

DENUCLEARIZATION OF NORTH-EAST ASIA AND OF THE WORLD by Jayantha Dhanapala*

A. INTRODUCTION

It is a truth universally acknowledged that nuclear weapons are the most destructive weapons invented and that their use can imperil all human civilization and the planet on which we live. Just last month the Asia Pacific Leaders Network on Nuclear Disarmament and Nuclear Non-proliferation (APLN) met in Jakarta and issued a Declaration which said, inter alia –

“Acutely conscious that the world’s more than 16,000 remaining nuclear weapons are strongly concentrated in the Asia Pacific region, with the US and Russia having over 90 per cent of the world’s stockpile and major strategic footprints here, China, India, and Pakistan all having significant arsenals, and the breakout state of North Korea continuing to build its capability,

Noting with grave concern that the number of nuclear weapons in the Asia Pacific is growing, substantial modernization programs are occurring and reliance on nuclear weapons in national security policies is not diminishing,

Noting further that most of the projected world growth in civil nuclear energy – with all the proliferation, safety and security risks associated with such energy production unless it is closely and effectively regulated – will occur in the Asia Pacific...”

Faced with this reality some non-nuclear weapon states, which have legally renounced the nuclear option, have huddled under the nuclear umbrella of nuclear powers. Others remain without any protection or legally binding assurances, relying on the campaign for nuclear disarmament leading to the total elimination of nuclear weapons – a goal that sometimes appears to be a mirage. Still others in a collective act of self-reliance have sought protection in nuclear weapon-free zones. Interestingly, such zones are mainly in the southern hemisphere further widening the gulf between the North and the South in to-day’s global political realities.

This international gathering in Tokyo is an opportune moment to examine the impressive record of historical achievements of existing zones and to explore how this can be a basis for future progress in the North East Asian region. In these days when so many other issues are competing for public attention – on both the domestic and international political agendas – it is all the more important to recall some of the inspirational heritage of nuclear weapon free zones.

I am reminded in particular of the preamble of the Treaty for the Prohibition of Nuclear Weapons in Latin America signed in 1967– the first nuclear weapon-free zone in an inhabited region. It explains both eloquently and succinctly why such zones are so vital. The text refers to the existence of nuclear weapons as ‘an attack on the integrity of the human species’ and recognises that the use of such weapons ‘may even render the whole earth uninhabitable’.

Yet what makes the history of nuclear weapon-free zones so impressive is not the terror of nuclear war evoked in the preambles of their respective treaties but the hope they inspire – hope based on both ideals and self-interests. The ideal is clear: these zones are stepping stones to a world free of all nuclear weapons. They are a sophisticated means whereby the world can advance in common cause against the production, possession or deployment of a weapon that is inherently incapable of distinguishing between civilian and military targets – a weapon

whose use would unquestionably violate international humanitarian legal principles as it destroys millions of innocent civilian lives and property. They have also progressively shrunk the area of the world's surface where nuclear weapons can be stationed, thereby placing restrictions on the strategic plans of nuclear weapon states.

The ideal of global nuclear disarmament is already reason enough for action, but when this ideal is combined with concrete benefits that are responsive to practical concerns of even the most cynical of realists, the case for nuclear weapon-free zones becomes formidable. This is the reason why nuclear weapon-free zones have grown both in variety and in popularity since their inception so many years ago.

Nuclear weapon-free zones do not exist as ends in themselves. They exist because they serve genuine security interests, promote international peace and security and inspire collective action for the good of each and the good of all. At a time when over 16,000 nuclear weapons reportedly remain in the hands of nine states, these zones offer one of the few sustained activities open to non-nuclear weapon states not just to quarantine themselves from the nuclear contagion around them, but to pool their efforts to resist it.

Some people say that countries that do not possess nuclear weapons have no business seeking to encourage the nuclear weapon states to change their nuclear policies. Indeed, that is the thinking of those who resist nuclear disarmament being negotiated in the world's only negotiating forum for multilateral disarmament – the Conference on Disarmament in Geneva. Yet as a matter of conscience, policy and law, global nuclear disarmament is in no way the exclusive domain of those states that have chosen to possess such weapons. Though Article VII of the Treaty on the Non-proliferation of Nuclear Weapons (NPT) acknowledges the right of any group of States to create nuclear weapon-free zones, Article VI of that treaty, reinforced by the ICJ Advisory Opinion of 1996, commits *all* of its 190 states parties to 'pursue negotiations in good faith on effective measures relating to cessation of the nuclear arms race at an early date and to nuclear disarmament'. Nuclear weapon-free zones are one of the most important of such measures.

I will not describe the history of all nuclear weapon-free zones. However analysing this historical record, I would like instead to point out two interesting features of the growth of these zones.

First, since the creation of the first zone by the Antarctic Treaty in 1959, one cannot help but note the sheer growth in the numbers of these regimes. We have witnessed an extraordinary case of the proliferation of such zones – reaching across whole continents covering more than 50 per cent of the earth's land mass, encompassing the ocean floor, and extending even into the heavens. The expansion of the concept to the Outer Space and Tlatelolco Treaties in 1967, the Seabed Treaty in 1971, the Rarotonga Treaty of 1985, the Pelindaba Treaty of 1996, the Bangkok Treaty in 1997, the Semipalatinsk Treaty of 2006 in each instance pushed the frontier a bit closer to a nuclear weapon-free planet. While the growth of these zones has not eliminated all conflict or achieved general and complete disarmament in their areas, it has accomplished much in laying the foundation for the proliferation of peace and asserted the rights of humanity to live in a nuclear weapon-free world.

There is, of course, no 'one size fits all' model of such zones that is equally suitable for each region. Each zone reflects the perceived security needs as well as the hopes and aspirations of its participating countries. As the UN Disarmament Commission noted in unanimously approving guidelines for the creation of such zones, they are the product of the specific circumstances of the region concerned, and are to be established on the basis of arrangements freely arrived at among the states of the region concerned. The establishment, growth, and maintenance of such zones is thus an inherently dynamic process – to this extent, all the zones are still in the process of fully realising their potential.

The Pelindaba Treaty took time to come into force. The nuclear weapon states have not yet acceded to the protocol of the Bangkok Treaty. The Central Asian nuclear weapon-free zone was under negotiation for many years and is the only zone in which the UN played an active role. Establishing and maintaining such zones are highly political processes, highly dependent upon – and hence vulnerable to – the forces of political reality. Proposals to establish such zones in the Nordic, Mediterranean, Balkan, Middle Eastern, South Asian, South Atlantic, North East Asian and East Asian regions – as well as the entire Southern Hemisphere – have encountered their respective difficulties. A similar fate has faced the proposals to denuclearise the Korean Peninsula, and the efforts to establish a zone in Central Europe, including the proposal by the Palme Commission in 1982 for a nuclear-free corridor in the region. And the elusive Zone of Peace in the Indian Ocean appears today to be a fading dream even in my country, Sri Lanka, which first sponsored the proposal in the United Nations in 1971.

Sometimes individual countries take actions into their own hands. In diverse ways, Austria, Japan, Germany and Mongolia have all chosen an alternative route, by undertaking national legal obligations to abjure the acquisition or possession of nuclear weapons. In South America, the MERCOSUR countries have joined to create a zone free of all weapons of mass destruction, echoing a similar proposal made by Egyptian President Mubarak for such a zone in the Middle East. And though they are not legally binding, we also must not forget the numerous local initiatives to establish municipal nuclear weapon-free zones around the world.

B.OBSTACLES

Nuclear weapon-free zones face numerous and formidable obstacles, yet they not only persist, but grow. The first obstacle they face is that the world remains divided into exclusive spheres of security, despite the more universalistic concept in the UN Charter of ‘international peace and security’ which tacitly denies the divisibility of peace. During the Cold War period the world was divided up in arrangements where some gathered under what they believed to be the protection of impermeable nuclear umbrellas, while the rest were presumably left to suffer the vicissitudes of world affairs on their own – while facing nuclear threats. Ironically, a decade after the Cold War ended one of these alliances continues and a queue forms at its entry door. In my view NATO is an anachronism especially when the OSCE fulfils the role of a post Cold War entity implementing the Helsinki Accords. Thousands of nuclear weapons remain on alert, first-use nuclear doctrines have been reaffirmed and more states have tested nuclear devices. It is not a world that is very hospitable to the creation or expansion of nuclear weapon-free zones.

Some countries take great comfort in the knowledge that any nuclear strike against any aggressor would unleash unthinkable horrors – horrors that could inevitably affect their own territory and their own citizens. That is the basic premise of nuclear deterrence theory: mutual – assured – destruction (MAD). Though over 100 countries have rejected such reasoning in favour of the security that comes from keeping such unconscionable weapons out of their neighbourhoods, the umbrella continues to cast a long shadow, perpetuating the myth that the ultimate peace is found only in the ultimate terror.

The second obstacle facing countries that are either in such zones or are considering establishing one, is the persistence of first-use doctrines on the part of some countries that possess nuclear weapons. Such doctrines, when combined with conditional language – described euphemistically as ‘calculated ambiguity’ – appear to leave open the option of launching nuclear strikes under some circumstances, even against non-nuclear weapon states. How can the nuclear weapon states offer negative security assurances to members of these regimes while simultaneously reserving the right to threaten to use – or actually to use – nuclear weapons against regime members? This amounts to a policy of erecting disincentives to establish such zones.

A third obstacle – one that may well grow in future years – is the rise of a new form of proliferation in the world. Let us call it the rise of ‘managed proliferation’ or the policy of actively encouraging the establishment of what might be termed, ‘nuclear weapon-safe zones’. Such concepts suggest that the possession of nuclear weapons, while perhaps regrettable, need not be catastrophic, and may, if subject to some careful stewardship, actually contribute to both regional and global stability. So leave existing nuclear weapons stockpiles alone, its proponents proclaim, even let them spread – but husband them wisely, and their possessors will earn a golden peace while sanctions are dismantled to satisfy powerful commercial interests. This vision of managed proliferation rejects entirely the very concept of disarmament, though not arms control. In fact, it glorifies arms control. Instead of the genuine peace and security that arises from instruments such as the Treaties of Tlatelolco, Rarotonga, Pelindaba, Bangkok, and Semipalatinsk, the new approach offers *ersatz* security through the provision of palliatives such as assistance in improving command-and-control over nuclear weapon systems, nuclear confidence-building measures, intelligence and early warning capabilities, and controls over the safety and security of devices in existing arsenals.

The new approach denies the existence of the possibility of accidents, mistakes or miscalculations, ignoring the facts of the 1962 Cuban missile crisis or the near miss in Scandinavia, when the launch of a scientific rocket in Norway in 1995 led to a nuclear alert. Instead, it assumes that measures taken to address such threats will be completely effective in getting the job done. This is, quite frankly, the fantasy virus that has recently spread to South Asia from its hosts in other regions, and is manifest in all discussions about the need for the world to adjust to the so-called ‘new realities’ in that region.

Yet the rise of new states with nuclear capabilities and the spectre of nuclear terrorism creates a fourth major obstacle for members of nuclear weapon-free zones, a problem related to the definition of what constitutes a nuclear weapon state and the sources of nuclear weapon threats today in view of the threat of nuclear terrorism. Which countries are appropriate to sign the various protocols in existing treaties reserved for nuclear weapon states? If the list is limited to the nuclear weapon states defined in the NPT, as it must, without according new status and legitimacy to new nuclear states, positive security assurances are also necessary in the event of dangers arising from other sources. The security assurances issue is thus complicated by another conundrum – who gives what and to whom?

The fifth obstacle arises from the assertion that security must come first and that once security is achieved, only then can disarmament be seriously entertained. This view, of course, ignores entirely both the security benefits that are obtained from the process of disarmament itself, and the insecurities that are aggravated by the failure to pursue disarmament strategies in earnest.

When the UN Disarmament Commission agreed in 1999 on guidelines to establish nuclear weapon-free zones, it not only reaffirmed the goal of ‘freeing the entire world from all nuclear weapons as well as other weapons of mass destruction, and more broadly speaking, of general and complete disarmament under strict and effective international control’, but stated that such a goal was necessary ‘*so that* future generations can live in a more stable and peaceful atmosphere’ (emphasis added). In other words, security can be served well by disarmament.

There are, to be sure, other obstacles facing the consolidation of zones once they are created. There are problems of entry into force, ambiguities in some Treaty provisions, problems of verification, financing, day-to-day administration, and achieving universal regional memberships. There are various problems associated with security arrangements, transits and overflights of nuclear weapons through such zones. There are challenges of educating the

public about the enormous benefits each citizen enjoys from not having to live under a cloud of nuclear terror.

It is interesting that at least two of these zones were formed following great controversies over nuclear testing. The initial efforts to set up a nuclear weapon-free zone in Africa no doubt reflected a reaction against French nuclear testing in Algeria, and an alleged South African test; similarly, the Rarotonga Treaty was given an impetus by French nuclear testing in the South Pacific. It is surely true that the negotiation of the Partial Test Ban Treaty in 1963 was strongly influenced by the public reaction to the health and environmental effects from atmospheric nuclear tests up to that date. And it is probably true that efforts to ban nuclear weapons from South America were strongly influenced by the sober reflections of leaders and citizens in the aftermath of the Cuban missile crisis.

Yet the creation of new zones simply cannot await any new shocks of this order of magnitude. Must a nuclear weapon-free zone in the Middle East, South Asia, Europe or East Asia await a tragic nuclear accident or nuclear attack? The shock therapy of actual nuclear detonations is not what is needed. Terror, death, and environmental catastrophes are not the path to achieve freedom from fear. The creation of nuclear weapon-free zones is preventive action.

C. NEXT STEPS

The UNDC Guidelines on the establishment of new zones helps us to identify some future steps, which might include the following:

First, all existing zones should come into force as soon as possible – new efforts are needed within incomplete zones, with appropriate encouragement as needed from without, to achieve universal regional membership and full international recognition.

Second, new efforts are needed to encourage the creation of new zones, even in the most difficult areas, including the Middle East and North East Asia. In other areas one could even begin with transitional measures: prohibiting certain categories of nuclear weapons, de-alerting nuclear weapons on the territory of countries in the region and other confidence-building initiatives. In North East Asia, Morton Halperin's useful paper "A Comprehensive Agreement for Security in Noertheast Asia" provides guidelines that should be discussed.

Third, new initiatives could be directed both at encouraging new forms of cooperation within existing zones as well as exchanges of experiences between parties of different zones. Members within such zones should be encouraged to cooperate in sharing information about the status of global nuclear disarmament efforts and in mobilising diplomatic efforts to encourage greater progress at all available opportunities, especially where they have secretariats to service them. This could take the form of joint studies, resolutions at international conferences, published speeches and editorials, and other such efforts.

Fourth, the requirement for arrangements between the countries in a certain region to be freely arrived at is of course essential, though this should be interpreted less as an obstacle to the creation of such zones than as a political and diplomatic challenge. A multi-front effort may, in certain circumstances, be required to encourage the leaders of some states to see reason. A great deal of this effort must be diplomatic. But it can also be promoted by citizen efforts, cultural exchanges, congresses, symposia, co-ordination among and between professional associations, the intelligent use of the media, activities by religious groups, and a host of other political initiatives. This meeting is an excellent beginning.

Fifth, the zones can be strengthened by additional protocols, such as those providing mutual commitments not to engage in attacks on peaceful nuclear facilities. Another useful confidence-building measure would address delivery systems for nuclear weapons. In his lecture upon receiving the Nobel Peace Prize in 1982, Alfonso Garcia Robles traced the

origins of the Tlatelolco Treaty to a Joint Declaration on 29 April 1963 by five South American presidents expressing their joint willingness to enter into a commitment not ‘to manufacture, store, or test nuclear weapons *or devices for launching nuclear weapons*’ (emphasis added). The preamble to the NPT similarly calls for the ‘liquidation’ not just of nuclear weapons but also of ‘the means of their delivery’. Yet today we hear only about missile defence and deterrence – not global missile disarmament.

Another useful protocol to consider would be to expand existing nuclear weapon-free zones into ‘fissile material-free zones’. Former IAEA Director-General Hans Blix has proposed this in the context of the Middle East. This would by no means require the abandonment of peaceful uses of nuclear energy, but it would require binding mutual commitments not to produce and stockpile materials required for use in nuclear weapons manufacture. It does not take great imagination to recognise the additional security benefits that members of nuclear weapon-free zones would gain by repudiating critical bomb-making materials along with the delivery systems needed to launch nuclear strikes. And both initiatives could – indeed should – be framed and pursued as a global goal.

The sixth and last step I will mention today concerns the UNDC’s explicit identification and recognition of the goal of establishing a Southern Hemisphere nuclear weapon-free zone. This too should be pursued vigorously. Its achievement would mark a stunning advance in the nuclear quarantine I mentioned earlier, and a grand new achievement on the road to a nuclear weapon-free world.

The zonal concept in nuclear disarmament and nuclear non-proliferation has been developed within the United Nations and an international consensus has been built around it. We need now to consolidate and strengthen this.

D. NORTH EAST ASIA NWFZ

Let me now move to discuss some specific issues regarding the proposal for a nuclear weapon free zone in North-East Asia. Let me first welcome the steps proposed by Morton Halperin in his paper. Indeed I would go further and say that Japan, the Republic of Korea and Mongolia should propose at the East Asia Summit of November this year the proposal of a North East Asian NWFZ in accordance with following paragraphs from the APLN Jakarta Declaration –

“10. The leaders attending the November 2014 East Asia Summit should set the 2015 East Asia Summit as the target for developing and announcing both general and nuclear confidence-building measures.

11. The 70th anniversary commemoration in August 2015 of the Hiroshima and Nagasaki bombings should be seen as an opportunity for world leaders to demonstrate their commitment to, and to generate momentum towards the achievement of, a nuclear-weapon-free world.”

As I have already said, five nuclear weapon free zones (NWFZ) , one single-state nuclear weapon free zone (Mongolia) and one unpopulated nuclear weapon free continent (Antarctica) – apart from the denuclearization of the extremities of the seabed and ocean floor and outer space – have been legally established and exist in the world today. While they do not conform to a replicable model, the UN Disarmament Commission has established guidelines which future proposals for NWFZ may wish to follow. As Jozef Goldblat has written:

“Nuclear-weapon-free zones have thus gradually become part and parcel of the nuclear non-proliferation regime. Not only do the treaties that have established the zones unconditionally prohibit the possession of nuclear weapons by non-nuclear-weapon states, but they also, in certain respects, go much further than the Non-proliferation Treaty, for instance, in the field of environmental security.”

At the moment a weapons of mass destruction free zone is being discussed for the Middle East with a conference planned for the indeterminate future and NWFZs are proposed for North-East Asia and the Arctic. The proposal for a North-East Asian Nuclear Weapon Free Zone has intrinsic merits. However it has acquired a fresh relevance both as a solution to the nuclear weapon programme of the Democratic People’s Republic of Korea (DPRK) and as a safeguard against a possible nuclear weapon option being exercised by Japan and the Republic of Korea (ROK). It could also assuage fears of a Chinese nuclear threat in East Asia with China accepting the protocols to a future NWFZ. The proposal is being seriously discussed among academics and legislators – perhaps a prelude to a negotiation at the policy making level.

While entry into force provisions vary from treaty to treaty, a NWFZ, has always in the past and should in the future, come into existence after all its member states who are signatories are verifiably nuclear weapon free. The 1969 Vienna Convention on the Law of Treaties states unambiguously in Article 18 -

“Obligation not to defeat the object and purpose of a treaty prior to its entry into force”

A State is obliged to refrain from acts which would defeat the object and purpose of a treaty when:

(a) it has signed the treaty or has exchanged instruments constituting the treaty subject to ratification, acceptance or approval, until it shall have made its intention clear not to become a party to the treaty; or

(b) it has expressed its consent to be bound by the treaty, pending the entry into force of the treaty and provided that such entry into force is not unduly delayed.”[v]

Conceptually NWFZs represent ‘affirmative action’ on the part of non-nuclear weapon states (NNWS) within the Treaty for the Non-proliferation of Nuclear Weapons (NPT) in accordance with its Article VII. The choice of that term, borrowed from the political discourse of many countries to describe policies or programmes providing advantages for peoples who are perceived as weaker groups, is deliberate. It points to a strong opposition to nuclear weapons among NNWS, actually predating the NPT, and the creation of NWFZs as building blocks for a nuclear weapon free world which the Obama-Medvedev Joint Declaration of April 2009, on behalf of the two states who hold 93% of the nuclear weapons in the world, declared as their objective. Indeed NWFZs in their preambles refer to global nuclear disarmament in unambiguous terms. As quarantine zones protecting countries and regions from the

contagion of nuclear weapons, NWFZs are not all consistent in the set of prohibitions they have adopted. The Treaty of Rarotonga for the South Pacific NWFZ and the Treaty of Semipalatinsk for the Central Asian Nuclear Weapon Free Zone (CANWFZ), for example, include countries that have defence agreements with NWS and therefore enjoy extended nuclear deterrence.

In the case of Rarotonga the treaty permits the passage of nuclear armed vessels through the NWFZ and the harbours of its member states. These compromises on the principles of the prohibitions enshrined in the NWFZ treaties through adroit drafting were not seen to be in such fundamental conflict with the prohibitions as to vitiate the central thrust of the treaty. The 1999 UN Disarmament Commission guidelines for establishing NWFZs states, inter alia, that:

States parties to a nuclear-weapon-free zone exercising their sovereign rights and without prejudice to the purposes and objectives of such a zone remain free to decide for themselves whether to allow visits by foreign ships and aircraft to their ports and airfields, transit of their airspace by foreign aircraft and navigation by foreign ships in or over their territorial sea, archipelagic waters or straits that are used for international navigation, while fully honouring the rights of innocent passage, archipelagic sea lane passage or transit passage in straits that are used for international navigation.

All NWFZ treaties allow, at the sovereign discretion of each member state, for overflight and transit of nuclear armed vessels through international waters. The provisions of the Treaty of Bangkok also cover the Exclusive Economic Zones (EEZ) and continental shelves. However, it is disputed whether this is in accordance to the UN Law of the Sea Convention. Jozef Goldblat has noted in respect of the CANWFZ that :

“This means that transit of nuclear weapons may be allowed or refused, but the decisions “should not be prejudicial” to the purposes and objectives of the treaty. Since neither the frequency nor the duration of transit is limited by the treaty, it is not clear to what extent transit differs from stationing. With the proviso mentioned above, total absence of nuclear weapons in the CANWFZ, as envisaged in Article VII of the NPT (dealing with the right of states to conclude regional denuclearization treaties), cannot be guaranteed.

Introduction of nuclear weapons into the zone, even for a short time, would defeat the sought goal of regional denuclearization. Moreover, transit of nuclear weapons allowed by one zonal state might affect the security of another.”

The CANWFZ has Kazakhstan Kyrgyzstan, Tajikistan, and Uzbekistan which are parties to the Tashkent Treaty – the treaty implied in Article 12 of the Semipalatinsk Treaty. Goldblat, who was associated with the actual drafting process (together with this writer) has explained a possible resolution of this issue in the following terms.

“In a joint statement, issued in the form of a binding international agreement, some high-level officials (preferably foreign ministers) of the Central Asian states would

adopt a common understanding of the contentious provision. They would pledge that in settling disputes related to this provision they would base themselves on, and act in conformity with, Article 30 of the 1969 Vienna Convention on the Law of Treaties. According to this article of the Vienna Convention, when a treaty specifies that it is not to be considered incompatible with an earlier treaty dealing with the same subject matter, the earlier treaty applies only to the extent that its provisions are compatible with those of the later treaty. Reference to this generally accepted rule of international law (*lex posterior derogat legi priori*) could allay the apprehension that Article 12 degrades the value of the entire treaty. In a similar but more explicit statement, the five parties would agree that any treaty, which they had concluded earlier, and which dealt with the same subject matter as the Semipalatinsk Treaty, would apply only to the extent that its provisions were compatible with the Semipalatinsk Treaty.”

Article 12 of the CANWFZ has no problems for the states parties themselves and for China and Russia. However the objections of UK, USA and France to signing the protocols could have been taken care of by the adoption of the recommendations of Goldblat. In the event the signature of the protocols by the three Western NWS took place before the NPT Third Prepcom in New York albeit with reservations.

With regard to another aspect of a NWFZ treaty, more recently the agreed Australian decision to export uranium to India despite the latter not being within the NPT is widely seen as a violation of the Treaty of Rarotonga. Thus accepted NWFZ guidelines have been shown to be flexible.

In the case of all NWFZs however the provisions of the NPT apply since they are all states parties of this treaty. Thus the application of extended deterrence or sheltering under the nuclear umbrella offered by any one of the NWS must be seen as a violation of Article 1 – one of the core articles of the NPT. Firstly the transfer of nuclear weapons or control of such weapons “directly or indirectly” is prohibited. This has been violated by the geographical location of US nuclear weapons in five NATO countries in Europe but has been justified by the US because the weapons are under US control – a justification frequently rejected by NNWS at NPT Review Conferences and other forums. No NWFZ would make the actual stationing of nuclear weapons whether under the control of a NWS or not legal. Secondly, the prohibition “not in any way to assist, encourage, or induce” any NNWS to acquire or control nuclear weapons stands obviously violated when the protection of a nuclear weapon defence is agreed upon by a bilateral treaty with a NWS as in the case of Australia, Japan or ROK.

The International Court of Justice in its Advisory Opinion of 8 July, 1996 ruled unambiguously on nuclear deterrence and extended nuclear deterrence both of which contain a threat of the use of nuclear weapons. To summarize

- ❖ The court decided to comply with the request for an advisory opinion;
- ❖ “There is in neither customary nor conventional international law any specific authorization of the threat or use of nuclear weapons”;

- ❖ “There is in neither customary nor conventional international law any comprehensive and universal prohibition of the threat or use of nuclear weapons as such”;
- ❖ “A threat or use of force by means of nuclear weapons that is contrary to Article 2, paragraph 4, of the United Nations Charter and that fails to meet all the requirements of Article 51, is unlawful”;
- ❖ “A threat or use of nuclear weapons should also be compatible with the requirements of the international law applicable in armed conflict, particularly those of the principles and rules of humanitarian law, as well as with specific obligations under treaties and other undertakings which expressly deal with nuclear weapons”.

The case brought before the ICJ by the Marshall Islands may very well clarify and expand on the 1996 ICJ Advisory Opinion.

E. CONCLUSION

Thus a NWFZ in North-east Asia has many reasons to commend itself as a solution to the complex issues in the region that threaten its security but compromising on fundamental NWFZ principles will only exacerbate matters. Exceptions and ambiguities have been introduced in the negotiation of past NWFZs but they cannot, and should not, be cited as precedents for future NWFZs. Extended deterrence and a NWFZ are mutually exclusive. The Obama speech in Prague in April 2009 and all that has transpired with regard to the objective of a nuclear weapon free world has altered global circumstances. Cold War warriors Schultz, Kissinger, Nunn and Perry said in their famous Wall Street Journal of 2007 that, “The end of the Cold War made the doctrine of mutual Soviet-American deterrence obsolete. Deterrence continues to be a relevant consideration for many states with regard to threats from other states. But reliance on nuclear weapons for this purpose is becoming increasingly hazardous and decreasingly effective.” The time to bury nuclear deterrence and extended nuclear deterrence is now.

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