

*Session I:  
Perspectives for a Comprehensive Approach to a Northeast Asia Nuclear-Weapon-Free Zone*

## **Multilateral Perspectives**

**By**

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**A Comprehensive Approach to a NEA-NWFZ Program of the First Workshop**  
Research Center for Nuclear Weapons Abolition  
Nagasaki University  
Nagasaki, Japan  
7 December 2012

*Remarks elaborated and adapted from his earlier remarks at  
Parliamentarians for Nuclear Non-Proliferation and Disarmament, 2012 Assembly  
Astana, Kazakhstan, 30 August 2012*

*The views expressed herein are those of the author and not necessarily of the United Nations.*

By virtually any measure, nuclear-weapon-free zones (NWFZs) have been a success story in past international efforts to prevent the acquisition and use of nuclear weapons in specific regions. But they have accomplished much more—they have also advanced the norm of global nuclear disarmament and are justifiably viewed in a fully multilateral context. They have also served to strengthen the global nuclear non-proliferation regime. By expanding the scope of legal obligations concerning the possession or proliferation of nuclear weapons, these treaty regimes have contributed to the “rule of law” in disarmament and non-proliferation.

Today, 111 States have joined regional NWFZs, while the nuclear-weapon-free status of Mongolia has also gained international recognition. Four regional treaties exclude the deployment or possession of nuclear weapons in virtually all the Southern Hemisphere. And in 2009, the treaty establishing the Central Asian nuclear-weapon-free zone entered into force, creating the first such zone north of the Equator.

It is often forgotten that the basic concept of these zones emerged in the 1960s as part of what were called “partial measures”—an approach to global nuclear disarmament that built upon a series of more limited measures rather than a single comprehensive disarmament treaty pursued unsuccessfully in the 1950s.

Reflecting this partial-measure approach, all the NWFZ treaties associate their respective zones with global nuclear disarmament. Thus these zones are far more significant than just a measure to strengthen regional peace and security. They have also helped to de-legitimize nuclear weapons per se, rather than just their spread, testing, or use—using some innovative approaches.

In Latin America and the Caribbean, for example, the Tlatelolco Treaty was the first such treaty to cover a heavily populated area, the first to define the term “nuclear weapon”, and the first to require legally binding negative security assurances from the nuclear-weapon States. It remains the only such treaty whose Protocols have been ratified by all five of these States.

The Treaty’s preamble indicated that “militarily denuclearized zones are not an end in themselves but rather a means for achieving general and complete disarmament at a later stage.” This link between the regional aims of the treaty and the twin global goals of nuclear disarmament and general and complete disarmament (GCD) appears in each of the treaties establishing regional nuclear-weapon-free zones.

These references to GCD are significant but often misunderstood. The term appears in a dozen multilateral treaties including the NPT. It was first placed on the agenda of the UN General Assembly in 1959 (Resolution 1378) and the first Special Session of the General Assembly in 1978 designated GCD as the “ultimate objective” of the world community in the field of disarmament.<sup>1</sup>

The term integrates two separate aims of the UN that derive originally from the Charter, which distinguished between “disarmament” and the “regulation of armaments”. Over the years,

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<sup>1</sup> UN General Assembly, Final Document, First Special Session on Disarmament, A/S-10/2, 23 May-30 June 1978, paragraph 19, p. 5, <http://www.un.org/disarmament/HomePage/SSOD/A-S-10-4.pdf>.

the General Assembly has clarified through many resolutions that “disarmament” applies specifically to the elimination or prohibition of nuclear weapons and other weapons adaptable to mass destruction (biological and chemical), while the goals with respect to conventional arms were to regulate or reduce such weaponry.<sup>2</sup> The General Assembly has also clearly established that these goals are to be pursued simultaneously, not sequentially.

In short, the agreed multilateral goal is to eliminate nuclear weapons—not simply to regulate them—and this is the goal that has been incorporated into the regional treaties creating nuclear-weapon-free zones. It is worth recalling, however, that the treaties are also intended to serve the wider GCD goal, which includes conventional arms, even though such weapons are not explicitly addressed in those regional treaties. This meaning could well be significant in the context of efforts to establish such a zone in Northeast Asia, given the large deployments of conventional forces in the region.

The legal foundation for such zones rests initially with the UN Charter, which in Article 52 recognizes the role of “regional arrangements or agencies” in the maintenance of international peace and security. Article VII of the NPT also affirms the right of groups of States to conclude regional treaties to assure the total absence of nuclear weapons from their territories.

In 1999, the UN Disarmament Commission adopted a set of seven principles to guide the establishment of such zones. These included—a ban on any type of nuclear explosive device for any purpose; verification and IAEA full-scope safeguards; a requirement for the zonal treaty to be “freely arrived at” among States of the region; and other standards relating to security assurances and conformity with international law and law of the sea.

While the 1999 guidelines did identify GCD as a goal of such zones, it did not refer to delivery systems for nuclear weapons. Each of the definitions of “nuclear explosive device” or “nuclear weapon” found in the five regional treaties states that the term does not include delivery vehicles “if separable from and not an indivisible part” of the weapon. Yet the UNDC guidelines stressed that each zone is “the product of the specific circumstances of the region concerned and highlights the diversity of situations in the different regions”.<sup>3</sup> There is therefore no reason why delivery systems could not be included within the scope of a zonal treaty, if the parties believe that local circumstances so require.

Now some have questioned the value of such treaties since all their parties are already members of the NPT. Yet the zonal treaties go beyond the obligations of the NPT in many respects. Their parties receive legally binding security assurances from the nuclear-weapon States. Unlike the NPT, these treaties also explicitly outlaw the basing of nuclear weapons among the States Parties.

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<sup>2</sup> Randy Rydell, “Nuclear Disarmament and General and Complete Disarmament,” in David Krieger (Ed.), The Challenge of Abolishing Nuclear Weapons (New York: Transaction Publishers, 2009), p. 227-242. The only exception to this rule is found in the Convention on Certain Conventional Weapons, which outlaws specific types of conventional arms because of their unusually inhumane effects.

<sup>3</sup> Report of the Disarmament Commission (1999), A/54/42, [http://www.un.org/ga/search/view\\_doc.asp?symbol=A/54/42](http://www.un.org/ga/search/view_doc.asp?symbol=A/54/42) (SUPP), p. 7.

Most of these regional treaties also address environmental issues (e.g. against radioactive dumping). The Africa and Central Asia treaties include controls over the physical security of nuclear materials and facilities. Most have more stringent terms for treaty withdrawal—the South Pacific, Africa, Southeast Asia and Central Asia treaties require 12 months advance notice, while Tlatelolco only requires 3 months as does the NPT. The Central Asian treaty requires enhanced safeguards under the IAEA’s Additional Protocol. The Pelindaba treaty bans even “research on” any nuclear explosive device, as well as attacks on nuclear facilities. And these treaties also have their own procedures for the settlement of disputes.

One zone receiving considerable attention today is the proposed Middle East zone free of nuclear weapons and other weapons of mass destruction—a goal adopted at the 1995 NPT Review and Extension Conference, and reaffirmed at the 2000 and 2010 NPT Review Conferences. Efforts to establish a nuclear-weapon-free zone in the region date back to 1974, with a General Assembly resolution sponsored by Iran and Egypt. President Mubarak proposed expanding the concept to WMD in 1990.

At the 2010 NPT Review Conference, the States Parties affirmed that the 1995 Middle East Resolution was “the basis” for the indefinite extension of the NPT. They also endorsed several practical steps to establish such a zone. In consultation with States of the region, the UN Secretary-General and the Russian Federation, the United Kingdom and the United States (the three sponsors of the 1995 Resolution) were jointly mandated to convene a conference in 2012 on establishing the zone, appoint a facilitator, and select a host government.

As of late November 2012, prospects for convening such a conference this year have dimmed. Recent statements by the United States, United Kingdom, Japan, the European Union, the League of Arab States, and the UN Secretary-General clearly indicate that while there is no consensus to convene this conference in 2012 there remains strong international support for the goal of establishing such a zone.

This experience with the Middle East zone may have some indirect relevance for the Northeast Asia zone in two respects. First, the initiative to establish the Middle East zone has long been linked by its supporters to the NPT regime and hence has been a regular subject of deliberations at NPT arenas. In other words, by framing the initiative in an NPT context, supporters have already established that this issue has global implications well beyond the region. Second, proponents of this zone have also sought to involve the UN and the Secretary-General in particular in the process of establishing this zone—this is another reflection of this effort to frame this initiative in a global context. The net effect of this approach has been to expand the domain of relevant “stakeholders” with an interest in the establishment of this zone. Whether this will suffice to ensure full participation by all States in the region in a future conference or treaty establishing the zone remains to be determined by the outcome of ongoing consultations.

It is noteworthy that while the initiative for establishing such zones comes exclusively from the States within the region, the United Nations has contributed to this process in many ways. Examples of past UN roles include activities by the General Assembly, which include statements and resolutions concerning the relevant treaties. In addition to their own public statements of support, the Secretaries-General have issued detailed reports, including a

comprehensive study of such zones in 1975 and the Middle East nuclear-weapon-free zone in 1991. As indicated, the UN Disarmament Commission has established guidelines for establishing these zones. More specifically, William Epstein, then a member of the UN Secretariat, assisted in the drafting of an early version of the Tlatelolco Treaty.<sup>4</sup> In response to requests from interested delegations, the UN's Regional Centre for Peace and Disarmament in Asia and the Pacific actively supported the establishment of the Central Asia zone, primarily through arranging for consultations among the relevant parties.<sup>5</sup>

This track record of UN assistance provides a useful precedent for possible future contributions in establishing zones in additional regions, including Northeast Asia.

So what's next for these zones? First is the job of getting all the nuclear-weapon States to ratify all the Protocols of the treaties. Second is the promotion of new zones especially in the Middle East, but also Northeast Asia and the Arctic. Third is further elaboration of the concept of a *WMD-free* zone in other regions, perhaps including the development of a model WMD-free-zone convention or an agreed set of principles similar to the approach taken by the UNDC concerning the establishment of regional nuclear-weapon-free zones.

The fourth concerns the challenge of dealing with the dilemma created by non-NPT States that possess nuclear weapons, whose security assurances could be seen as constituting international recognition of their nuclear-weapon status.

While governments of the regions concerned are responsible for establishing such zones, civil society has very important roles to play in shaping the political will needed to achieve this goal. National parliamentarians and local government officials have played active roles as have countless initiatives launched by groups in civil society, at times working in cooperation with the UN and IAEA. Common to many of these efforts have been initiatives to engage the media and to educate public opinion about the benefits offered by these zones.

In conclusion, while the cumulative establishment of regional zones will not alone suffice to produce a world free of nuclear weapons, this is in fact their common larger goal. To this extent, the zones represent one of the best examples today of how multilateral anti-nuclear-weapon norms are taking root at the regional and local levels.

It's often said that "all politics is local politics." Yet with respect to these zones, nuclear-weapons politics is operating on both local and global dimensions. As representatives of the people, legislators can serve not just as a bridge between the Executive and the public, but also between the world community and both national and local political systems. They have enormous potential to strengthen the political will needed from all countries to achieve a nuclear-weapon-free world. Establishment of a Northeast Asia nuclear-weapon-free zone would be a great step forward in achieving this historic goal.

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<sup>4</sup> William Epstein, "The Making of the Treaty of Tlatelolco," Journal of the History of International Law, 2001 (3), p. 153-179.

<sup>5</sup> Report of the Secretary-General, A/52/309, 27 August 1997, para. 12.