

WEAPONS OF MASS DESTRUCTION, NON-PROLIFERATION AND DISARMAMENT

I. INTRODUCTION

New Zealand continued its support for non-proliferation and disarmament regimes and initiatives concerning weapons of mass destruction (WMD), understood here to refer to chemical, biological, radiological and nuclear weapons (also commonly referred to as CBRN) during 2012. While the Government highlighted multilateral cooperation on disarmament and arms control as an area for “special attention” in its foreign policy during 2012,¹ these activities in the WMD area focused on radiological and nuclear security and disarmament.² In addition to developments in the respective weapons’ regimes, certain international export control regimes for WMD equipment, materials and technology in which New Zealand is a member were also updated during the year. New Zealand voiced its displeasure at the ongoing dysfunction of the United Nations disarmament machinery, in particular the moribund Conference on Disarmament, at the United Nations General Assembly,³ while also seemingly (and surprisingly, given the country’s long-standing and largely bipartisan support for these issues) de-emphasising the political relevance of disarmament and arms control at the national level by subsuming the Disarmament and Arms Control ministerial portfolio into the Foreign Affairs portfolio in early 2012.

II. DEVELOPMENTS CONCERNING TREATY REGIMES

A. Chemical Weapons Convention

The Chemical Weapons Convention⁴ (CWC) celebrated its 15th anniversary of entry into force by convening a High-level Meeting of the Organisation for the Prohibition of Chemical Weapons (OPCW), the Convention’s implementing body, on 1 October 2012 in New York. The meeting’s purpose was to “generate support for the long-term objectives of

- 1 New Zealand Ministry of Foreign Affairs and Trade *Annual Report 2011/12* at 38 and New Zealand Ministry of Foreign Affairs and Trade *Annual Report 2012/13* at 44.
- 2 New Zealand also made contributions to conventional weapons arms control, such as its work in support of the Arms Trade Treaty (see Treasa Dunworth “International Criminal Law and International Humanitarian Law” (2012) 10 NZYIL (this volume)) and conventional weapons disarmament, including its support for the Convention on Cluster Munitions, the Convention on Anti-Personnel Landmines and the Convention on Certain Conventional Weapons.
- 3 Statement by Dell Higgie, New Zealand Ambassador for Disarmament “Conference on Disarmament of the United Nations General Assembly First Committee” (31 July 2012).
- 4 Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction 1974 UNTS 317 (opened for signature 13 January 1993, entered into force 29 April 1997) [Chemical Weapons Convention].

the Convention”⁵ and to build political momentum for the Convention in the run-up to its Third Review Conference, to be held on 8-19 April 2013. In its statement⁶ to the meeting New Zealand, a long-standing supporter of the Convention, noted that the goal of destroying all declared chemical weapons stockpiles “is in sight”, but that the OPCW must be able to adapt to respond to “future opportunities and threats”, understood to include novel and diverse non-proliferation challenges facing the Convention. New Zealand also called for united international action in response to any use of chemical weapons (noting that Syria, a non-State Party, had recently threatened chemical weapons use) and for States not yet party,⁷ particularly Syria, to adhere to the Convention.

New Zealand also participated in the Seventeenth Session of the Conference of the States Parties to the Chemical Weapons Convention, which was held from 26-30 November 2012 in The Hague, The Netherlands. New Zealand’s national statement⁸ during the general debate largely repeated the issues it raised during the High-level Meeting.

New Zealand’s CWC National Authority is the International Security and Disarmament Division of the Ministry of Foreign Affairs and Trade.

B. Biological Weapons Convention

New Zealand was not a particularly active participant in the 2012 Biological Weapons Convention⁹ (BWC) intersessional process, which annually consists of meetings of experts and meetings of States Parties that undertake a programme of work in the inter-Review Conference period. This is largely due to a reduced focus on biological weapons diplomacy under the National-led government and, generally, since the negotiations for a BWC verification protocol ended acrimoniously in 2001, which gave rise to the intersessional process. New Zealand’s contributions usually comprise a national statement and support for statements and working papers proffered

5 OPCW *Note by the Technical Secretariat, OPCW High-Level Meeting, United Nations Headquarters, New York 1 October 2012, S/1034/2012* (2012). These long-term objectives include the need for a strengthened focus on preventing chemical weapons proliferation once the verified destruction of existing chemical weapons has been completed.

6 “Organisation for the Prohibition of Chemical Weapons: High Level Meeting - ‘Fifteen years of the Chemical Weapons Convention: Celebrating success, Committing to the future’”, New Zealand statement delivered by HE Jim McLay, Permanent Representative, New Zealand Permanent Mission to the United Nations, 1 October 2012.

7 Only six States remain outside the Convention: Israel and Myanmar are signatory States; Angola, Egypt, North Korea and South Sudan have neither signed nor acceded to the Convention.

8 Statement by Ambassador George Troup, New Zealand’s Permanent Representative to the OPCW “New Zealand Statement to the 17th Conference of States Parties to the Chemical Weapons Convention, 26 November 2012” (26 November 2012).

9 Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction 1015 UNTS 163 (opened for signature 10 April 1972, entered into force 26 March 1975) [Biological Weapons Convention].

by one or more of the JACKSNNZ¹⁰ informal grouping of States, of which it is a member. The JACKSNNZ grouping arose at the BWC Sixth Review Conference in 2006 to counter-balance the BWC policies of fellow members of the Convention's Western Group,¹¹ the United States and European Union Member States, and to ensure that its participating States' interests were recorded despite pragmatism requiring Western Group unity on BWC meeting outcomes and decisions.

While New Zealand did not deliver a national statement nor contribute or sign on to a JACKSNNZ working paper at the 2012 BWC Meeting of Experts,¹² it was party to a joint JACKSNNZ statement¹³ and a working paper¹⁴ submitted to the 2012 BWC Meeting of States Parties.¹⁵ The JACKSNNZ statement highlighted the need for effective national implementation of the Convention and means to improve confidence in compliance (in the continued absence of a verification mechanism), an annual review of scientific and technological advances,¹⁶ international cooperation and collaboration on health and life science initiatives and universal adherence to the Convention.¹⁷ The working paper called for a focused discussion on what constitutes compliance with the Convention and how States Parties can better demonstrate their compliance in order to enhance assurance for other States Parties; in the continued absence of a verification regime, these discussions are crucial for the BWC regime's stability.

New Zealand submitted its annual confidence-building measure return covering the calendar year 2011 during 2012,¹⁸ which it has chosen to make publicly accessible on the BWC Implementation Support Unit website.¹⁹

10 The JACKSNNZ grouping comprises Japan, Australia, Canada, (South) Korea, Switzerland, Norway and New Zealand.

11 There are three regional groupings in the BWC context: the Eastern Group, the Group of the Non-Aligned Movement and Other States, and the Western Group (which has a different membership than the Western European and Other Group (WEOG) in the United Nations General Assembly). See "Membership" at <www.unog.ch/bwc>.

12 This meeting was held during 16-20 July 2012 in Geneva.

13 Joint Statement by the JACKSNNZ (Japan, Australia, Canada, Republic of Korea, Switzerland, Norway, and New Zealand) to the Biological and Toxin Weapons Convention Meeting of States Parties, 10 December 2012.

14 Australia, Canada, Japan, New Zealand and Switzerland "We need to talk about compliance" BWC/MSP/2012/WP.11 (2012) (Norway and South Korea did not sign on to this working paper). See <www.unog.ch/bwc>.

15 This meeting was held during 10-14 December 2012 in Geneva.

16 Such developments are otherwise only considered at the five-yearly Review Conferences.

17 The BWC has 170 States Parties, 10 signatory States and 16 States which have neither signed nor acceded to the Convention, the latter group including five States in the Pacific region (Kiribati, Micronesia (Federated States of), Niue, Samoa and Tuvalu). See "Membership" at <www.unog.ch/bwc>.

18 Annual confidence-building measure (CBM) data exchange returns are due by 15 April each year, covering the previous calendar year. New Zealand submitted its CBM for the 2012 calendar year on 10 April 2013, which is also publicly available; see the "Implementation" section of the BWC Implementation Support Unit website <www.unog.ch/bwc>.

19 See <www.unog.ch/bwc>.

New Zealand's BWC national focal point is the International Security and Disarmament Division of the Ministry of Foreign Affairs and Trade.

C. Nuclear Non-Proliferation Treaty

Nuclear weapons non-proliferation and disarmament has long been a priority policy issue for New Zealand and the country is an active participant in the respective treaty regimes – of which the Nuclear Non-Proliferation Treaty²⁰ (NPT) is the cornerstone agreement – and related bilateral and plurilateral agreements and non-binding instruments and initiatives.²¹

New Zealand made a national statement²² in the general debate session of the 2012 Preparatory Committee for the 2015 NPT Review Conference, held from 30 April-11 May 2012 in Vienna in which it offered its full support for the initiative to establish a Middle East zone free of weapons of mass destruction, for which an Action Plan was adopted at the 2010 NPT Review Conference.²³ A regional conference to discuss the issue, due to be held in December 2012 in Finland, the Middle East WMD free zone facilitator, was postponed on 23 November 2012 due to political differences between the participating States.²⁴ New Zealand's national statement also endorsed the desirability of nuclear-weapon States "decreasing the role of nuclear weapons in their military doctrine", in reference to its policy of calling for the de-alerting, or reducing the operational readiness, of nuclear warheads. The statement also voiced support for compliance with NPT nuclear safeguards and the Nuclear Security Summit process, as a means to enhance nuclear safety and security while recognising States' right to develop and use nuclear energy for peaceful purposes. It also supported the growing discourse on the international humanitarian law dimension of nuclear weapons use.²⁵

New Zealand also made statements in the cluster debates on implementation concerning nuclear disarmament; nuclear non-proliferation, nuclear safeguards and nuclear weapon free zones; and peaceful uses of nuclear energy.²⁶

20 Treaty on the Non-Proliferation of Nuclear Weapons 729 UNTS 161 (opened for signature 1 July 1968, entered into force 5 March 1970) [Nuclear Non-Proliferation Treaty].

21 See Alberto Costi "Nuclear Weapons, Non-Proliferation and International Security" (2010) 8 NZYIL 252-280 for a comprehensive overview of the status of such agreements and New Zealand's position concerning such instruments as at 2010.

22 Statement by HE Dell Higgie, Permanent Representative to the United Nations in Geneva, "Preparatory Committee for the 2015 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, General Debate 30 April 2012" (30 April 2012).

23 See Costi, above n 21, at 254.

24 United States Department of State "2012 Conference on a Middle East Zone Free of Weapons of Mass Destruction (MEWMDZF)" (press statement, 23 November 2012).

25 New Zealand was also party to a joint statement concerning the relationship between international humanitarian law and nuclear disarmament. See Joint statement on the humanitarian dimension of nuclear disarmament by Austria, Chile, Costa Rica, Denmark, Holy See, Egypt, Indonesia, Ireland, Malaysia, Mexico, New Zealand, Nigeria, Norway, Philippines, South Africa and Switzerland, "First Session of the Preparatory Committee for the 2015 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, 2 May 2012" (2 May 2012). See also Dunworth, above n 2.

26 See <www.reachingcriticalwill.org>.

Finally, New Zealand also associated itself with the statements by the New Agenda Coalition (NAC)²⁷ and the Vienna Group of 10.²⁸ The NAC statement²⁹ called on nuclear weapon states to “immediately start work on the practical steps required to attain nuclear disarmament”, noting that its members consider the indefinite possession of nuclear weapons a continued threat to humanity, and called for universal adherence to the Convention.³⁰ The NAC also submitted working papers on nuclear disarmament and multilateral disarmament verification.³¹ The Vienna Group of 10 statement³² announced the group’s working papers submitted to the 2012 Preparatory Committee meeting, on: compliance and verification; export controls; nuclear safety; physical protection; peaceful uses; and the importance of the Comprehensive Nuclear-Test-Ban Treaty to non-proliferation and disarmament.³³

D. Comprehensive Nuclear-Test-Ban Treaty

A significant development for New Zealand concerning the Comprehensive Nuclear-Test-Ban Treaty³⁴ (CTBT) during 2012 was the agreement of a memorandum of understanding (MoU) between Australia and New Zealand to facilitate scientific and technical cooperation between the two countries.³⁵ The MoU will assist the Australian Safeguards and Non-Proliferation Office

- 27 The New Agenda Coalition (NAC) comprised Brazil, Egypt, Ireland, Mexico, New Zealand, South Africa and Sweden in 2012; Sweden withdrew from the NAC in 2013. The Coalition aims to foster discussion on achieving compliance with Article VI of the NPT concerning nuclear disarmament.
- 28 The Vienna Group of 10 comprises Australia, Austria, Canada, Denmark, Finland, Hungary, Ireland, the Netherlands, New Zealand, Norway and Sweden (11 States). The group aims to instigate and inform discussion on verification and peaceful uses in the NPT context, particularly by submitting working papers to the NPT Preparatory Committee and Review Conference processes.
- 29 Statement by Ambassador Abdul Samad Minty, Permanent Representative of the Republic of South Africa to the United Nations in Geneva and to other International Organisations in Switzerland on behalf of the New Agenda Coalition “First Preparatory Committee for the 2015 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, General Debate, 30 April 2012” (30 April 2012).
- 30 The Nuclear Non-Proliferation Treaty has 189 States Parties, four States which have neither signed, acceded or succeeded to the Convention (India, Israel, Pakistan and South Sudan) and one State which has declared its withdrawal from the Convention (North Korea) although the legality of this withdrawal is disputed. See “Membership” at <www.disarmament.un.org>.
- 31 NPT/CONF.2015/PC.1/WP.29 and NPT/CONF.2015/PC.1/WP.30 respectively; see <www.iaea.org>.
- 32 Statement by the Vienna Group of 10 “Treaty on the Non-Proliferation of Nuclear Weapons Preparatory Committee, Vienna, 30 April - 11 May 2012 (Vienna, 30 April - 11 May 2012).
- 33 NPT/CONF.2015/PC.1/WP.3; NPT/CONF.2015/PC.1/WP.7; NPT/CONF.2015/PC.1/WP.5; NPT/CONF.2015/PC.1/WP.6; NPT/CONF.2015/PC.1/WP.2; and NPT/CONF.2015/PC.1/WP.4 respectively; see <www.iaea.org>.
- 34 Comprehensive Nuclear-Test-Ban Treaty, GA Res A/50/1027, 26 August 1996 (opened for signature 24 September 1996; not yet in force).
- 35 Australia Minister for Foreign Affairs “Australia and New Zealand aim for permanent ban on nuclear weapon tests” (press release, 5 October 2012).

and the New Zealand Ministry of Foreign Affairs and Trade to cooperate on interpreting data collected through the CTBT Organization's global International Monitoring System (IMS) concerning possible nuclear test explosions.

III. DEVELOPMENTS RELATING TO NON-BINDING INSTRUMENTS AND INITIATIVES

A. Nuclear Security Summit

Prime Minister John Key represented New Zealand at the second Nuclear Security Summit, convened during 26-27 March 2012 in Seoul, South Korea, following his participation in the first such summit, held in Washington DC during 2010. The summits are intended to harness political will and secure funding commitments, at the highest level, for the development of and compliance with nuclear security initiatives to reduce the threat of nuclear terrorism and to prevent any unauthorised access to nuclear materials. New Zealand was one of 18 States to sign on to a joint statement supporting an Indonesian initiative announced at the summit to develop a national legislation implementation kit on nuclear security.³⁶ This accords with New Zealand's support for legislative assistance and the provision of sample implementing legislation in other non-proliferation and disarmament regimes.

Following the summit, New Zealand signed an agreement with the United States to provide USD400,000 funding to secure and remove vulnerable nuclear material in Uzbekistan, in support of its commitment to global threat reduction initiatives.³⁷

B. United Nations General Assembly

New Zealand actively participated in the First Committee of the 67th Session of the United Nations General Assembly, concerning disarmament and international security matters, delivering national statements which called for a reinvigoration of the moribund Conference on Disarmament, which is mandated with negotiating multilateral disarmament agreements, and for

36 White House, Office of the Press Secretary, "Joint Statement on National Legislation Implementation Kit on Nuclear Security, 27 March 2012." A non-governmental organisation, the Verification Research, Training and Information Centre (VERTIC), drafted this kit at the request of Indonesia during 2013 for submission to the 2014 Nuclear Security Summit; see VERTIC "VERTIC participates in expert meeting on National Legislation Implementation Kit on Nuclear Security in Yogyakarta, Indonesia" (20 November 2013) <www.vertic.org>.

37 United States National Nuclear Security Administration (NNSA) "US, New Zealand expand partnership to reduce global nuclear threats" (press release, 27 July 2012).

greater efforts towards eliminating nuclear weapons³⁸ and joining statements in support of nuclear disarmament³⁹ and decreasing the operational readiness of nuclear weapon systems.⁴⁰

New Zealand also supported certain General Assembly resolutions concerning weapons of mass destruction in 2012. This section notes New Zealand's voting record on select resolutions of particular relevance to New Zealand's policy.⁴¹

Resolutions for which New Zealand voted in favour:

- Follow-up to the advisory opinion of the International Court of Justice on the legality of the Threat or Use of Nuclear Weapons (A/Res/67/33, 3 December 2012);
- Towards a nuclear-weapon-free world: accelerating the implementation of nuclear disarmament commitments [as a sponsor] (A/Res/67/34, 3 December 2012);
- Measures to uphold the authority of the 1925 Geneva Protocol (A/Res/67/35, 3 December 2012);
- High-level meeting of the General Assembly on nuclear disarmament (A/Res/67/39, 3 December 2012);
- Decreasing the operational readiness of nuclear weapons systems [as a sponsor] (A/Res/67/46, 3 December 2012);
- Treaty banning the production of fissile material for nuclear weapons or other nuclear explosive devices (A/Res/67/53, 3 December 2012);
- Nuclear-weapon-free southern hemisphere and adjacent areas [as a sponsor] (A/Res/67/55, 3 December 2012);
- Taking forward multilateral nuclear disarmament negotiations [as a sponsor] (A/Res/67/56, 3 December 2012);
- United action towards the total elimination of nuclear weapons (A/Res/67/59, 3 December 2012);

38 Statement by HE Dell Higgie, New Zealand, during the Plenary Session of the First Committee of the 67th Session of the General Assembly, 8 October 2012; Statement by Deborah Panckhurst, New Zealand during the Thematic Debate on Nuclear Weapons of the First Committee of the 67th Session of the General Assembly, 18 October 2012.

39 Statement by HE Mr Märten Grunditz, Sweden on behalf of the New Agenda Coalition during the General Debate of the First Committee of the 67th Session of the General Assembly, 8 October 2012; Statement by Mr Ulf Lindell, Sweden on behalf of the New Agenda Coalition during the Thematic Debate on Nuclear Weapons of the First Committee of the 67th Session of the General Assembly, 17 October 2012.

40 Statement by HE Mr Benno Laggner, Switzerland to the Nuclear Disarmament Cluster of the First Committee of the 67th Session of the General Assembly, 17 October 2012.

41 Some other pertinent resolutions were adopted without vote. For full voting records, see United Nations, *The United Nations Disarmament Handbook: Disarmament Resolutions and Decisions of the Sixty-Seventh Session of the United Nations General Assembly Vol 37 (Part 1) 2012*. See Costi, above n 21, at 262 concerning New Zealand's voting patterns, which remain valid for 2012, and at 275-279 concerning New Zealand's 2010 voting record on nuclear disarmament, non-proliferation and international security resolutions.

- Nuclear disarmament (A/Res/67/60, 3 December 2012); and
- Comprehensive Nuclear-Test-Ban Treaty [as a sponsor] (A/Res/67/76, 3 December 2012).

Resolutions for which New Zealand abstained:

- Conclusion of effective international arrangements to assure non-nuclear-weapon States against the use or threat of use of nuclear weapons (A/Res/67/29, 3 December 2012).

Resolutions for which New Zealand voted against:

- Reducing nuclear danger (A/Res/67/45, 3 December 2012); and
- Convention on the Prohibition of the Use of Nuclear Weapons (A/Res/67/64, 3 December 2012).

C. Export Control Regimes

New Zealand participates in three informal non-proliferation regimes that encourage responsible transfers of certain dual-use materials, equipment and technologies relating to weapons of mass destruction and their means of delivery and the harmonisation of effective national export control measures: the Australia Group (AG) concerning biological and chemical weapons; the Missile Technology Control Regime (MTCR) concerning unmanned delivery systems capable of delivering nuclear, chemical and biological weapons; and the Nuclear Suppliers Group (NSG) concerning nuclear material and nuclear-related equipment and technology exports.⁴² These regimes meet annually to consider proliferation challenges and to review and update their control lists and guidelines. During 2012 the AG updated its plant pathogen control list,⁴³ the MTCR revised the equipment, software and technology annex to its guidelines,⁴⁴ and the NSG updated its guidelines for nuclear transfers and the transfer of nuclear-related dual-use equipment, materials, software and related technology.⁴⁵

42 See the regime websites at <www.australiagroup.net>, <www.mtcr.info> and <www.nuclearsuppliersgroup.org>.

43 Australia Group "List of plant pathogens for export control" (June 2012) <www.australiagroup.net>.

44 Missile Technology Control Regime *Equipment, Software and Technology Annex* MTCR/TEM/2012/Annex (2012).

45 Nuclear Suppliers Group "Guidelines for Nuclear Transfers" NSG Part 1 June 2012 Update and "Guidelines for Transfers of Nuclear-Related Dual-Use Equipment, Materials, Software and Related Technology" NSG Part 2 August 2012 Update. These changes were instigated by the NSG's 20th plenary meeting convened during 24-25 June 2010 in Christchurch, New Zealand.

IV. NATIONAL POLICY, LEGISLATION AND MECHANISMS

A. Public Advisory Committee on Disarmament and Arms Control (PACDAC)

This Committee, which was established under the New Zealand Nuclear Free Zone, Disarmament and Arms Control Act 1987, met three times during 2012 to discuss policy issues with MFAT officials and to consider funding applications to the Peace and Disarmament Education Trust (PADET) and the Disarmament Education United Nations Implementation Fund (DEUNIF).⁴⁶

B. Disarmament and Arms Control Ministerial Portfolio

Following the New Zealand general election on 26 November 2011, the National-led administration's new Cabinet ministerial portfolio list announced that the Disarmament and Arms Control portfolio, established in 1987 under a Labour-led administration, was subsumed into the Foreign Affairs portfolio.⁴⁷ Civil society responded that having a dedicated minister for these issues had enhanced New Zealand's participation in arms control and disarmament meetings and aided the adoption of relevant implementation legislation in Parliament⁴⁸ and questioned the Government's apparently dwindling commitment to disarmament.⁴⁹

C. Implementation of the 2002 United Nations Study on Disarmament and Non-Proliferation Education

New Zealand submitted a national report, one of only nine UN Member States to do so, for the Secretary-General's fifth biennial report on implementation of this study's recommendations.⁵⁰ New Zealand's report noted its funding for disarmament and peace education,⁵¹ its engagement with civil society and its inclusion of peace education in the national education curriculum.

Angela Woodward
University of Canterbury

46 See <www.communitymatters.govt.nz>.

47 John Key "New National-led administration announced" (press release, 12 December 2011). The Labour and Green parties each nominated an MP to this portfolio in December 2011. See <www.stopclusterbombs.org.nz>.

48 See <www.stopclusterbombs.org.nz>.

49 Mary Wareham and Angela Woodward "Disarmament work could be wasted" *The Dominion Post* (online ed, Wellington, 11 April 2012).

50 GA Res 67/138, A/67/138 (2007).

51 The Peace and Disarmament Education Trust (PADET) and the Disarmament Education United Nations Implementation Fund (DEUNIF), both administered by the Department of Internal Affairs. See <www.communitymatters.govt.nz>.