

New Zealand Nuclear Free Zone, Disarmament, and Arms Control Act

New Zealand, 1987

In 1987 New Zealand became the first U.S. ally to adopt legislation prohibiting nuclear arms within its territory and waters. New Zealand's stance found support from nonnuclear countries and from civil society in the United States and other allied countries. The act, which originated over opposition to nuclear testing in the South Pacific, has considerable influence on attempts to create a nuclear weapons-free world.

In recent years, a flurry of high-level officials and former officials from the world's five formally recognized nuclear-weapon states—China, France, Russia, the United Kingdom, and the United States—have argued that nuclear deterrence has become unsustainable and inherently unstable, bringing with it the risks of proliferation and the threat that nuclear weapons could be used by accident, miscalculation, or intent. The effects of any such use on humanity and the environment would be catastrophic, dwarfing the effects of other environmental challenges such as climate change. New Zealand, long an advocate of nuclear deterrence, came to this conclusion in 1987 and took action to prohibit the weapons, paving the way for a global ban.

On 8 June 1987, the New Zealand parliament adopted the Nuclear Free Zone, Disarmament, and Arms Control Act. This legally terminated the extended nuclear deterrence policy that had been a core part of the security relationship between New Zealand and the United States, particularly since the adoption of the Australia/New Zealand/United States (ANZUS) Treaty in 1951. The legislation demonstrated resolve in this new policy by specifically prohibiting the visits of nuclear-armed or nuclear-powered vessels into New Zealand waters and by criminalizing acts involving the possession, deployment, threat, or use of

nuclear weapons by citizens within New Zealand and by New Zealand agents anywhere in the world.

The legislation signified a considerable shift in both national politics and international relations for New Zealand, forging a new national identity and foreign policy, separating from its strong historical links and strategic alliances with Australia, Canada, France, the United Kingdom, and the United States. As David Lange, New Zealand's prime minister, announced:

This will change everything—there'll be no going back. We'll cut ourselves adrift economically, militarily, culturally—the umbilical cord to our past has been severed. New Zealand will never be the same again. (Dewes and Green 1998)

In some ways the legislation reflected public opinion and affirmed government policy against developing nuclear energy, especially in the wake of the 1986 Chernobyl nuclear disaster. But it was also very controversial, with opposition from large sectors of the public who were nervous about the prospect of being undefended in the Cold War environment, and strong lobbying from New Zealand's allies who did not want to lose the moral authority of New Zealand's support for the Western nuclear alliance. Yet the legislation survived external pressure and successive governments to become part of New Zealand's national identity as a peaceful and “clean-green” country and its confidence in playing a significant role in the advancement of peace and disarmament globally. New Zealand came to relish the role of opposing nuclear weapons internationally with the force of morality and law, pitted against the political and military might of the nuclear powers—much like the biblical role of David, the small heroic figure who saved innocent victims from the threat of the colossal force of Goliath.

Beginnings: “No Ordinary Sun”

When the United States dropped the atom bomb on Hiroshima and Nagasaki, New Zealanders celebrated in the streets. Japan’s war machine had moved down through Southeast Asia and was close to invading Australia and New Zealand. From New Zealand’s perspective, the nuclear bombs brought an end to the horrific war and saved them from Japanese invasion.

With the emerging military power of the Soviet Union posing a similar expansionist threat following the Second World War, New Zealand thus readily supported the buildup of the Western nuclear deterrent—and sought protection from it. New Zealand sought and gained a security treaty with the United States and Australia (the ANZUS Treaty), signed in 1951. New Zealand also entered into a range of cooperative security and intelligence arrangements, primarily with Australia, Canada, France, the United Kingdom, and the United States, but also with some of the Southeast Asian countries under the Southeast Asia Treaty Organization (SEATO). As part of these security relationships, the New Zealand government and most New Zealanders welcomed the nuclear tests conducted during the 1950s and early 1960s by the United States in the Marshall Islands and by the United Kingdom in Australia and the Christmas Islands.

During this time, however, there was a small but growing awareness amongst New Zealanders of the impact of nuclear weapons on innocent civilians in Hiroshima and Nagasaki, as well as the long-term and severe effects of radiation from nuclear weapons—including from the nuclear weapons tests. There was also a growing unease about the risks of nuclear annihilation if nuclear deterrence failed, and the concern that being part of the nuclear alliance made New Zealand a target. This was fueled by the escalating numbers and destructive power of the nuclear arsenals and the increasing tension between the superpowers. Thus two contradictory perspectives about nuclear weapons were gaining political attention: on the one hand that nuclear weapons were the protectors of freedom and Western society, and on the other hand that they were the single biggest threat to security and life, not only in New Zealand but throughout world.

Hone Tuwhare, a New Zealander who was part of the occupation force in Hiroshima after Japan’s surrender, captured this contradiction in his poem “No Ordinary Sun,” which became part of the English syllabus in many secondary schools. Tuwhare compares the sun, vital to life on Earth, with the destructive power of the nuclear bomb, which could end all life on Earth. This dichotomy caused a growing fissure in New Zealand politics that would lead to widespread protests and political turmoil in the late 1970s and early 1980s.

Nuclear Weapons and the Law

Growing public awareness about the effects of nuclear weapons globally led to the achievement of the Partial Test Ban Treaty in 1963, bringing an end to the nuclear testing programs conducted by the United States and United Kingdom in the Pacific. France, however, did not sign the treaty and in 1966 commenced atmospheric nuclear tests in Maohi (French-occupied Polynesia).

These tests stimulated widespread opposition in Australia, New Zealand, and the Pacific Islands, fueled by increasing evidence of the health and environmental consequences of nuclear testing. As Darlene Keju-Johnson, director of family planning for the Marshall Islands, said:

Now we have this problem of what we call “jelly-fish babies.” These babies are born like jelly-fish. They have no eyes. They have no heads. They have no arms. They have no legs. They do not shape like human beings at all. When they die they are buried right away. A lot of times they don’t allow the mother to see this kind of baby because she will go crazy. It is too inhumane. (de Ishtar 1998, 17)

Public protests included the sailing of protest boats into the test zone, some of which were rammed and/or boarded and removed from the zone by French naval forces.

On 9 May 1973, Australia, New Zealand, and some other Pacific Island states instituted legal action in the International Court of Justice (ICJ) on the grounds that the radioactive fallout from the tests violated their territorial integrity. They achieved an interim injunction against the French tests while the case was being considered. In 1974, France announced an end to atmospheric testing; they instead would test underground. The result was a vindication of New Zealand’s actions against nuclear testing, and an indication of the power of law to prevail, even against a powerful nuclear-armed country.

Conflicts: Kayaks vs. Nuclear Submarines

The Labour government, which had championed the nuclear tests case and a U.N. resolution to establish a South Pacific nuclear weapon-free zone, was defeated in the 1975 general election. The incoming National government announced that New Zealand’s ports would be open to visits by allied warships regardless of whether they were nuclear powered and might be nuclear armed. Over the following eight years, a number of such vessels visited New Zealand ports, prompting huge protests including peace flotillas of surfboards, kayaks, yachts, and motor boats that attempted to block the incoming ships. One kayaker paddled up to a nuclear submarine creeping into Auckland

harbor, landed on the bow, and jumped out of the kayak and onto the incoming submarine, much to the puzzlement of the captain perched in the submarine's turret (Newnham 1996, 41–46).

David Lange, who became prime minister when Labour regained power in 1984, was one of the lawyers representing these protestors. His experience paved the way for his later approach to the issue of how to legally prohibit the entrance of nuclear weapons into New Zealand waters when the nuclear navies refuse to confirm or deny whether any specific vessel was carrying such weapons.

Building the Legal Norm

The antinuclear protests had seemingly no impact on the National government, which continued inviting allies to send warships suspected of carrying nuclear weapons. Robert Muldoon, then prime minister, was unrepentantly pronuclear—even arguing that the United States was not bold enough in its nuclear program, telling the United States that its defeat in Vietnam was the result of its unwillingness to use nuclear weapons (Lange 1990, 25). The public remained split between the right, which mostly supported the nuclear warship visits, and the left, which mostly opposed them.

A new tactic of establishing cities as nuclear weapon-free zones (NWFZs) began to cut across the right-left divide, forcing mayors and councilors to consider the effects of nuclear weapons use on their cities and their responsibility to protect their cities from such a crime. This built a legal and political norm against nuclear weapons, city by city. By the 1984 general election, over 66 percent of New Zealanders lived in NWFZs, and the Labour Party had adopted an unequivocal policy to ban nuclear weapons from New Zealand if elected.

Public opposition to nuclear weapons was reflected in the parliament. In 1983–1984 two private member's bills that would have prohibited nuclear weapons were narrowly defeated by the government. (Private member's bills allow for parliamentarians to vote with their conscience and not the party policy.) The second bill led to a snap, or early, election in mid-1984, won by the Labour opposition, ushering in an antinuclear government.

The Nuclear Dispute

Two days after the general election, U.S. secretary of state George Shultz flew to Wellington for a security meeting with Australian and New Zealand officials (still under the National government that would be in power for another two weeks). Shultz publicly expressed the hope that the New Zealand Labour government would take the same approach as the Australian Labour government and continue to allow unimpeded access by U.S. warships to New Zealand ports (Lange 1990, 56). When Labour was sworn into office two weeks later, however, the government led by David Lange affirmed the policy to bar nuclear-armed and nuclear-powered ships from New Zealand ports.

New Zealand's allies, most notably the United States, responded at first with dismay, then with attempts to persuade the government to change its mind, and later with economic and political pressure. Claims were made that

New Zealand's nuclear-free policy was providing a vacuum in the South

Pacific that was being capitalized on by the Soviet Union. Photos were given to New Zealand media by the U.S. Information Agency showing Soviet submarines encroaching into the Pacific Ocean; these were later proven by disarmament experts to be photos of Soviet subs in the Atlantic—a very different ocean.

Additional measures undertaken by the United States to pressure New Zealand to change its policy included a partial embargo placed by the U.S. administration on New Zealand trade deals, a suspension in military cooperation and sharing of certain military intelligence, and a diplomatic freeze. The United States also requested a visit of the USS *Buchanan*, which was refused by the Lange

government on the basis that the *Buchanan* was capable of launching nuclear depth bombs.

New Zealand emerged relatively unscathed from the trade embargo, thanks partly to a so-called girlcott campaign in the United States. A girlcott is the opposite of a boycott; U.S. supporters actively and publicly bought New Zealand “nuclear-free” products and successfully lobbied their congressional members to reject the U.S. administration's attempts to maintain and extend their initial blocks on



dairy trade deals with New Zealand. The resulting publicity that New Zealand gained in the U.S. press was one of the factors that actually led to trade between New Zealand and the United States doubling over the six years of the Lange administration. A similar attempt to bar trade from New Zealand was made by the premier of the Australian state of Queensland. The attempt was spectacularly unsuccessful, with huge increases in demand in Queensland for specific New Zealand products as a result of the publicity. A subsequent event that further enhanced global demand for New Zealand's goods was the Chernobyl nuclear disaster in 1986 (Ware 2003).

The antinuclear movement gained more support with the French government terrorist bombing of the Greenpeace ship *Rainbow Warrior* on 10 July 1986. The fact that France, a country that New Zealand had lost tens of thousands of troops defending in the two world wars, would commit such a crime to cover up its deadly nuclear activities in the Pacific was shocking to most New Zealanders. A public opinion poll commissioned by the 1986 Defence Committee of Enquiry reported that 92 percent of New Zealanders opposed nuclear weapons and 69 percent opposed warship visits (Dewes and Green 1999, 18–19). The support of the legislation banning nuclear weapons increased over time, and the National Party, which had continued to oppose the legislation, was forced to change its position in 1990 in order to become electable.

The Legislation and New Zealand-U.S. Relations

The New Zealand Nuclear Free Zone, Disarmament, and Arms Control Act includes a number of provisions. It prohibits the manufacture, acquisition, possession, or control of nuclear weapons by citizens or residents within New Zealand or by agents of New Zealand anywhere in the world, as well as the aiding and abetting of such weapons (sections 5 (1) and (2)). Additionally, it prohibits the stationing or transport of nuclear weapons on New Zealand territory or through New Zealand internal waters (section 6), and bars the entry of any ship whose propulsion is wholly or partly dependent on nuclear power into the internal waters of New Zealand (section 11). The act makes it a criminal offense for any person to contravene or fail to comply, punishable by imprisonment (section 14). It also established a Minister for Disarmament and Arms Control (section 18); this is a unique position that has not yet been replicated anywhere in the world.

Stalemate

The stalemate between New Zealand and the United States has continued since 1984, preventing any visits of

U.S. warships and any return to full ANZUS partnership. There have been, however, a number of recent indications that this aspect of the relationship between the United States and New Zealand may be changing. The United States has restored New Zealand's favored-nation status for weapons procurements and resumed sharing intelligence information. New Zealand naval ships, for the first time in twenty-five years, are now welcome in U.S. ports—the first visit was made by the *Te Kaha* in June 2010, between naval exercises with U.S. and Japanese naval vessels in Seattle (Schouten 2010).

Nuclear-Powered Vessels

The provision in the legislation against nuclear-powered vessels that arose from Labour Party policy leading up to the 1984 election was motivated by two key factors: the fact that nuclear-powered warships were, at the time, also nuclear-weapons capable and concerns about the safety of nuclear-powered warships and the risks from the nuclear reactors. There had been some debate that nuclear-powered vessels did not actually pose much of a threat and should perhaps be allowed entry. The issue arose again during the drafting of the legislation in 1986 and 1987, causing a public campaign against nuclear-powered vessels recalling the *Wahine* ship disaster, a passenger ship that hit rocks and sunk on entry into Wellington harbor; “What if the *Wahine* had been nuclear-powered?” was the campaign's slogan. The ban on nuclear-powered vessels thus had sufficient public support to make it into the legislation. Since that time, some National party members have raised the possibility of repealing the ban on nuclear-powered ships as a possible way to get the United States to restore ship visits and full military cooperation. Public opposition to such a move, however, has continued to be very strong.

Individual Responsibility: Criminality and Extraterritoriality

The provision that no New Zealand citizen or resident may manufacture, acquire, or possess nuclear weapons within New Zealand is important in codifying the norm of individual responsibility, applying that norm to all citizens and residents of New Zealand regardless of position, and indicating that there would be repercussions should any acts be committed in violation of the legislation. It also serves as an example of some of the implementation requirements should a global prohibition on nuclear weapons be achieved. As such, the Model Nuclear Weapons Convention, which was circulated by the United Nations in 1997 and revised in 2007, includes a number of national implementation measures drawing

from New Zealand's legislation (Datan, Hill, Scheffran, and Ware 2007).

There have been numerous implications of the act's extraterritoriality clause, meaning its application beyond the territory of the state, with respect to aiding and abetting those who attempt to procure nuclear weapons. It prevents the participation of New Zealand personnel in military exercises or operations with U.S. military forces that might involve planning or preparation for the threat or use of nuclear weapons. It has also contributed to an examination of government funds that included companies involved in the nuclear weapons industry in their investment portfolios. As a result of this examination, a number of government funds have divested from such companies.

Nuclear Policy

New Zealand has been a supporter and active member of the United Nations since its inception. In debates and resolutions on nuclear disarmament and security issues New Zealand voted mostly alongside its allies until the 1980s, but the nuclear-free policy signaled a shift from this tradition. New Zealand continued as a member of the Western bloc and continued to vote with them on numerous issues, but also exercised a growing element of independence. New Zealand was one of only two Western countries (the other being San Marino) to vote at the United Nations General Assembly in 1994 to take the issue of the legality of nuclear weapons to the International Court of Justice and to appear in the court to argue against them. The initiative to bring the issue to the ICJ came from New Zealand antinuclear activists riding the wave of success in prohibiting nuclear weapons from their own country.

This new independence was also significant in prompting New Zealand to establish a New Agenda Coalition (NAC) in 1998 with Brazil, Egypt, Ireland, Mexico, South Africa, and Sweden. NAC was instrumental in bridging the divide between the Non-Aligned Movement (NAM) and the nuclear weapon states to achieve agreement on

disarmament steps at the 2000 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons (NPT).

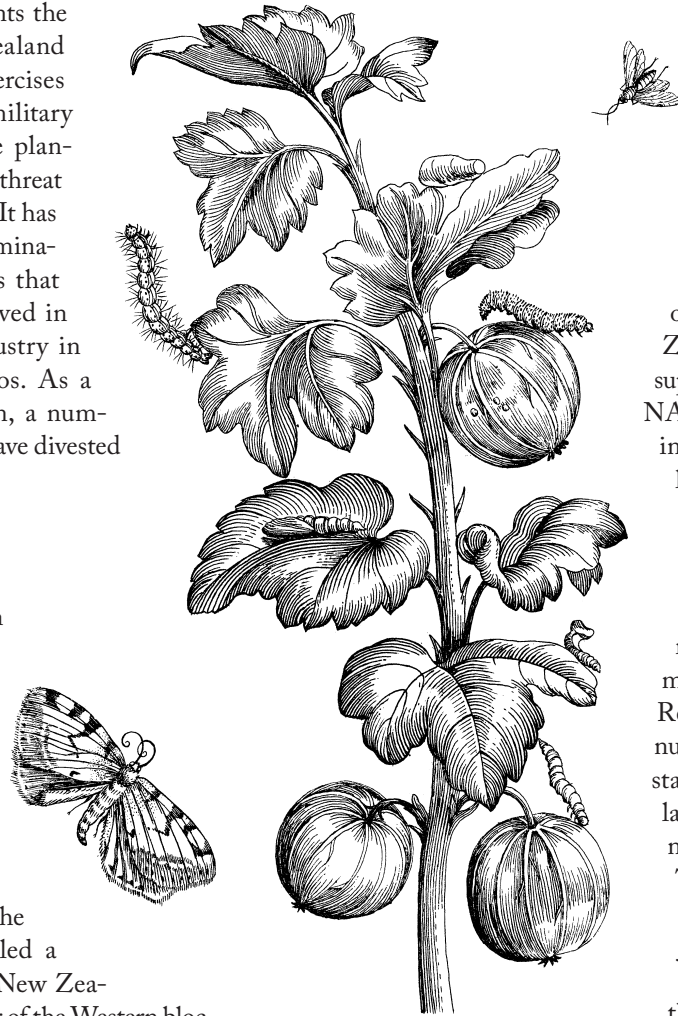
New Zealand's nuclear-free policy also came into play in its bid for a U.N. Security Council seat in 1993. New Zealand was competing against Sweden, which had good standing with the Western European and Others Group (an unofficial voting bloc within the U.N.), with NAM because of their nonaligned status, and with developing countries because of the amount of aid given by Sweden. New Zealand won the seat with the support of many countries—the NAM among them—signaling that it was New Zealand's nuclear-free stand that clinched the vote.

The legislation provided the basis for New Zealand to argue at the U.N. Security Council that, in implementing Security Council Resolution 1540 to prevent nuclear proliferation, member states could follow New Zealand's example by prohibiting nuclear weapons completely. The legislation also provided the basis for New Zealand to join with the Philippines and Samoa in proposing that the threat or use of nuclear weapons be included as a crime under

the jurisdiction of the International Criminal Court.

Nuclear Material Shipments

The legislation does not prohibit the transit of nuclear materials through New Zealand waters unless they are related to the production of nuclear weapons. This has provided some controversy with regard to the transit through the Tasman Sea of shipments of fuel for nuclear reactors (mostly between Japan and France) and the port visits of uranium shipments en route from Australia to the United States and France. In May 2000, the Greens Party introduced a bill to extend the zone covered by the 1987 legislation to include the exclusive economic zone (EEZ) and to also include the prohibition on transit of nuclear fuel and



waste from nuclear power plants in the expanded nuclear-free zone.

Jeanette Fitzsimmons, co-leader of the Greens Party announced that the bill was inspired by developments that had occurred since 1987:

Nuclear fuel reprocessing has gone global, with shipments of highly hazardous plutonium mixed-oxide fuel and high-level waste passing regularly between Japan and Europe, sometimes through the Tasman Sea. (Fitzsimmons 2002)

The government, however, claimed that extending New Zealand's nuclear-free zone to include the EEZ would breach the U.N. Convention on the Law of the Sea (UNCLOS), would be impossible to police, and was unnecessary as, in their understanding, nuclear shipments were not transiting the EEZ. With regard to UNCLOS, the government argued that the bill would breach a fundamental Law of the Sea principle that requires all countries to allow freedom of navigation through their EEZ.

Some international experts, however, argued that coastal states have sufficient authority to prevent activities in their EEZ that threaten the environment—especially the fisheries—and also the authority to prevent naval activities that are a threat to the peace or in violation of the U.N. Charter including Article 2(4), which prohibits the threat or use of force (Mann Borgese and Ware 2003). Others argued that nuclear weapons deployed on submarines on high-alert status constituted an illegal threat according to a 1996 ICJ decision, and thus could be prohibited from the EEZ (Weeramantry 2003). The government was not swayed by the arguments and the bill was unsuccessful.

The Obama and Post-Obama Eras

U.S. policy under President Obama has shifted markedly from one of maintaining nuclear weapons as an underlying core of U.S. security and of the security framework of U.S. allied relationships, to one of advocacy and action to accomplish a nuclear weapons-free world. In this new context, New Zealand's nuclear-free legislation appears no longer to be an impediment or irritant to the United States, but rather a valued credential, making New Zealand a potentially important partner in the multilateral work required to achieve nuclear disarmament.

As such, President Obama invited New Zealand prime minister John Key to the Washington Nuclear Security Summit in April 2010, even though New Zealand has no nuclear facilities to secure. The invitation appeared to indicate a shift in the U.S. perspective on New Zealand's antinuclear legislation from opposition to acceptance, and possibly support (Editorial 2010). This was reflected further in November 2010 when U.S. secretary of state Hillary

Clinton praised New Zealand's leadership on nuclear non-proliferation (Schwartz 2010), and affirmed that “we share a common goal. Both of us are committed to creating a world without nuclear weapons” (Nuclear weapon-free world the goal 2010). Secretary Clinton also joined New Zealand prime minister John Key in signing the Wellington Declaration on closer strategic cooperation. Perhaps this is a first step in a relationship that could integrate New Zealand's good will around the world with the power and influence of the United States in order to build the political momentum required for global nuclear abolition. If this happens, New Zealand's antinuclear legislation will finally have come of age.

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See also Armed Conflict and the Environment; Chernobyl; Civil Disobedience, Environmental; Environmental Law (several articles: Australia and New Zealand; Pacific Island Region; United States and Canada); Grassroots Environmental Movements; Law of the Sea; Waste Shipment Law

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