uncertain. At the end of the Rarotonga Forum, a mission was sent to the five principal nuclear weapon states to explain and request them to comply with the Treaty. This mission will be reporting to the 17th SPF in Suva, Fiji from the 11-12 August 1986.

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Appendix II

Treaty for the Prohibition of Nuclear Weapons in Latin America

Preamble

In the name of their peoples and faithfully interpreting their desires and aspirations, the Governments of the States which have signed the Treaty for the Prohibition of Nuclear Weapons in Latin America,

Desiring to contribute, so far as lies in their power, towards ending the armaments race, especially in the field of nuclear weapons, and towards strengthening a world at peace, based on the sovereign equality of States, mutual respect and good neighbourliness,

Recalling that the United Nations General Assembly, in its resolution 808 (IX), adopted unanimously as one of the three points of a co-ordinated programme of disarmament "the total prohibition of the use and manufacture of nuclear weapons and weapons of mass destruction of every type,"

Recalling that militarily denuclearized zones are not an end in themselves but rather a means for achieving general and complete disarmament at a later stage,

Recalling United Nations General Assembly resolution 1911 (XVIII), which established that the measures that should be agreed upon for the denuclearization of Latin America should be taken "in the light of the principles of the Charter of the United Nations and of regional agreements,"

Recalling United Nations General Assembly resolution 2028 (XX), which established the principle of an acceptable balance of mutual responsibilities and duties for the nuclear and non-nuclear powers, and

Recalling that the Charter of the Organization of American States proclaims that it is an essential purpose of the organization to strengthen the peace and security of the hemisphere,

Signed at Mexico City on 14 February 1967.

Convinced:

That the incalculable destructive power of nuclear weapons has made it imperative that the legal prohibition of war should be strictly observed in practice if the survival of civilization and of mankind itself is to be assured,

That nuclear weapons, whose terrible effects are suffered, indiscriminately and inexorably, by military forces and civilian population alike, constitute, through the persistence of the radioactivity they release, an attack on the integrity of the human species and ultimately may even render the whole earth uninhabitable,

That general and complete disarmament under effective international control is a vital matter which all the peoples of the world equally demand,

That the proliferation of nuclear weapons, which seems inevitable unless States, in the exercise of their sovereign rights, impose restrictions on themselves in order to prevent it, would make any agreement on disarmament enormously difficult and would increase the danger of the outbreak of a nuclear conflagration,

That the establishment of militarily denuclearized zones is closely linked with the maintenance of peace and security in the respective regions,

That the military denuclearization of vast geographical zones, adopted by the sovereign decision of the States comprised therein, will exercise a beneficial influence on other regions where similar conditions exist,

That the privileged situation of the signatory States, whose territories are wholly free from nuclear weapons, imposes upon them the inescapable duty of preserving that situation both in their own interests and for the good of mankind,

That the existence of nuclear weapons in any country of Latin America would make it a target for possible nuclear attacks and would inevitably set off, throughout the region, a ruinous race in nuclear weapons which would involve the unjustifiable diversion, for warlike purposes, of the resources required for economic and social development,

That the foregoing reasons, together with the traditional peace-loving outlook of Latin America, give rise to an inescapable necessity that nuclear energy should be used in that region exclusively for peaceful purposes, and that the Latin American countries should use their right to the greatest and most equitable possible access to this new source of energy in order to expedite the economic and social development of their peoples,

Convinced finally:

That the military denuclearization of Latin America—being understood to mean the undertaking entered into internationally in this Treaty to keep their territories forever free from nuclear weapons—will constitute a measure which will spare their peoples from the squandering of their limited resources on nuclear armaments and will protect them against possible nuclear attacks on their territories, and will also constitute a significant contribution towards preventing the proliferation of nuclear weapons and a powerful factor for general and complete disarmament, and

That Latin America, faithful to its tradition of universality, must not only endeavour to banish from its homelands the scourge of a nuclear war, but must also strive to promote the well-being and advancement of its peoples, at the same time co-operating in the fulfilment of the ideals of mankind, that is to say, in the consolidation of a permanent peace based on equal rights, economic fairness and social justice for all, in accordance with the principles and purposes set forth in the Charter of the United Nations and in the Charter of the Organization of American States,

*Have agreed as follows:**Obligations*

ARTICLE 1

1. The Contracting Parties hereby undertake to use exclusively for peaceful purposes the nuclear material and facilities which are under their jurisdiction, and to prohibit and prevent in their respective territories:

(a) The testing, use, manufacture, production or acquisition by any means whatsoever of any nuclear weapons, by the Parties themselves, directly or indirectly, on behalf of anyone else or in any other way; and

(b) The receipt, storage, installation, deployment and any form of possession of any nuclear weapon, directly or indirectly, by the Parties themselves, by anyone on their behalf or in any other way.

2. The Contracting Parties also undertake to refrain from engag-

ing in, encouraging or authorizing, directly or indirectly, or in any way participating in the testing, use, manufacture, production, possession or control of any nuclear weapon.

Definition of the Contracting Parties

ARTICLE 2

For the purposes of this Treaty, the Contracting Parties are those for whom the Treaty is in force.

Definition of territory

ARTICLE 3

For the purposes of this Treaty, the term "territory" shall include the territorial sea, air space and any other space over which the State exercises sovereignty in accordance with its own legislation.

Zone of application

ARTICLE 4

1. The zone of application of the Treaty is the whole of the territories for which the Treaty is in force.

2. Upon fulfilment of the requirements of article 28, paragraph 1, the zone of application of the Treaty shall also be that which is situated in the western hemisphere within the following limits (except the continental part of the territory of the United States of America and its territorial waters): starting at a point located at 35° north latitude, 75° west longitude; from this point directly southward to a point at 30° north latitude, 75° west longitude; from there, directly eastward to a point at 30° north latitude, 50° west longitude; from there along a loxodromic line to a point at 5° north latitude, 20° west longitude; from there directly southward to a point at 60° south latitude, 20° west longitude; from there directly westward to a point at 60° south latitude, 115° west longitude; from there directly northward to a point at 0° latitude, 115° west longitude; from there along a loxodromic line to a point at 35° north latitude, 150° west longitude; from there directly eastward to a point at 35° north latitude, 75° west longitude.

Definition of nuclear weapons

ARTICLE 5

For the purposes of this Treaty, a nuclear weapon is any device which is capable of releasing nuclear energy in an uncontrolled manner and which has a group of characteristics that are appropriate for use for warlike purposes. An instrument that may be used for the transport or propulsion of the device is not included in this definition if it is separable from the device and not an indivisible part thereof.

Meeting of signatories

ARTICLE 6

At the request of any of the signatories, or if the Agency established by article 7 should so decide, a meeting of all the signatories may be convoked to consider in common questions which may affect the very essence of this instrument, including possible amendments to it. In either case, the meeting will be convoked by the General Secretary.

Organization

ARTICLE 7

1. In order to ensure compliance with the obligations of this Treaty, the Contracting Parties hereby establish an international organization to be known as the "Agency for the Prohibition of Nuclear Weapons in Latin America," hereinafter referred to as "the Agency." Only the Contracting Parties shall be affected by its decisions.

2. The Agency shall be responsible for the holding of periodic or extraordinary consultations among member States on matters relating to the purposes, measures and procedures set forth in this Treaty and to supervision of compliance with the obligations arising therefrom.

3. The Contracting Parties agree to extend to the Agency full and prompt co-operation in accordance with the provisions of this Treaty, of any agreements they may conclude with the Agency and of any agreements the Agency may conclude with any other international organization or body.

4. The headquarters of the Agency shall be in Mexico City.

Organs

ARTICLE 8

1. There are hereby established as principal organs of the Agency a General Conference, a Council and a Secretariat.

2. Such subsidiary organs as are considered necessary by the General Conference may be established within the purview of this Treaty.

The General Conference

ARTICLE 9

1. The General Conference, the supreme organ of the Agency, shall be composed of all the Contracting Parties; it shall hold regular sessions every two years, and may also hold special sessions whenever this Treaty so provides, or, in the opinion of the Council, the circumstances so require.

2. The General Conference:

(a) May consider and decide on matters or questions covered by the Treaty, within the limits thereof, including those referring to powers and functions of any organ provided for in this Treaty.

(b) Shall establish procedures for the control system to ensure observance of this Treaty in accordance with its provisions.

(c) Shall elect the members of the Council and the General Secretary.

(d) May remove the General Secretary from office if the proper functioning of the Agency so requires.

(e) Shall receive and consider the biennial and special reports submitted by the Council and the General Secretary.

(f) Shall initiate and consider studies designed to facilitate the optimum fulfilment of the aims of this Treaty, without prejudice to the power of the General Secretary independently to carry out similar studies for submission to and consideration by the Conference.

(g) Shall be the organ competent to authorize the conclusion of agreements with Governments and other international organizations and bodies.

3. The General Conference shall adopt the Agency's budget and fix the scale of financial contributions to be paid by member States, taking into account the systems and criteria used for the same purpose by the United Nations.

4. The General Conference shall elect its officers for each session and may establish such subsidiary organs as it deems necessary for the performance of its functions.

5. Each member of the Agency shall have one vote. The decisions of the General Conference shall be taken by a two-thirds majority of the members present and voting in the case of matters relating to the control system and measures referred to in article 20, the admission of new members, the election or removal of the General Secretary, adoption of the budget and matters related thereto. Decisions on other matters, as well as procedural questions, and also determination of which questions must be decided by a two-thirds majority, shall be taken by a simple majority of the members present and voting.

6. The General Conference shall adopt its own rules of procedure.

The Council

ARTICLE 10

1. The Council shall be composed of five members of the Agency elected by the General Conference from among the Contracting Parties, due account being taken of equitable geographical distribution.

2. The members of the Council shall be elected for a term of four years. However, in the first election three will be elected for two years. Outgoing members may not be re-elected for the following period unless the limited number of States for which the Treaty is in force so requires.

3. Each member of the Council shall have one representative.

4. The Council shall be so organized as to be able to function continuously.

5. In addition to the functions conferred upon it by this Treaty and to those which may be assigned to it by the General Conference, the Council shall, through the General Secretary, ensure the proper operation of the control system in accordance with the provisions of this Treaty and with the decisions adopted by the General Conference.

6. The Council shall submit an annual report on its work to the General Conference as well as such special reports as it deems necessary or which the General Conference requests of it.

7. The Council shall elect its officers for each session.

8. The decisions of the Council shall be taken by a simple majority of its members present and voting.

9. The Council shall adopt its own rules of procedure.

The Secretariat

ARTICLE 11

1. The Secretariat shall consist of a General Secretary, who shall be the chief administrative officer of the Agency, and of such staff as the Agency may require. The term of office of the General Secretary shall be four years and he may be re-elected for a single additional term. The General Secretary may not be a national of the country in which the Agency has its headquarters. In case the office of General Secretary becomes vacant, a new election shall be held to fill the office for the remainder of the term.

2. The staff of the Secretariat shall be appointed by the General Secretary, in accordance with rules laid down by the General Conference.

3. In addition to the functions conferred upon him by this Treaty and to those which may be assigned to him by the General Conference, the General Secretary shall ensure, as provided by article 10, paragraph 5, the proper operation of the control system established by this Treaty, in accordance with the provisions of the Treaty and the decisions taken by the General Conference.

4. The General Secretary shall act in that capacity in all meetings of the General Conference and of the Council and shall make an annual report to both bodies on the work of the Agency and any special reports requested by the General Conference or the Council or which the General Secretary may deem desirable.

5. The General Secretary shall establish the procedures for distributing to all Contracting Parties information received by the Agency from governmental sources, and such information from non-governmental sources as may be of interest to the Agency.

6. In the performance of their duties, the General Secretary and the staff shall not seek or receive instructions from any Government or from any other authority external to the Agency and shall refrain from any action which might reflect on their position as international officials responsible only to the Agency; subject to their responsibility to the Agency, they shall not disclose any industrial secrets or other confidential information coming to their knowledge by reason of their official duties in the Agency.

7. Each of the Contracting Parties undertakes to respect the exclusively international character of the responsibilities of the General Secretary and the staff and not to seek to influence them in the discharge of their responsibilities.

Control system

ARTICLE 12

1. For the purpose of verifying compliance with the obligations entered into by the Contracting Parties in accordance with article 1, a control system shall be established which shall be put into effect in accordance with the provisions of articles 13-18 of this Treaty.

2. The control system shall be used in particular for the purpose of verifying:

(a) That devices, services and facilities intended for peaceful uses of nuclear energy are not used in the testing or manufacture of nuclear weapons;

(b) That none of the activities prohibited in article 1 of this Treaty are carried out in the territory of the Contracting Parties with nuclear materials or weapons introduced from abroad, and

(c) That explosions for peaceful purposes are compatible with article 18 of this Treaty.

IAEA safeguards

ARTICLE 13

Each Contracting Party shall negotiate multilateral or bilateral agreements with the International Atomic Energy Agency for the application of its safeguards to its nuclear activities. Each Contracting Party shall initiate negotiations within a period of 180 days after the date of the deposit of its instrument of ratification of this Treaty. These agreements shall enter into force, for each Party, not later than eighteen months after the date of the initiation of such negotiations except in case of unforeseen circumstances or *force majeure*.

Reports of the parties

ARTICLE 14

1. The Contracting Parties shall submit to the Agency and to the International Atomic Energy Agency, for their information, semi-annual reports stating that no activity prohibited under this Treaty has occurred in their respective territories.

2. The Contracting Parties shall simultaneously transmit to the

Agency a copy of any report they may submit to the International Atomic Energy Agency which relates to matters that are the subject of this Treaty and to the application of safeguards.

3. The Contracting Parties shall also transmit to the Organization of American States, for its information, any reports that may be of interest to it, in accordance with the obligations established by the Inter-American System.

Special reports requested by the General Secretary

ARTICLE 15

1. With the authorization of the Council, the General Secretary may request any of the Contracting Parties to provide the Agency with complementary or supplementary information regarding any event or circumstance connected with compliance with this Treaty, explaining his reasons. The Contracting Parties undertake to co-operate promptly and fully with the General Secretary.

2. The General Secretary shall inform the Council and the Contracting Parties forthwith of such requests and of the respective replies.

Special inspections

ARTICLE 16

1. The International Atomic Energy Agency and the Council established by this Treaty have the power of carrying out special inspections in the following cases:

(a) In the case of the International Atomic Energy Agency, in accordance with the agreements referred to in article 13 of the Treaty;

(b) In the case of the Council:

(i) When so requested, the reasons for the request being stated, by any Party which suspects that some activity prohibited by this Treaty has been carried out or is about to be carried out, either in the territory of any other Party or in any other place on such latter Party's behalf, the Council shall immediately arrange for such an inspection in accordance with article 10, paragraph 5.

(ii) When requested by any Party which has been suspected of or charged with having violated the Treaty, the Council shall immediately arrange for the special inspection requested, in accordance with article 10, paragraph 5.

The above requests will be made to the Council through the General Secretary.

2. The costs and expenses of any special inspection carried out under paragraph 1, sub-paragraph (b), sections (i) and (ii) of this article shall be borne by the requesting Party or Parties, except where the Council concludes on the basis of the report on the special inspection that, in view of the circumstances existing in the case, such costs and expenses should be borne by the Agency.

3. The General Conference shall formulate the procedures for the organization and execution of the special inspections carried out in accordance with paragraph 1, sub-paragraph (b), sections (i) and (ii) of this article.

4. The Contracting Parties undertake to grant the inspectors carrying out such special inspections full and free access to all places and all information which may be necessary for the performance of their duties and which are directly and intimately connected with the suspicion of violation of this Treaty. If so requested by the Contracting Party in whose territory the inspection is carried out, the inspectors designated by the General Conference shall be accompanied by representatives of the authorities of that Contracting Party, provided that this does not in any way delay or hinder the work of the inspectors.

5. The Council shall immediately transmit to all the Parties, through the General Secretary, a copy of any report resulting from special inspections.

6. Similarly, the Council shall send through the General Secretary to the Secretary-General of the United Nations for transmission to the United Nations Security Council and General Assembly, and to the Council of the Organization of American States for its information, a copy of any report resulting from any special inspection carried out in accordance with paragraph 1, sub-paragraph (b), sections (i) and (ii) of this article.

7. The Council may decide, or any Contracting Party may request, the convening of a special session of the General Conference for the purpose of considering the reports resulting from any special inspection. In such a case, the General Secretary shall take immediate steps to convene the special session requested.

8. The General Conference, convened in special session under this article, may make recommendations to the Contracting Parties and submit reports to the Secretary-General of the United Nations to be transmitted to the Security Council and the General Assembly.

Use of nuclear energy for peaceful purposes

ARTICLE 17

Nothing in the provisions of this Treaty shall prejudice the rights of the Contracting Parties, in conformity with this Treaty, to use nuclear energy for peaceful purposes, in particular for their economic development and social progress.

Explosions for peaceful purposes

ARTICLE 18

1. The Contracting Parties may carry out explosions of nuclear devices for peaceful purposes—including explosions which involve devices similar to those used in nuclear weapons—or collaborate with third parties for the same purpose, provided that they do so in accordance with the provisions of this article and the other articles of the Treaty, particularly articles 1 and 5.

2. Contracting Parties intending to carry out, or co-operate in the carrying out of such, an explosion shall notify the Agency and the International Atomic Energy Agency, as far in advance as the circumstances require, of the date of the explosion and shall at the same time provide the following information:

- (a) The nature of the nuclear device and the source from which it was obtained;
- (b) The place and purpose of the planned explosion;
- (c) The procedures which will be followed in order to comply with paragraph 3 of this article;
- (d) The expected force of the device;
- (e) The fullest possible information on any possible radioactive fall-out that may result from the explosion or explosions, and the measures which will be taken to avoid danger to the population, flora and fauna, and territories of any other Party or Parties.

3. The General Secretary and the technical personnel designated by the Council and the International Atomic Energy Agency may observe all the preparations, including the explosion of the device, and shall have unrestricted access to any area in the vicinity of the site of the explosion in order to ascertain whether the device and the procedures followed during the explosion are in conformity with the in-

formation supplied under paragraph 2 of the present article and the other provisions of this Treaty.

4. The Contracting Parties may accept the collaboration of third parties for the purpose set forth in paragraph 1 of the present article, in accordance with paragraphs 2 and 3 thereof.

Relations with other international organizations

ARTICLE 19

1. The Agency may conclude such agreements with the International Atomic Energy Agency as are authorized by the General Conference and as it considers likely to facilitate the efficient operation of the control system established by this Treaty.

2. The Agency may also enter into relations with any international organization or body, especially any which may be established in the future to supervise disarmament or measures for the control of armaments in any part of the world.

3. The Contracting Parties may, if they see fit, request the advice of the Inter-American Nuclear Energy Commission on all technical matters connected with the application of the Treaty with which the Commission is competent to deal under its Statute.

Measures in the event of violation of the Treaty

ARTICLE 20

1. The General Conference shall take note of all cases in which, in its opinion, any Contracting Party is not complying fully with its obligations under this Treaty and shall draw the matter to the attention of the Party concerned, making such recommendations as it deems appropriate.

2. If, in its opinion, such non-compliance constitutes a violation of this Treaty which might endanger peace and security, the General Conference shall report thereon simultaneously to the Security Council and the General Assembly through the Secretary-General of the United Nations and to the Council of the Organization of American States. The General Conference shall likewise report to the International Atomic Energy Agency for such purposes as are relevant in accordance with its Statute.

United Nations and Organization of American States

ARTICLE 21

None of the provisions of this Treaty shall be construed as impairing the rights and obligations of the Parties under the Charter of the United Nations or, in the case of States members of the Organization of American States, under existing regional treaties.

Privileges and immunities

ARTICLE 22

1. The Agency shall enjoy in the territory of each of the Contracting Parties such legal capacity and such privileges and immunities as may be necessary for the exercise of its functions and the fulfilment of its purposes.

2. Representatives of the Contracting Parties accredited to the Agency and officials of the Agency shall similarly enjoy such privileges and immunities as are necessary for the performance of their functions.

3. The Agency may conclude agreements with the Contracting Parties with a view to determining the details of the application of paragraphs 1 and 2 of this article.

Notification of other agreements

ARTICLE 23

Once this Treaty has entered into force, the Secretariat shall be notified immediately of any international agreement concluded by any of the Contracting Parties on matters with which this Treaty is concerned; the Secretariat shall register it and notify the other Contracting Parties.

Settlement of disputes

ARTICLE 24

Unless the Parties concerned agree on another mode of peaceful settlement, any question or dispute concerning the interpretation or application of this Treaty which is not settled shall be referred to the International Court of Justice with the prior consent of the parties to the controversy.

Signature

ARTICLE 25

1. This Treaty shall be open indefinitely for signature by:

(a) All the Latin American Republics;

(b) All other sovereign States situated in their entirety south of latitude 35° north in the western hemisphere; and, except as provided in paragraph 2 of this article, all such States which become sovereign, when they have been admitted by the General Conference.

2. The General Conference shall not take any decision regarding the admission of a political entity part or all of whose territory is the subject, prior to the date when this Treaty is opened for signature, of a dispute or claim between an extra-continental country and one or more Latin American States, so long as the dispute has not been settled by peaceful means.

Ratification and deposit

ARTICLE 26

1. This Treaty shall be subject to ratification by signatory States in accordance with their respective constitutional procedures.

2. This Treaty and the instruments of ratification shall be deposited with the Government of the United States of Mexico, which is hereby designated the Depository Government.

3. The Depository Government shall send certified copies of this Treaty to the Governments of signatory States and shall notify them of the deposit of each instrument of ratification.

Reservations

ARTICLE 27

This Treaty shall not be subject to reservations.

Entry into force

ARTICLE 28

1. Subject to the provisions of paragraphs 2 and 3 of this article, this Treaty shall enter into force among the States that have ratified it as soon as the following requirements have been met:

Appendix II

(a) Deposit of the instruments of ratification of this Treaty with the Depository Government by the Governments of the States mentioned in article 25 which are in existence on the date when this Treaty is opened for signature and which are not affected by the provisions of article 25, paragraph 2;

(b) Signature and ratification of Additional Protocol I annexed to this Treaty by all extra-continental and continental States having *de jure* or *de facto* international responsibility for territories situated in the zone of application of the Treaty;

(c) Signature and ratification of the Additional Protocol II annexed to this Treaty by all powers possessing nuclear weapons;

(d) Conclusion of bilateral agreements on the application of the Safeguards System of the International Atomic Energy Agency in accordance with article 13 of this Treaty.

2. All signatory States shall have the imprescriptible right to waive, wholly or in part, the requirements laid down in the preceding paragraph. They may do so by means of a declaration which shall be annexed to their respective instruments of ratification and which may be formulated at the time of deposit of the instrument or subsequently. For those States which exercise this right, this Treaty shall enter into force upon deposit of the declaration, or as soon as those requirements have been met which have not been expressly waived.

3. As soon as this Treaty has entered into force in accordance with the provisions of paragraph 2 for eleven States, the Depository Government shall convene a preliminary meeting of those States in order that the Agency may be set up and commence its work.

4. After the entry into force of the Treaty for all the countries of the zone, the rise of a new power possessing nuclear weapons shall have the effect of suspending the execution of this Treaty for those countries which have ratified it without waiving the requirements of paragraph 1, sub-paragraph (c) of this article, and which request such suspension; the Treaty shall remain suspended until the new power, on its own initiative or upon request by the General Conference, ratifies the annexed Additional Protocol II.

Amendments

ARTICLE 29

1. Any Contracting Party may propose amendments to this Treaty and shall submit their proposals to the Council through the General

Secretary, who shall transmit them to all the other Contracting Parties and, in addition, to signatories in accordance with article 6. The Council, through the General Secretary, shall, immediately following the meeting of signatories, convene a special session of the General Conference to examine the proposals made, for the adoption of which a two-thirds majority of the Contracting Parties present and voting shall be required.

2. Amendments adopted shall enter into force as soon as the requirements set forth in article 28 of this Treaty have been complied with.

Duration and denunciation

ARTICLE 30

1. This Treaty shall be of a permanent nature and shall remain in force indefinitely, but any Party may denounce it by notifying the General Secretary of the Agency if, in the opinion of the denouncing State, there have arisen or may arise circumstances connected with the content of the Treaty or of the annexed Additional Protocols I and II which affect its supreme interests and the peace and security of one or more Contracting Parties.

2. The denunciation shall take effect three months after the delivery to the General Secretary of the Agency of the notification by the Government of the signatory State concerned. The General Secretary shall immediately communicate such notification to the other Contracting Parties and to the Secretary-General of the United Nations for the information of the Security Council and the General Assembly of the United Nations. He shall also communicate it to the Secretary General of the Organization of American States.

Authentic texts and registration

ARTICLE 31

This Treaty, of which the Spanish, Chinese, English, French, Portuguese and Russian texts are equally authentic, shall be registered by the Depositary Government in accordance with Article 102 of the United Nations Charter. The Depositary Government shall notify the Secretary-General of the United Nations of the signatures, ratifications and amendments relating to this Treaty and shall communicate them to the

Secretary General of the Organization of American States for his information.

TRANSITIONAL ARTICLE

Denunciation of the declaration referred to in article 28, paragraph 2, shall be subject to the same procedures as the denunciation of the Treaty, except that it shall take effect on the date of delivery of the respective notification.

IN WITNESS WHEREOF the undersigned Plenipotentiaries, having deposited their full powers, found in good and due form, sign this Treaty on behalf of their respective Governments.

DONE at Mexico City, Distrito Federal, on the fourteenth day of February, one thousand nine hundred and sixty-seven.

Additional Protocol I

The undersigned Plenipotentiaries, furnished with full powers by their respective Governments,

Convinced that the Treaty for the Prohibition of Nuclear Weapons in Latin America, negotiated and signed in accordance with the recommendations of the General Assembly of the United Nations in resolution 1911 (XVIII) of 27 November 1963, represents an important step towards ensuring the non-proliferation of nuclear weapons,

Aware that the non-proliferation of nuclear weapons is not an end in itself but rather a means of achieving general and complete disarmament at a later stage,

Desiring to contribute, so far as lies in their power, towards ending the armaments race, especially in the field of nuclear weapons, and towards strengthening a world at peace, based on mutual respect and sovereign equality of States,

Have agreed as follows:

ARTICLE I

To undertake to apply the status of denuclearization in respect of warlike purposes as defined in articles 1, 3, 5 and 13 of the Treaty for the Prohibition of Nuclear Weapons in Latin America in territories for which, *de jure* or *de facto*, they are internationally responsible and which lie within the limits of the geographical zone established in that Treaty.

ARTICLE 2

The duration of this Protocol shall be the same as that of the Treaty for the Prohibition of Nuclear Weapons in Latin America of which this Protocol is an annex, and the provisions regarding ratification and denunciation contained in the Treaty shall be applicable to it.

ARTICLE 3

This Protocol shall enter into force, for the States which have ratified it, on the date of the deposit of their respective instruments of ratification.

IN WITNESS WHEREOF the undersigned Plenipotentiaries, having deposited their full powers, found in good and due form, sign this Treaty on behalf of their respective Governments.

Additional Protocol II

The undersigned Plenipotentiaries, furnished with full powers by their respective Governments,

Convinced that the Treaty for the Prohibition of Nuclear Weapons in Latin America, negotiated and signed in accordance with the recommendations of the General Assembly of the United Nations in resolution 1911 (XVIII) of 27 November 1963, is an important step towards ensuring the non-proliferation of nuclear weapons,

Aware that the non-proliferation of nuclear weapons is not an end in itself but rather a means for achieving general and complete disarmament at a later stage,

Desiring to contribute, so far as lies in their power, towards ending the armaments race, especially in the field of nuclear weapons, and towards promoting and strengthening a world at peace based on mutual respect and sovereign equality of States,

Have agreed as follows:

ARTICLE 1

The status of denuclearization of Latin America in respect of warlike purposes, as defined, delimited and set forth in the Treaty for the Prohibition of Nuclear Weapons in Latin America of which this instru-

ment is an annex, shall be fully respected by the Parties to this Protocol in all its express aims and provisions.

ARTICLE 2

The Governments represented by the undersigned Plenipotentiaries undertake, therefore, not to contribute in any way to the performance of acts involving a violation of the obligations of article 1 of the Treaty in the territories to which the Treaty applies in accordance with article 4 thereof.

ARTICLE 3

The Governments represented by the undersigned Plenipotentiaries also undertake not to use or threaten to use nuclear weapons against the Contracting Parties of the Treaty for the Prohibition of Nuclear Weapons in Latin America.

ARTICLE 4

The duration of this Protocol shall be the same as that of the Treaty for the Prohibition of Nuclear Weapons in Latin America of which this Protocol is an annex, and the definitions of territory and nuclear weapons set forth in articles 3 and 5 of the Treaty shall be applicable to the Protocol, as well as the provisions regarding ratification, reservations, denunciation, authentic texts and registration contained in articles 26, 27, 30 and 31 of the Treaty.

ARTICLE 5

This Protocol shall enter into force, for the States which have ratified it, on the date of the deposit of their respective instruments of ratification.

IN WITNESS WHEREOF the undersigned Plenipotentiaries, having deposited their full powers, found in good and due form, sign this Treaty on behalf of their respective Governments.

A P P E N D I X 2

SOUTH PACIFIC NUCLEAR FREE

ZONE TREATY

14 June 1985

STATE DEPARTMENT ARCHIVES - 100-107071

PART II

The Parties to this Treaty

Believing in their commitment to a world at peace;

Convinced that the continuing nuclear arms race presents the risk of nuclear war which would have devastating consequences for all people;

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

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

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

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

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

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

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

Determining to keep the region free of environmental pollution by radioactive wastes and other radioactive matter.

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

Have agreed as follows:

ANNEX 1

DEFINITIONS

For the purposes of this Treaty and its Protocols:

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

ARTICLE 2

APPLICATION OF THIS TREATY

1. Except where otherwise specified, this Treaty and its Protocols shall apply to territory within the South Pacific Nuclear Free Zone.

2. Nothing in this Treaty shall prejudice or in any way affect the rights, or the exercise of the rights, of any State under international law with regard to freedom of the seas.

ARTICLE 3

PROHIBITION ON MANUFACTURE OF NUCLEAR EXPLOSIVE DEVICES

Each Party undertakes:

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

ANNEX I

PROHIBITION OF SUPPLYING SPECIAL FISSILE MATERIAL

Special fissile materials:

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

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

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

ANNEX 15

PROHIBITION OF STATIONING OF NUCLEAR

EXPLOSIVE DEVICES

1. Each Party undertakes to prevent in its territory the stationing of any nuclear explosive device.

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

ANNEX 6

PROHIBITION OF TESTING OF NUCLEAR

EXPLOSIVE DEVICES

Each Party undertakes:

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

ARTICLE 7

PREVENTION OF DUMPING

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

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

ARTICLE 8

CONTROL SYSTEM

1. The Parties hereby establish a control system for the purpose of verifying compliance with their obligations under this Treaty.
2. The control system shall comprise:
 - (a) reports and exchange of information as provided for in Article 9; 2
 - (b) consultations as provided for in Article 10 and Annex 4 (I); 3.
 - (c) the application to peaceful nuclear activities of safeguards by the IAEA as provided for in Annex 3;
 - (d) a complaints procedure as provided for in Annex 4.

ARTICLE 10 (Continued)

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

ARTICLE 10

(CONSULTATION AND CO-OPERATION)

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

ARTICLE II

AMENDMENT

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

ARTICLE 12

SIGNATURE AND RATIFICATION

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

ARTICLE 13

WITHDRAWAL

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

2. Withdrawal shall be effected by giving notice twelve months in advance to the Director who shall circulate such notice to all other Parties.

ARTICLE 12

RESERVATIONS

This Treaty shall not be subject to reservations.

ARTICLE 15

ENTRY INTO FORCE

1. This Treaty shall enter into force on the date of deposit of the eighth instrument of ratification.

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

ARTICLE 16

DEPOSITARY FUNCTIONS

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

THE HIGH COMMISSIONERS OF the undersigned, being duly authorized by their Governments, have signed this Treaty.

DONE at _____, this _____
day of _____, One thousand nine hundred and eighty-
[five], in a single original in the English language.

ANNEX I

SOUTH PACIFIC ECONOMIC REPLY ZONE

- A. The area bounded by a line --
- (1) commencing at the point of intersection of the maritime boundary between Indonesia and Papua New Guinea by the Equator;
 - (2) running thence east along the Equator to its intersection by the meridian of Longitude 163 degrees East;
 - (3) thence north along that meridian to its intersection by the parallel of Latitude 3 degrees North;
 - (4) thence east along that parallel to its intersection by the meridian of Longitude 171 degrees East;
 - (5) thence north along that meridian to its intersection by the parallel of Latitude 4 degrees North;
 - (6) thence east along that parallel to its intersection by the meridian of Longitude 180 degrees East;
 - (7) thence south along that meridian to its intersection by the Equator;
 - (8) thence east along the Equator to its intersection by the meridian of Longitude 165 degrees West;
 - (9) thence north along that meridian to its intersection by the parallel of Latitude 5 degrees 30 minutes North;

- (10) thence east along that parallel to its intersection by the meridian of Longitude 154 degrees West;
- (11) thence south along that meridian to its intersection by the Equator;
- (12) thence east along the Equator to its intersection by the meridian of Longitude 115 degrees West;
- (13) thence south along that meridian to its intersection by the parallel of Latitude 60 degrees South;
- (14) thence west along that parallel to its intersection by the meridian of Longitude 115 degrees East;
- (15) thence north along that meridian to its southermost intersection by the outer limit of the territorial sea of Australia;
- (16) thence generally northerly and easterly along the outer limit of the territorial sea of Australia to its intersection by the meridian of Longitude 136 degrees 45 minutes East;
- (17) thence north-easterly along the geodesic to the point of Latitude 10 degrees 50 minutes South, Longitude 139 degrees 12 minutes East;
- (18) thence north-easterly along the maritime boundary between Indonesia and Papua New Guinea to where it joins the land border between those two countries;
- (19) thence generally northerly along that land border to where it joins the maritime boundary between Indonesia and Papua New Guinea, on the northern coastline of Papua New Guinea; and

(20) thence generally northerly along East boundary to the point of commencement.

B. The areas within the outer limits of the territorial seas of all Australian islands lying westward of the area described in paragraph A and north of latitude 60 degrees South, provided that any such areas shall cease to be part of the South Pacific Nuclear Free Zone upon receipt by the depositary of written notice from the Government of Australia stating that the areas have become subject to another treaty having an object and purpose substantially the same as that of this Treaty.

1.
2.
3.
4.

ANNEX 2

IAEA SAFEGUARDS

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

CONSULTATIVE COMMITTEE

1. There is hereby established a Consultative Committee which shall be convened by the Director from time to time pursuant to Articles 10 and 11 and Annex 4 (2). The Consultative Committee shall be constituted of representatives of the Parties, each Party being entitled to appoint one representative who may be accompanied by advisers. Unless otherwise agreed, the Consultative Committee shall be chaired at any given meeting by the representative of the Party which last hosted the meeting of Heads of Government of Members of the South Pacific Forum. A quorum shall be constituted by representatives of half the Parties. Subject to the provisions of Article 11, decisions of the Consultative Committee shall be taken by consensus or, failing consensus, by a two-thirds majority of those present and voting. The Consultative Committee shall adopt such other rules of procedure as it sees fit.

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

1. A Party complained of shall have the opportunity for a confidential hearing before the Director in which the complainant shall be permitted to explain the complaint to the Director, being the responsibility of the complainant in the absence of the Party complained of, provided that the latter consents or authorizes to provide it with an explanation of the complaint in writing.
2. If the Director is not satisfied, the complainant Party may bring the complaint to the Director with a request that the Consultative Committee be convened to consider it. Complaints shall be supported by an amount of evidence of breach of obligation known to the complainant Party. Upon receipt of a complaint the Director shall convene the Consultative Committee as quickly as possible to consider it.
3. The Consultative Committee, taking account of efforts made under paragraph 1, shall afford the Party complained of a reasonable opportunity to provide it with an explanation of the matter.
4. If, after considering any explanation given to it by the representatives of the Party complained of, the Consultative Committee decides that there is sufficient substance in the complaint to warrant a special inspection in the territory of that Party or elsewhere, the Consultative Committee shall direct that such special inspection be done as quickly as possible by a special inspection team of three suitably qualified special

inspectors appointed by the Consultative Committee in consultation with the complainant of a complaint, provided that no national or other Party and/or other special inspection team, if so requested by the complainant of, the special inspection team shall be accompanied by representatives of the Party. Neither the right of consultation on the appointment of special inspectors, nor the right to accompany special inspectors shall delay the work of any special inspection team.

5. In making a special inspection, special inspectors shall be subject to the directives only of the Consultative Committee and shall comply with such directives concerning their objectives, confidentiality and procedures as may be directed upon by it. Directives shall take account of the legitimate interests of the Party complained of in complying with other international obligations and commitments and shall not duplicate safeguards procedures to be undertaken by the IAEA pursuant to agreements referred to in Annex 2(i). The special inspectors shall discharge their duties with respect for the laws of the Party complained of.
6. Each Party shall give to special inspectors full and free access to all information and places within its territory which may be relevant to enable the special inspectors to implement the directives given to them by the Consultative Committee.
7. The Party complained of shall take all appropriate steps to facilitate the special inspection, and shall grant to special inspectors privileges and immunities necessary for the performance of their functions, including inviolability for all reports and documents and immunity from arrest, detention and legal process for acts done and words spoken and written for the purpose of the special inspection.

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

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

ARTICLE 1

The Parties to this Protocol

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

Hereinafter as follows:

ARTICLE 2

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

ARTICLE 3

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

ARTICLE 4

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

ARTICLE 4

This Protocol shall be subject to ratification.

ARTICLE 5

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

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

Done at _____, this _____ day of _____, One thousand nine hundred and eighty-~~five~~, in a single original in the English language.

The Parties to this Protocol

shall be the South Pacific Nuclear Free Zone Treaty (the Treaty)

and its Protocols as follows:

ARTICLE 1

Each Party undertakes not to contribute to any act which constitutes a violation of the Treaty or its Protocols by Parties to them.

ARTICLE 2

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

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

ARTICLE 3

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

ARTICLE 4

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

ARTICLE 5

This Protocol shall be subject to ratification.

ARTICLE 6

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

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

DONE at _____, this _____ day of _____, One thousand nine hundred and fifty-~~five~~, in a single original in the English language.

ARTICLE 1

The Parties to this Protocol

France, the People's Republic of China, the Union of Soviet Socialist Republics (the Treaty)

and the United States

ARTICLE 2

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

ARTICLE 3

Each Party may, by written notification to the Depositary, indicate its acceptance from the date of such notification of any alteration in its obligation under this Protocol brought about by the entry into force of an amendment to the Treaty pursuant to Article 11 of the Treaty or by the extension of the South Pacific Nuclear Free Zone pursuant to Article 13(3) of the Treaty.

ARTICLE 4

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

ARTICLE 5

This Protocol shall be subject to ratification.

ARTICLE 5

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

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

DONE at _____, this _____ day of _____, One thousand nine hundred and eighty-[five], in a single original in the English language.