

# EXISTING REGIONAL NUCLEAR WEAPON FREE ZONES: PRECEDENTS THAT COULD INFORM DEVELOPMENT OF AN ARCTIC NUCLEAR WEAPON FREE ZONE

*Michael Hamel-Green  
(Victoria University, Melbourne, Australia)*

At the end of the Cold War in 1989, there were unprecedented possibilities for major breakthroughs in arms control and disarmament. These opportunities were largely lost through a lack of political will on the part of the world leaders at the time, and the trenchant opposition to multilateralism on the part of a Republican controlled Congress under Clinton and a Republican Administration under George W. Bush. We are now at another turning point in history when the leadership in countries all over the world is beginning to appreciate better the need for global cooperation and multilateral action on a number of fronts, not least climate change and nuclear threats. We are also at a point where the accession of the Obama Administration in Washington, and the advent of a Democrat-controlled Congress more open to multilateral initiatives, opens a new window of opportunity for arms control.

The urgency of action on arms control and disarmament has been underlined over the past decade by the 1998 Indian and Pakistan nuclear tests, the 2006 North Korean nuclear test, the Iranian moves to acquire nuclear weapon capability through uranium enrichment programs, the expanding reach of missile defence systems serving to provoke escalating nuclear countermeasures, and nuclear modernization programs across all the nuclear powers. Like nature, military power abhors a vacuum, and tends to spread to any region, however remote, where there is no treaty or other binding legal regime to constrain it. The Antarctic is free of nuclear weapons and military activities precisely because five decades ago the leaders of the major powers and the Southern Ocean regional states had the vision and political will to enter into a binding treaty that ensured “the use of Antarctica for peaceful purposes only”, and established the world’s first effective nuclear-weapon-free zone (NWFZ). The Arctic region has long been the arena and casualty of great power transit and deployment of strategic nuclear weapons above and below the ice, nuclear weapon accidents, atmospheric and underground nuclear testing, and radioactive waste and fallout contamination (and associated health impacts for indigenous peoples), and displacement of indigenous peoples as result of military bases and infrastructure. If a comparable nuclear free zone treaty had been established as in the Antarctic, it is reasonable to assume that the Arctic might have been spared these deadly and unwanted nuclear attentions.

The nuclear weapon free zone concept was first pioneered in 1956-57 by the Polish diplomat, Adam Rapacki, in the early phase of the Cold War as a way of defusing nuclear confrontation in Central Europe.<sup>1</sup> The basic idea was that the Central European states would establish a treaty that would ensure the total absence of nuclear weapons in the region, whether in the form of nuclear

weapon stationing by a nuclear weapon state, or acquisition of such weapons by zone states; and that the zone would be given binding guarantees from the nuclear weapon states not to use nuclear weapons against the zone countries. The concept foundered at the time as a result of the NATO logic that the alliance needed forward deployment of nuclear weapons to counter numerically superior Warsaw Pact conventional forces.

The idea, however, found partial embodiment two years later, in 1959, with the multilateral negotiation of the Antarctic Treaty, which not only established the Antarctic as a zone “to be used exclusively for peaceful purposes” but also in Article V prohibited any nuclear explosions or disposal of radioactive waste material.<sup>2</sup> Coupled with its Article 1 prohibitions on “any measures of a military nature” (including military bases, maneuvers and weapons testing), and intrusive inspection provisions, the Treaty effectively established the world’s first nuclear weapon free zone.

Eight years later, in 1967, this was followed by the creation of the first fully-fledged nuclear weapon free zone in a highly populated region, Latin America. This was the Tlatelolco Treaty, which now has achieved almost universal adherence from Latin American states, and has secured nuclear non-use or threat-of-use guarantees from all five of the UN Security Council nuclear weapon states (P5 – China, France, Russia, UK and US).<sup>3</sup> The zone was negotiated in response to concern over how close the region came to being engulfed in a nuclear holocaust at the time of the 1962 Cuban Missile Crisis, The Nobel Prize winning architect of the zone, the Mexican diplomat, Alfonso Garcia Robles, argued that such zones would not only contribute to preventing horizontal proliferation among the countries of a given region, but also contribute to wider global security by gradually expanding the areas of the world “from which nuclear weapons are prohibited to a point where the territories of the powers which possess these terrible weapons of mass destruction will be something like contaminated islets subject to quarantine”.<sup>4</sup>

This, indeed, is what has been gradually happening in the subsequent decades, no doubt to the dismay of many nuclear weapon advocates and apparatchniks in the militaries of the nuclear weapon states. In 1985, the South Pacific states established the Rarotonga Treaty, a nuclear free-zone banning all stationing and testing of nuclear weapons in a broad ocean region that linked up with the boundaries of the Antarctic Treaty and the Tlatelolco Treaty. The zone is now recognised and guaranteed by all the P5 nuclear weapon states, although the US has so far only signed but not yet ratified the Treaty. In 1995, the Southeast Asian (Bangkok Treaty) was established by ASEAN, and, in 1996, the whole of the African continent (Pelindaba Treaty) followed suit. Ten years later, the first zone wholly in the Northern Hemisphere, the 2006 Central Asia Nuclear Free Zone (Semipalatinsk Treaty) was established. There are now nuclear weapon free zones preventing acquisition, testing, stationing and development of nuclear weapons (but not yet transit) in over 100 countries across the world, including the whole of the Southern Hemisphere. Not all have secured the required non-use or threat of use of nuclear weapons by external nuclear weapon states, but several are well on the way to doing so, assisted by international

pressure in such forums as the UN General Assembly.

New zones have been proposed for such regions as Central Europe, Northern Europe, the Middle East, South Asia and Northeast Asia and the Korean Peninsula; and, last but certainly not least, the Arctic region.<sup>5</sup> In the case of the Arctic, the first NWFZ proposal was advanced in 1964 by the “two Alexanders”, one Russian and one American, scientists writing in the *Bulletin of the Atomic Scientists*. The Arctic NWFZ proposal was taken up in various forms by the Inuit people’s organizations and councils, including the Inuit Circumpolar Conference (from 1974), regional and international peace organizations, academic peace researchers, and Arctic Region area specialists: Arctic NWFZ proponents include Hanna Newcombe (1981), Owen Wilkes (1984), Oran Young and Gail Osherenko (1989), Ronald Purver (1989) and more recently the Canadian Pugwash Group (2007), Ramesh Thakur (2007), Mike Wallace (2008), Jozef Goldblat (2008), Jayantha Dhanapala (2008), and PPND Canada (2007-9).<sup>6</sup>

The existing NWFZs are extraordinary testimony to the power of regional groupings of states to exert their control and influence over a policy and security sphere that has long been dominated by the nuclear weapon states (NWS). The NWS became accustomed during the Cold War - and to a large degree since - to put their own narrow military and strategic interests ahead of the needs for a cooperative security approach to reducing and eliminating the threat of a nuclear holocaust (which could well rearrange our climate far more abruptly and just as disastrously as global warming).

In the case of all the successfully established zones, there were critics and pessimists who suggested that such zones would never be agreed, or if agreed, never recognised by the nuclear weapon states. Certainly to have whole regions agree on such measures is a formidable challenge, especially when the nuclear weapon states themselves seek to apply pressure on alliance partners. However, in all the existing zones, a number of factors, including skilful diplomats and visionary leaders, and, in some instances, vigorous grassroots campaigns from non-government academics, peace movements and indigenous communities, have, successfully won out against traditional arms race advocates of nuclear-based deterrence and “security”.

The question could be raised as to whether the more than 100 countries who have opted to become members of nuclear-weapon-free zones are less or more safe or secure than those which have opted for nuclearization. Is Israel, for example, more secure as a result of its 1967 decision to acquire nuclear weapons, thereby triggering a nuclear arms race with regional adversaries and the current denouement of potential Iranian acquisition of nuclear weapons, than if it had agreed to an internationally verified and guaranteed Middle East Nuclear Weapon Free or Weapon of Mass Destruction Free Zone as advocated by Egypt, Iran and the UN General Assembly from 1974 onwards? Is India now more secure as a result of its 1974 acquisition of nuclear weapons as a deterrent to China, and thereby triggering a nuclear arms race with Pakistan, than if it had negotiated an internationally verified and guaranteed South Asian Nuclear Weapon Free Zone arrangement, as

proposed by the UN General Assembly during 1974-77 and the 2000 NPT Review Conference?

More broadly still, is the world a safer place as a result of the addition of a relative few nation-states to nuclear weapons as an allegedly necessary part of their security arrangements? Even a relatively limited nuclear war in the regions concerned would be devastating in terms of loss of life and economic impacts, while simultaneously having catastrophic global economic, climate and refugee movement consequences.

So what may be learned from the existing precedents in establishing nuclear weapon free zones in the contexts of renewed initiatives to establish an Arctic NWFZ.

The Antarctic Treaty is probably the most important precedent. This is not only because it relates to a polar region but also because it brings together a core group of geographically proximate and closely interested states including the US and Russia – which has parallels with the 8 Arctic Council states of Canada, Denmark, Finland, Greenland, Norway, Sweden, Russia and the US. It is also an valuable precedent because it embodies in the treaty itself, and in the wider Antarctic Treaty System (ATS) branching from the trunk of the main treaty, a very successful legally binding regime that regulates almost all nuclear, military, environmental, scientific and economic activities the region in a mutually agreed and cooperative way.<sup>7</sup> All of these activities have their counterpart in the Arctic region, yet have only been regulated in a relatively *ad hoc* and non-binding way. The only Arctic nuclear and military activities to have been regulated are in the specific domains and activities covered by the Partial Test Ban Treaty of 1963 and the Sea Bed Treaty of 1971, and the limited 1920 demilitarization agreement relating to Norway's Svalbard Archipelago in the Greenland Sea.

The Antarctic Treaty negotiations were motivated by concern over potential territorial disputes between the various territorial claimants, a spirit of scientific cooperation fostered by the International Geophysical Cooperation Year of 1957-58 amongst the treaty countries, and concerns of the then Cold War adversaries, the US and USSR, to deny each other military hegemony over Antarctica. In the present context of the Arctic, with the prospect of summer melting of the Arctic ice cap and increased access to mineral and other resources, together with disputes over national jurisdictions over the 200-mile exclusive economic zones, and continued tension between NATO states and Russia over deployment of missile defence systems and radars on Russian borders, some of the same elements that prompted the Antarctic Treaty are very relevant for the Arctic. While the strategic nuclear submarine deployments of Russia and the US in the Arctic Ocean might seem an insuperable obstacle to establishing an Arctic NWFZ, in practice it might be in both states' interests to have a demilitarized buffer zone in the region. The prospective summer melting of the Arctic icecap may lessen the invisibility benefits of SSBN strategic submarine deployment in the Arctic Ocean; and the strategic benefits of such deployment were probably overestimated even under present conditions, owing to risks of under-ice collisions and the

comparative safety from ASW monitoring in Russia's closer-to-home havens for submarine patrols.

The actual provisions of the Antarctic Treaty and its ancillary agreements hold many valuable precedents for a similar treaty in the Arctic.

The treaty, with its boundary set at 60 degrees North, includes both land and sea territory. This would also be the case for an Arctic Region zone (since the territorial and EEZ claims of Arctic coastal states would reach to the very centre of the Arctic Ocean, as Russia's 2008 planting of the Russian flag on the seabed of the North Pole itself dramatically illustrated). The Antarctic Treaty's inclusion of what might be considered EEZs (under the frozen territorial claims of proximate treaty states) and high seas does pose questions of consistency with the subsequent 1982 Law of the Sea Treaty, which allows for nuclear weapon and military transit, but so far the Antarctic Treaty's non-nuclear provisions have been observed within the treaty boundaries. This issue would be more contentious in the Arctic Region where underwater deployment of nuclear armed attack and ballistic missile submarines has been an ongoing practice of both Russia and the US. However, it is feasible under protocols to a proposed Arctic NWFZ for Russia and the US to waive their UNCLOS rights of passage within the zone in the interest of establishing a stabilizing buffer zone between themselves, particularly in a context where both states have recently signalled their intention to substantially reduce their deployed nuclear warheads.

The Antarctic Treaty has very clear arms control prohibitions under Article 1 prohibiting military bases, maneuvers, and weapons testing, and Article 4 prohibiting nuclear explosions and radioactive waste dumping, all of which would be highly relevant for a similar zone in the Arctic, and currently apply to not only the land areas of Antarctica but also the ocean areas south of the 60 degrees South parallel.

It also has very effective verification machinery in the form of Article 7 which states the right of Parties to designate observers to carry out inspections with complete freedom of access in "any or all areas of Antarctica". Some 32 inspections had been carried out by 1995, including by teams from the US, Russia, Australia, Norway, Sweden, China, Brazil, Chile, Argentina, New Zealand and the UK, with the US carrying out approximately one third of all inspections (Giuliani, 1996). Undoubtedly, the inspection provisions of the treaty have provided confidence and trust that all parties were fully complying with the treaty, and certainly warrant consideration in any comparable treaty in the Arctic.

The Antarctic Treaty has also served as an outstanding successful framework agreement for promoting further binding cooperative agreements on scientific research, environmental protection, and resource management. The Madrid Protocol of 1991 was particularly important in committing Antarctic Treaty members to comprehensive protection of the Antarctic environment, declared Antarctica to be a "natural reserve, devoted to peace and science", and prohibited "any activity relating to mineral resources, other than scientific

research”.

Arctic environmental specialists and legal experts, such as Pharand (1992), Koivurova (2008) and Rothwell (1996)<sup>8</sup>, have welcomed the formation of the Arctic Council to foster cooperation in the region in environmental and sustainable development (but specifically excluding military security) and the establishment of Working Groups in such areas as: flora and fauna; protection of the marine environment; emergency prevention and response; and Arctic monitoring and assessment. However, in the context of the flurry to open up the region to mineral exploitation and development, Arctic environmental experts are also drawing attention to the fact that current Arctic arrangements have no teeth, and that what is needed is a comparable treaty to that in the Antarctic. Pharand (1992) proposed a treaty very similar in spirit to the Antarctic Treaty, focussing on environment protection and regional cooperation to develop the Arctic “for peaceful purposes in the interest of all humanity”. More recently, Sands (2003) has noted that while the present “soft law” approach in the Arctic has been a good first step, “ultimately it will be necessary to establish appropriate institutional arrangements and substantive rules, perhaps similar to those applied in the Antarctic, to ensure that agreed obligations are respected and enforced”.<sup>9</sup> More recently still, Rothwell (2008) has argued that the principles that should be taken from the Antarctic Treaty include “a sovereignty neutral regime, the guarantee of freedom of scientific research, a demilitarized/denuclearized region, flexibility to develop additional instruments, and a quasi international management which retains a role for key states”.<sup>10</sup>

Looking back, the architects of the Antarctic Treaty, led by the US diplomat, Paul Daniels, might be pardoned for feeling highly satisfied with their 19 months of negotiation between June 1958 and December 1959 when the Treaty was signed, particularly in comparison with what has already happened in the Arctic. They have preserved a whole continent from a range of environment, military and nuclear threats for some fifty years; and facilitated the kind of scientific cooperation that has already produced important outcomes and benefits for the whole planet, not least in the fields of climate and atmospheric research, such as the 1985 Antarctic scientists’ discovery of the hole in the ozone layer, in turn leading to the 1987 Montreal Convention to control substances that deplete the ozone layer. It is not only the Emperor Penguins of the Antarctic who might flap their approval for those who had the vision, skill and will to negotiate the Antarctic Treaty, but people all over the world whose health and food supplies would be threatened if the ozone layer were to be permanently destroyed. A similar zone for the Arctic, if the Arctic littoral states can summon the courage, foresight and political will to bring it about, would no doubt earn the appreciation of the Inuit peoples and other Arctic dwellers for generations to come (not mention appreciative snorts from humpback whales and paw salutes from polar bears).

The previous US George W. Bush Administration was evidently worried about environmentalist and disarmament groups’ advocacy of the need for an Arctic Treaty similar to that of Antarctica. Having for many years refused to ratify the 1982 Law of the Sea Treaty (after very successfully seeking throughout its

lengthy negotiations to weaken its provisions), and having, during the Bush Administration, tended to disparage and even tear up existing multilateral agreements (such as the ABM Treaty), the Administration apparently rediscovered the value of the Law of the Sea Treaty as the lesser of two evils, and announced its intentions to belatedly seek Congressional ratification of the Law of the Sea. John Bellinger, legal advisor to the then US Secretary of State, Condoleezza Rice, wrote:

*Some nongovernmental organizations and academics say that we need an 'Arctic treaty' along the lines of the treaty system that governs Antarctica. Though it sounds nice, such a treaty would be unnecessary and inappropriate... So what should the United States do about the Arctic? For starters, it should do nothing to advance a new comprehensive treaty for the region. Instead, it should take full advantage of the existing rules by joining the Law of the Sea Convention. The convention, now before the Senate would codify and maximize international recognition of United States rights to one of the largest and most resource-rich continental shelves in the world – extending at least 600 miles off Alaska.<sup>11</sup>*

At one minute to midnight (or should it be sunrise?) on January 9<sup>th</sup> 2009, just before the inauguration of the Obama Administration, President George W. Bush issued a National Security Presidential Directive (NSPD 66) specifically on US Arctic Region Policy.<sup>12</sup> The policy affirmed long standing US policy about preserving US military vessel and aircraft mobility and transit throughout the Arctic region, including the Northwest Passage, and foreshadowed US developing “greater capabilities and capacity” in the Arctic Region to protect US borders. It calls upon the US Senate to accede to the Law of the Sea Convention “promptly, to protect and advance U.S. interests, including with respect to the Arctic”; “joining [the Law of the Sea] will serve the national security interests of the United States, including the maritime mobility of our Armed Forces worldwide. It will secure U.S. sovereign rights over extensive marine areas, including the valuable natural resources they contain”. While rejecting the idea of a comprehensive treaty, the Directive did, however, envisage consideration of “new or enhanced international arrangements for the Arctic to address issues likely to arise from expected increases in human activity in the region”, giving as examples, shipping, resource exploitation, energy development, and tourism. There seems, at present, no sign that the new Obama Administration is varying this policy. In April 2009, US Secretary of State Hilary Clinton said the Obama Administration is “committed” to ratifying the Law of the Sea as the best way for Arctic powers to resolve competing territorial claims over the Far North’s resource-rich seabed.<sup>13</sup>

If we turn from what the Antarctic Treaty can offer as a precedent to some of the other existing Nuclear Free Zone treaties, we might look briefly at each of the treaties in turn, beginning with the first fully-fledged zone to be negotiated in a heavily populated region, the 1967 Tlatelolco Treaty in South America.

The Latin American NFZ Treaty, like other NWFZ treaties in populated

regions, does not seek to achieve comprehensive demilitarization as required by the Antarctic Treaty but rather denuclearization in the form of bans on regional states acquiring, manufacturing or testing nuclear weapons, bans on external nuclear weapon states stationing nuclear weapons in the region (as happened in the lead up to the Cuban Missile Crisis), and guarantees from the nuclear weapon states not to use or threaten to use nuclear weapons against the zone.<sup>14</sup> It does not, however, prevent nuclear weapons transit in EEZs and high seas within the zone. The zone has been valuable, in conjunction with the NPT and bilateral mechanisms, in helping prevent nuclear rivalries within the region (as in the past between Argentina and Brazil). It now has almost universal acceptance within the region, and has achieved negative security guarantees from all of the P5 nuclear weapon states.

One of the major contributions of the Tlatelolco Treaty was to demonstrate the viability and international credibility of a regional NWFZ established through the exercise of regional states' own sovereignty. Initially proposed by five Latin American states, Brazil, Mexico, Chile, Ecuador and Bolivia, in the wake of the 1962 Cuban Missile Crisis, it was negotiated over four years from 1964-7 with Mexico taking the lead in coordinating the negotiations. The US did not initially ratify the security guarantees but finally ratified the treaty's Protocol 2 in 1971, the first time that the US had entered into a legally binding agreement to restrict its use of nuclear weapons, an important breakthrough that paved the way for other nuclear powers to make similarly binding commitments.

The Treaty's basic denuclearization provisions and protocol mechanisms for locking nuclear weapon states into non-use guarantees have become an inspiration and starting point for the drafting of all of the other established NWFZs. These include its Article 1 prohibitions on the "testing, use, manufacture, production or acquisition by any means whatsoever of any nuclear weapons" and the "receipt, storage, installation, deployment and any form of possession of nuclear weapons, directly or indirectly, by the Parties themselves, by anyone on their behalf or in any other way", and on the Parties "engaging 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". It has been argued that an Arctic NWFZ is not necessary since the non-nuclear Arctic littoral states are already members of the NPT and bound not to acquire nuclear weapons. However, one of the key elements of the Tlatelolco and other NWFZ treaties is that not only do they prevent the parties themselves from acquiring nuclear weapons but also prevent nuclear weapon states from stationing and permanently deploying nuclear weapons in the zone. This is very relevant to the Arctic where some nuclear weapon states already have military bases within the Arctic Circle, and where further military bases are planned. The Tlatelolco Treaty clearly underlines the role of such zones in constraining horizontal nuclear proliferation within the region, and vertical proliferation by nuclear weapon powers seeking to forward base nuclear weapon systems beyond their own territory (as occurred in the case of Soviet nuclear weapons deployed in Cuba, and US nuclear weapons deployed in Turkey and Germany).

Besides the quite rigorous denuclearization provisions of Article 1, all of which would also make sense in the Arctic context, the two Protocols of the Treaty have also become models for similar protocols in other NWFZ treaties. Protocol 1 requires external states with territories in the zone to apply the same Article 1 denuclearization provisions to these territories. Protocol 2 requires external nuclear weapon states to similarly respect Article 1, not to contribute to any violations of that article, and, most importantly, “not to use or threaten to use nuclear weapons against the Contracting Parties”. In the case of an Arctic NWFZ, an equivalent to Protocol 2 would require nuclear weapon states to provide non-use or threat of use guarantees to the non-nuclear Arctic region states. An equivalent to Protocol 1, would require denuclearization in the Arctic territories controlled by Russia and the United States – a relatively bigger ask for Russia in view of its major Arctic submarine and military bases. This would probably only prove feasible in the context of bilateral arms control agreements forming part of the foreshadowed START 2 agreement, although at the time of Mikhael Gorbachev’s 1987 Murmansk initiative, proposing a “zone of peace in the Arctic”, Russia seemed prepared to entertain negotiations on partial demilitarization of the Polar Basin, including air and naval military restrictions in the North, Norwegian and Greenland Seas (eg. submarine and air stand-off zones, and ASW-free zones).<sup>15</sup>

A particularly strong feature of the Tlatelolco Treaty was its creation of a very effective implementation and compliance multilateral agency in the form of OPANAL – the Agency for the Prohibition of Nuclear Weapons in Latin America and the Caribbean. OPANAL was set up under Article 7 to ensure compliance with the treaty and to hold periodic consultations on treaty implementation. As one analyst has noted, OPANAL not only played a crucial role in gaining almost universal regional adherence to the zone, but also “proved particularly useful in dealing with the potential nuclear rivalry between Argentina and Brazil”.<sup>16</sup> It has since gone on to organize major international conferences of countries that belong to nuclear weapon free zones, such as the 2005 Tlatelolco Conference, thereby contributing to wider disarmament strategies and the promotion of new NWFZs. While other NWFZs have preferred periodic consultations, the advantage of the OPANAL model, is that there is an ongoing organization to coordinate and implement implementation of the treaty, to monitor compliance, to retain commitment to the zone amongst the political leaderships of regional and nuclear weapon states, to promote cooperation with other zones in working to expand zones and move towards global elimination of nuclear weapons. The creation of a similar agency for an Arctic zone would be particularly important in view of the need to promote and secure enduring regional and international commitment to simultaneous efforts to address nuclear, environmental, resource and indigenous issues.

The 1985 Rarotonga Treaty establishing a nuclear free zone in the South Pacific also offers some valuable precedents for an Arctic zone.<sup>17</sup> The initial impetus for the zone came from indigenous peoples and regional non-government organizations concerned about the impact of French, British and US atmospheric nuclear testing in the Pacific, including French testing at Moruroa and Fangataufa in French Polynesia, British testing at Maralinga in

Australia and Christmas Island in Kiribati, and American testing at Bikini and Eniwetak Atolls in the Marshall Islands. The cumulative fallout from these tests raised regional alarm about long term health effects - not only for islanders and other indigenous people in close proximity to the test sites but for people all over the region as fallout began to be detected in food sources.

A 1975 Fiji Nuclear Free and Independent Pacific Conference launched and began promoting a Charter for a Nuclear Free Pacific, including a specific proposal for Pacific Nuclear Free Zone. The idea was taken up by peace movements and Labour Parties in both New Zealand and Australia, and by the South Pacific Forum, the main regional organization of independent South Pacific states. In 1983 the incoming Australian Labor Party Hawke Government led negotiations under the auspices of the South Pacific Forum to establish the zone. The final treaty, signed in 1985, embodies most of the key provisions of the Tlatelolco Treaty, including bans on development, acquisition and stationing of nuclear weapon. It had tighter provisions in the sense of banning "peaceful" nuclear explosions (a weak point in the Tlatelolco Treaty), but weaker provisions in other areas (such as the failure to establish an implementation and compliance organization like OPANAL).

There are several important precedents established by the Rarotonga Treaty. It was the first nuclear weapon free zone to be established as a result of grassroots campaigns, especially through the indigenous Pacific Islander network, the Nuclear Free and Independent Pacific. While the final treaty was not as comprehensive as Pacific Islanders and peace groups wanted (for example, continuing to permit nuclear weapons transit and nuclear weapon related communications bases), it did serve to interlock with the preceding Antarctic and Tlatelolco treaties in creating a zone throughout much of the Southern Hemisphere that prohibited any land-based stationing of nuclear weapons by external nuclear powers. It also contained an extra protocol for signature by nuclear powers that prohibited any testing of nuclear weapons in both land and ocean areas within the "picture frame" boundaries of the zone, encompassing all the South Pacific Islands, Australia, New Zealand, and ocean areas up to the boundaries of the Antarctic Treaty, the Tlatelolco Treaty, and the Equator (with some minor inclusions north of the Equator). The treaty is now signed and ratified by all the states in the region and by all the P5 nuclear weapon states, except for the US which has signed but not yet ratified the treaty. The treaty certainly serves to prevent any resumption of testing anywhere in the zone. A further innovation was to include a ban on radioactive waste dumping at sea anywhere in the same zone.

The way in which the zone was established – through the pressures on regional governments and regional bodies (like the South Pacific Forum) through grassroots coalitions of indigenous people's organizations, peace groups and environmental NGOs (such as Greenpeace) - has particular resonance with the Arctic where there is a similar focus on regional denuclearization possibilities on the part of Inuit organizations and Councils, and the peace and environmental movements in many of the littoral states, particularly Canada and the Nordic states. This provides a comparable mobilizing basis to what proved relatively successful in the South Pacific

region in a far more constrained Cold War era.

The inclusion of the high seas and EEZs in anti-testing and anti-waste dumping control regimes is also a valuable precedent. Similar provisions would add value to an Arctic Nuclear Free Zone Treaty and reinforce the need for such a treaty compared to reliance solely on the Law of the Sea, which has no such provisions.

The South Pacific NWFZ is also of relevance because it includes one country, Australia, that is a close friend and military alliance partner of a nuclear weapon state, the United States. Australia's ANZUS alliance with the US has some parallels with some of the Arctic littoral states, such as Canada, Norway and Denmark, being similarly allied with the US through NATO. The South Pacific experience serves to indicate that such alliances do not pose an insuperable obstacle to regional nuclear weapon free zone establishment, although the provisions of such zones may reflect some aspects designed to accommodate pre-existing military alliances. The Rarotonga Treaty, for example, does not prohibit nuclear weapon transit, nor US communication bases in Australia, nor the right of nuclear powers to fire nuclear weapons from the zone as distinct from firing at the zone.

The 1995 Southeast Asian Bangkok Treaty, negotiated through ASEAN, and relatively unconstrained by the need to accommodate alliance relationships with external nuclear powers, also contains useful precedents for an Arctic zone.<sup>18</sup> It has defined the zone to include the Straits and Exclusive Economic Zones (EEZs of the States belonging to the zone. The treaty locks the zonal states into the same prohibitions on development, acquisition, testing and stationing of nuclear weapons as the preceding Tlatelco and Rarotonga Treaties (a vital non-proliferation measure as some regional states contemplate developing a nuclear power industry, and Burma seems to be developing nuclear linkages with North Korea). At the same time, it puts pressure on the external nuclear weapon states to respect the nuclear free status of the region, including the EEZs and straits, by guaranteeing not to use nuclear weapons against the zone, or indeed, from the zone. The US has refused to sign the required security guarantees against using nuclear weapons against or in the zone on the grounds that it conflicts with its rights of passage under the 1982 Law of the Sea (even though it has so far itself refused to ratify the LOS, a characteristic example of "eating your treaty cake and having it too" on the part of the world's exceptionalist superpower).

There are some obvious parallels between the Southeast Asian straits and EEZs, and the numerous passages and extensive EEZs in the Arctic region. Southeast Asian attempts to protect their straits and EEZs from becoming embroiled in nuclear conflicts not of their own making has a counterpart in proposals to denuclearize Canada's Northwest Passage as a potential first step to wider denuclearization of the wider Arctic region. While nuclear weapon states may seek to insist on their full rights under the LOS, there is nothing to prevent their agreeing through binding protocols to respect specific maritime zones as denuclearized areas and waive their normal rights under the LOS. The nuclear weapon states frequently unilaterally declare "exclusion

zones” in open waters for the purpose of missile testing, and continue to observe the ban on nuclear weapons in the open waters of the Antarctic Treaty zone. The possibility of denuclearization is enhanced by the reciprocal undertakings of the US and Russia not to deploy tactical nuclear weapons on ships and planes, and the proposed START 2 bilateral talks offer further possibilities for agreeing bilaterally on zones where nuclear weapons will not be deployed or transited, including Southeast Asia and the Arctic. Even for the nuclear weapon states, the benefits of supporting regional groups in arrangements that will prevent proliferation may well be greater than clinging to Cold War habits of clinging to every inch of maritime or land territory where nuclear weapons may be transited or deployed. Is it really in US interests for it to refuse support for an ASEAN NWFZ that prevents Burma from becoming a nuclear weapon equipped ally of North Korea on the basis that it needs to send nuclear-armed vessels through ASEAN waters at a time when it no longer deploys tactical nuclear weapons on such vessels, and when it is sharply reducing its strategic weapons in tandem with Russia.

The 1996 Pelindaba African NWFZ offers further precedents in that it was established on a continent when nuclear weapon testing had already occurred in the early 1960s when France carried out nuclear tests in the Sahara desert, and where one regional state, South Africa, during the Apartheid era, instituted a nuclear weapons program and produced a small number of nuclear weapons. The Treaty, now only one ratification away from coming into force, has special provisions for the dismantlement of existing nuclear weapon facilities under IAEA supervision, the dumping of nuclear waste anywhere in the zone, and armed attacks on nuclear power reactors. If Arctic territories of Russia and the US are included in an Arctic NWFZ, then similar provisions would be required; and even for the non-nuclear-weapon Arctic littoral states, provisions against attacks on civilian nuclear power plants and waste dumping would be important.<sup>19</sup>

The most recent zone is the 2006 Semipalatinsk Central Asia NWFZ established by the five Central Asia states, Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan, and Uzbekistan.<sup>20</sup> The treaty contains core provisions against nuclear weapon acquisition, development, testing and stationing that are similar to the other treaties. Its significance has been explained well by Jayantha Dhanapala, the former UN Undersecretary General for Disarmament: “This region once reportedly hosted 700 tactical nuclear weapons – not to mention the over 1,400 former Soviet strategic nuclear weapons that Kazakhstan returned to Russia before joining the NPT in 1995”.<sup>21</sup> With abundant supplies of uranium, stockpiles of at least three metric tons of plutonium at a shutdown reactor in Kazakhstan, and considerable nuclear expertise within the region, it would seem particularly urgent to put in place binding denuclearization arrangements. In the context of the region’s strategic location, currently hosting both Russian and US airbases, it would also seem urgent to prevent nuclear weapon stationing and rivalry by external nuclear states.

The zone is entirely land based, so might be considered to have less in common with the Arctic region. However, like the South Pacific NWFZ, it

involves some states that are in military alliance with a nuclear weapon state., in this case the 1992 Tashkent Treaty between Russia and four of the zonal states: Kazakhstan, Kyrgyzstan, Tajikistan, and Uzbekistan. Unfortunately, this has resulted in the inclusion of the Article 12 provision that states: This Treaty does not affect the rights and obligations of the Parties under other international treaties which they may have concluded prior to the date of the entry into force of this treaty. The parties shall take all necessary measures for effective implementation of the purposes and objectives of this Treaty in accordance with the main principles contained therein.” According to Roscini’s recent detailed international legal analysis of the treaty:

*The combined effect of the two paragraphs of Article 12 is that only those provisions of previous treaties that do not prejudice the effective implementation...of the Treaty are preserved...therefore, the Central Asian denuclearized States parties to the Tashkent Treaty still have an obligation to provide military assistance to the other parties (including Russia) in case of aggression, but this assistance cannot include the acceptance of nuclear explosive devices on their territory.<sup>22</sup>*

Despite this legal effect of the current wording, the Western nuclear states have chosen to refuse recognition to the zone on the grounds that the first paragraph of Article 12 may be interpreted as giving precedence to the Tashkent Treaty and thereby lead to an undermining of the zone if Russia were to deploy nuclear weapons in defence of any Central Asian state. This is despite the fact that the same Western powers have endorsed the South Pacific NWFZ in which Australia could presumably draw upon US nuclear weapons use as part of the ANZUS military alliance; and despite the fact that there are relatively simple legal solutions to this problem, including, as Goldbat suggests, agreeing on the application of Article 30 of the 1969 Vienna Convention on the Law of Treaties, or, possibly as a last legal resort, attaching appropriate reservations to ratifications of the non-use or threat of use protocol to the treaty.

Innovative features of the Semipalatinsk Treaty that are also worthy of consideration in designing an Arctic NWFZ include: its prohibition on the “conduct of research” on nuclear weapons, something on which most of the other treaties (with the exception of the Pelindaba Treaty) have been weak or silent; and its incorporation of the more rigorous and intrusive IAEA Additional Protocol verification safeguards.<sup>23</sup>

In conclusion, there are important precedents that will be valuable in Arctic NWFZ discussions and negotiations from all the existing treaties, most particularly from the Antarctic Treaty but also from each of the other treaties. The Antarctic Treaty relates to a region with no permanent human population, The other treaties all relate to populated regions. The Arctic region has a mix of both aspects, with its central Arctic Ocean basin, and populated areas north of the Arctic circle in the littoral states. It is therefore appropriate that any Arctic NWFZ treaty should take account of the experience and provisions of both the Antarctic Treaty and treaties for populated regions.

Aside from the specific precedents and processes that might be drawn from existing NWFZs, there is another more general political aspect of previous zone establishment that should be kept in mind. Debate and negotiations on NWFZs are sometimes closed off by simplistic assessments suggesting that if the major nuclear weapon states, particularly the US and Russia, are not in agreement with the zone, then NWFZ arrangements are doomed, or do not warrant efforts towards bringing them into being. If this assessment or advice had been followed, then none of the existing NWFZs in populated regions would have been established. They represent the determination of regional groupings of states (and sometimes single states, like Mongolia) to exercise their sovereign right to denuclearize their region even when the nuclear weapon states have been reluctant or unwilling to give their immediate support. Even in the case of the Tlatelolco Treaty, which greatly benefited the United States in establishing a Latin American denuclearized zone that would prevent nuclear weapons being deployed in America's "back door" (as happened in Cuba in 1962), the US did not ratify the zone until four years after it was signed.

The 1968 Non Proliferation Treaty's Article VII, binding on all the P5 nuclear powers, clearly states the right of regional groupings to establish NWFZs: "Nothing in this Treaty affects 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."<sup>24</sup> In the case of the Arctic, it is feasible, if the two Arctic nuclear weapon states, Russia and the US, were initially reluctant to have their Arctic territories included, for the remaining non-nuclear Arctic region states to establish a NWFZ in their regions, and to exert continued diplomatic pressure for the remaining Arctic territories to be denuclearized under a separate protocol relating to Russian and US Arctic territory. This would be analogous to Protocol 1 in the Tlatelolco Treaty and Protocol 1 in the Rarotonga Treaty.

As the foremost international authority on NWFZs, Dr Jozef Goldblat, has noted:

*In much of the discussion of Arctic issues, some say attention should focus only on the US and Russia. Yet if a group of countries decided to create such a zone, fine, the nuclear powers are not necessary – countries do have the right to agree not to allow nuclear weapons on their territories. There is, of course, a need to consult nuclear-weapon powers: this happened in Central Asia, but the regional states have no obligation to follow diktats of the great powers. The Central Asian treaty is valid even if nuclear-weapon-states do not ratify its protocol... Other advantages of a NWFZ exist: they create a different type of relations among countries of the region; they offer common forums and institutions; parties can discuss other matters including conventional disarmament; and they can advance their common environmental security interests.<sup>25</sup>*

We are at a new moment in arms control and disarmament with the advent of the Obama Administration in Washington, a Democrat-majority Congress, new bilateral talks between the US and Russia on strategic arms reductions,

and the forthcoming 2010 NPT Review Conference at which many of the non-nuclear states are wanting to see substantive rather than token implementation of Article VI's requirement for "effective measures relating to the cessation of the nuclear arms race at an early date and to nuclear disarmament".<sup>26</sup> We are also at a crucial watershed for the future of the Arctic region: whether it becomes a locus for deadly nuclear weapon system rivalries, conflicts over EEZs and resource extraction, and consequent environmental damage; or whether it becomes a crucial denuclearized buffer zone between the two major nuclear powers - the kind of zone of peace and international scientific cooperation that the Antarctic Treaty so successfully created.

This moment has to be seized, both by the non-nuclear Arctic regional governments of Denmark, Greenland, Norway, Finland, Sweden, Iceland and Canada, and by Russia and the US. The same vision and determination that was in evidence at the time of the 1957-58 Antarctic Treaty negotiations (with several of the same players) needs to be revived and demonstrated again, both to avoid catastrophic threats to Arctic peoples and their environment, and to take one another step forward in rolling back region by region the scope for the use and deployment of nuclear weapons.

Michael Hamel-Green

[Michael.hamel-green@vu.edu.au](mailto:Michael.hamel-green@vu.edu.au)

30<sup>th</sup> July 2009

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<sup>1</sup> Hinterhoff, E., *Disengagement*, Stevens & Sons, 1959, pp.423-9; Saeter, M. 'Nuclear Disengagement Efforts 1955-80' in Lodgaard, S. & Thee M., *Nuclear Disengagement in Europe*, SIPRI/Pugwash/Taylor & Francis, 1983, p.59.

<sup>2</sup> UN Department of Political Affairs, *Status of Multilateral Arms Regulation and Disarmament Agreements*, Fourth Edition, v.1, UN, New York, 1993, pp.22-32.

<sup>3</sup> Ibid. pp.72-109.

<sup>4</sup> Alfonso Garcia Robles, speech before the United Nations, UN A/C.1/PEV/2018, November 13, 1974, 32, cited in Alfonso Garcia Robles, Occasional Paper 19, *The Latin American Nuclear-Weapon-Free Zone* (Muscatine: The Stanley Foundation, 197

<sup>5</sup> For an analytical overview of both existing and proposed denuclearized zones, see Goldblat, Jozef, *Arms Control: the New Guide to Negotiations and*

*Agreements*, PRIO/SIPRI/SAGE, London, 2002, Chapter 13 'Denuclearized Zones', pp.196-219.

<sup>6</sup> For an overview of Arctic denuclearization proposals up to 1988, see Purver, Ronald, 'Arms Control Proposals for the Arctic: A Survey and Critique' in Mottola, Kari (ed.), *The Arctic Challenge*, Westview, Boulder, 1988, pp.183-219.

<sup>7</sup> For detailed studies of the Antarctic Treaty System, see: Beck, Peter,

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*The International Politics of Antarctica*, Croom Helm, Beckenham, 1986 (especially chapter 4 'A Continent for Peace'); Francioni, Francesco and Scovazzi, Tullio, *International Law for Antarctica*, Kluwer Law International, The Hague, 1996; Jorgensen-Dahl, Arnfinn and Ostreng, Willy (eds.), *The Antarctic Treaty System in World Politics*, Macmillan/Frijtjof Nansen Institute, London, 1991; Rothwell, Donald, *The Polar Regions and the Development of International Law*, Cambridge University Press, Cambridge, 1996; and Stokke, Olav Schram and Vidas, Davor (eds.), *Governing the Antarctic: the effectiveness and legitimacy of the Antarctic Treaty System*, Cambridge University Press, Cambridge, 1996.

<sup>8</sup> Koivurova, Timo, 'Alternatives for an Arctic Treaty – Evaluation and a New Proposal', RECEIL 17, 1, 2008; Pharand, Donat, 'The Case for an Arctic Region Council and a Treaty Proposal', *Revue Generale de Droit*, 23, 1992, pp.163-195; Rothwell, Donald, *The Polar Regions and the Development of International Law*, Cambridge University Press, Cambridge, 1996.

<sup>9</sup> Sands, Philippe, *Principles of International Environmental Law*, 2<sup>nd</sup> Edn., Cambridge University Press, Cambridge, 2003, p731, cited in Koivurova, op.cit.

<sup>10</sup> Rothwell, Donald R., *A New Legal Regime for the Arctic?*, Presentation, 2008, accessed at [www.arcticnet.ulaval.ca/pdf/talks2008/rothwellDon.pdf](http://www.arcticnet.ulaval.ca/pdf/talks2008/rothwellDon.pdf) on 28/7/09.

<sup>11</sup> Bellinger, John B., *Treaty on Ice*, 23 June 2008, accessed on US State Department website July 28209.

<sup>12</sup> The White House, President George W. Bush, *National Security Presidential Directive and Homeland Security Presidential Directive*, NSPD-66/HSPD-25, January 9 2009, accessed on US State Department website on 28/7/09.

<sup>13</sup> Alberts, Sheldon, 'US supports Arctic treaty in turf battle over oil riches', Canwest News Service, Edmonton Journal, 7/4/09

<sup>14</sup> Goldblat, *op.cit.*, pp.198-202.

<sup>15</sup> For a recent study of the Murmansk initiative, see Atland, Kristian, 'Mikhael Gorbachev, the Murmansk Initiative, and the Desecuritization of Interstate Relations in the Arctic', *Cooperation and Conflict*, 43, 289, 2008.

<sup>16</sup> Serrano, Monica, 'Latin America – The Treaty of Tlatelolco' in Thakur, Ramesh (ed.), *Nuclear Weapons-Free Zones*, Macmillan/St Martin's Press, London, 1998, p. 46.

<sup>17</sup> Goldblat, *op.cit.*, pp.202-205. For a detailed study, including the historical and political aspects of the treaty, see Hamel-Green, Michael, *The South Pacific Nuclear Free Zone Treaty: A Critical Assessment*, Peace Research Centre, Research School of Pacific Studies, Australian National University, 1990; and a further study of its implementation in Thakur, *op.cit.*, 'The South Pacific – The Treaty of Rarotonga', pp.59-80.

<sup>18</sup> Goldblat, *op.cit.*, pp.206-208.

<sup>19</sup> Goldblat, *op.cit.*, pp.208-212.

<sup>20</sup> Goldblat, *op.cit.*, pp.212-214.

<sup>21</sup> Jayantha Dhanapala, former UN Undersecretary General for Disarmament Affairs, September 30, 2006, cited in Parish and Potter, 'Central Asian States Establish Nuclear-Weapon-Free Zone Despite U.S. Opposition'

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<sup>22</sup> Marco Roscini, 'Something Old, Something New: The 2006 Semipalatinsk Treaty on a Nuclear Weapon-Free Zone in Central Asia', *Chinese Journal of International Law* 7, no.3 (2008), 593–624

<sup>23</sup> Roscini, *ibid.*

<sup>24</sup> UN Department of Political Affairs, *Status of Multilateral Arms Regulation and Disarmament Agreements*, Fourth Edition, v.1, UN, New York, 1993, p.114.

<sup>25</sup> Goldblat, Jozef, cited in *Arctic Security in the 21<sup>st</sup> Century Conference Report*, The Simons Foundation and the School of International Studies, Simon Fraser University, Vancouver BC, April 11-12 2008, Session II Military Security in the Arctic, pp. I-vii - I-viii.

<sup>26</sup> UN Department of Political Affairs, *Status of Multilateral Arms Regulation and Disarmament Agreements*, Fourth Edition, v.1, UN, New York, 1993, p.114.