# Submission to the Joint Standing Committee on Treaties inquiry on Nuclear Non-Proliferation and Disarmament

Nic MACLELLAN January 2009

Committee Secretariat, Joint Standing Committee on Treaties, House of Representatives, PO Box 6021, Parliament House, Canberra, ACT 2600

Dear Sir / Madam

Please find attached my submission to the Joint Standing Committee on Treaties inquiry on "Nuclear Non-Proliferation and Disarmament."

The focus of my submission is on the South Pacific Nuclear Free Zone Treaty (Treaty of Rarotonga), and ways that Australia could work with other members of the Pacific Islands Forum to strengthen the treaty as a contribution to international non-proliferation and disarmament.

The submission is made in a personal capacity, and I would be willing to speak at any public hearings that may be held as part of the inquiry.

Nicholas James MACLELLAN

Phone: Email:

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# Submission to Joint Standing Committee on Treaties inquiry on Nuclear Non-Proliferation and Disarmament

This submission focuses on the treaty establishing the South Pacific Nuclear Free Zone (SPNFZ), also known as the Rarotonga Treaty, to which Australia is a signatory. The submission identifies possible modifications to the treaty, and actions that the Australian government might take to strengthen this important non-proliferation and disarmament agreement.

Nuclear weapons free zones (NWFZs) are building blocks towards larger and more comprehensive disarmament initiatives, such as the negotiation of a Nuclear Weapons Convention. They are significant in that they allow action by mid-level powers and states without nuclear weapons, contributing to the abolition of nuclear weapons.

Since the SPNFZ Treaty entered into force in 1986, there has not been a formal review of the Treaty by Forum member countries. This submission argues that the current JSCOT inquiry should propose a series of measures to review and strengthen the Treaty, including:

1) Diplomatic initiatives to encourage the United States to ratify its signature of the protocols of the Rarotonga Treaty

- 2) Establishing formal links with other Nuclear Free Zones
- 3) Convening a regional conference to review and amend the treaty

It is timely for Australia - as a leading member of the Pacific Islands Forum - to join with other Forum members in reappraising the key features, role and contribution of the Rarotonga Treaty in relation to its original intentions, and also to its relevance and utility in the new regional and global environment.

The submission draws on my 2000 briefing paper to the Pacific Islands Forum Secretariat and publications by Professor Michael Hamel-Green, who remains a leading Australian expert on NWFZs (see Hamel-Green: *The South Pacific Nuclear Free Zone Treaty: a Critical Assessment*. Canberra: Peace Research Centre, Australian National University, 1990).

# A) Background to the Rarotonga Treaty

In the middle of the 1980s nuclear arms race between the United States and the Soviet Union, the independent island nations of the Pacific created the South Pacific Nuclear Free Zone Treaty (SPNFZ). The SPNFZ Treaty is also known as the Rarotonga Treaty, as it was opened for signature on Hiroshima Day 6 August 1985 at the meeting of the Pacific Islands Forum in Rarotonga, the main island of the Cook Islands.

Protocols of the Treaty prohibit the use, or threat of use, of any nuclear devices within the Treaty zone. The Treaty also prohibits the testing of nuclear weapons within the zone.

The Rarotonga Treaty was negotiated in the midst of controversy, in the context of superpower confrontation, French nuclear testing and the bombing of the *Rainbow Warrior* 

by French agents. More than two decades after the negotiation and signing of the Rarotonga Treaty, there have been dramatic changes in the global political environment, including:

\* the collapse of the USSR and end of the Cold War;

\* heightened international awareness of the dangers of nuclear weapon proliferation, particularly in the context of regional conflicts (as evident with tensions over Israel's and Iran's nuclear weapons programs; the growing nuclear arsenals of India and Pakistan; and ongoing security debates on the Korean peninsula);

\* the indefinite extension of the Nuclear Non-Proliferation Treaty (NPT) in 1995, and the signing of the Comprehensive Test Ban Treaty;

\* the establishment of a number of other NWFZs in South East Asia, Africa and Central Asia, as well as the adoption of nuclear-free status by individual nations \* renewed international efforts to create a Nuclear Weapons Convention as a crucial step towards the abolition of nuclear weapons.

As declared nuclear powers, Russia and China signed the protocols of the Rarotonga Treaty in 1986 and 1987, and ratified them in 1988, pledging not to store or test nuclear weapons in the region or use them against parties to the Treaty. However France, Britain and the United States refused to sign the protocols for a decade, until the end of French nuclear testing in 1996.

Today, the treaty has widespread support, from regional states and most of the declared nuclear weapon states (save the United States). Pacific island nations Vanuatu and Tonga initially refused to sign the Treaty (with Vanuatu saying the Treaty was not strong enough, and did not match its own existing nuclear free policy), but both have now signed and ratified the Treaty. France, the UK and USA signed the Treaty's protocols at a ceremony on 25 March 1996. However unlike France and Britain, the United States has not yet ratified its signature (see appendix for list of parties, and dates of signature and ratification).

The SPNFZ Treaty represented the first significant arms control agreement amongst the Pacific Islands Forum states. In terms of one of its key objectives to end nuclear testing in the region, it provided a vehicle for diplomatic pressure. A further significant contribution to the region is to lock in a permanent commitment to ban nuclear weapons (although currently the treaty does not prohibit transit and port calls of nuclear armed vessels - each member state may "decide for itself" whether to permit port calls or transit in territorial waters).

The treaty has also been ultimately successful in achieving universal support and coverage among states in the original zone of application, south of the Equator. However, since it was opened for signature, some of the Micronesian states north of the Equator have joined the Pacific Islands Forum: the Federated States of Micronesia, the Republic of the Marshall Islands and the Republic of Palau.

At the time the treaty was negotiated, these territories were part of the US-administered Trust Territory of the Pacific Islands and were not included (primarily because of potential conflict with US strategic interests in the region and US requirements under its Compact of Free Association agreements with the Micronesian states).

Now these countries have joined the Pacific Islands Forum and the United Nations, the Rarotonga treaty could be amended to include them in its boundaries. Although the legal or political necessity of gaining US approval may continue to be a constraint, the United States itself signed the treaty in 1996, and there is likely to be less US opposition to Micronesian states joining, particularly in the context of reduced US reliance on overseas land-based stationing and storage of nuclear weapons.

# B) Rarotonga and global disarmament

The Rarotonga Treaty has already served as early step on a ladder - it may also be seen as part of a wider agenda of confidence building measures on a global scale.

*Firstly*, following the early Antarctic (1959) and Tlatelolco (1967) treaties, SPNFZ provided a symbolic and practical precedent for other regions.

As only the second such zone in an inhabited region after the 1967 Tlatelolco Treaty in Latin America, the Rarotonga Treaty served to demonstrated the continued relevance of creating Nuclear Weapons Free Zones (NWFZs) during the Cold War period. It showed the potential for regional groupings to develop their own arms control initiatives with or without the initial support of all of the major nuclear powers. As in the case of the Tlatelolco Treaty, the Rarotonga Agreement was ultimately successful in securing legally binding negative security guarantees from all five nuclear weapon states, despite the time it took for this to be achieved.

The Rarotonga Treaty provided a stimulus to the negotiation of a similar zone in the neighbouring region of Southeast Asia (the Bangkok Treaty), signed on 15 December 1995, and also served as an important precedent for the African NWFZ Treaty (the Pelindaba Treaty), signed on 11 April 1996. This was demonstrated by the fact that Australia was invited to send an official observer from the very outset of the Bangkok negotiations, and by many similarities in the content of the two agreements. Australia's observer noted that the African negotiators drew heavily on the Rarotonga Treaty.

Today the whole land area and much of the ocean in the southern hemisphere (including Antarctica) is covered by Nuclear Weapons Free Zones (although the Pelindaba NWFZ has not yet come into force). Within existing NWFZs, New Zealand and the Philippines have added national legislation to strengthen protections of their territory. In addition, Austria (1999) and Mongolia (2000) are each single-state NWFZs.

In 2000, under the sponsorship of Brazil and New Zealand, the UN General Assembly called for the creation of a Southern Hemisphere and adjacent areas NWFZ treaty, so strengthening SPNFZ could assist this initiative.

*Secondly*, SPNFZ is potentially a means for our region to participate in the coalition of nuclear free zone states, seeking to apply global political and diplomatic pressure on the nuclear weapon and threshold states.

The second aspect of the Rarotonga Treaty's global role was brought into focus during the final bout of French testing in late 1995. The vision of establishing informal diplomatic linkages between regions which had banned nuclear weapons began to be implemented. There were meetings between Latin American and Pacific UN diplomatic missions in New York, to coordinate efforts on a UN General Assembly anti-testing resolution.

In 1997, these informal linkages were taken a step further with the Brazilian Southern Hemisphere Nuclear Free Zone initiative, first put to the 1996 UN General Assembly. Under this initiative, the four existing NWFZs largely based in the Southern Hemisphere would seek to "contribute to the prevention of the proliferation of nuclear weapons ... and to general and complete disarmament" by working together to "explore and implement further ways and means of cooperation in order to promote the common goals envisaged in those treaties, including the consolidation of the status of a nuclear-weapon free Southern Hemisphere." The United Nations, for its part, would be called upon both to urge the full recognition of the Southern Hemisphere and other areas covered by the four zones by all relevant states, to encourage further NWFZ establishment, and to provide assistance, through the UN Secretary-General, to facilitate the accomplishment of these goals.

The positive global contribution of Rarotonga as a precedent and encouragement to other regions, and as a part of a growing coalition of regions seeking the total elimination of all nuclear weapons is partly offset however by limits in the comprehensiveness of its measures. It does not prevent the transit of nuclear weapons, for example, or the use of the launch of such weapons from the zone at targets beyond the region. Concern over these possibilities has lessened since the removal of tactical nuclear weapons from the surface vessels of Russia and America, but at present there are no legally binding agreements that would prevent either power from redeploying such weapons on naval or air platforms.

The failure to ban such activities can only be seen as a weakness in the non-nuclear fabric that the Rarotonga Treaty is seeking to create and a missed opportunity in efforts to reduce the role of nuclear weapons globally. It is worth noting that the SEANFZ (Bangkok) Treaty, by comparison, does seek to prevent the use of nuclear weapons from anywhere in the designated zone, including not only land territories but also the 200-mile Exclusive Economic Zones (EEZs).

# **C) Environmental Controls**

Environmentally, the Rarotonga Treaty's contribution is less clear. Certainly, it went beyond the Tlatelolco Treaty to include controls over nuclear waste dumping in the ocean (setting a precedent-which the African NFZ treaty followed), and included a strong commitment in the preamble to "keep the (South Pacific) region free of environmental pollution by radioactive wastes and other radioactive matter". However, closer analysis of its environmental provisions suggests some surprising limitations. The Treaty does not, for example, prevent land dumping of radioactive waste. This was on the grounds that if ocean dumping is prohibited, then logically some allowance must be made for land dumping. However, this begs the question of on whose land the wastes are dumped, given that the major potential dumpers are outside the region, and some have already applied pressure on small island states to permit land-based dumping.

Further, for a treaty that had an end to French testing in the region as one of its main objects, it is curiously silent on the question of radioactive wastes at the nuclear test sites. There is nothing in the treaty to prevent the French continuing to store nuclear wastes at Moruroa and Fangataufa atolls (where France conducted 193 nuclear tests between 1966 and 1996).

Aside from the obvious environmental benefit of preventing further testing in the region, the Treaty's control over ongoing dumping of nuclear wastes would seem to be more symbolic than substantive. It serves only to complement the Pacific Regional Environment Program (SPREP) ocean anti-dumping regime, rather than protecting small island states and regional communities from the long-term risks of land-based dumping of commercial nuclear wastes.

# D) Role as Legal Model and Precedent

The Rarotonga Treaty has already served as a precedent for the two new zones in Southeast Asia and Africa, in the same way that the Rarotonga negotiators made use of the earlier Tlatelolco Treaty as a guide and precedent. However, in terms of compliance and control, Rarotonga may be seen as a step backwards from the Tlatelolco precedent, since it fails to create a separate enforcement organisation. Instead it relies on existing regional bodies which already have full agendas and are unlikely to possess the necessary technical expertise for ensuring compliance. Secondly, the last court of appeal in the event of treaty violation is the Pacific Islands Forum rather than the UN Security Council. While appeal to the Forum is certainly an essential step in any violation, the absence of a mechanism for appealing to the UN means that the model lacks teeth. In these areas the Rarotonga Treaty therefore sets a poor precedent compared not only with the Tlatelolco Treaty but also the African and Southeast Asian treaties. The Treaty's control system under Article 8 applies only to the treaty parties, not to the protocol parties.

Despite the limited nature of the Treaty, there can be little doubt that it has already played a valuable and important role. The Treaty acted as a regional confidence-building measure that has encouraged the establishment of a similar zone in neighbouring Southeast Asia, and served as a building block in wider global efforts to declare the whole Southern Hemisphere a nuclear free zone and work towards the total elimination of all nuclear weapons.

# E) Strengthening the Rarotonga Treaty

In the post-Cold War context of heightened awareness of proliferation threats, there are new opportunities to strengthen the Rarotonga Treaty. Here are a number of steps that could be taken:

# 1) Diplomatic initiatives to encourage the United States to ratify the protocols of the Rarotonga Treaty

As detailed in the Appendix, the three protocols to the SPNFZ Treaty have been signed and ratified by all the declared nuclear weapons states, with the exception of the United States of America, which has refused to ratify its signature.

The election of the Obama administration provides a new opportunity for engagement with the United States on nuclear disarmament issues.

As ANZUS allies, Australia and New Zealand are well placed to encourage the US administration to ratify the Treaty protocols, as an important diplomatic gesture towards global disarmament, and a signal that ANZUS partners are willing to support the creation of nuclear free zones in more contested regions of the world (such as the Middle East, Korean peninsula and North-East Asia).

This could be accompanied by diplomatic efforts to encourage the Obama administration to ratify the Comprehensive Test Ban Treaty (CTBT) and ban sub-critical nuclear testing – These steps would provide an important contribution to non-proliferation efforts, especially given the experience of islanders as survivors of US, British and French nuclear testing at a range of sites around the region (Monte Bello Islands, Maralinga, Emu Field, Bikini Atoll, Enewetak Atoll, Johnston Atoll, Christmas Island, Malden Island, Moruroa Atoll, Fangataufa Atoll).

#### 2) Establishing formal links with other Nuclear Free Zones

SPNFZ could be strengthened by the creation of formal linkages with other established NWFZs, including:

- regular inter-governmental consultations;
- cooperative action to further the wider aims and objectives of the treaties at the UN and in other international and regional forums;
- exchanges of information and data relevant to treaty verification and compliance;
- establishment of broader zones (such as the Southern Hemisphere Nuclear Free Zone concept); and
- establishment of an international NWFZ secretariat.

The Agency for the Prohibition of Nuclear Weapons in Latin America and the Caribbean (OPANAL), located in Mexico City, is an inter-governmental agency created by the Treaty of Tlatelolco to ensure that the obligations of the Treaty be met.

Under the Howard government, Australia did not formally participate in OPANAL's regular conferences – it is time for Australia to play a more active role in engaging with the relevant secretariats for other NWFZs, and supporting Pacific Island Countries in a range of academic, diplomatic and political engagement.

#### 3) Convening a regional conference to review and amend the treaty

One step that should be taken is the convening of a SPNFZ review conference. This conference could assess progress in the Treaty's implementation, consider amendments and recommend on further initiatives, in the light on disarmament initiatives in the 21st century.

While the Treaty does not require mandatory periodic reviews, it does envisage the establishment of a Consultative Committee (Article 10 and Annex 3) for the purpose of "consultation and co-operation on any matter arising in relation to this Treaty or for reviewing its operation". This Committee, comprised of one representative plus advisers from each member state, and able, failing consensus, to make decisions by two thirds majority vote, is also empowered under Article 11 to "consider proposals for amendment" and, in the case of any proposal agreed to by consensus, circulate it for acceptance by all Parties.

This Consultative Committee is obliged to convene "at the request of any Party", and it would be a relatively simple matter for any concerned regional state to ensure that the Committee is convened. Ideally, of course, the initiating state would seek the cooperation of all other parties in the convening of the Consultative Committee.

# F) A New Agenda to strengthen SPNFZ

While the agenda of a SPNFZ review conference would itself be a matter for regional negotiation, based on consultations with relevant government and non-government organisations, the following possibilities might be considered:

# a) Extend the Treaty zone north of the Equator, to cover all the Micronesian members of the Pacific Islands Forum.

The Treaty zone could be extended with the formal inclusion of the Federated States of Micronesia, the Republic of the Marshall Islands and the Republic of Palau. As the United States has signed the protocols of the Rarotonga Treaty and revised its general approach to NWFZs, the potential for opposition on the grounds of possible conflict with US-Micronesian Compacts of Free Association is lessened.

The Federated States of Micronesia participated as an observer in the negotiations of the Rarotonga Treaty and has, from time to time, expressed interest in joining the zone. The inclusion of the Marshall Islands would be particularly appropriate given the past history of US atmospheric testing in these islands. The anti-dumping provisions of the treaty would also be highly relevant given past proposals for radioactive waste dumping in or around Micronesia. The northwards extension of the zone would also be useful symbolically as a further encouragement to Northern Hemisphere states.

Despite the "South Pacific" labelling of the treaty, it should be noted that the zone already strays north of the Equator to include all of Kiribati's far-flung islands, and that it contains an

explicit provision (Article 12.3) permitting the redrawing of the treaty boundaries to include any new Pacific Islands Forum members who wish to join the treaty so long as this is approved by the Forum itself. The name itself might be changed to Pacific Nuclear Free Zone.

#### b) Create verification systems

Another priority is amendment of the verification and control system in line with those in the Tlatelolco and Pelindaba Treaties, to include a specialist verification agency and referral to the UN Security Council and General Assembly in the case of violations that cannot be resolved at a regional level. It could also involve institution of a regular reporting system, covering all relevant developments and activities in the region.

#### c) Allow citizen involvement

The Treaty's control system could be amended to include the concept of societal verification. "Whistleblowing" by individual citizens and NGOs could legitimately register complaints about Treaty breaches without suffering repression (as Mordechai Vanunu has suffered in Israel). There are a range of non-government organisations in the region, including the Pacific Concerns Resource Centre (PCRC) and Pacific Conference of Churches (PCC), which played a crucial role in the development of SPNFZ and could contribute to any review process.

#### d) End nuclear waste dumping on land in the Treaty zone

Amendment of anti-dumping provisions to cover certain forms of land-based radioactive waste dumping and to bring the SPNFZ Treaty into line with other international conventions and legislation in this area. In particular, such amendment needs to ensure that there are adequate controls over the removal of land-based nuclear waste that has already been created, such as the wastes in or around the French testing sites at Moruroa and Fangataufa, British sites in Australia and Christmas Island, and American sites in Micronesia.

#### e) End missile testing in the Treaty zone

Strengthening of the provisions (or inclusion of an additional protocol) to prohibit long-range nuclear-capable missile delivery systems; and addition of a further Protocol preventing any country from testing missiles in the zone. This is becoming all the more urgent as some regional and metropolitan states move to acquire or further develop such missiles. This would be contentious for the United States, which tests missiles at Kwajalein Atoll in the Marshall Islands.

#### f) Ban any threat of nuclear weapons use within the SPNFZ zone

Strengthening of non-use guarantees to include use or threat of use of nuclear weapons within the zone as well as against the zone. For example, the protocol to the Bangkok Treaty forbids NWS to "use or threaten to use nuclear weapons within the Southeast Asia Nuclear Weapon-Free Zone." This statement can be interpreted as prohibiting the launching of any nuclear weapons from within the zone (e.g. from submarines within the zone waters) and also prohibiting nuclear weapon states from using or threatening to use nuclear weapons against any target within the zone (including non-member states).

#### g) Ban other weapons of mass destruction within the SPNFZ zone

Extension of the zone, or negotiation of follow-on agreements, to cover all weapons of mass or indiscriminate destruction, including chemical and biological weapons and fuel air explosives. Such extension would serve to complement and enhance the effectiveness of the

Chemical and Biological Weapon conventions and the Convention on Conventional Weapons.

#### h) End the transport of nuclear materials through the zone

The Treaty of Bangkok prohibits nuclear transport within the Economic Exclusion Zones of treaty parties, and the Treaty of Pelindaba renounces nuclear weapons research. Australia should work to extend the SPNFZ treaty to cover these two areas.

# **G)** Conclusion

The Rarotonga Treaty has made significant contributions at both a regional and global level. It provided an encouragement to the negotiation of a similar zone in the neighbouring region of Southeast Asia and is both a practical and symbolic element in the broader initiative to establish a Southern Hemisphere Nuclear Free Zone. Further, it has demonstrated the power of regional groupings to take active steps towards arms control and disarmament in their own regions, with or without the initial support of the nuclear powers.

Nevertheless, there are many ways in which it can and ought to be strengthened, taking into account the current security environment and emerging threats of proliferation across a range of weapons categories. In particular, the time would seem ripe, if not overdue, for the convening of a SPNFZ review conference that would discuss and negotiate a range of possibilities for either strengthening the treaty or developing follow-on treaties and confidence-building measures.

It is important to remember that the Rarotonga Treaty was not simply a creation of governments. It arose after years of lobbying and mobilisation by churches, women's organisations and other non-government and community groups. The SPNFZ Treaty is actually weaker than the broader treaty promoted by citizen's groups in the 1970s and early 1980s. With the end of nuclear testing in the South Pacific, there still remain many nuclear threats to the region. Australia should join its Pacific neighbours to reinforce the SPNFZ, to complement broader disarmament and non-proliferation initiatives such as the creation of a Nuclear Weapons Convention.

#### **APPENDIX: TREATY DATA**

The South Pacific Nuclear Free Zone Treaty (Treaty of Rarotonga) was adopted and opened for signatures in Rarotonga, Cook Islands in August 1985, and entered into force on 11 December 1986. The depository for the Treaty is the Pacific Islands Forum Secretariat in Suva, Fiji.

Country	Signed	Ratified	In Force
Australia	6 August 1985	11 December 1986	11 December 1986
Cook Islands	6 August 1985	28 October 1985	11 December 1986
Fiji	6 August 1985	4 October 1985	11 December 1986
Kiribati	6 August 1985	28 October 1986	11 December 1986
Nauru	17 July 1986	13 April 1987	13 April 1987
New Zealand	6 August 1985	13 November 1986	11 December 1986
Niue	6 August 1985	12 May 1986	11 December 1986
Papua New Guinea	16 September 1985	15 September 1989	15 September 1989
Samoa	6 August 1985	20 October 1986	11 December 1986
Solomon Islands	29 May 1987	27 January 1989	27 January 1989
Tonga	2 August 1996	18 December 2000	18 December 2000
Tuvalu	6 August 1985	16 January 1986	11 December 1986
Vanuatu	16 September 1995	9 February 1996	9 February 1996

Parties to the Treaty are:

There are three protocols to the Treaty, for signature and ratification by the nuclear powers. Russia and China signed and ratified the treaty soon after it was adopted, but France, the United States and Britain only signed in March 1996, after the end of French nuclear testing. Unlike France and Britain, the United States has not yet ratified its signature of the Treaty protocols.

At the 29<sup>th</sup> Pacific Islands Forum, held in Pohnpei, Federated States of Micronesia in August 1998, the final Forum Communiqué stated:

"Leaders noted from the Secretary General's report that there had been no further signatures or ratifications of the Rarotonga Treaty or its Protocols since the United Kingdom's ratification on 19 September 1997, and called upon the United States to promptly ratify the Protocols".

For the last decade, the United States has continued its refusal to ratify the treaty protocols.

#### **PROTOCOL 1:**

Under Protocol 1, the three states with territories in the zone (France, the United Kingdom and the United States) undertake to apply the basic provisions of the Treaty to their territories in the zone.

Party	Signed
France	25 March 1996
United Kingdom	25 March 1996
United States	25 March 1996

Ratified/In Force 20 September 1996 19 September 1997 not ratified

### PROTOCOL 2:

Parties to Protocol 2 undertake not to use or threaten to use any nuclear explosive device against Parties to the Treaty or territories in the zone of Parties to Protocol 1.

Party	Signed	Ratified/In Force
China	10 February 1987	21 October 1988
France	25 March 1996	20 September 1996
United Kingdom	25 March 1996	19 September 1997
United States	25 March 1996	not ratified
USSR	15 December 1986	21 April 1988

#### PROTOCOL 3:

Parties to Protocol 3 undertake not to test nuclear explosive devices in the zone.

Party	Signed	<b>Ratified/In Force</b>
China France United Kingdom United States USSR	10 February 1987 25 March 1996 25 March 1996 25 March 1996 15 December 1986	21 October 1988 20 September 1996 19 September 1997 not ratified 21 April 1988