



**Informal Workshop on Good Practices and Lessons Learned of Existing
Nuclear-Weapon-Free Zones**

**Opening remarks by Ms. Izumi Nakamitsu
High Representative for Disarmament Affairs**

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New York
7 July 2020

Your Excellency, Ambassador Bahous,

Excellencies,

Dear colleagues and friends,

As a renewed effort towards achieving the objective of establishing a Middle East zone free of nuclear weapons and other weapons of mass destruction, the States of the region, supported by the wider international community, held a successful first session of the Conference last year. I would like to congratulate again Ambassador Bahous and all the participating States and the observer States for the successful outcome. This workshop aims to support States in their implementation of that successful outcome.

The effort to establish a Middle East zone clearly has a strong conceptual connection with progressive development of nuclear-weapon-free zones since the 1950s. These zones now cover around 56 percent of the Earth's surface and virtually all of the Southern hemisphere. Although nuclear-weapon-free zones should not be considered ends in themselves, each of those regional agreements have made an invaluable contribution not only to the global disarmament and non-proliferation regime, but also to regional and international security.

Even though the objectives of the current process on the Middle East are broader, the experience of other regions in overcoming their unique challenges and establishing nuclear-weapon-free zones can provide useful lessons. After all, each of these efforts by their very nature share certain common objectives and elements. And addressing the grave dangers posed by nuclear weapons remains a central focus in the context of the Middle East. Accordingly, the experiences of other regions can inform many of the collective decisions that the current process will have to contemplate in the future.

In the first instance, each zone has been tailored to the specific circumstances and characteristics of the region concerned. This has involved navigating not only the varied and dynamic political and security relations within a region but also cooperating with critical external stakeholders, first and foremost – the nuclear-weapon States. The provisions of nuclear-weapon-free zone treaties have been shaped by the preexisting commitments of the regional States and the prevailing international norms and standards that have emerged over time. Their arrangements for institutionalization and cooperation have had to build upon the capacity of existing organizations or create new ones where they were lacking. They have

had to deal with how to reconcile their aspirations with other legal regimes, such as the law of the sea. And they have had to take into account the various relationships and commitments that regional States maintain with others, especially the nuclear-weapon States which will effectively serve as guarantors for these zones.

I am very happy to see representatives from institutions that support or have contributed to existing zones and States parties that play institutional roles. I am further encouraged by efforts they are undertaking to increase their cooperation. I look forward to your presentations and ensuing interactive discussions over the next three days.

I have no doubt that this process will benefit from and draw upon your valuable experience. I also hope this informal setting provides an opportunity for the States of the Middle East to engage earlier with some of the key substantive issues that still lie ahead. I encourage all participating States to make full use of the experience assembled in this workshop to engage actively, including by asking questions and expressing any views they have on these various topics.

Allow me to ensure you once again of my Office's and my personal support for your activities on this track.

I wish you a very productive discussion, and I am personally looking forward to the discussions.

Thank you very much.

**Informal Workshop on Good Practices and Lessons Learned
With Respect to the Implementation of
Treaties Establishing Nuclear-Weapon-Free Zones**

**“The Role of the Treaty of Bangkok in Maintaining Peace and Stability
In Southeast Asia”**

**By H.E. Dato’ Syed Mohamad Hasrin Aidid
Permanent Representative of Malaysia to the United Nations
7 July 2020**

Opening

- At the outset, I wish to express my appreciation to the UNODA for the invitation to be one of the panelists for this informal workshop.
- I believe this initiative is a strategic platform for us to exchange views and perspectives as well as share good practices and lessons learned in the context of existing nuclear-weapon-free zones.
- Malaysia is honored to be a Supporter of the Secretary-General’s Agenda for Disarmament, including a Supporter for Action 5 of the Agenda which focuses on Strengthening and Consolidating Nuclear-Weapon-Free Zones.

Overview

- In discussing the subject of peace and stability in Southeast Asia, we could begin by acknowledging that political cooperation and cooperative frameworks within ASEAN over the last few decades had led to a series of significant results.
- Milestones include the Zone of Peace, Freedom and Neutrality (ZOPFAN) Declaration in 1971, the conclusion of the Treaty of Amity and Cooperation in Southeast Asia (TAC) in 1976, the establishment of the ASEAN Regional Forum (ARF) in 1994, and the conclusion of the Treaty on the Southeast Asia Nuclear-Weapon-Free Zone (SEANWFZ) in 1995.
- The TAC, which presently has 39 High Contracting Parties including the 10 ASEAN Member States, serves as a code of conduct for inter-state relations in Southeast Asia. It sets forth fundamental principles including mutual respect for the independence, sovereignty, equality and territorial integrity of all nations, as well as renunciation of the threat or use of force. ASEAN regularly considers new requests for accession to the TAC.
- Also among ASEAN's core legal instruments is the Southeast Asia Nuclear-Weapon-Free Zone Treaty (SEANWFZ Treaty, or Bangkok Treaty), signed by ten (10) ASEAN Member States in Bangkok on 15 December 1995.

- The Treaty entered into force on 27 March 1997. It is of a permanent nature and shall remain in force indefinitely.
- The Treaty is aligned with the aspirations of the ASEAN Charter, which states that one of ASEAN's purposes is to preserve Southeast Asia as a nuclear-weapon-free Zone and free of all other weapons of mass destruction.
- This is an important foundation upon which rely the goals of regional peace, stability and security of Southeast Asia.
- Pursuant to the Treaty, all States Parties are obliged, among others, not to develop, manufacture or otherwise acquire, possess or have control over nuclear weapons, station or transport nuclear weapons by any means, or test or use nuclear weapons.
- States Parties also undertake not to discharge radioactive materials or wastes at sea, into the atmosphere or on land within the Zone, and not to allow other States to conduct these acts.
- In short, the SEANWFZ Treaty promotes the universalization of international agreements related to disarmament and non-proliferation of nuclear weapons.

Verification and Compliance

- Under the SEANWFZ Treaty, verification is to be achieved through reports by States Parties and the exchange of information, and through the application of IAEA safeguards.
- States Parties have discretion over visits by foreign ships and aircraft to ports and airfields, transit of airspace by foreign aircraft, and navigation by foreign ships.
- The Treaty provides for a Commission of the SEANWFZ to oversee its implementation and ensure compliance with its provisions. This Commission comprises the ASEAN Foreign Ministers. A subsidiary organ under the Commission is the Executive Committee, which consists of the ASEAN Senior Officials.
- The Treaty also gives each State Party the right to request clarification from another State Party to resolve an ambiguous situation or one which may give rise to doubts about compliance. In such circumstances, a State Party may also request that the Executive Committee send a fact-finding mission to another State Party.

Peace and Stability in Southeast Asia & The P5

- From a larger perspective, it is important to note that since its inception, ASEAN has played a key role in the maintenance of regional peace, security and stability.

- The evolving regional architecture, premised on ASEAN Centrality, has allowed ASEAN to engage and pursue confidence-building measures with a broad range of external partners.
- There is no doubt as to the importance of realizing the overarching objectives of the SEANWFZ Treaty and its Protocol, in accordance with the Kuala Lumpur Declaration on ASEAN 2025: Forging Ahead Together, which was adopted by ASEAN Leaders at the 27th ASEAN Summit in 2015.
- Since the signing of the SEANWFZ Treaty in 1995, States Parties have pursued consultations with the five (5) nuclear-weapon states to secure their recognition of the Treaty through their signature and ratification of the Protocol.
- The main motivation for the Treaty's Protocol is to ensure ASEAN's own security, since Parties to the Protocol would agree not to use or threaten to use nuclear weapons against any State Party to the Treaty.
- The goal of the Treaty, that is prohibiting any nuclear weapon activities in the region, cannot be fully realized without legally binding commitments by the nuclear-weapon states through their ratification of the Treaty's Protocol.

- Indeed, there have been ongoing discussions on the nature of the legally binding negative security assurances to be made by parties to the Protocol, including the question of reservations.
- Although reservations to the SEANWFZ Treaty are expressly prohibited by Article 17, the Protocol is silent on the matter.
- Under such circumstances, in accordance with Article 19 (c) of the Vienna Convention on the Law of Treaties (VCLT), reservations may be submitted as long as they are “not incompatible with the object and purpose of the Treaty”.
- ASEAN can learn from the experiences of other Nuclear-Weapon-Free Zones, especially on the common practice of submitting reservations by nuclear-weapon states to the Protocols of the Treaty of these Nuclear-Weapon-Free Zones.
- As such, ASEAN Member States should take a pragmatic approach in discussing the reservations by the nuclear-weapon States to the Protocol of the SEANWFZ Treaty, if we want to make tangible and significant progress.
- Ensuring the entry into force of the Protocol to the SEANWFZ Treaty would help maintain the Southeast Asia region as a zone of peace and neutrality amidst shifting global and regional geopolitical dynamics.

Consultation among the Treaty's States Parties and the nuclear-weapon states

- Moving forward, all ASEAN Member States should actively pursue the signing and ratification of the Protocol to the SEANWFZ Treaty by the Nuclear-Weapon States, in line with the ASEAN Political-Security Community Blueprint 2025.
- There is clearly a need to resolve all outstanding issues pertaining to the signing and ratification of the SEANWFZ Protocol, at the earliest.
- Sustained efforts, commitment and ownership by States Parties are essential towards ensuring full effectiveness of the SEANWFZ Treaty.
- Continuous dialogue and consultations, both within ASEAN as well as between ASEAN and the nuclear-weapon states, would help to resolve outstanding issues.

Biennial Resolution on SEANWFZ at the UN General Assembly

- The States Parties have continued to undertake efforts to promote the profile of the SEANWFZ in multilateral forums including through tabling and adoption of the ASEAN resolution on the SEANWFZ Treaty in the First Committee of the General Assembly.
- The submission of the biennial resolution by ASEAN Member States began at the 62nd session of the General Assembly in 2007.

- The most recent substantive resolution on the SEANWFZ Treaty was adopted at the 70th Session of the UN General Assembly on 7 December 2015. In 2017 and 2019, only a procedural decision was adopted.
- We hope to table a substantive resolution on this issue in the nearest future.

Closing

- In upholding the ASEAN Charter and the SEANWFZ Treaty, Malaysia remains firmly committed to ensuring that Southeast Asia remains a nuclear-weapon-free zone.
- Malaysia will continue with its efforts towards promoting peace and stability in the region, in accordance with international law and the principles of the UN Charter, while exercising the sovereignty of our region as well securing the future of a world free of nuclear weapons.

WORKSHOP ON GOOD PRACTICES AND LESSONS LEARNED WITH RESPECT TO
THE IMPLEMENTATION OF TREATIES ESTABLISHING NUCLEAR-WEAPON-FREE
ZONES

Statement by

H.E. Gerardo Alberto Simón Yerres,

President of the Council of the Agency for the Prohibition of Nuclear Weapons in Latin America
and the Caribbean (OPANAL)

and

Ambassador Extraordinary and Plenipotentiary of Republic of Honduras to the United Mexican
States

“How the Treaty of Tlatelolco contributed to the regional peace and stability while helping to
break the Cold War nuclear arms race”

-7 July 2020-

Mexico City, Mexico

Distinguished colleagues,

I would like to thank the organizers for convening this workshop. During these difficult times it is crucial to keep the conversation on such important issues going.

In order to understand the role of the Treaty of Tlatelolco in contributing to the regional peace and stability and in the goal of global nuclear disarmament, it is necessary to recall how it was conceived in midst of the Cold War era.

Next week we will commemorate the 75th anniversary of the first in history nuclear test, which forever changed the world. With the so-called "Trinity Test" carried out by the United States on July 16, 1945 in Alamogordo, New Mexico, the concept of the arms race reached a whole new dimension. The Soviet Union followed suit with its first nuclear test in 1949 and the nuclear arms race and the Cold War between these two superpowers began.

In October 1962, during the so-called "Cuban Missile Crisis", the Cold War had never been so close to Latin America and the Caribbean. The region was confronted by the fact that it was not geographically alien to the risk of a nuclear war but suddenly became the location with its highest possibility. This situation increased the awareness of the nuclear threat.

In April 1963, five Presidents of Latin American States (Bolivia, Brazil, Chile, Ecuador and Mexico) issued the "Declaration on the denuclearization of Latin America". By means of said Declaration, the five Presidents announced: "that their Governments are prepared to sign a multilateral Latin American agreement whereby their countries would undertake not to manufacture, receive, store or test nuclear weapons or nuclear launching devices."

In November 1963, the United Nations General Assembly addressed the Latin American and Caribbean initiative by adopting resolution 1911 (XVIII), which expressed the support of the international community for the idea that our region should become the first one to be exempt from nuclear weapons. Furthermore, it was an autonomous decision to guarantee the security of Latin American and Caribbean States through a treaty that would prohibit, in all its forms, nuclear weapons.

Consequently, the States of the region began a negotiation process that culminated in the adoption of the Treaty of Tlatelolco in 1967.

It should be noted that during the last session of the Preparatory Committee for the Denuclearization of Latin America (COPREDAL), 21 out of 33 States from the region and 22 extra-regional States participating as observers, were present. This is relevant to our workshop for two main reasons.

First, the importance of starting the negotiation of a treaty even when not all the parties that subsequently sign and ratify it participate in the process from the beginning. In case of Tlatelolco, the Treaty and its zone of application reached the universalization only in 2002, when with the ratification of Cuba, all the 33 States of Latin America and the Caribbean became Parties to the

Treaty. This lesson could serve as an example for other regions that intend to create zones free of weapons of mass destruction, such as the Middle East.

Secondly, it was important to have the participation of observers because this legitimized the transparent process under which the text of the treaty was agreed at the international level. Likewise, this allowed the six extra-regional states that would become Parties to the Additional Protocols to the Treaty of Tlatelolco (United States, Soviet Union, France, United Kingdom, China and Netherlands) to be involved from the start. This is another lesson learned that could be applied to the negotiations on the establishing of a zone free of weapons of mass destruction in the Middle East.

Distinguished colleagues,

The Treaty of Tlatelolco emerged in a conflictive context framed in the Cold War and has never lost its relevance. On the contrary - living in such dangerous times as today, when the nuclear superpowers are modernizing their arsenals and are unwilling to sign or extend the agreements that reduce their atomic arsenals, our region, being the pioneer in establishing a zone free of weapons in a densely populated territory, has the mission of promoting peace and a world without nuclear weapons. We are willing to work together with other Nuclear Weapon Free Zones for the benefit of international security.

The ways and means in which nuclear-weapon-free zones contribute to regional peace, stability and other political objectives

Dr. Renata Dwan and Dr. Chen Zak Kane

United Nations Institute for Disarmament Research (UNIDIR)

Discussion paper for Panel 1: Adapting to the regional context,
Workshop on Good Practices and Lessons Learned from Existing Nuclear Weapon Free Zone
Treaties

Online, 7-9 July 2020

NWFZs as a distinct nonproliferation tool

Nuclear-Weapon-Free Zones (NWFZ) are arrangements freely established between groups of States to address nuclear non-proliferation and disarmament issues. They are legally binding agreements, recognized by the General Assembly of the United Nations. The General Assembly defined in 1975 a NWFZ as any zone, recognized as such by the UN General Assembly, established by virtue of a treaty or convention the total absence of nuclear weapons within the zone verified by an international system to monitor compliance with this commitment.¹

Five treaties establishing NWFZs have been concluded so far: the 1967 Treaty of Tlatelolco for the Prohibition of Nuclear Weapons in Latin America and the Caribbean, the 1985 Treaty of Rarotonga on the South Pacific NWFZ, the 1995 Bangkok Treaty on the South East Asia NWFZ, the 1996 Pelindaba Treaty on the African NWFZ, and the 2006 Semipalatinsk Treaty on a NWFZ in Central Asia.² Mongolia was recognized internationally as a single-state nuclear-weapon-free zone in 2001. Although distinct in origins, structure and mechanisms, the five NWFZ reflect a commitment on the part of their signatory states to nuclear non-proliferation and more broadly, to working toward a world without nuclear weapons. As such, NWFZ strengthen non-proliferation norms globally and seek to give them practical expression at a regional level. As such, NWFZ promote and seek to contribute to international peace and security at global and regional levels.

The international community has long considered the establishment of such zones an important measure and encouraged their creation, with the ultimate objective of enhancing global and

¹ United Nations General Assembly Resolution 3472 (XXX) B of 11 December 1975, [https://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/3472\(XXX\)](https://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/3472(XXX))

² For text of the treaties, see UN Office for Disarmament Affairs, Nuclear-Weapon-Free Zones, <https://www.un.org/disarmament/wmd/nuclear/nwzf/>

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regional peace and security, strengthening the nuclear non-proliferation regime and contributing towards realizing the objectives of nuclear disarmament.³

The motivations and objectives in the establishment of existing NWFZs

The idea of distinct geographic areas completely free of nuclear weapons predates the Nuclear Nonproliferation Treaty (NPT) and was spurred in the 1950s by Cold War competition between the United States and the Soviet Union and their respective allies. All NWFZ areas were heavily affected by Cold War dynamics and conventional and nuclear arms race between the Nuclear-Weapons-States (NWS) and states concerned sought to:

- protect themselves from the risk of possible spillover from a conventional or a nuclear exchange between nuclear armed states, including by preventing the deployment of nuclear weapons on their territories
- mitigate the political, security, environmental and public health consequences of the testing of nuclear weapons by nuclear armed states on or near their territory.

As such, a key driver for the establishment of NWFZs was the threat posed by the actions of NWS external to the regions concerned. For example, the idea to create the African NWFZ first emerged in the aftermath of French nuclear weapon tests in the Sahara Desert in 1961. African states were keen to avoid its repetition in the future. They also wanted to prevent the continent from being used for stationing and transporting nuclear weapons by the NWSs. The goal of preventing regional nuclear proliferation and a potential regional nuclear arms race as a consequence of the development of South Africa's nuclear weapons programme in the 1970s was a subsequent important driver.

Similarly, the first NWFZ to be established, the Treaty of Tlatelolco, was initiated in the aftermath of the Cuban Missile Crisis in 1962 to address concerns raised by the stationing of nuclear weapons by the NWS in the region, particularly Soviet tactical and intermediate-range nuclear missiles in Cuba. States of the region did not want to find themselves in the middle of a nuclear conflict between the superpowers and were keen to prevent the deployment of nuclear weapons on the sub-continent.

In Southeast Asia, the Treaty of Bangkok was developed as part of the Declaration on the Zone of Peace, Freedom, and Neutrality (ZOPAN) issued in 1971 intended to keep the region "free from any form or manner of interference by outside Powers". The initiative was driven by concerns about the NWS' military bases and nuclear weapon transit by air and sea in the region. In addition, the late 1960s and early 1970s witnessed major conflicts in Cambodia, Laos and Vietnam where the superpowers were militarily involved. The potential for conventional wars to escalate into nuclear exchanges sustained interest in regional denuclearization.

³ 2010 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, Final Document, NPT/CONF.2010/50 (Vol. I)*, [https://undocs.org/NPT/CONF.2010/50%20\(VOL.I\)](https://undocs.org/NPT/CONF.2010/50%20(VOL.I))

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In the South Pacific, regional states initiated the Treaty of Rarotonga in 1983 to prevent further nuclear tests on its territory. They were particularly concerned about French underground nuclear testing in French Polynesia and proposed nuclear waste-dumping and nuclear-armed ship visits to Pacific ports. The most recently established NWFZ in Central Asia reflected similar concerns of the legacies of nuclear testing by the former Soviet Union. Members of the Treaty of Semipalatinsk were particularly keen to ensure that no more nuclear testing would be carried out in their region. Environmental concerns were also a key driver behind the creation of the zone, particularly with a view to the rehabilitation of territories affected by radioactive contamination caused by Soviet nuclear activities during the Cold War.

The NWFZ sought to reduce the security, environmental and health threats that nuclear weapons possessed by states external to their region. These origins of the five existing NWFZ help explain the priority that NWFZ put on formal recognition by NWS of their legal status and the negotiation of Negative Security Assurances (NSA) between zones and individual NWS. To achieve this objective each of the existing NWFZs include an additional protocol committing each of the NWS not to use or threaten to use nuclear weapons against regional state parties. Ultimately, NWFZ were only partially successful in achieving these legal commitments from the NWS. The Treaty of Tlatelolco (Latin American NWFZ) is the only treaty wherein all protocols have been ratified by all five of the NPT NWS.

The impact of NWFZs on regional peace, stability and cooperation

Competition between nuclear armed states external to the region played an important role behind the origins of nuclear weapons free zones, just as the reduction of tensions between former Cold War rivals, in some cases, ultimately enabled the practical realization of a number of them. At the same time, the commitment to establish and maintain zones free of nuclear weapons contributed to regional peace, stability and cooperation in four concrete ways.

Reducing nuclear risk regionally and globally

As noted above, a primary objective of early NWFZs was to reduce the risk of those regions being caught up in conflict and an escalation of conflict between nuclear armed states that could lead to the use of nuclear weapons on their territory. NWFZs created a political framework to express concern at ongoing tensions between nuclear weapon states. It contributed to practical risk reduction by establishing legal frameworks that prevented NWS from stationing nuclear-capable forces in specific regions of the world. The absence of nuclear weapons enhanced safety and reduced risk, including of accidents or inadvertent use of nuclear weapons.

Renouncing nuclear weapons as an instrument of statecraft in a region

As the examples of the establishment of NWFZs in Southeast Asia, South Pacific and Central Asia illustrate, a precondition for the full establishment of these zones was the withdrawal of NWS' nuclear weapons or military bases as well as their agreement to halt nuclear testing in the respective region. Only when these conditions were in place could the absence of nuclear weapons be verifiably assured. This helps to explain why the Treaty of Bangkok establishing the

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NWFZ in Southeast Asia was signed only in 1995 upon the closure of US and former Soviet military bases in the region. Similarly, the Treaty of Semipalatinsk of 2006 became a reality after the emergence of the five independent Central Asian states and the withdrawal of former Soviet nuclear weapons from their territories.

The African NWFZ is the only case where a zone was established with a regional nuclear weapon possessor existing prior to its establishment. However, despite the idea of the zone emerging in 1961, negotiations on its establishment Zone only started in 1991, after South Africa unilaterally dismantled its nuclear weapons and joined the NPT as a Non-Nuclear Weapons State (NNWS). The treaty text was agreed only in 1995 upon the ending of apartheid.

In the case of the Treaty of Tlatelolco which entered into force in 1969, States that originally refused to join the zone, such as Argentina and Cuba, joined around the same time as they joined the NPT as a NNWS. Brazil signed the Treaty of Tlatelolco at the same time as Argentina in 1994 but did not join the NPT which it continued to describe as a discriminatory treaty. It ultimately joined the NPT, four years later, in part to have greater access to nuclear technology for peaceful uses.⁴

Since most external and regional obstacles were resolved prior to zone negotiations, in three of the five cases, once negotiations began, the treaty was concluded relatively quickly and the entry into force was achieved within two to three years.⁵

Strengthening nuclear non-proliferation efforts at regional and global levels

Although regional proliferation was not the initial driver for the introduction of proposals to create a NWFZ in each of the five areas, preventing risks of future proliferation was an objective in the creation of existing zones. By establishing legally binding commitments to the non-development, use or stationing of nuclear weapons, NWFZs contributed to preventing the emergence of nuclear possessors in their respective regions. In the 1970s, for example, the nuclear activities of South Africa under the apartheid regime contributed to African states' goal of establishing the zone to prevent proliferation and to ensure that no country in the region would choose the same path. In the South Pacific, the Zone reinforced Australia's non-proliferation commitment and prohibited NWS from conducting nuclear tests in the region.

The zones created major legal and political barriers to any potential breakout state and reinforced non-proliferation norms, even among states parties experiencing significant rivalry or even conflict. This is the case even in Latin America, where one Zone member state (Brazil) and one non-member state (Argentina) pursued nuclear weapons programmes after the Treaty of Tlatelolco entered into force in 1969. Seizing on the distinct entry into force arrangements for

⁴ 'Brazil's take on Iran and the NPT' Interview with Antonio Ramalho, 19 May 2010, <https://www.cfr.org/interview/brazils-take-iran-and-npt>

⁵ In addition to the African NWFZ, the Southeast Asian NWFZ was negotiated over an extended period of time.

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each party to the Treaty, Brazil developed a nuclear weapons programme after ratifying the agreement but before it came fully into force on its national territory.⁶

NWFZs reinforce state parties' NPT commitments and at times complement and enhance non-proliferation obligations beyond the NPT. Several of the NWFZ legal arrangements go further than the NPT by prohibiting the stationing and testing of any nuclear explosive device in the territories of its parties; commit their parties to apply the highest standards of security and physical protection of nuclear material, facilities and equipment to prevent theft and unauthorized use; prohibit armed attack against nuclear installations in the zone concerned; and prohibit the dumping of any radioactive waste. The Central Asia treaty for example, require the adoption of the Additional Protocol and the Comprehensive Test Ban Treaty. To this extent, NWFZs can be seen as important frameworks to advance the practical application of non-proliferation commitments and legal obligations, including those that states parties have agreed as parties to the NPT.

Confidence and cooperation among states of the region

States pursuing the establishment of NWFZs in the five regions discussed did not make an explicit connection between the establishment of legally binding nuclear free arrangements and the pursuit of regional security cooperation. Conflict resolution was not an objective of the NWFZs. Those regions which experienced regional interstate and/or intrastate conflicts in periods before the establishment of the zone, for example, Africa, did not address conflict issues in their negotiations of zone treaty arrangements. Some such conflicts, for example, the first Congo war, took place against the backdrop of the NWFZ's negotiation while the entry of force of the Treaty of Pelindaba in 2009 took place against a backdrop of ongoing interstate conflicts in the Horn of Africa and the then Sudan.

In Latin America, where no major inter-state conflict took place in the years prior and after the treaty adoption, the region experienced only one major conflict after the Zone's entry into force in 1969, between a state from the region, Argentina, and a NWS, the United Kingdom, during the 1982 Falklands War.⁷ It should be noted that these conflicts were not region-wide and no NWFZ was negotiated by state parties in the midst of major hostilities. Nevertheless, the existence of regional tensions and/or conventional conflicts between two or more state parties did not prevent the pursuit and establishment of NWFZs.

Only one zone, the African NWFZ, has established an explicit link between the zone's implementing body, the African Commission on Nuclear Energy (AFCONE) and formal regional peace and security mechanisms. The African Union Commission's peace and security

⁶ According to Tlatelolco text Treaty, the Treaty will come fully into force when all eligible states have signed and ratified the Treaty and its two Protocols and concluded comprehensive safeguards agreements with the IAEA. States could, however, individually waive these requirements and declare the Treaty in force for their respective territories. Brazil did not waive this requirement until 1994, at the same day Argentina ratified the treaty.

⁷ Argentina accused UK for violating the Treaty of Tlatelolco during the War by deploying nuclear propelled submarines to the geographic area demarcated by the Treaty and by entering the Zone with ships carrying nuclear weapons.

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department supports AFCONE, promotes ratification and implementation of the Treaty of Pelindaba and represents the zone at international events, including NPT Review Conferences and considers the zone to be part of the overall AU peace and security architecture.⁸

The five NWFZs also differ considerably in their institutional mechanisms and arrangements established to monitor the status of the zone and verify compliance of state parties. Most of the five NWFZs have a low level of institutionalization.⁹ All NWFZ rely on the International Atomic Energy Agency (IAEA) to verify compliance. The Agency for the Prohibition of Nuclear Weapons in Latin America and the Caribbean (OPANAL), the verification mechanism for the Latin American NWFZ, is the most institutionalized zone framework. In addition to OPANAL, Brazil and Argentina established a bilateral verification arrangement that predate their full accession to the Zone treaty. The Brazilian-Argentine Agency for Accounting and Control of Nuclear Materials (ABACC) was created in 1991 before Argentina ratified the NWFZ and before both states joined the NPT in 1994 to ensure that the two countries are using nuclear materials strictly for peaceful purposes. Since then, the IAEA is responsible of applying full scope of safeguards in both countries in conjunction to ABACC. In Latin America, ABACC cooperates closely with OPANAL in an interesting example of interlocking bilateral and regional verification mechanisms.

While all five of the existing NWFZ identify the possibility of cooperation on peaceful applications of nuclear technologies and nuclear radiation safety and security, as of this current time, currently only the Latin American zone, through OPANAL, actively pursues regional cooperation on peaceful nuclear use and the articulation of a regional perspective in multilateral disarmament and nonproliferation forums through its status as observer in the UN General Assembly and right to participation in IAEA meetings.

Observations relevant to the Middle East WMDfZ

The discussion above highlights the important contribution that NWFZs make to strengthening nuclear non-proliferation and to progress toward a world free of nuclear weapons. Despite their different origins, scope and levels of institutionalization, each of the five NWFZ point to the operational benefits of pursuing regional application of global nonproliferation and disarmament norms.

The Middle East shares many of the features of the regions outlined. The military presence of and tensions between nuclear armed states external to the region is a concern for many states therein. Concern about nuclear proliferation risks in the region is high. Conventional conflicts

⁸ Noel Stott, 'The Treaty of Pelindaba: toward the full implementation of the African NWFZ treaty' in UNIDIR Disarmament Forum 2, 2011, *Nuclear-weapons free zones*. It should be noted that few other NWFZ regions have such extensive institutionalized regional peace and security mechanisms as Africa and Central Asia has no regional organization.

⁹ Vienna Centre for Disarmament and Non-Proliferation (VCDNP) Task Force Report, 'Cooperation among NWFZ: History, challenges and recommendations', March 2018.

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between and within states of the region continue. There is significant interest in the region on the potential of peaceful use of nuclear energy.

At the same time, there are significant differences. In the Middle East, the drivers for the establishment of a zone are internal: existing regional Weapons of Mass Destruction (WMD) capabilities and regional proliferation threats. Moreover, zones in all other regions exclusively focus on the nuclear dimension. The ME WMDFZ incorporates the nuclear element, but regional states also aim to free the region from all WMD capabilities, adding an additional layer of strategic and technical complexity.

Progress on these two factors involves changes in the existing status quo, requiring some states to dismantle their WMD capabilities and others to verifiably forswear nuclear weapons programmes. Changes to nuclear basing, testing and weapons programmes were integral to the pursuit of each of the five NWFZs and none of them came about until these changes were practically accomplished. In all five cases, this took considerable time, commitment as well as shifts in the international political and strategic environment.

The five NWFZs further reveals that, while the absence of any inter-state or intrastate conflict in a region is not a prerequisite for the establishment of a zone, the absence of significant major conflict and a recognition of shared interest, however limited, is critical. Limited trust among regional states in the Middle East, past noncompliance with international WMD regimes and limited experience of regional cooperation mechanisms further complicate pathways to zone development. The distinct experience of each NWFZ illustrates that there is no single route to success. It also highlights how overlapping arrangements, including bilateral and plurilateral as well as regional arrangements, might be explored.

External drivers, this paper argues, are essential to understanding the origins and pursuit of existing NWFZs. While ultimately, the establishment of a zone is a voluntary exercise that can only be pursued by states of the region, it is clear that the nuclear strategies, policies and perspectives of nuclear weapons states play an essential role in enabling progress toward or impeding the establishment of the zone. The absence of external NWS' stationing of nuclear weapons in the Middle East or testing nuclear weapons, provides at least some of the basic conditions of NWFZs. Reducing the risk of escalation of competition between them could be another.

These similarities and differences could create broader opportunities for 'give and take' to engage and explore the potential for a MEWMFDZ and the far-reaching positive impact it would have on peace, stability and other political objectives in the region.

Potter Remarks for UN NWFZ Conference (July 7, 2020)—(10 minutes)

INTRO: It is my great honor and pleasure to participate in this informal workshop on good practices and lessons learned with respect to existing NWFZs. While I very much wish we could be together in person, I have been impressed by the richness and value of many virtual gatherings, and I look forward to our conversation today. I also wish to express my appreciation to ODA for facilitating this meeting and to High Representative Izumi Nakamitsu for her presence with us.

Overview

It is hard to imagine an international climate less hospitable to nuclear arms control than today. To put it bluntly, each day we see further evidence that the bilateral and multilateral arms control architecture that served the international community very well for the past half century is

crumbling and is on the verge of total collapse, and yet we seem to be at a loss about how to take corrective action.

Under such circumstances, it is more important than ever to recognize those nuclear disarmament and nonproliferation approaches that continue to show a degree of success. Among the most significant are Nuclear-Weapon-Free Zones (NWFZs). Assuming that certain conditions are met—including the full adherence to existing zonal treaties by parties to those treaties—NWFZs retain promise looking forward. Moreover, although NWFZs typically are thought of mainly as measures to advance nuclear disarmament and nonproliferation, they also can play a useful role in enhancing regional security, advancing the peaceful use of nuclear energy, promoting environmental remediation, and reducing the risks of nuclear terrorism.

How NWFZs Advance the NPT:

I have been asked to discuss how specific obligations in existing NWFZ treaties reinforce

and extend provisions of the NPT. In that regard, it is useful to recall that the earliest NWFZs, and most importantly the Treaty of Tlatelolco, preceded the NPT. This history informs the language of Article VII of the NPT, which stipulates that “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.”

NWFZs reinforce the NPT and advance nuclear disarmament and nonproliferation in a variety of ways when they are implemented faithfully. They do so by a combination of legally binding prohibitions, altering threat perceptions and fostering confidence building measures (CBMs), and reinforcing nuclear disarmament and nonproliferation norms.

1. **Legal prohibitions.** NWFZs go beyond the NPT in prohibiting zonal treaty parties from developing, manufacturing, possessing, testing, or allowing the stationing of nuclear weapons on their territory. **In this regard, NWFZs exceed the prohibitions in Article**

I of the NPT, which are directed at the NWS, and reinforce the commitments made by non-nuclear weapon states (NNWS) under Article II not to receive the transfer of nuclear weapons or assistance for the manufacture of such weapons. They also reinforce the Article III mandate regarding adoption of IAEA safeguards by requiring, at a minimum, comprehensive/full-scope safeguards.

For example, in the case of the Central Asian NWFZ, all parties to the treaty must bring into force, if they have not already done so, not only an agreement with the IAEA for the application of safeguards in accordance with the NPT, but also the Additional Protocol. In addition, the parties to the Treaty are expressly prohibited from providing “(i) source or special fissionable material or (ii) equipment or material especially designed or prepared for the processing, use or production of special fissionable material, to any non-nuclear-weapon State, unless that

State has concluded with the IAEA a comprehensive safeguards agreement and its Additional Protocol....”¹

Although most of the aforementioned legal prohibitions apply to NNWS parties to NWFZs, NWS that conclude protocols to zones assume legal obligations not to use nuclear weapons against or threaten the member states with nuclear weapons—thereby reinforcing the principle of negative security assurances (NSAs). **Regrettably, the force of these commitments by NWS often are diluted by reservations and/or interpretative statements made in conjunction with their conclusion of the protocols.**²

2. **Threat perceptions.** An important but under-analyzed contribution of NWFZs is their impact on the threat perceptions of zonal parties and the relationship between altered threat perceptions and enhanced

¹ Article 8 (c) of the Treaty on a Nuclear-Weapon-Free Zone in Central Asia.

²China, France, Russia, the United Kingdom, and the United States all have expressed reservations or issued interpretative statements when signing one or more protocols.

regional stability. The importance of this factor is not uniform across regions, but in most instances convergent threat perceptions both facilitate the negotiation of zones and contribute to their effectiveness, especially in moderating concerns about the nuclear ambitions of regional rivals.

Perhaps the best example of this dynamic involves the process by which the Treaty of Tlatelolco and its associated body—the Brazilian-Argentine Agency for Accounting and Control of Nuclear Materials (ABACC)—has helped to strengthen confidence in the peaceful intentions of those states with the most advanced nuclear technology in the region, while also providing greater assurance that their nuclear facilities and materials are safe and secure.³

3. **Norm Development.** The power of NWFZs to advance the goals of nuclear disarmament and nonproliferation extend beyond formal

³ See Togzhan Kasanova, “Nuclear safeguards in Brazil and Argentina: 25 years of ABACC,” AIP Conference Proceedings 1898, 040004 (2017); <https://doi.org/10.1063/1.5009227>
Published Online: 15 November 2017 available at <https://doi.org/10.1063/1.5009227>.

legal obligations and altered threat perceptions. They also involve the cultivation and reinforcement of norms and traditions regarding the nonuse of nuclear weapons and the risks associated with their production, testing and possession. The importance attached to this function varies across zones, but is a common feature of all NWFZs. This dimension is evident, for example, in the emphasis given by the Rarotonga, Pelindaba, and Central Asian NWFZs to the humanitarian and environmental consequences resulting from nuclear weapons production and/or nuclear testing. **Even more so than the other zones**, the overriding concern and the single element most responsible for the decision by the five Central Asian states to negotiate a NWFZ in the region was the shared view of the need to raise international consciousness about the damage inflicted on the territories of the Central Asian states during the course of many years of uranium mining and milling, as

well as nuclear testing, and the necessity of undertaking remedial actions.⁴

A very different, but equally important normative dimension of NWFZs, albeit one that is underdeveloped in practice, are initiatives by zonal states to reinforce nuclear disarmament and nonproliferation norms by promoting disarmament and nonproliferation education—one of the few approaches widely supported by NNWS and NWS alike. OPANAL, in cooperation with Mexico and the James Martin Center for Nonproliferation Studies, has demonstrated the potential of this approach in the form of an annual Summer School on Non-Proliferation and Nuclear Disarmament, typically held in Mexico City for young diplomats from throughout Latin American and the Caribbean. Indeed, even as we speak the sixth iteration of the school is being conducted. The course is an excellent example of how NWFZs can help advance nuclear

⁴ See, for example, William Potter, Togzhan Kassenova, and Anya Loukianova, “Central Asia Becomes A Nuclear-Weapon-Free Zone,” CNS Research Note (December 11, 2008) available at: <https://www.nonproliferation.org/central-asia-becomes-a-nuclear-weapon-free-zone/>.

nonproliferation and disarmament literacy by fulfilling Action 22 of the 2010 NPT Review Conference Final Document, which encourages all states to implement the 34 recommendations of the United Nations study on disarmament and nonproliferation education in order to advance the goals of the NPT in support of achieving a world without nuclear weapons.⁵

Obstacles to Overcome.

In this short commentary, I have sought to highlight a number of attractive features of NWFZs and the symbiotic relationship they enjoy with the NPT and regional security. **The promise of NWFZs, however, has by no means been fully realized.** Among major factors impeding the effectiveness of zones are: (1) the failure of some States parties to honor their zonal obligations; (2) the tendency of NWS to hedge their commitments through signing statements expressing reservations and/or

⁵ See “Celebrating 15 Years of Disarmament and Non-Proliferation Education,” UNODA Occasional Papers, No. 31 (December 2017) available at: <https://s3.amazonaws.com/unoda-web/wp-content/uploads/2018/01/op31.pdf>.

restrictive interpretations; and (3) the inability or reluctance of different NWFZs to exploit the leverage they might derive from greater collaborative action.

One of the most unfortunate developments has been the readiness on the part of a number of States parties to three NWFZ treaties to ignore legally-binding provisions that are regarded as politically and economically inconvenient. This tendency is most evident with respect to nuclear commerce with a NPT-recognized NNWS lacking full-scope safeguards. Unfortunately, many countries who otherwise routinely champion nuclear disarmament and nonproliferation appear indifferent to these transgressions, and also choose to ignore the political obligations restricting nuclear trade to which they subscribed at the 1995 NPT Review and Extension Conference. Just as it is intolerable for NWS to pick and choose those NPT obligations to which they adhere, so it is impermissible for NNWS to ignore economically inconvenient legal and/or political commitments

they have undertaken. To do so is to undermine their moral authority, diminish the credibility and influence of the zones to which they belong, and demonstrate the inconsistent manner in which peaceful use benefits accrue to NNWS parties to the NPT. Perhaps even more disturbing is the reluctance of any members of the three NWFZs in question or any members of other zones to acknowledge this infraction.⁶ **In short, the more zonal members themselves cherry-pick the legal obligations they choose to honor, the more they encourage other states, including the NWS, to behave in a similar manner.**

Just as States parties to NWFZs should adhere faithfully to all of their treaty obligations, so should NWS respect, without qualification, the treaty protocols to which they subscribe. Yet as noted previously, each NWS has, at one time or another, expressed reservations or issued interpretive statements when signing protocols and/or in the course of the protocol ratification

⁶ When challenged by the author on this point, one senior diplomat from a state usually on the side of the nonproliferation and disarmament angels, replied “We have bigger fish to fry.” Similarly, when a senior diplomat from another country usually regarded as a nonproliferation and disarmament champion was asked how his country’s stance on nuclear exports could be reconciled with its principled nonproliferation stance, the reply was: “We have principles, and then we have other principles.”

process, which delimit their force. At various points of time, for example, the United States has indicated that it reserved the right to employ nuclear weapons in response to an attack using biological and chemical weapons, even if the attack came from a NNWS party to a NWFZ.⁷ Other NWS states have articulated different reservations and interpretations pertaining to such issues as the scope of the zone, transit of nuclear weapons, compliance of states with nonproliferation obligations, and the relationship of the NWFZ treaty to other, prior agreements. The issue of reservations has been the source of particular contention in the deliberation between the parties to the Bangkok NWFZ Treaty and the five NWS, none of which have yet concluded protocols to the Treaty. More generally, more than a half century since the first NWFZ in a populated region entered into force, **there is only one zone—Latin America and the Caribbean—in which all five of the NPT-**

⁷ For a discussion of U.S. non-use policy in the context of NWFZs, see Leonard Spector and Aubrie Ohide, “Negative Security Assurances: Revisiting the Nuclear-Weapon-Free Zone,” *Arms Control Today* (April 2005), pp. 13-19 and George Bunn and Jean duPreez, “More Than Words: The Value of U.S. Non-Nuclear Use Promises,” *Arms Control Today* (July/August 2007). [but the implications of this change in policy is unclear as the protocols to the Rarotonga, Pelindaba, and Central Asian NWFZ treaties have yet to be ratified by the US Senate]

recognized NWS have ratified the non-use protocols

It is now fashionable to applaud the increased cooperation among zones, a very worthy objective that has been highlighted at three international NWFZ conferences, and at meetings that usually are held on the margins of NPT Preparatory Committee meetings. While such gatherings provide an opportunity to share information and experiences, the sought after cooperation remains largely aspirational in nature. As such, the opportunity to act in a coordinated, if not united, fashion is unrealized, as is the potential for NWFZs to be a force multiplier for the many small NNWS zonal parties.⁸ Given the sheer number of NNWS adherents to NWFZs, one can imagine the potential influence of these zones were they to act in a more collective fashion that exploited their common interests and voting power with respect to nuclear disarmament and nonproliferation. As forcefully laid out in the most

⁸ This point is emphasized in Mueller, "Cooperation among Nuclear-Weapon-Free Zones," p. 5.

comprehensive study of the topic, cooperation, among the zones could facilitate:

- Strengthening the cohesion within each zone by enhancing the benefits of zonal membership through shared learning of features of other zones and of others' experience in negotiating and implementing their respective treaties;
- Capacity building for more effective participation in the international disarmament and nonproliferation frameworks;
- Strengthening the position of each zone toward relevant outsiders [notably the NWS and their reluctance to sign relevant protocols or to attach interpretations and reservations];
- Enhancing the influence of zones, propagating the “zonal philosophy” and pursuing common interests in relevant international gatherings; and
- Promoting the idea of NWFZs in regions where no zone yet exists, and assisting

regional States in their efforts to create new zones.⁹

Conclusion:

As we reflect on the potential and promise of NWFZs to reinforce the NPT and regional security, it is useful to look more closely at the origins of the first zone in a populated area—the Treaty of Tlatelolco. The catalyst for that zone—and for much subsequent nuclear arms control—was the 1962 Cuban Missile Crisis. From the vantage point of most Latin American states, nuclear war threatened to ravage their region, and yet they were relegated to the position of helpless bystanders. As one scholar of the Tlatelolco Treaty points out, the events of October 1962 underscored how the presence of nuclear weapons within the region made their territory a possible target of a nuclear strike.¹⁰ It therefore was no coincidence that the initiative for a NWFZ in Latin America arose during the Cuban Missile Crisis and found formal expression in a UN proposal in November 1962 and a joint declaration of five Latin American

⁹ Ibid.

¹⁰ See John R. Redick, “The Tlatelolco regime and Nonproliferation in Latin America,” *International Organization* (Winter 1981), p. 110.

presidents in April 1963.¹¹ States in the subcontinent believed that this innovative approach might prevent the deployment of nuclear weapons in their region by external powers, while reducing the likelihood of a regional nuclear arms race. Thus, even before the conclusion of the NPT, the pioneering effort of a small group of individuals led by then Mexican Under-Secretary Alfonso Garcia Robles demonstrated an unusual contagion effect: just as nuclear weapons may spread, so to may nuclear disarmament.

As my CNS colleague Gaukhar Mukhatzhanova often recalls when lecturing about NWFZs, Garcia Robles famously observed to the UN General Assembly in 1974 that NWFZs “would gradually broaden the areas of the world from which nuclear weapons are prohibited to a point where the territories of powers which possess them ...will be something like contaminated islets subject to quarantine.”¹² In this era of pandemics, including the nuclear variety, we sorely need that kind of a quarantine.

¹¹ Ibid.

¹² Cited by Gaukhar Mukhatzhanova, “Ridding the world of nuclear weapons, One region at a time.”

CHECK AGAINST DELIVERY

Workshop on Good Practices and Lessons Learned from Existing Nuclear Weapon Free Zone Treaties

United Nations Office for Disarmament Affairs

Online, 7 - 9 July 2020

The relationship between South Africa's nuclear disarmament and the negotiation of the Treaty of Pelindaba

Mr. Noel Stott, Verification Research, Training and Information Centre

Discussion paper for Theme 2: The role of general obligations and provisions in the context of global disarmament and non-proliferation objectives

[7 July 2020: 11:30 am – 12:45 pm]

1. Firstly, let me thank the organisers for the invitation to speak today.
2. I note that other speakers including Messaoud Baaliouamer, the Executive-Secretary of the African Commission on Nuclear Energy (AFCONE), the oversight entity of the Treaty of Pelindaba, and the representative of the African Union will also discuss the Treaty of Pelindaba, so I need to ensure that I don't repeat what they have said or will say—especially in terms of its provisions.
3. Secondly, a disclaimer! I am not a historian which is probably a prerequisite to talk about the relationship between South Africa's nuclear disarmament and the negotiation of the Treaty of Pelindaba.¹
4. However, for many years I have had an interest in the Treaty of Pelindaba and could argue that during the period that I worked for the South African-based Institute for Security Studies (ISS) we played some small role in ensuring that it (eventually) entered into force.
5. I now work for the London-based Verification Research, Training and Information Centre (VERTIC), and am currently working on a project in support of the development and strengthening of practical

¹ For a more detailed historical analysis of the Treaty of Pelindaba, see: Jo-Ansie van Wyk, 'No nukes in Africa: South Africa, the denuclearisation of Africa and the Pelindaba Treaty', *Historia* Vol. 57 No.2, January 2012.

and effective nuclear disarmament verification measures for the achievement and maintenance of a world without nuclear weapons.

6. In this context, and let me at this stage throw this question out as a possible general discussion point:

What is the role of nuclear-weapon-free zone organisations in building the capacity of their members (as non-nuclear weapon states) to contribute effectively to multilateral efforts aimed at strengthening disarmament verification and in particular in developing appropriate methodologies and techniques for nuclear disarmament verification?

7. One cannot really talk about the Treaty of Pelindaba without putting it into the context of other nuclear-weapon-free-zones (NWFZs) or indeed the concept of a 'nuclear weapons free zone' itself.
8. The concept of NWFZs, of course, pre-dates the NPT and can be traced back as early as 1957/1958, when the Polish government proposed the prevention of the nuclearization of West Germany and the deployment of Soviet nuclear weapons on Polish territory.²
9. The proposed zone was to comprise Poland, Czechoslovakia, East Germany and West Germany.
10. Of course, the proposal had no chance of becoming a reality under Cold War conditions.³
11. The idea of NWFZs then was, and/or rather, now is formalised in Article VII of the 1968 Treaty on the Non-Proliferation of Nuclear Weapons (NPT).
12. However, one can argue that while, the NPT prohibits the acquisition of nuclear weapons by non-nuclear-weapon States, it does not prohibit the presence of nuclear weapons owned by a nuclear-weapon State on their territories.

² In fact, according to Wakana Mukai (The importance of Nuclear Weapons Free Zones, *Journal on Science and World Affairs*, Vol. 1, No. 2, 2005. pp. 79-86), the idea of NWFZs arose in 1956, with a proposal presented to a United Nations Committee on Disarmament which sought to obtain partial arms restrictions, the establishment of regions under constant inspection, as well as a prohibition of the stationing of nuclear equipped forces, nuclear weapons and hydrogen weapons, on German soil and in neighbouring states. This proposal, which had been presented by the Soviet Union, was adopted and rephrased in a more sophisticated form by the Foreign Minister of Poland, Adam Rapacki, and presented during a session of the United Nations General Assembly in October 1957.

³ Atsushi TAGO, *The Origins of Nuclear Weapons Free Zones: Security Communities or Substitutes for a 'Nuclear Umbrella'?* Graduate School of Law, Kobe University, Japan, n.d.

13. Clearly, the Nuclear-Weapon States that were the proponents of preventing additional States from acquiring nuclear weapons did not press for preventing the geographical spread *of their own* weapons because of Cold War security interests.⁴
14. In contrast, Nuclear Weapons Free Zone treaties, close this loophole by not allowing the stationing of nuclear weapons or of other nuclear explosive devices within the territories of state parties.
15. If we talk about the Cold War ending on the 26 December 1991, with the dissolution of the Soviet Union, then three of the five NWFZs were created in the Post-Cold War era - the ones in Latin America and the South Pacific were established during or in the context of the Cold War, while those in Southeast Asia and Africa after its ending.
16. Each of the regions also had their own context and specific motivations to establish a NWFZ.⁵
17. To put it simply: States Parties to each of them expressed their wish: not to participate in the nuclear arms race or in a nuclear war; or to not acquire, possess or admit on their territory nuclear weapons.
18. For example:
 - a. The Tlatelolco Treaty (1967)—The Treaty for the Prohibition of Nuclear Weapons in Latin America and the Caribbean⁶—established the first NWFZ in a densely populated area. It is well documented that the Cuban missile crisis was a significant catalyst for the establishment Zone. ‘States of the region did not want to find themselves in the midst of a nuclear conflict between the superpowers and were keen to prevent the deployment of nuclear weapons in the sub-continent. They also sought to prevent nuclear proliferation and a potential nuclear arms race within the region.’⁷

⁴ Oluyemi Adeniji, *The Treaty of Pelindaba on the African Nuclear-Weapon-Free Zone*, United Nations Institute for Disarmament Research, Geneva, 2002.

⁵ *Cooperation among Nuclear-Weapon-Free Zones: History, Challenges and Recommendations*, VCDNP Task Force Report, March 2018.

⁶ Antigua and Barbuda, Argentina, Bahamas, Barbados, Belize, Bolivia, Brazil, Chile, Colombia, Costa Rica, Cuba, Dominica, Dominican Republic, Ecuador, El Salvador, Grenada, Guatemala, Guyana, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Suriname, Trinidad and Tobago, Uruguay, Venezuela.

⁷ *Co-operation among Nuclear-Weapon-Free Zones: History, Challenges and Recommendations*, VCDNP Task Force Report, March 2018.

- b. The Rarotonga Treaty (1985)—establishing the South Pacific Nuclear Free Zone.⁸ At the time, it can be argued that it was mainly to prevent further nuclear tests in the region – remember from 1946 to 1958, the United States conducted some 66 atmospheric and underwater tests in the Marshall Islands in the northern Pacific region. The United Kingdom conducted atmospheric tests between 1952-1957 on Australian territory at Maralinga, Emu Field, and Monte Bello Island. Both the United Kingdom and the United States conducted atmospheric nuclear tests on Christmas Island. In 1963 France established a nuclear test site in its French Polynesian atolls and carried out some 190 nuclear detonations (including more than 40 above ground) between 2 July 1966 and early 1996 at the Mururoa and Fangataufa sites.
- c. The Bangkok Treaty (1995)—establishing the Southeast Asia Nuclear Weapon-Free Zone.⁹ This Treaty evolved from the 1971 initiative by the Association of Southeast Asian Nations (ASEAN) on the creation of a “Zone of Peace, Freedom and Neutrality in Southeast Asia”. The initiative was driven by concerns about the NWSs’ military bases and nuclear weapon transit by air and sea in the region. When the United States and the Soviet Union closed their respective bases in the region, establishment of the zone became more feasible politically.¹⁰
- d. The Central Asian Treaty (2009)—establishes the Nuclear-Weapon-Free Zone in Central Asia (CANWFZ).¹¹ One reason for its creation was the dissolution of the Soviet Union. It covers territories affected by the Soviet nuclear weapons programme and the five Central Asian States were particularly keen to ensure that no more nuclear testing would be carried out in the region; that the areas affected by radioactive contamination caused by Soviet nuclear activities during the Cold War were rehabilitated and that the remaining fissile material stocks were secured.

⁸ Australia, Cook Islands, Fiji, Kiribati, Naurau, New Zealand, Niue, Papua New Guinea, Solomon Islands, Tuvalu, Vanuatu, and Western Samoa.

⁹ Brunei Darussalam, Cambodia, Indonesia, Laos, Malaysia, Myanmar, Philippines, Singapore, Thailand, and Vietnam.

¹⁰ Cooperation among Nuclear-Weapon-Free Zones: History, Challenges and Recommendations, VCDNP Task Force Report, March 2018.

¹¹ Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan and Uzbekistan.

African Nuclear-Weapon-Free Zone Treaty (Treaty of Pelindaba)

19. The Pelindaba Treaty (1996)—establishing the African Nuclear-Weapon-Free-Zone (ANWFZ). The reasons for the creation of the ANWFZ were the French nuclear tests in the Sahara desert in the 1960s¹², the need to prevent the continent from being used for storing or transporting nuclear weapons and, of course the (suspected) South African nuclear weapons programme.
20. Both of these contributed to African States' willingness to prevent proliferation and to ensure that no country in the region would choose such a path again.
21. The formation of the Organization of African Unity (OAU) in 1963 provided African States with a continental forum for the discussion and co-ordination of African response to continental and global issues.
22. It however took thirty-one years between when the First Ordinary Session of the then Organisation of African Unity (OAU) [now the African Union] declared Africa a denuclearized zone¹³ [in July 1964] and when the final draft of the text of the African Nuclear-Weapon-Free-Zone Treaty – the Treaty of Pelindaba – was adopted [on 23 June 1995] during the thirty-first Ordinary Session of the OAU Summit.¹⁴
23. Prior to the 1964 declaration, in 1961, the United Nations General Assembly (UNGA) adopted a resolution that was titled 'Consideration of Africa as a Denuclearized Zone'.
24. The resolution, *inter alia*, called on all member States of the United Nations to refrain from carrying out any nuclear tests in Africa and from using the continent to test, store, or transport nuclear weapons.
25. However, with the prevailing Cold War atmosphere, it took three decades to transform the Declaration's vision and commitment into a reality.

¹² Co-operation among Nuclear-Weapon-Free Zones: History, Challenges and Recommendations, VCDNP Task Force Report, March 2018.

¹³ Declaration on the Denuclearization of Africa [AHG/Res.II(I)].

¹⁴ The Treaty was signed in 1996 in Cairo and it entered into-force in July 2009.

26. The transformation had to await both the end of the Cold War and the end of apartheid in South Africa: Given that:
- The West saw the denuclearisation of Africa as being against their Cold War interest.
 - The role of South Africa's nuclear programme in delaying the implementation of the idea of an African NWFZ was due to Western support to the country in the context of the Cold War—it took the end of the Cold War to change the pattern of co-operation with South Africa by the Western powers.¹⁵
27. It was thus only in 1990 that UNGA was able to adopt a positive resolution on Africa's denuclearization. That resolution affirmed that the evolution of the international situation was conducive for commencing the implementation of the 1964 Declaration.
28. It requested the UN, in co-operation with the then OAU, to convene a group of experts to study the modalities for its implementation.¹⁶
29. While some writers claim that South Africa had an instrumental role in brokering the Treaty of Pelindaba and played a significant role in the drafting the text, this is not 100% accurate.
30. What is true is that South Africa's dismantling of its nuclear weapons removed a *key obstacle* to finalizing the parameters of a Treaty to establish the Zone—South Africa's decision in 1990 to rid itself of nuclear weapons, to join the NPT and to accept IAEA safeguards on all its nuclear activities, and president De Klerk's March 1993 public admission of what was long suspected—that South Africa had indeed a weapons programme and that it had been totally dismantled.¹⁷
31. In his March 1993 speech to the joint sitting of South Africa's two houses of parliament, de Klerk also articulated the government's support for an African NWFZ and according to Roger Jardine, who

¹⁵ Oluyemi Adeniji, *The Treaty of Pelindaba on the African Nuclear-Weapon-Free Zone*, United Nations Institute for Disarmament Research, Geneva, 2002.

¹⁶ Oluyemi Adeniji, *The Treaty of Pelindaba on the African Nuclear-Weapon-Free Zone*, United Nations Institute for Disarmament Research, Geneva, 2002.

¹⁷ Dr. Hans Blix, at the Conference for the Signing of the African Nuclear-Weapon-Free Zone Treaty (the Pelindaba Treaty).

was then the National Co-ordinator of Science and Technology Policy for the African National Congress (ANC), the ANC also favoured such a treaty.¹⁸

32. The treaty was negotiated in six meetings between 1991 and 1995 in various African cities.
33. However, South Africa was not invited to *formally* participate in the drafting process until the final meetings in 1995.
34. Thus South Africa did not participate in the meetings in 1991 and 1992 (even as observers).
35. At that stage it was still the position of the OAU not to deal officially with representatives of the regime in Pretoria.
36. Remember, South Africa was not a member of the OAU only being allowed to join on 6 June 1994 after the country's first democratic general election South Africa in April 1994.
37. In May 1991, participants debated whether South Africa should be included in the Treaty – with the dominant view being that South Africa was an African country and if the apartheid laws were to be abolished there would be no longer any obstacle to South Africa being invited to become a member of the OAU. A more cautious view expressed was that while every effort should be made to include South Africa in a future treaty, work on the treaty should not be held hostage by South Africa.
38. It should be noted that, for example, during the second meeting of experts in April 1992 (which examined the 'modalities and elements for the preparation and implementation of a convention or treaty on the denuclearisation of Africa'), South Africa has also high on the agenda.
39. For instance, in the discussions on the minimum number of ratifications that should be needed for entry into force, it was agreed that 'it would be important for it to be ratified by the largest possible number of countries, including the more significant countries, South Africa in particular'.
40. After toying with the idea of entry-into-force being contingent on the ratification by a number of 'significant' countries including and notably South Africa, [*aka the CTBT*] it was agreed that it would

¹⁸ de Villiers, J.W., Roger Jardine, and Mitchell Reiss, 'Why South Africa Gave Up the Bomb', *Foreign Affairs*, Vol. 72, No. 6, November/December 1993.

be important for South Africa not to be endowed with a quasi-veto power if its ratification was a pre-condition for the entry into force.

41. At the same time, participants strongly felt that, for the treaty or convention to be credible and effective, South Africa, the only State in Africa suspected of possessing a military nuclear capability, must of necessity be a party.
42. Accordingly, the experts agreed that the number of ratifications required for the entry into force of the convention should be between one third and two thirds of the membership of OAU.
43. They also took note of the essential difference between the situation in Africa and Latin America and the South Pacific—that Africa had a country that already possessed a nuclear weapon capability.
44. As such it would be important not only to prevent the introduction of nuclear weapons into the continent but that those who had them (South Africa) must destroy them.
45. The third meeting took place in April 1993 in Harare, Zimbabwe, in accordance with United Nations General Assembly Resolution 47/76 of 15 December 1992, 'in order to draw up a draft treaty or convention on the denuclearization of Africa'.
46. This meeting was significant in that South Africa was invited as an observer and was represented by a troika of representatives of the Government, and the two main liberation movements—the African National Congress (ANC) and the Pan-Africanist Congress of Azania (PAC).
47. The invitation was issued in New York on 30 March 1993, less than a week after State President F.W. de Klerk had informed the South African Parliament of the existence of a limited nuclear deterrent programme, which had been terminated prior to the conclusion of the Safeguards Agreement with the IAEA.
48. It was formally accepted in Harare on 2 April 1993, when all the members of the group of experts were attending a workshop of the Programme for Promoting Nuclear Non-Proliferation (PPNN).¹⁹

¹⁹ Shearar, Jeremy, 'Denuclearization in Africa: The South African Dimension', *Disarmament*, Vol. 16, No. 2, 1993, pp. 171–86.

49. It is also important to note that from the documents that I have seen about these meetings, it is clear that the participants took the view that in order to achieve the vision of a nuclear-weapons-free Africa, negotiations and consultations rather than confrontation was the way to go. This is perhaps one lesson to be learned.
50. South Africa only became a fully-fledged participant in the group of experts meeting in Johannesburg from 29 May to 2 June 1995 where the finalised text for submission to the OAU Council of Ministers' Sixty-second Ordinary Session (to be held in Addis Ababa from 21 to 23 June 1995) was drafted.
51. At this meeting, South Africa's then Director-General of the Department of Foreign Affairs, delivered the keynote address while, when the meeting relocated to the Pelindaba site for the closing session, both the Chairman of the Atomic Energy Corporation of South Africa (AEC) [Dr. J. W. L. de Villiers] and the AEC's Chief Executive (Dr. W. E. Stumpf) made statements—key players in the development of South Africa's programme and its dismantlement.
52. The OAU Council of Ministers made some amendments and thereafter adopted resolution OAU CM/Res.1592 (LXII)/Rev.1. submitting the text to the thirty-first Ordinary Session of the OAU Assembly of Heads of State and Government in December 1995 for approval.
53. Interestingly (for this meeting) throughout the process the issue of a zone in the Middle East was also discussed—for example stressing that given the geographical proximity of Africa and the Middle East, there was a need to further study the question of ensuring compliance with the future convention or treaty by any State suspected of possessing nuclear weapons, other than the five States acknowledged as having nuclear weapons.
54. They were also of the view 'that any progress achieved in the setting up of a nuclear free zone in the Middle East would alleviate fears of Northern and Eastern African States and thus strengthen peace and security in the region'.
55. The Treaty opened for signature on 11 April 1996 in Cairo, Egypt and entered into force in 1999.
56. South Africa signed on the day it opened for signature and ratified in March 1998.
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Other Notes:

57. Presently, the Treaty has 41 States Parties with [only] 14 states still to deposit their instruments of ratification with the African Union (AU).²⁰
58. The Treaty declares Africa²¹ a zone free from nuclear weapons—that nuclear weapons are not developed, produced or otherwise acquired or stationed anywhere on the African continent or its associated islands; and provides for the promotion of co-operation in the peaceful uses of nuclear energy; requires complete nuclear disarmament by African states and aims to enhance both regional and global peace and security.
59. States Parties also pledge to prohibit the testing of nuclear devices and the dumping of radioactive waste, while improving the physical protection of their nuclear materials and facilities. Uniquely, the Treaty of Pelindaba also prohibits armed attacks on nuclear installations, including nuclear research or power reactors.
60. In addition, Article 9 requires parties not to provide source or special fissionable material, or equipment or material especially designed or prepared for the processing, use or production of special fissionable material for peaceful purposes to any non-nuclear weapon State unless subject to a comprehensive safeguards agreement concluded with IAEA.
61. This requirement was the first legally binding obligation for nuclear exporters to require from their customers comprehensive or full-scope IAEA safeguards on all nuclear activities as a condition of nuclear supply.²²
62. Like other NWFZ treaties, the Treaty of Pelindaba, includes protocols for the five NWS to sign and ratify and therefore to respect the status of the zone and to provide ‘negative security assurances’

²⁰ 13 states have signed the treaty, but not ratified it: Central African Republic, Cape Verde, Djibouti, Democratic Republic of the Congo, Egypt, Eritrea, Liberia, Morocco, Sierra Leone, Somalia, South Sudan, Sao Tome & Principe and Uganda. South Sudan is yet to accede to the Treaty.

²¹ Africa is defined as the entire continent as well as the following islands: Agalega Islands, Bassas da India, British Indian Ocean Territory (commonly referred to as the Chagos Archipelago, including Diego Garcia), Canary Islands, Cape Verde, Cardagos Carajos Shoals, Comoros, Europa Island, Juan de Nova, Madagascar, Mauritius, Mayotte, Prince Edward and Marion Islands, Réunion, Rodrigues Island, Sao Tome and Principe, Seychelles, Tromelin Island and the Zanzibar Archipelago.

²² Harald Muller, ‘National and International Export Control Systems and Supplier States’ Commitments under the NPT’, PPNN Issue Review Electronic Version, September 1996.

as well as for other relevant non-African and states not party—such as Spain, which is de jure in control of territories within the African zone to also sign and ratify.

63. Protocol I calls on NWSs not to use or threaten to use a nuclear weapon against any state party to the treaty or against any territory within the NWFZ. It has been signed by all the NWSs and ratified by China, France, Russia and the United Kingdom. As such, Protocol 1 entered into force for China, France, and the United Kingdom on 15 July 2009, when the Treaty entered into force.
64. Protocol II calls on the NWSs not to participate, assist or encourage the testing of a nuclear explosive device on the African continent. It has been signed by all the NWSs and ratified by China, France, Russia and the United Kingdom. Like Protocol 1, this Protocol entered into force for China, France, and the United Kingdom when the Treaty as a whole entered into force.
65. Protocol III calls upon parties which are de jure in control of territories within the NWFZ—namely France and Spain—to apply the principles of the treaty to the territories under their control. France has signed and ratified it. However, Spain, which is a non-nuclear-weapon state (NNWS), has yet to do so.
66. So, only Spain and the United States have not ratified all of the Protocols relevant to them.
67. Spain, while not a nuclear-armed state, is *de facto* in control of three territories within the Zone—the Canary Islands and two coastal cities in Morocco, Ceuta and Melilla.
68. Ceuta and Melilla are two small Spanish-ruled enclaves on the north coast of Morocco, the last remnants of Spain’s 600-year-old African empire.
69. According to Spain, these are integral parts of the European Union and therefore, should not be included within the Zone.
70. However, the continued existence of these two enclaves has been an issue of contention between Spain and Morocco with Morocco bringing the issue before the UN Decolonization Committee in 1975.
71. Spain has also argued that the Treaty of Pelindaba does not contain any global non-proliferation or disarmament provisions that it has not already signed onto.

72. With respect to Diego Garcia, between 1814 and 1965 it was a territory of Mauritius.
73. It then became part of the Chagos Archipelago, which belonged to the newly created British Indian Ocean Territory. In 1970, the island was leased to the United States, and developed as a joint U.S.-UK air and naval support station during the Cold War.
74. During the 1991 Persian Gulf War, and during Operation Desert Fox, it served as a base for B-52 bombers, which on 17 December 1998 launched nearly 100 long-range cruise missiles aimed at Iraq. In 2001, the United States again used Diego Garcia when it launched B-2 and B-52 bombers attacks against Afghanistan. It was also used during the US-led war against Iraq.
75. Thus, both the UK and the US argue that the British Indian Ocean Territory cannot be included in the geographical area of the Treaty of Pelindaba.
76. In its statement attached to its ratification instrument, the United Kingdom made it clear that it 'does not accept any legal obligations in respect of that Territory by their adherence to Protocols I and II.'²³
77. The UK and the US thus believe that while this situation remains, neither the Treaty nor Protocol III applies to their activities (or indeed any other State not Party to the Treaty) on the island of Diego Garcia or elsewhere in the British Indian Ocean Territories.
78. The AU, however, considers the islands to be part of Mauritius and the International Court of Justice in The Hague has recently (February 2019) stated that the island was not lawfully separated from Mauritius and that the UK should end its control of the Chagos Islands in the Indian Ocean 'as rapidly as possible'.²⁴
79. The map in Annex 1 of the Treaty explicitly includes the Chagos Archipelago -- although with a note in reference to the long-standing diplomatic dispute between the UK and Mauritius.

²³ Statement made by the United Kingdom and attached to its ratification instrument, 19 March 2001.

²⁴ International Court of Justice, Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, 25 February 2019.

80. It should also be noted that when the lower house of the Federal Assembly of Russia (Duma) ratified the relevant Protocols in 2011, it was stated that ‘in signing this treaty the reservation was made that it does not apply to the US base of Diego Garcia... this... allows us to fully maintain our own security in hypothetical situations of the emergence [of] crises or conflicts in which the potential use of nuclear weapons is possible.’²⁵
81. Finally, let me conclude by saying perhaps rather pessimistically, that while the end of the Cold War has resulted in non-proliferation successes—including through the creation of NWFZs—there is no evidence of ‘a determined pursuit by the NWS of a systematic and progressive effort to reduce nuclear weapons globally with the ultimate goal of eliminating those weapons’, (as provided for in the consensus decision of the NPT Review and Extension Conference).
82. As we approach another significant anniversary of the NPT’s entry into force, there is little if, any, substantial progress even with the *so-called* step-by-step approach to nuclear disarmament—the CTBT is not in force; there are no negotiations for a Fissile Material Treaty and the NWS have rejected outright the 2017 Treaty on the Prohibition of Nuclear Weapons (TPNW), arguing that it ignores the increasingly complex international security environment; that it is incompatible with the doctrine of nuclear deterrence; and that it threatens the global nuclear non-proliferation regime by injecting disarmament issues into non-proliferation fora.²⁶
83. In addition, new types of nuclear weapons are being developed and qualitative improvements to existing arsenals are being made.
84. All this, despite the reality that the total elimination of nuclear weapons is the only guarantee against the use or threat of use of such weapons and that the very possession of nuclear weapons encourages proliferation – Cold War or no Cold War.

²⁵ <http://www.lalitmauritus.org/en/newsarticle/1188/russia-signs-up-to-pelindaba-with-exception-for-us-nuclear-base-on-diego-garcia/>

²⁶ US Nuclear Posture Review - note 13.

HOW NORMS IN ZLAN

CONTRIBUTE TO NON-PROLIFERATION AND DISARMAMENT.

Counsellor María Antonieta Jáquez

Political Coordinator at the Mission of Mexico to the UN.

7th July, 2020.

I thank the High Representative Nakamitsu for her kind invitation and UNODA for organizing this workshop, and for the papers prepared by UNIDIR and other participants.

NWFZ are, in my view, often taken for granted in the disarmament fora. Sometimes they are confused or misrepresented as merely NSA's treaties, when they are one of the most important multilateral achievements in and outside the UN disarmament machinery. Of course, people might say I am biased because I am a Mexican diplomat. But the relevance of NWFZ has been recognized by the General Assembly several times, including in the SSODI, as one of the most effective means for preventing the proliferation, both horizontal and vertical, of nuclear weapons, as well as for contributing to the elimination of the danger of a nuclear holocaust, and ultimately to disarmament.

I must recall here Ambassador Alfonso García Robles, who in his Nobel Prize acceptance lecture looked back on when the Treaty of Tlatelolco was presented to the General Assembly, in Resolution 2286 (XXII) of 5 December 1967, and the General Assembly

declared that it constituted "...an event of historic significance in the efforts to prevent the proliferation of nuclear weapons and to promote international peace and security".

From the establishment of the first denuclearized zone, the GA has restated the contributions of the different NFWZ in similar terms.

I would like to thank my good friend, Dr. Bill Potter, for his presentation and paper with a comprehensive and clear description of the provisions and commonalities in NFWZ treaties, as it has made my presentation easier.

I will give some comments on some on some traits of the NFWZ to explain how their contribution in 3 areas:

1.- The first one, is the **EXPLICIT** contribution of the goals of the Zones. Although it might seem as a self-evident truth, the zones have contributed to both non-proliferation and disarmament as well as to the peace and security of the world, through the provisions and obligations in the Treaties that established them.

Even when NFWZ were established in different regional circumstances, and the texts are different in content, all share common elements and goals: To reject, prevent, prohibit or stop the development, production, testing, use, and acquisition of nuclear weapons; to keep nuclear weapons out of such zones; to prevent nuclear-weapon states from threatening to use or using

nuclear weapons against the parties of the Treaties, and to establish a control or verification mechanism for compliance.

Factually, NWFZ have also averted the appearance of new possessors of nuclear weapons.

The obligations in the treaties have a link to other obligations such as the ones in the NPT regarding nuclear safeguards, and to the verification activities of the IAEA. The prohibition of testing paved the way to the establishment of the CTBT regime. In this regard, the NWFZ are effectively supporting the non-proliferation regime in their territories. And, in the case of the Tlatelolco treaty, and hopefully, in other zones soon, the treaty promoted the creation of a dedicated agency to serve as a focal point, secretariat and specialized regional body for nuclear disarmament and non-proliferation.

2.- The second contribution is the **NORMATIVE VALUE** of NWFZ. Even when the NWFZ treaties are regional in their scope, they have established a prohibitive norm regarding nuclear weapons. Likewise, the reiterated practice and *opinio juris* of States has contributed to the crystallization of the prohibition of nuclear weapons as an international customary international rule. The source of the prohibition then is twofold: the treaties establishing NWFZ and custom. Interestingly enough, this argument was presented by the Marshall Islands before the ICJ.

Needless to say, the prohibitions established in the NFWZ inspired the provisions of the TPNW (which by the way, was opened for signature 3 years ago and we hope that will enter into force in the near future).

3.- The third and final aspect, is the **POLITICAL AND PHILOSOPHICAL** contributions of NWFZ.

NWFZ are not an end in themselves. They were conceived as intermediate steps pending the total elimination of nuclear weapons. In this regard, they must be seen as a vehicle to a greater goal, which is to achieve and sustain a nuclear weapon free world.

We must also recall that denuclearized zones precede the NPT and other treaties on nuclear weapons negotiated multilaterally. And that they appeared in the middle of the cold war.

Why is all this relevant?

NWFZ are a concrete demonstration of how the free exercise of sovereign decisions by States can transform and reshape international relations.

Many tend to attach NWFZ to a particular geopolitical destiny. In the context of the Cold War, it was important for certain regions to establish denuclearized zones. Hypothetically, had they not done so, it would have been very possible for some NWS to deploy

nuclear weapons in their respective influence zones, and/or the zones to agree on schemes similar to a nuclear umbrella, like the one in Europe, to support zero sum stability.

Undertaking the creation of a regime of total absence of nuclear weapons in densely populated areas was like of crossing through a narrow door. It was a sovereign decision of States, and it was not easy nor automatic.

At the end of the day, the establishment of NWFZ and the fulfillment of their regime fundamentally oppose the concept of deterrence.

The provisions in the Treaties establishing NWFZ are a legal expression of a withdrawal from the politics of the Cold War. Their parties have undertaken not only the obligation but the commitment not to pose a security concern or threat to others, and they have protected their territories and peoples from possible nuclear attacks, not by power, but through international law and the strengthening of the rule of law.

Now that we are celebrating the 75th Anniversary of the UN Charter, we must look back at the aspirational content in the preamble of the Charter. NWFZ materialized the aspiration to free future generations of the scourge of a nuclear war.

Finally, we are used to referring to issues pertaining nuclear weapons in the international society as the law of the jungle.

Paraphrasing Brunnée and Toope in “Legitimacy and Legality in International Law”, NWFZ are a practical and concrete way to demonstrate that **there is law in the jungle**.

The security dialogue related to nuclear weapons must not only be dictated by the narrative of who can't have the weapons and who has them, as proposed by the NPT; or by those who claim that nuclear weapons are necessary for their security. It has already been determined by those States like the ones participating in NWFZ, but not only them, who deliberately are aiming to have a world based on international cooperation and international law, and not on weapons, let alone weapons of mass destruction.

Thank you very much.

NWFZs, Nuclear Disarmament, Nonproliferation, and Regional Security: A Symbiotic Relationship [Draft of 6-27-20]

William C. Potter¹

Overview

It is hard to imagine an international climate less hospitable to nuclear arms control than today. To put it bluntly, the world is in a state of increasing disarray. Each day we see further evidence that the bilateral and multilateral arms control architecture that served the international community very well for the past half century is crumbling and is on the verge of total collapse, something that almost certainly will transpire should nuclear testing resume as some would have it. Yet we seem at a loss about how to take corrective action. To quote United Nations Secretary-General Antonio Guterres, “a wind of madness is sweeping the globe,” making everything more unpredictable and uncontrollable.

Under such circumstances, it is more important than ever to recognize those nuclear disarmament and nonproliferation approaches that continue to show some degree of success. Among the most significant are Nuclear-Weapon-Free Zones (NWFZs). Assuming that certain conditions are met—including the full adherence to existing zonal treaties by parties to those treaties—NWFZs retain promise looking forward. Moreover, although NWFZs typically are thought of mainly as measures to advance nuclear disarmament and nonproliferation, they also can play a useful role in enhancing regional security, advancing the peaceful use of nuclear energy, promoting environmental remediation, and reducing the risks of nuclear terrorism.

Common Characteristics

The idea of strengthening regional security by establishing a geographical space free of nuclear weapons can be traced back to the 1950s, and was manifest in the so-called Rapacki Plan of 1957. The approach also found expression in the Antarctic Treaty of 1959, the Outer Space Treaty of 1967, the Seabed Treaty of 1971, and—for the first time in a densely populated area—the 1967 Treaty of Tlatelolco. The latter regional treaty in Latin

¹ William C. Potter is Director of the James Martin Center for Nonproliferation Studies at the Middlebury Institute of International Studies at Monterey (MIIS). He also is the Sam Nunn and Richard Lugar Professor of Nonproliferation Studies at MIIS.

America and the Caribbean was followed by NWFZs in the South Pacific (The Treaty of Rarotonga, 1985), in Southeast Asia (The Bangkok Treaty, 1995), in Africa (the Pelindaba Treaty, 1996) and in Central Asia (2006).² Mongolia also has declared itself to be a single state NWFZ³. Although each NWFZs has distinctive features, they share a number of common characteristics, most important of which are prohibitions on the development, manufacture, control, possession, testing, and stationing of nuclear weapons on the territory of the zone.⁴ All extant zones also mandate the application of IAEA comprehensive safeguards, and the Central Asian NWFZ also requires parties to have in place the Additional Protocol. In addition, most zones require strict conditions for nuclear exports, consistent with Paragraph 12 of the Decision on Principles and Objectives for Nuclear Non-Proliferation taken at the 1995 NPT Review and Extension Conference.⁵ Another common feature of NWFZs are obligations on the part of Nuclear Weapons States (NWS) in the form of protocols to the treaties.

United Nations General Assembly Resolution 3472 B (1975) defines the concept of a NWFZ and establishes the obligations of nuclear weapon states (NWS) with respect to the zone--namely to respect the terms of the zone and not to use or threaten to use nuclear weapons against States Parties to the zone.⁶ Subsequent decisions at the 1978 Special Session on Disarmament and the 1999 UN Disarmament Commission (UNDC) elaborated on the criteria for NWFZs, including the important UNDC provisions that: (1) the zonal initiative should emanate from the states in the region; (2) all relevant states should participate in the negotiations, and NWS should be consulted; (3) the zone should be established "on the basis of arrangements freely

² The Treaty of Tlatelolco entered into force in 1969; the Treaty of Rarotonga entered into force in 1986; the Treaty of Bangkok entered into force in 1997; the Treaty of Pelindaba entered into force in 2009; and the Central Asian NWFZ Treaty entered into force in 2009.

³ In February 2006, the Mongolian Parliament adopted the Law on Mongolia's Nuclear-Weapon-Free Status. See Harald Mueller, "Cooperation among Nuclear-Weapon-Free Zones: History, Challenges and Recommendations." VCDNP Task Force Report (Vienna Center for Disarmament and Non-Proliferation, March 2018), p. 20.

⁴The prohibitions vary in terms of their specificity. The language in the Central Asian NWFZ, for example, is ambiguous about the circumstances under which nuclear weapons might be introduced to the region.

⁵ This paragraph specifies "that new supply arrangements for the transfer of source or special fissionable material or equipment or material especially designed or prepared for the processing, use or production of special fissionable material to non-nuclear-weapon States should require, as a necessary precondition, acceptance of the comprehensive IAEA safeguards and internationally legally binding commitments not to acquire nuclear weapons or other nuclear explosive devices."

⁶See http://www.nuclearfiles.org/menu/library/treaties/nuclear-free-zones/UNGA_Res3472_1975.pdf .

arrived at among the states of the region concerned; and (4) the NWFZ should reaffirm legal obligations deriving from other nuclear nonproliferation and disarmament commitments.⁷

How NWFZs Advance the NPT:

The earliest NWFZs, and most importantly the Treaty of Tlatelolco, were negotiated prior to the Treaty on the Non-Proliferation of Nuclear Weapons (NPT). This history informs the language of Article VII of the NPT, which stipulates that “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.”

NWFZs reinforce the NPT and advance nuclear disarmament and nonproliferation in a variety of ways when they are implemented faithfully. They do so by a combination of legally binding prohibitions, altering threat perceptions and fostering confidence building measures (CBMs), and reinforcing nuclear disarmament and nonproliferation norms.

1. Legal prohibitions. NWFZs go beyond the NPT in prohibiting zonal treaty parties from developing, manufacturing, possessing, testing, or allowing the stationing of nuclear weapons on their territory regardless of who may exercise control over the weapons. In this regard, NWFZs exceed the prohibitions in Article I of the NPT, which are directed at the NWS, and reinforce the commitments made by non-nuclear weapon states (NNWS) under Article II not to receive the transfer of nuclear weapons or assistance for the manufacture of such weapons. They also reinforce the Article III mandate regarding adoption of IAEA safeguards by requiring, at a minimum, comprehensive/full-scope safeguards.

For example, in the case of the Central Asian NWFZ, all parties to the treaty must bring into force, if they have not already done so, not only an agreement with the IAEA for the application of safeguards in accordance with the NPT, but also the Additional Protocol. In addition, the parties to the Treaty are expressly prohibited from providing “(i) source or special fissionable material or (ii) equipment or material

⁷ These points are highlighted by Gaukhar Mukhatzhanova in a lecture on “Ridding the world of nuclear weapons, One region at a time,” Mexico City, July 8, 2014.

especially designed or prepared for the processing, use or production of special fissionable material, to any non-nuclear-weapon State, unless that State has concluded with the IAEA a comprehensive safeguards agreement and its Additional Protocol....”⁸ The Treaty also reinforces the principle of physical protection of nuclear material and equipment by requiring each Treaty party to maintain effective standards of protection to prevent unauthorized use or handling or theft. To that end, the Treaty mandates States Parties to “apply measures of physical protection to nuclear material in domestic use, transport and storage, to nuclear material in international transport, and to nuclear facilities within its territory at least as effective as those called for by the Convention on Physical Protection of Nuclear Material of 1987 and by the recommendations and guidelines developed by the IAEA for physical protection.”⁹

Although most of the aforementioned legal prohibitions apply to NNWS parties to NWFZs, NWS that conclude protocols to zones not only agree to respect the terms of the zones, but also assume legal obligations not to use nuclear weapons against or threaten the member states with nuclear weapons—thereby reinforcing the principle of negative security assurances (NSAs). Regrettably, the force of these commitments by NWS often are diluted by reservations and/or interpretative statements made in conjunction with their conclusion of the protocols.¹⁰

2. Threat perceptions. An important but under-analyzed contribution of NWFZs is their impact on the threat perceptions of zonal parties and the relationship between altered threat perceptions and enhanced regional stability. The importance of this factor is not uniform across regions, but in most instances convergent threat perceptions both facilitate the negotiation of zones and contribute to their effectiveness, especially in moderating concerns about the nuclear ambitions of regional rivals.

⁸ Article 8 (c) of the Treaty on a Nuclear-Weapon-Free Zone in Central Asia.

⁹ Article 9 of the Treaty on a Nuclear-Weapon-Free Zone in Central Asia.

¹⁰China, France, Russia, the United Kingdom, and the United States all have expressed reservations or issued interpretative statements when signing one or more protocols.

Perhaps the best example of this dynamic involves the process by which the Treaty of Tlatelolco and its associated body—the Brazilian-Argentine Agency for Accounting and Control of Nuclear Materials (ABACC)—has helped to strengthen confidence in the peaceful intentions of those states with the most advanced nuclear technology in the region, while also providing greater assurance that their nuclear facilities and materials are safe and secure.¹¹

The Tlatelolco Treaty also is illustrative of how a NWFZ can stimulate the creation of new regional bodies to ensure compliance with the obligations of the zonal treaty and thereby foster greater regional commitments to nuclear nonproliferation and disarmament. That has been the case with respect to Agency for the Prohibition of Nuclear Weapons in Latin America and the Caribbean (OPANAL), which was established in 1969 for the purpose of ensuring compliance with the zone’s nonproliferation and disarmament objectives. To date, the NWFZ in Latin America and the Caribbean is unique among NWFZs in having such a specialized agency to support the achievement of the treaty’s objectives.¹²

3. Norm Development. The power of NWFZs to advance the goals of nuclear disarmament and nonproliferation extend beyond formal legal obligations and altered threat perceptions. They also involve the cultivation and reinforcement of norms and traditions regarding the nonuse of nuclear weapons and the risks associated with their production, testing and possession. The importance attached to this function varies across zones, but is a common feature of all NWFZs. This dimension is evident, for example, in the emphasis given by the Rarotonga, Pelindaba, and Central Asian NWFZs to the humanitarian and environmental consequences resulting from nuclear weapons production and/or nuclear testing. This emphasis is reflected in the

¹¹ See Togzhan Kasanova, “Nuclear safeguards in Brazil and Argentina: 25 years of ABACC,” AIP Conference Proceedings 1898, 040004 (2017); <https://doi.org/10.1063/1.5009227>
Published Online: 15 November 2017 available at <https://doi.org/10.1063/1.5009227>.

¹²See “Agency for the Prohibition of Nuclear Weapons in Latin American and the Caribbean (OPANAL)” available at <https://www.nti.org/learn/treaties-and-regimes/agency-prohibition-nuclear-weapons-latin-america-and-caribbean-opanal/>

Preamble to the Rarotonga Treaty, which notes that Treaty Parties are “Determined to keep the region free of environmental pollution by radioactive wastes and other radioactive matter,” and in Article 7 on the prevention of dumping of radioactive waste and other radioactive matter at sea, within the South Pacific NWFZ. A similar concern is highlighted in the Preamble to the Pelindaba Treaty, which speaks of the determination of States Parties “to keep Africa free of environmental pollution by radioactive wastes and other radioactive matter.” Article 7 of the Treaty also spells out a prohibition of dumping of radioactive wastes. In keeping with the Rarotonga and Pelindaba NWFZs, the Central Asian zone also has a major focus on the human and environmental costs associated with nuclear weapons production and testing. Even more so than the other zones, the overriding concern and the single element most responsible for the decision by the five Central Asian states to negotiate a NWFZ in the region was the shared view of the need to raise international consciousness about the damage inflicted on the territories of the Central Asian states during the course of many years of uranium mining and milling, as well as nuclear testing, and the necessity of undertaking remedial actions.¹³ This environmental concern is addressed specifically in Article 6 of the treaty devoted to “Environmental Security.”

A very different, but equally important normative dimension of NWFZs, albeit one that is underdeveloped in practice, are initiatives by zonal states to reinforce nuclear disarmament and nonproliferation norms by promoting disarmament and nonproliferation education—one of the few approaches widely supported by NNWS and NWS alike. OPANAL, in cooperation with Mexico and the James Martin Center for Nonproliferation Studies, has demonstrated the potential of this approach in the form of an annual Summer School on Non-Proliferation and Nuclear Disarmament, typically held in Mexico City for young diplomats from throughout Latin America and the Caribbean. Indeed, In July 2020 the sixth iteration of the school will be conducted, for the first time in an online format over the course of two weeks. The course

¹³ See, for example, William Potter, Togzhan Kassenova, and Anya Loukianova, “Central Asia Becomes A Nuclear-Weapon-Free Zone,” CNS Research Note (December 11, 2008) available at: <https://www.nonproliferation.org/central-asia-becomes-a-nuclear-weapon-free-zone/>.

is an excellent example of how NWFZs can help advance nuclear nonproliferation and disarmament literacy by fulfilling Action 22 of the 2010 NPT Review Conference Final Document, which encourages all states to implement the 34 recommendations of the United Nations study on disarmament and nonproliferation education in order to advance the goals of the NPT in support of achieving a world without nuclear weapons.¹⁴

Obstacles to Overcome.

This short overview has identified a number of attractive features of NWFZs and the symbiotic relationship they enjoy with the NPT and regional security. The promise of NWFZs, however, has by no means been fully realized. Among major factors impeding the effectiveness of zones are: (1) the failure of some States parties to honor their zonal obligations; (2) the tendency of NWS to hedge their commitments through signing statements expressing reservations and/or restrictive interpretations; and (3) the inability or reluctance of different NWFZs to exploit the leverage they might derive from greater collaborative action.

One of the most unfortunate developments over the past fifteen years has been the readiness on the part of a number of States parties to three NWFZ treaties to ignore legally-binding provisions that are regarded as politically and economically inconvenient. This tendency is most evident with respect to nuclear commerce with a NPT-recognized NNWS lacking full-scope safeguards. Unfortunately, many countries who otherwise routinely champion nuclear disarmament and nonproliferation appear indifferent to these transgressions, and also choose to ignore the political obligations restricting nuclear trade to which they subscribed at the 1995 NPT Review and Extension Conference. Just as it is intolerable for NWS to pick and choose those NPT obligations to which they adhere, so it is impermissible for NNWS to ignore economically inconvenient legal and/or political commitments they have undertaken. To do so is to undermine their moral authority, diminish the credibility and influence of the zones to which they belong, and demonstrate the inconsistent manner in which peaceful use benefits accrue to NNWS parties to the NPT. Perhaps even more disturbing

¹⁴ See “Celebrating 15 Years of Disarmament and Non-Proliferation Education,” UNODA Occasional Papers, No. 31 (December 2017) available at: <https://s3.amazonaws.com/unoda-web/wp-content/uploads/2018/01/op31.pdf>.

is the reluctance of any members of the three NWFZs in question or any members of other zones to acknowledge this infraction.¹⁵ In short, the more zonal members themselves cherry-pick the legal obligations they choose to honor, the more they encourage other states, including the NWS, to behave in a similar manner.

Just as States parties to NWFZs should adhere faithfully to all of their treaty obligations, so should NWS respect, without qualification, the treaty protocols to which they subscribe. Yet as noted previously, each NWS has, at one time or another, expressed reservations or issued interpretive statements when signing protocols and/or in the course of the protocol ratification process, which delimit their force. At various points of time, for example, the United States has indicated that it reserved the right to employ nuclear weapons in response to an attack using biological and chemical weapons, even if the attack came from a NNWS party to a NWFZ.¹⁶ Other NWS states have articulated different reservations and interpretations pertaining to such issues as the scope of the zone, transit of nuclear weapons, compliance of states with nonproliferation obligations, and the relationship of the NWFZ treaty to other, prior agreements. The issue of reservations has been the source of particular contention in the deliberation between the parties to the Bangkok NWFZ Treaty and the five NWS, none of which have yet concluded protocols to the Treaty. Although most NWFZ adherents emphasize the principle of unconditional adherence to the treaty protocols by the NWS, in practice this principle is observed mainly in the breach. Moreover, more than a half century since the first NWFZ in a populated region entered into force, there is only one zone—Latin America and the Caribbean—in which all five of the NPT-recognized NWS have ratified the non-use protocols. In short, although NWFZs cover the entire Southern Hemisphere and extend into the Northern Hemisphere, much more effort is required before these regions can be said to enjoy the full security benefits the zones were intended to provide.

¹⁵ When challenged by the author on this point, one senior diplomat from a state usually on the side of the nonproliferation and disarmament angels, replied “We have bigger fish to fry.” Similarly, when a senior diplomat from another country usually regarded as a nonproliferation and disarmament champion was asked how his country’s stance on nuclear exports could be reconciled with its principled nonproliferation stance, the reply was: “We have principles, and then we have other principles.”

¹⁶ For a discussion of U.S. non-use policy in the context of NWFZs, see Leonard Spector and Aubrie Ohide, “Negative Security Assurances: Revisiting the Nuclear-Weapon-Free Zone,” *Arms Control Today* (April 2005), pp. 13-19 and George Bunn and Jean duPreez, “More Than Words: The Value of U.S. Non-Nuclear Use Promises,” *Arms Control Today* (July/August 2007). [but the implications of this change in policy is unclear as the protocols to the Rarotonga, Pelindaba, and Central Asian NWFZ treaties have yet to be ratified by the US Senate]

It is now fashionable to applaud the increased cooperation among zones, a very worthy objective that has been highlighted at three international NWFZ conferences, and at meetings that usually are held on the margins of NPT Preparatory Committee meetings. While such gatherings provide an opportunity to share information and experiences, the sought after cooperation remains largely aspirational in nature. As such, the opportunity to act in a coordinated, if not united, fashion is unrealized, as is the potential for NWFZs to be a force multiplier for the many small NNWS zonal parties.¹⁷ Given the sheer number of NNWS adherents to NWFZs, one can imagine the potential influence of these zones were they to act in a more collective fashion that exploited their common interests and voting power with respect to nuclear disarmament and nonproliferation. As forcefully laid out in the most comprehensive study of the topic, cooperation, among the zones could facilitate:

- Strengthening the cohesion within each zone by enhancing the benefits of zonal membership through shared learning of features of other zones and of others' experience in negotiating and implementing their respective treaties;
- Capacity building for more effective participation in the international disarmament and nonproliferation frameworks;
- Strengthening the position of each zone toward relevant outsiders [notably the NWS and their reluctance to sign relevant protocols or to attach interpretations and reservations];
- Enhancing the influence of zones, propagating the “zonal philosophy” and pursuing common interests in relevant international gatherings; and
- Promoting the idea of NWFZs in regions where no zone yet exists, and assisting regional States in their efforts to create new zones.¹⁸

Conclusion

As we reflect on the potential and promise of NWFZs to reinforce the NPT and regional security, it is useful to look more closely at the origins of the first zone in a populated area—the Treaty of Tlatelolco. The catalyst for that zone—and for much subsequent nuclear arms control—was the 1962 Cuban Missile Crisis. From the vantage point of most Latin American states, nuclear war

¹⁷ This point is emphasized in Mueller, “Cooperation among Nuclear-Weapon-Free Zones,” p. 5.

¹⁸ Ibid.

threatened to ravage their region, and yet they were relegated to the position of helpless bystanders. As one scholar of the Tlateloloco Treaty points out, the events of October 1962 underscored how the presence of nuclear weapons within the region made their territory a possible target of a nuclear strike.¹⁹ It therefore was no coincidence that the initiative for a NWFZ in Latin America arose during the Cuban Missile Crisis and found formal expression in a UN proposal in November 1962 and a joint declaration of five Latin American presidents in April 1963.²⁰ States in the subcontinent believed that this innovative approach might prevent the deployment of nuclear weapons in their region by external powers, while reducing the likelihood of a regional nuclear arms race. Thus, even before the conclusion of the NPT, the pioneering effort of a small group of individuals led by then Mexican Under-Secretary Alfonso Garcia Robles demonstrated an unusual contagion effect: just as nuclear weapons may spread, so to may nuclear disarmament.

As my CNS colleague Gaukhar Mukhatzhanova often recalls when lecturing about NWFZs, Garcia Robles famously observed to the UN General Assembly in 1974 that NWFZs “would gradually broaden the areas of the world from which nuclear weapons are prohibited to a point where the territories of powers which possess them ...will be something like contaminated islets subject to quarantine.”²¹ In this era of pandemics, including the nuclear variety, we sorely need that kind of a quarantine.

¹⁹ See John R. Redick, “The Tlatelolco regime and Nonproliferation in Latin America,” *International Organization* (Winter 1981), p. 110.

²⁰ Ibid.

²¹ Cited by Gaukhar Mukhatzhanova, “Ridding the world of nuclear weapons, One region at a time.”

Dr. Dastan Yeleukenov
Director of the International Security Department of the
Ministry of Foreign Affairs of the Republic of Kazakhstan

Informal Workshop on Good Practices and Lessons Learned
with respect to the Existing Nuclear-Weapon-Free Zones

Online, 8 July 2020

Theme 3: How zones address transit, visitation and overflight; regulation of exclusive economic zones and the high seas

Topic: How the Central Asian nuclear-weapon-free zone treaty deals with transit and visitation

Distinguished colleagues,

I would like to thank the United Nations Office on Disarmament Affairs (UNODA) for organizing such an important event and inviting me to speak as a panelist on several topics. I am confident that this workshop will substantially contribute to strengthening the cooperation between all of the nuclear-weapon-free zones. Let me briefly share our experience of creating a nuclear-weapon-free zone in our region.

The Treaty on a Nuclear-Weapon-Free Zone in Central Asia (CANWFZ) was signed by five Central Asian States on September 8, 2006 in Semipalatinsk (Kazakhstan), which is deeply symbolic for the process of nuclear disarmament.

The Semipalatinsk Treaty has a number of unique features. It has established the first nuclear-free zone in the northern hemisphere and in a region, which once served as a ground for active deployment and testing of nuclear weapons, and where existed extensive uranium mining for military purposes. Therefore this zone lays down obligations for the ecological rehabilitation of uranium tailings and nuclear test sites. Moreover, among other NWFZs the Central Asia has the longest common land border with two nuclear power states. In addition, it is completely landlocked region.

We are actively working on strengthening the coordination within our zone, as well as promoting the “Treaty on cooperation in preventing illicit trafficking in nuclear materials and combating nuclear terrorism of the Parties to the Central Asian Treaty on the Nuclear-Weapon-Free Zone”.

Regarding the topic - how the Central Asian nuclear-weapon-free zone treaty deals with transit and visitation, I would like to underline the following.

According to Article 2 of the Treaty, “the scope of application of a Central Asian Nuclear-Weapon-Free Zone is defined exclusively for the purposes of this Treaty as the land territory, all waters (harbors, lakes, rivers and streams) and the air space above them, which belong to the five states of the region – Republic of Kazakhstan, the Kyrgyz Republic, the Republic of Tajikistan, Turkmenistan and the Republic of Uzbekistan”.

The issues of transit, visits and flights under the Treaty are governed by the provisions of Articles 4 and 9. The legal actions of foreign ships, aircraft and land vehicles are reflected in Article 4, which states that “without prejudice to the purposes and objectives of this Treaty, each Party, in the exercise of its sovereign rights, is free to resolve issues related to transit through its territory by air, land or water, including visits by foreign ships to its ports and landing of foreign aircraft at its airfields.”

Here, I would like to note that during the negotiations on the Treaty on prohibition of nuclear weapons (TPNW) Kazakhstan has repeatedly proposed to include ban on transit and transshipment of nuclear weapons.

Also transit mentioned in the interpretive statement made by Russian Federation at the signing ceremony of the NSA Protocol to the Semipalatinsk Treaty which includes the following: “possible failure to abide may be the entry into ports, landing or transit to the airfields of the Central Asian republics of foreign military vessels and aircraft with nuclear weapons”. Conceivably, such statement should be considered as an indirect prohibition of transit of nuclear weapons or nuclear explosive devices.

In terms of nuclear materials that are in the process of internal transportation and/or stored by one of the parties to the Treaty, article 9 of the Treaty provides a clear obligation for the parties to “strictly apply physical protection measures with respect to such materials that are not inferior in effectiveness to the measures provided for in the Convention on Physical Protection of Nuclear Material of 1987, as well as in recommendations and guidelines developed by the IAEA regarding physical protection.” The same obligations are defined for the international transport of nuclear facilities in the territory of one of the parties to the Treaty.

In this regard, when drafting the provisions of the Treaty on the establishment of a zone free of nuclear weapons and other types of WMD in the Middle East or any other region of the world, comprehensive and explicit provisions on transit issues should be foreseen in advance.

I will be talking on another topic - how the Central Asian States navigated their partnerships with nuclear-weapon States while successfully obtaining security assurances, in my next presentation at the following session.

Thank you for your attention.

Informal Workshop on Good Practices and Lessons Learned with Respect to the Existing Nuclear-Weapon-Free-Zones (7-9 July 2020)

Theme 3: “How the Bangkok Treaty addresses issues of transit passage and regulation of exclusive economic zones”

**Maratee Nalita Andamo
ASEAN Affairs Department
Ministry of Foreign Affairs of Thailand**

1. Introduction.

- It is a pleasure and an honour to be with you all at this workshop. My Director-General of the ASEAN Affairs Department at the Ministry of Foreign Affairs of Thailand sends her sincere appreciation to High Representative Izumi Nakamitsu for the kind invitation to speak at this event and apologizes for not being able to participate herself.

- In her stead, I hope to be able to share the experience of the SEANWFZ and the Bangkok Treaty to the best of my ability for the purposes of this discussion. The distinguished panelists thus far have been very illuminating and I am honoured to join in the conversation.

- I have been asked to speak about how the Bangkok Treaty addresses issues of transit passage and regulation of exclusive economic zones. But before I get into those details, I would like to begin with a question to provide a little bit of context.

- How do you measure the success of a Nuclear Weapon Free Zone? Is it by the ratification of all NWS? Is it by the absence of nuclear war or the absence of an active threat of nuclear war in your region? Or is it the absence of conflict?

- In ASEAN’s experience, we would average about an 8 out of 10 if I answered yes to that entire list of questions. But I am confident that if you ask any ASEAN country, regardless of our diverse views and evolving positions on a number of specific issues, the success that we have achieved from the establishment of the zone, is the fact that we have created, developed and nurtured, a common regional security identity (and one that goes beyond the Cold War context).

- What I mean is that beyond advancing global non-proliferation and disarmament objectives, SEANWFZ has succeeded in advancing a common future, from an existential security standpoint. For ASEAN, it has meant overcoming our

differences and what Dr. Renata said yesterday, “putting yourself in someone else’s shoes”.

- This is the first important point that I would like to make because I believe it has relevance for the current state of global affairs and the need to find opportunities for this valuable exercise whenever possible.

- As we heard yesterday, the Cold War and the end of the Cold War were the catalyst for the establishment of a number of zones. Today, in our current state of affairs, which many say has been possibly the worst in disarmament history in recent years, there is opportunity even in crisis. The growing importance of regionalism in today’s COVID context cannot be overstated. Set within major power rivalry, trade tensions and challenges to multilateralism, it can be an opportunity to forge common regional peace and security.

2. Transit and EEZs.

- When we turn to the issue of how the Bangkok Treaty dealt with transit passage and regulation of exclusive economic zones, the “question” I raised earlier will come into play.

- The inclusion of EEZs and the continental shelves is a distinct feature of our Treaty. In our region’s experience and throughout our history of inter-state relations, geographical characteristics have been and are a significant factor. As it relates to SEANWFZ, our ten-country organisation comprises the first and the second largest archipelago in the world, namely, Indonesia and the Philippines. Indonesia boasts a total of approximately 15,000 islands while the Philippines comprises a rough number of 7,000 islands. Hence, because of the importance placed on the sea, it was decided that the scope of the SEANWFZ would not only cover territorial waters, but also the EEZs and the continental shelves. The Middle East may find relevant characteristics in the region that could be reflected in the Treaty and its Protocol.

- Regarding transit passage, our Treaty is not dissimilar to the Tatalolco or the Raratonga treaties. Articles 1, 2 (2) and 7 address the issue.

- Article 7 states that “Each State Party, on being notified, may decide for itself whether to allow visits by foreign ships and aircraft to its ports and airfields, transit of its airspace by foreign aircraft, and navigation by foreign ships through its territorial sea or archipelagic waters and overflight of foreign aircraft above those waters in a manner not governed by the rights of innocent passage, archipelagic sea lanes passage or transit passage.” Article 1 defines the word “state” and Article 2 (2) invokes UNCLOS and the UN Charter.

- These articles are interpreted and put into practice through another distinct feature of the Bangkok Treaty, which is the “peer review”. Namely, any

actions that contravene the Treaty could eventually be brought, through the relevant mechanisms, to the IAEA, the GA, or the UNSC but before doing so, States Parties are entitled to seek early clarification from other State Parties on relevant verification of compliance, including information on port visit, transit, or passage of foreign ships and aircraft.

- So, to take both issues comprehensively, the Bangkok Treaty was very clear on the discretion given to States Parties on the issue of transit, with direct references to UNCLOS and the UN Charter. At the same time, it was ambitious in including the EEZs.

- These two issues combined have been the major stumbling block in consultations with the NWS on signing and ratifying the Protocol to the Treaty. Essentially, NWS have not signed the Protocol to the Bangkok Treaty because they object to the inclusion of continental shelves and EEZs; to the restriction not to use nuclear weapons within the large zone of application, or from within the zone against targets outside the zone; and to the restriction on the passage of nuclear-powered ships through the zone. Over the years, their hesitations and concerns have escalated, waned, proliferated, and even streamlined for one NWS, but they have generally remained the same. Some may point to the fact that other zones carry very similar provisions on transit, but have succeeded in obtaining ratifications from a number of NWS. In addition to what the Permanent Representative of Malaysia mentioned yesterday about the need to sort out among ASEAN the issue of reservations (which form part of the delay in moving forward), what many have concluded is that much of the difficulty coming from the NWS lies in the very strategic position of ASEAN. Others also point to a lack of political will.

- Again, the consultations with the NWS have been quite extensive and the SEANWFZ Commission (the Treaty's compliance mechanism) had last year agreed to the suggestion to invite a representative from the Raratonga Treaty, to share their experience with how they handled reservations from NWS. We do hope to learn from our neighbours in the South Pacific soon and to advance on our positions and consultations vis-a-vis NWS.

- One of the most important lesson to take away from this exercise, is the value of consultations that need to take place among ASEAN Member States themselves, and in a regular fashion. As I said before, one overriding success of the Bangkok Treaty is that it forged a common security identity, but this identity needs to be further nurtured and protected through the ongoing geopolitical shifts and major power rivalries that we find ourselves in now and likely will continue to find ourselves in, in the future.

3. Parting Thoughts/Lessons for the Middle East.

- a. No zone is completely alike nor should they be. The distinction in origin, structure, mechanism and other features will be valuable because it will be catered to a security pact that is sustainable for that region.
 - b. A balance must be struck and agreed on between clarity versus flexibility. Being aspirational versus being practical. And all of this is for States of the region to define for themselves.
 - c. Forging a common security identity can help to diminish reliance on those outside of the region for security. The “how” will require a lot of effort and political will, and to advance discussions on the issue in all related forums, security and even non-security related ones. Nuclear disarmament does not and cannot happen in a vacuum.
- Disarmament and establishing nuclear weapon free zones do not happen overnight and require a lot of persistence and alignment and realignment of security approaches and goals.
 - Let me conclude here by reiterating Thailand’s continued commitment to this issue, and our commitment to working with all stakeholders, States Parties, NWS, civil society and industry, towards the disarmament goals embodied in the zones treaties, the NPT, the TPNW and other important international instruments.
 - I look forward to hearing from others today and to responding, as much as I can, to any questions or comments you may have.
 - Thank you for your attention.

The Experience of South Pacific States in Ensuring the Absence of Nuclear-Armed Vessels in their National Waters and Ports

Michael Hamel-Green
Emeritus Professor, College of Arts & Education,
Victoria University Melbourne

Discussion paper for Panel 3: Transit, visitation and overflight; regulation of exclusive economic zones and the high seas, *Workshop on Good Practices and Lessons Learned with Respect to the Implementation of Treaties Establishing Nuclear-Weapon-Free Zones, 7-9 July 2020*

Nuclear-armed ship and submarine visits and transit have been a difficult and contentious issue across the world, and pose particular challenges for regions seeking to establish nuclear-weapon-free zones consistent with the UN definition of, and requirement for, the total absence of nuclear weapons within such zones.¹ The following discussion paper will focus primarily on port visits and nuclear-armed ship transit through the territorial waters of South Pacific NWFZ members since other papers will be discussing the wider issues of transit in exclusive economic zones (EEZs) and the high seas.

The South Pacific Nuclear Free Zone Treaty (SPNFZ)

The 1985 South Pacific Nuclear Free Zone (Rarotonga) Treaty (SPNFZ) was the second NWFZ to be established by a regional grouping of states after the 1967 Tlatelolco Treaty. The zone was negotiated through the South Pacific Forum, the then regional organization of independent South Pacific states that included Australia, New Zealand, Fiji, Papua New Guinea, Niue, Tonga, Western Samoa, Nauru, Solomon Islands, Cook Islands, Vanuatu, and Kiribati.² Since then the regional body has been recast as the Pacific Forum and now includes other Pacific Island states and self-governing territories, including the Marshalls, French Polynesia, New Caledonia, Palau, Federated States of Micronesia, and Tokelau, although these have not as yet become part of the South Pacific Nuclear Free Zone treaty.

¹ United Nations General Assembly, Resolution 3472 (XXX) B defines a Nuclear-Weapon-Free Zone as requiring “the statute of the total absence of nuclear weapons”, UNODA, <https://www.un.org/disarmament/wmd/nuclear/nwzf/> (accessed 29/5/20)

² For detailed studies of the SPNFZ, see: Michael Hamel-Green, *The South Pacific Nuclear Free Zone Treaty: A Critical Assessment* Peace Research Centre, Research School of Pacific Studies, Australian National University, Canberra, 1990 (available online at ANU Library, <https://openresearch-repository.anu.edu.au/handle/1885/111864>); Gregory Fry, “Regional Arms Control in the South Pacific,” in Pitt and Thompson, eds., *Nuclear-Free Zones*, Croom Helm, London, 1987, pp. 46-66; T.V. Paul, “Nuclear-free-zone in the South Pacific”, *The Round Table*, 75:299, pp.252-262, 1986.

The SPNFZ Treaty was the culmination of Pacific countries' direct experience of nuclear weapons and their effects from the very beginning of the nuclear age. This was in the shape of 321 nuclear tests by Western nuclear-armed states in the Pacific from 1946 to 1996, including atmospheric tests by the US 1946-62, Britain 1952-58 and France up to 1974.³ Test sites included Bikini and Enewatak atolls in the Marshall Islands, Moruroa and Fangataufa atolls in French Polynesia, Christmas Island in Kiribati, and Maralinga in South Australia. Fallout from the tests and radioactive contamination, as well as forced relocations, led to devastating health and humanitarian crises for indigenous peoples affected, and incurred increased cancer risks across the whole Pacific region.⁴

From the early 1960s through to the 1980s, there was also rising concern among many within Pacific countries, especially within New Zealand, Australia, Fiji, Vanuatu and Papua New Guinea, about the threats posed by the increasing nuclear arms race during the Cold War. This was at a time when both the US and then Soviet Union deployed not only strategic nuclear missiles but also tactical, cruise and intermediate range nuclear missiles on various platforms, including ships, planes and land bases. The concerns were heightened by the "near-miss" global nuclear conflict that could have erupted during the 1962 Cuban Missile Crisis, the siting of US nuclear-related communication, command and control bases in Australia from 1963, US missile testing at Kwajalein in the Marshalls, awareness that US ships visiting ports in the region could be carrying nuclear weapons, and the possibility of Pacific sites, including ports and American base sites, becoming nuclear targets in the event of a war between the superpowers.

To address this range of nuclear threats civil society groups, such as the Nuclear Free and Independent Pacific Movement and Greenpeace, together with national peace, disarmament and environment groups, campaigned

³ Michael Hamel-Green "Nuclear Tests in the Pacific," in Nigel J. Young, ed., *The Oxford Encyclopaedia of Peace*, Oxford University Press, Vol.3, 2010, pp. 264-269; United States Government Department of Energy (DOE), United States Nuclear Tests, July 1954 through September 1992 US Department of Energy, NV-209, Rev.15, 2001); Bruno Barrillot, *Les Essais Nucléaires Français 1960-1996: Conséquences sur l'environnement et la santé*, Centre de Documentation et de Recherche sur la Paix et les Conflits, Lyon, 1996); Vitali Fedchenko and Ragnhild Ferm Hellgren, "Nuclear Explosions, 1945-2006," *SIPRI Yearbook 2007*, Oxford University Press, Oxford, 2007, pp. 555-557.

⁴ For accounts of the effects of nuclear testing on Pacific islanders and indigenous people, see: Jonathan Weisgall, "The Nuclear Nomads of Bikini", *Foreign Policy*, No.39 Summer 1980, pp.74-98; Jonathan Weisgall, *Operation Crossroads: The Atomic Tests at Bikini Atoll*, Naval Institute Press, Annapolis, 1994; Stewart Firth, *Nuclear Playground*, Allen & Unwin, Sydney, 1987; Jane Dibblin, *Day of Two Suns: US Nuclear Testing and the Pacific Islanders*, Virago Press, London, 1988; Ronnie Alexander, *Putting the Earth First: Alternatives to Nuclear Security in Pacific Island States*, Matsunaga Institute for Peace, University of Hawaii, Honolulu, 1994; Nic Maclellan & Jean Chesneaux, *France in the Pacific*, Ocean Press, Melbourne, 1998; Nic Maclellan, *Grappling with the Bomb: Britain's Pacific H-bomb Tests*, ANU Press, Canberra, 2017; Alan Parkinson, *Maralinga: Australia's Nuclear Waste Cover-up*, ABC Books, Sydney, 2017.

vigorously, and with much public support, for Pacific governments to negotiate a nuclear-weapon-free zone. The SPNFZ zone proposal came to fruition during 1983–85 when Labor Party Governments came to power in Australia and New Zealand and cooperated with Pacific Island states in responding to civil society calls for the creation of a regional South Pacific NWFZ.⁵

Regional Views on Nuclear-Armed Ship Visits

In the event, the SPNFZ 1983-85 negotiations, despite much consensus, did expose some major regional disagreement over the issue of port visits and transit in territorial waters by nuclear-armed ships.

Australia and New Zealand were allied with the United States under the ANZUS Treaty and both were under pressure from the US to accept such visits and transit. The Australian Labor Government was reluctant to jeopardize its US alliance relationship and sought to allow port visits under the new SPNFZ treaty. On the other hand, the New Zealand Labor Government was far less willing to accept such visits. Confronted with a proposed 1984 visit by the US nuclear-capable guided-missile destroyer, *USS Buchanan*, the Lange Labor Government refused the visit despite awareness of the risk of US withdrawal from ANZUS Treaty arrangements with New Zealand.⁶ As the New Zealand Prime Minister at the time, David Lange, noted in a much publicized Oxford Union Debate: “There is simply only one thing more terrifying than nuclear weapons pointed in your direction and that is nuclear weapons pointed in your enemy’s direction. The outcome of their use would be the same in either case, and that is the annihilation of you and all of us. That is a defence which is no defence”.⁷

The SPNFZ Compromise on Nuclear-Armed Ship Visits

The SPNFZ Treaty’s negotiated solution to the nuclear ships issue was a compromise formula whereby individual states could make their own decision

⁵ Hamel-Green, *op.cit.*

⁶ For detailed studies on New Zealand, Australian and Pacific Island policies at the time on nuclear-armed ship visits and nuclear disarmament, see: Kevin Clements, *Back from the Brink: the creation of a Nuclear-Free New Zealand*, Allen & Unwin, Wellington, 1988; Michael Pugh, *The ANZUS Crisis: nuclear visiting and deterrence*, Cambridge University Press, Cambridge, 1989; David Capie, “Nuclear-free New Zealand: Contingency, contestation and consensus in public policy-making” in Joanna Luetjens, Michael Mintrom, Paul ‘t Hart (eds.), *Successful Public Policy: Lessons from Australia and New Zealand*, ANU Press, 2019; Greg Fry, *Framing the Islands*, ANU Press, Canberra, 2019; Jessie Dorfmann, “You Can Never Sink a Rainbow: Anti-Nuclearism in the Pacific”, *Harvard International Review*, vol.37, no.2, Winter 2016, pp 4-7.

⁷ David Lange quotation cited in Veronika Meduna, *New Zealand Set to Mark Anti-Nuclear Victory over the United States*, Australian Broadcasting Commission News, <https://www.abc.net.au/news/2016-08-13/new-zealand-celebrates-anti-nuclear-victory-over-united-states/7731644> (accessed 28/5/20).

on allowing or disallowing such visits and transit in territorial waters. This permitted Australia to continue such visits, and for New Zealand and some other Pacific states to disallow such visits. This was specified in the final wording of Article 5:

“Article 5 Prevention of stationing of nuclear explosive devices

- 1. Each Party undertakes to prevent in its territory the stationing of any nuclear explosive device.*
- 2. Each Party in the exercise of its sovereign rights remains free to decide for itself whether to allow visits by foreign ships and aircraft to its ports and airfields, transit of its airspace by foreign aircraft, and navigation by foreign ships in its territorial sea or archipelagic waters in a manner not covered by the rights of innocent passage, archipelagic sea lane passage or transit passage of straits”.⁸*

‘Stationing’ was defined in Article 2 as *“emplantation, emplacement, transportation on land or inland waters, stockpiling, storage, installation and deployment.”⁹*

During the course of the South Pacific NWFZ negotiations, both Papua New Guinea and Vanuatu voiced strong concerns that the treaty’s lack of regulation of port visits by nuclear-armed vessels could lead to some form of de facto stationing.¹⁰ They argued for time limits on the “duration and pattern of port visits” and a “prior warning” requirement for nuclear ship visits. Even at the time of the negotiations, it was noted by a leading authority on US bases in Australia that US nuclear-armed attack submarines visited at Stirling Naval Base in Western Australia some 20-25% of the time.¹¹ However, Australia, which chaired the negotiations, rejected the PNG/Vanuatu proposal, and, in the event, New Zealand accepted the compromise proposal, apparently concerned to minimize damage to its relations with the US over the nuclear ship ban by indicating that it was not necessarily seeking to “export” its “nuclear allergy” (as American officials liked to label the New Zealand and Island stance on nuclear ship visits).

National Policies on Nuclear-Armed Ship Visits Since 1985

Since 1985 when the SPNFZ was first signed, there have been few changes in the stances of both Australia and New Zealand on nuclear-armed ship visits and transit through territorial waters. In the case of Australia there continues to be bipartisan support for allowing such visits on the part of the two main

⁸ United Nations Office For Disarmament Affairs, Treaties Database, *South Pacific Nuclear Free Zone Treaty text*, <http://disarmament.un.org/treaties/t/rarotonga/text>, (accessed 29/4/20).

⁹ Ibid.

¹⁰ South Pacific Bureau for Economic Cooperation, *Report by the Chairman of the Working Group on a South Pacific Nuclear Free Zone to the South Pacific Forum, Rarotonga, 4-6 August 1985*, SPEC, Suva, 1985; also see Michael Hamel-Green, “Regional Arms Control in the South Pacific: Island State Responses to Australia’s Nuclear Free Zone Initiative, *The Contemporary Pacific*, vol.3 no.1, Spring 1991, pp.59-84.

¹¹ Desmond Ball, “Limiting Damage from Nuclear Attack” in Ball, D & Langtry, J.O. (eds), *Australian National University & Allen & Unwin, Canberra, 1983, p.155.*

parties, and the government has permitted US military exercises at Darwin with annual rotations of 2,500 US marines as part of the US “pivot” towards Asia. In the case of New Zealand the policy against nuclear-armed ship visits was consolidated through its 1987 New Zealand Nuclear Free Zone, Disarmament and Control Act, which, under Article 9, specifies that the Prime Minister may only grant entry into the internal waters of New Zealand if “satisfied that the warships will not be carrying any nuclear explosive device”.¹² This clearly rules out port visits by nuclear-armed ships. However, in relation to NZ territorial seas and straits, it exempts any ship “exercising the right to innocent passage” or “right of transit passage”.¹³ By 1990, the New Zealand National Party, under pressure from public opinion, reversed its former policy of supporting nuclear-armed ship port calls and now continues to support a ban on such visits.

Following the 1991 decision of the US to cease deploying tactical nuclear weapons on vessels, the issue became a less urgent one for Pacific countries opposed to such vessels. During the late 1990s, the NZ Clark Government reaffirmed the country’s ban on nuclear-armed ship port calls, emphasizing the need for New Zealand to take a leading role on nuclear disarmament.¹⁴ In the context of the US decision to remove tactical nuclear weapons from its surface vessels, the Key National Party government did, in November 2016, allow the USS Sampson warship to make a visit, the first in 33 years.¹⁵ The current NZ leader, Jacinda Ardern, has continued to reaffirm the country’s anti-nuclear position as embodied in its 1987 legislation.¹⁶ In December 2018, New Zealand convened a Pacific regional conference involving South Pacific island states to support implementation of the UN Treaty on the Prohibition of Nuclear Weapons (TPNW), now signed by New Zealand, Fiji, Cook islands, Vanuatu, Tuvalu, Samoa, Kiribati, Nauru, and Palau.¹⁷

Implications: Port Calls by Nuclear-Armed Vessels

Despite a long period of reduced concern by many South Pacific states following the 1991 US removal of tactical nuclear weapons from its vessels and planes, we are now entering a potential new Cold War period of conflict in which some of the major nuclear powers are currently modernizing their nuclear forces and may once again seek to deploy tactical and longer range cruise and intermediate range nuclear weapons on ships and planes, and

¹² Pugh, 1989, *op.cit.*, “Appendix 7, Extracts from the New Zealand Nuclear Free Zone, Disarmament and Arms Control Act”, pp.208-210.

¹³ *Ibid.*

¹⁴ David McCraw, “New Zealand Foreign Policy Under the Clark Government: High Tide of Liberal Internationalism”, *Pacific Affairs*, v.78 no.2, Summer, 2005, pp 217-235.

¹⁵ Nicky Hager, “US warship visit to New Zealand”, *New Zealand Herald*, 9 June 2016.

¹⁶ New Zealand Herald, “Jacinda Ardern revives disarmament and arms control role to stress anti-nuclear stance”, NZ Herald,

https://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=12002708

(accessed 1/6/20).

¹⁷ Rick Wayman, *Auckland Statement on the Treaty on the Prohibition of Nuclear Weapons*, Nuclear Age Peace Foundation, <https://www.wagingpeace.org/auckland-statement-tpnw> (accessed 28/5/20).

move to base or station such weapons in regions where nuclear-weapon-free zones are established or proposed.

The United States has already, it seems, begun deploying from late 2019 a new long-range missile armed with a tactical “low-yield” warhead W76-2 (believed to be about 5 kt) on its Ohio-class SSBN submarines.¹⁸ In the case of Russia, Hans Kristensen has recently noted that the Russian Navy has some 900 nonstrategic nuclear weapons, including cruise missiles, antisubmarine rockets, torpedoes and depth charges, which could be deployed on submarines, aircraft carriers, cruisers, destroyers, frigates, corvettes and naval aircraft.¹⁹ Both sides are justifying their modernization of existing nonstrategic nuclear weapons on the basis of each other’s moves, and the US additionally expresses concern about Chinese nuclear weapon modernization.

The possibility of redeployment of tactical nuclear weapons on board ships and planes visiting the South Pacific raises the question of what can be taken from the region’s experience at both government and civil society levels in ensuring the absence of nuclear weapons in national ports and waters.

Certainly the example of New Zealand’s experience in successfully banning port visits by nuclear armed ships suggests the crucial importance of civil society campaigns and action both in direct protest over such visits, in public education on the risks both locally and globally, and on lobbying major parties and governments. Civil society action to create a nuclear free zone and ban such visits was crucial in the evolution of New Zealand policy.²⁰ Public opinion moved so decisively in favour of imposing bans on nuclear ship port calls that the National Party leadership realised it would be politically costly to continue to support such visits. New Zealand also offers a valuable model for other countries in its consolidation of the ban on nuclear-armed ship port calls in its binding 1987 Nuclear Free Zealand legislation.

In the case of other South Pacific island countries imposing bans, the role of civil society action was again very apparent, particularly in the case of the trans-Pacific Nuclear Free and Independent Pacific movement.²¹

While the SPNFZ was a compromise on nuclear-armed ship visits, David Lange did, by way of explanation, note at the 1985 Rarotonga press conference launching the new treaty: “You can’t climb a ladder by starting at the top”.²² Lange was anticipating perhaps that it could be strengthened in

¹⁸ Robert Burns, “US Adds ‘Low Yield’ Nuclear Weapon to Its Submarine Arsenal”, *The Diplomat*, <https://thediplomat.com/2020/02/us-adds-low-yield-nuclear-weapon-to-its-submarine-arsenal> (accessed 28/5/20)

¹⁹ Hans M. Kristensen & Matt Korda, “Russian nuclear forces, 2020”, *Bulletin of the Atomic Scientists*, 76:2, 2020, pp.102-117.

²⁰ Capie, *op.cit.*; Hager, *op.cit.*

²¹ Hamel-Green, 1990, *op.cit.*; Nic Maclellan, “The Nuclear Age in the Pacific Islands”, *The Contemporary Pacific*, v.17, no.2, 2005, pp 363-372.

²² Author’s notes of David Lange’s comments recorded when present at the South Pacific Forum press conference on the South Pacific Nuclear Free Zone, Rarotonga, 6th August 1985.

later years. The treaty most certainly was a major advance in committing the region to anti-stationing and anti-testing prohibitions. On nuclear ship visits, regional strengthening of bans on nuclear ship visits is certainly possible under the SPNFZ treaty's Article 5, if more and more regional states were to follow New Zealand's example. It is also feasible to revise the treaty itself to ban such visits through the treaty's amendment provisions, although this would be unlikely while the current stance of the Australian Government remains in place.²³

In the light of a potential decision of major nuclear powers to redeploy tactical and intermediate nuclear weapons on board ships and planes visiting the region, the actual implementation of the South Pacific NWFZ clauses on port calls and territorial transit of nuclear armed vessels certainly warrant further tightening up to prevent de facto stationing by nuclear-armed states. A recent 2020 article by Samuel Bashfeld that forms part of a two-year Australian National Security College, Australian Defence Department supported, project on the Indian Ocean notes:

*“Australia takes advantage of...ill-defined wording in the Treaty of Rarotonga...to host nuclear-capable US platforms. By not specifying the duration of a “port visit”, Australia is able to manage alliance obligations while complying with a treaty similar in scope and design to the Pelindaba Treaty”.*²⁴

Australia's practice would seem to conflict with the whole intent and spirit of the SPNFZ treaty's anti-stationing obligations, and opens the wider South Pacific region and neighbouring states to possible targeting and involvement, particularly given nuclear powers' embracing of Air-Sea Battle concepts in which not only direct targets but also communication infrastructure may be targeted in the process of rapid nuclear escalation. Such possibilities would seem to confirm the original concerns of Vanuatu and Papua New Guinea during the Rarotonga Treaty's negotiations that there be limits on the duration and pattern of port visits. Negotiators of proposed new zones, such as the Middle East Weapon of Mass Destruction Free Zone, might well consider the need for a more watertight definition of “stationing” to prevent any possibility of de facto stationing under the guise of frequent and prolonged port calls by nuclear-armed ships or airport calls by nuclear-armed aircraft.

Implications: Nuclear-Armed Transit in territorial seas

Beyond bans on nuclear-armed vessel port calls, there is the further issue of territorial transit. Under the Rarotonga Treaty's Article 5, as well as under the 1987 New Zealand Nuclear Free Zone legislation, territorial waters transit is permitted under rights of “innocent passage”. The wording of this article can be construed as allowing nuclear-weapon-states an automatic legal right to

²³ Treaty amendment mechanisms are discussed in Michael Hamel-Green, “The South Pacific – The Treaty of Rarotonga” in Ramesh Thakur (ed.), *Nuclear Weapons-Free Zones*, Macmillan, London, 1998, pp.59-80.

²⁴ Samuel Bashfeld, “Mauritius, Diego Garcia and the small matter of nukes”, Lowy Institute, <https://lowyinstitute.org/the-interpretor/mauritius-diego-garcia-and-small-matter-nukes> (accessed 28/5/20).

transit through the territorial waters of nuclear-free-zone members without needing permission from the relevant NWFZ members, and, at the time of negotiations, the Australian Chair of the Rarotonga Treaty claimed that this was the case. However, under the Law of the Sea (UNCLOS), this is most certainly not the case. In a detailed legal study of the Rarotonga Treaty²⁵, Philp notes that, while it does guarantee innocent passage rights of transit through territorial waters, UNCLOS defines innocent passage as passage which is “not prejudicial to the peace, good order, or security of the coastal State”, and, more specifically still, that the rights of coastal states would be violated if a transiting vessel engages in any of the following activities:

*(a) any threat of use of force against the sovereignty, territorial integrity or political independence of the coastal State, or in any other manner in violation of the principles of international law embodied in the Charter of the United Nations; (b) any exercise or practice with weapons of any kind; ... (f) the launching, landing or taking on board of any military device”.*²⁶

Philp concludes that UNCLOS specifically provides for a coastal state to “take necessary steps in its territorial sea to prevent a passage which is not innocent”, and that the establishment of a regional nuclear weapon free zone banning nuclear weapons transit could be considered such a necessary step.

Even if a complete ban on nuclear weapons transit in territorial waters were not to be imposed directly through an amended SPNFZ treaty, sovereign states would have the right under UNCLOS to regulate such transit in a number of ways. These include: prior notification of transit, restriction of transiting vessels to defined sea lanes, prohibition of military exercises, restriction in mode of transit (eg submarines must surface), and limits on numbers of transiting vessels. Regulations of this nature would at least serve to prevent nuclear weapons transit from passing close to population centres and such centres becoming targets in any escalating nuclear power conflict.²⁷

Given the absence of reference to such requirements in the Rarotonga Treaty, negotiators of new NWFZs or WMDFFZs might well seek to reduce the risks of nuclear-armed states circumventing the nuclear bans imposed by either regional or national NWFZs by specifically inserting wording embodying UNCLOS definitions and requirements, particularly those relating to prior notice of transit and confirming the innocent nature of such passage consistent with the UNCLOS provisions. This, no doubt, will pose continuing problems for states such as the US who insist on “non-confirm, non-deny” policies in relation to nuclear weapon presence but, under UNCLOS, coastal states have a right to such confirmation

²⁵ Philp Jr, P.R., “The South Pacific Nuclear-Weapon-Free-Zone, the Law of the Sea, and the ANZUS Alliance: an exploration of conflicts, a step towards world peace”, *California Western International Law Journal*, v.16, 1986, pp.138-177.

²⁶ Cited in Philp Jr, *ibid*.

²⁷ Philp Jr, *ibid*.

While not explicitly stated in the UNCLOS specifications but a logical consequence of them, new regional zones might also consider the need for specifically banning any transiting nuclear-armed vessel within their territorial seas from the use or threat of use of nuclear weapons against any target inside or outside the zone region (as, indeed, the existing Southeast Asian Nuclear Free Zone Treaty seeks to achieve in its Protocol for signature by the five NPT-recognised nuclear-armed states). This would also be consistent with principles and obligations imposed under the Treaty for the Prohibition of Nuclear Weapons, which, under Article 1(g), prohibits Parties from allowing “any...deployment of any nuclear weapons...in its territory or at any place under its jurisdiction or control”.²⁸ The nine South Pacific states that have supported and signed the TPNW may be expected to either nationally, or regionally (through revision of the Rarotonga Treaty), impose bans on transit of such weapons through their territorial seas. It should also be noted that the International Committee of the Red Cross has interpreted the TPNW’s Article 1(e) prohibition of “assisting” anyone to engage in activities prohibited under the treaty as also prohibiting nuclear weapon transit where this would result in the deployment of nuclear weapons.²⁹

Conclusion

In conclusion, there are a number of general lessons and issues raised by the experience of South Pacific states in seeking to ban and/or regulate nuclear-armed ship vessel port calls and transit through their territorial waters.

One is the importance of civil society campaigns to educate the public and work closely with governments and political parties on the need to both reduce nuclear risks and create the political will to work towards wider global nuclear disarmament, on which the long-term future of the human project depends. Such campaigns were crucial in both New Zealand and several other Pacific island states in developing policies to ensure the total absence of nuclear weapons in their ports through bans on nuclear ship visits. Following the negotiation of the 2017 UN Treaty on the Prohibition of Nuclear Weapons, there has already been strong support within the region for this new measure to delegitimize and outlaw nuclear weapons. Even within Australia, the International Campaign Against Nuclear Weapons has now successfully secured Opposition Labor Party policy platform support for the TPNW. Regional support for the new treaty was evident in the New Zealand-convened December 2018 regional Pacific Conference on the TPNW, and makes it very likely that most regional states will continue to oppose nuclear-

²⁸ United Nations Office for Disarmament Affairs, *Treaty on the Prohibition of Nuclear Weapons Text*, United Nations, <http://disarmament.un.org/treaties/tpnw/text> (accessed 1/6/20).

²⁹ International Committee of the Red Cross, “View of the ICRC on interpretation of the Treaty on the Prohibition of Nuclear Weapons”, 24 April 2019, <https://www.icrc.org/en/document/view-icrc-interpretation-treaty-prohibition-nuclear-weapons>, cited in ICAN (Australia), *Choosing Humanity: Why Australia Must Join the Treaty on the Prohibition of Nuclear Weapons*, ICAN Australia, Melbourne, July 2019, pp.24-25.

armed vessel port calls in their region under their sovereign right as specified in Article 5 of the SPNFZ treaty.

However, while South Pacific countries have been able, within the compromise formulation of SPNFZ Article 5, to decide whether or not to accept nuclear-armed vessel port calls, the key objective of the zone treaty to prevent stationing of nuclear weapons does raise important issues as to whether the relevant clauses and definitions are adequate to prevent circumvention by one or more of the nuclear-armed states, both in relation to port calls and in relation to territorial waters transit. With potential redeployment of tactical nuclear weapons on board surface vessels in the context of a potential new Cold War, the issue is by no means merely hypothetical.

In the case of port calls, the SPNFZ Treaty, as discussed, does not impose any restriction in its definition of stationing or in Article 5 on the duration of port calls involving nuclear weapons. It is evident in the past that the United States has already engaged in de facto stationing, with nuclear-armed vessels being present in some Australian ports for up to 25% of the time. In the event of redeployment of nuclear-armed tactical weapons on board such vessels, this would certainly incur the direct risk of being targeted in any escalating conflict between major nuclear-armed states, and have much the same outcome as if nuclear weapons were to be in place all the time, something that is clearly prohibited under the treaty. This problem would seem to indicate that in the negotiation of new NWFZs or WMDFZs the relevant provisions should be drafted with particular attention to preventing de-facto forms of stationing, perhaps through much tighter time limits on particular visits, or through prohibiting such visits altogether.

In the case of territorial sea transit, the SPNFZ Treaty was silent on the obligations under the Law of the Sea. As the Treaty wording of Article 5 stands, it might be assumed that nuclear-armed states have an automatic right of innocent passage through zone territorial waters. This is far from being the case under UNCLOS definitions of what does and does not constitute innocent passage, and under UNCLOS obligations of coastal states to prevent passage that is not innocent. In new NWFZ or WMDFZ initiatives, or amendment of existing NWFZ treaties, it would seem important to explicitly include in any new or amended NWFZ treaty reference both to UNCLOS definitions of innocent passage and to UNCLOS requirements relating to passage of nuclear-armed vessels through coastal state territorial waters, including prior notice of transit, evidence that military exercises are not involved, and that there is no taking on board of any military device.

Beyond the territorial seas, it is also worth noting (although it has not been the focus of this paper) that the Rarotonga SPNFZ Treaty establishes an important and innovative precedent in prohibiting a particular category of nuclear weapon activity, nuclear testing, within high seas and EEZ areas lying within the designated boundaries of the zone. The SPNFZ boundaries encompass a vast expanse of ocean lying between the Equator and Latitude 60 degrees South (boundary of the Antarctic Treaty), and between the

Western side of Australia to Longitude 115 degrees East (boundary of the Tlatelolco Treaty), and thereby also includes French Polynesia. This high seas/EEZ nuclear test ban is achieved through the Rarotonga Treaty's Protocol 3, which requires the five NPT-recognised nuclear-weapon-states, France, US, UK, Russia and China, to undertake "*not to test any nuclear explosive device anywhere within the South Pacific Nuclear Free Zone*".³⁰

Protocol 3 reflected the widespread regional protests over health and environmental impacts of French, US and UK nuclear testing in the region. Concern over this testing was indeed one of the prime motivations in establishing the South Pacific NWFZ. Contrary to sceptics who questioned whether SPNFZ could ever succeed in securing binding agreements from nuclear weapon states to limit their nuclear activities on the high seas, the treaty has been successful in securing ratification of Protocol 3 by four out of the five NPT-recognised nuclear powers (France, UK, China and Russia), while the fifth, the US, has signed but not yet ratified this legally binding protocol. The ratification by France, which terminated its nuclear test program in French Polynesia in 1996, was a particularly significant success for the SPNFZ treaty.

The South Pacific NFZ would also seem to be an important precedent for showing how, even in high seas areas not directly under the control of regional states, and assuming sufficient political will, there are still ways in which regional states can move towards the complete absence of nuclear weapons within their region through NWFZ protocols that lock nuclear weapon states into relinquishing their nuclear weapon activities.

In the case of the EEZs and high seas regions falling within the designated boundaries of a NWFZ or WMDFZ, it would seem equally feasible for such zones to include a separate protocol under which nuclear-armed states voluntarily forgo their rights of nuclear-weapon transit through such areas even if they can legitimately claim innocent passage rights. Given the UNCLOS requirement that the "high seas shall be reserved for peaceful purposes", coupled with the advent of the UN TPNW Treaty declaration that any use of nuclear weapons is "contrary to international law applicable in armed conflict, in particular the principles and rules of international humanitarian law"³¹, it would seem difficult for any nuclear states to assert that its transit of such weapons, whether in territorial seas, EEZs or the high seas, could be considered "innocent", except, perhaps in the transport of nuclear weapons to be dismantled and destroyed under International Atomic Energy Agency (IAEA) supervision.

³⁰United Nations Office For Disarmament Affairs, Treaties Database, *South Pacific Nuclear Free Zone Treaty Protocol 3 text.*, http://disarmament.un.org/treaties/t/rarotonga_p3 (accessed 29/5/20).

³¹ United Nations Office for Disarmament Affairs, *Treaty on the Prohibition of Nuclear Weapons Text*, United Nations, <http://disarmament.un.org/treaties/t/tpnw/text> (accessed 1/6/20).

Statement at the informal on-line workshop on 8 July

Thank Amb. Bahous, ODA and other organizers of this on-line workshop on good practices and lessons learned. I am sure that it would be helpful in promoting the issue, including the goals and objectives of the 2019 conference.

I am grateful for inviting Blue Banner to share its views on issues related to NWFZs. Based on my paper I would like to make the following 3 points:

One. Mongolia's role.

Unlike the five established zones, Mongolia is considered as a state with a unique nuclear-weapon-free status. The P5 are not prepared to accept the notion of a single-State zone believing that doing so would set a precedent and discourage establishing regional (conventional) zones. Mongolia's frank talks with the P5 resulted in General Assembly resolution entitled "Mongolia's international security and nuclear-weapon-free status". In it the Assembly welcomed Mongolia's initiative and its efforts to consolidate it, but due to P5 position it is still shy from officially recognizing and welcoming the status. After years of talks and lengthy discussions, in 2012 the P5 signed a joint declaration pledging to respect the status and not to contribute to any act that would violate it. As to recognition of Mongolia as a single-State zone, the work is still in progress.

Two. Issue of single-State NWFZ. The 1975 study of NWFZs in all its aspects has underlined that NWFZs can be established not only by groups of states, entire continents or large geographical regions, but also by small groups of states and (I underline) **even individual countries**. International developments show that in the not so distant future other single-State zones might emerge. Hence it is time for the international community to consider the issue of single-State zones. Thus for example in South Asia, where militarily two most influential states have become de facto nuclear-weapon states thus promotion of a South Asian NWFZ has come to an abrupt halt. Now ideas are being flagged by some in the region to become a single-State zone either by legislating it in the Constitution or others by adopting special legislation on the issue. Beyond the South Asian region, one can look at other non-nuclear-weapon states that are not members of political-military alliances nor form part of established zones. There are at least a dozen states, including some small island states, that might choose to clearly declare their non-nuclear status and acquire from the P5 (where deemed needed) or regional powers commitments that their status would be respected and not violated. Such understandings would contribute to confidence and reduce further the areas of nuclear-weapon related activities at a time when vertical nuclear arms race is underway. The vertical arms race might "require" placing if not actual weapons then supporting structures such as surveillance, tracking or homing devices to serve the nuclear weapon system. In other words it is time, 45 years after the first study on NWFZs, that a second study to be undertaken that would reflect the rich experience accumulated and lessons learned. Special attention needs to be dedicated to the Middle East and Northeast

Asian regions. UNIDIR could undertake a study on the emerging single-State zone concept and practice.

Three. Establishing a NEA-NWFZ. Denuclearizing the Korean peninsula is becoming one of the urgent topics on nuclear security agenda. However, to be more effective a broader approach is needed, i.e. denuclearizing the entire Northeast Asian region, meaning establishing a zone consisting of the two Koreas and Japan, and the U.S., Russia and China providing security assurances to them, known as the 3+3 formula. Establishing such a zone is under discussion, though unofficially, mainly at the levels of think tanks and CSOs. The discussions have produced a list of useful ideas and proposals.

Blue Banner has undertaken a study of the issue and has come to a conclusion that a bold conceptual approach is needed to have the ball rolling, first and foremost from the U.S. and North Korea on the very concept of denuclearizing the peninsula. North Korea needs to make a decision in principle regarding the denuclearization based on its legitimate interests, and not only “work towards” that goal. On the other hand, the U.S. needs to review its nuclear umbrella doctrine, at least with respect to South Korea and Japan, since, if or when a zone is established, each ally separately and together with the U.S. would still have overwhelming conventional advantage. Such tailored ‘non-nuclear’ extended deterrence would allow to seriously take up the issue of establishing a zone. Unlike the JCPOA or the Budapest memoranda, the NWFZ security assurance would be legally binding so that no change of government or administration would allow renegeing on or violating the agreement. It would also be politically more acceptable if, within the framework of the zone, the U.S. provides security assurances to the DPRK, while Russia and China to its two allies as parties to the zone. The assurances provided by the three nuclear-weapon states would signal their serious cooperation and that the assurances would be credible for their recipients. Content wise, the zone treaty or a separate protocol to it could contain provisions on providing broad economic assistance to North Korea in the form of a mini Marshall Plan that would benefit all states or groups of states involved. At the same time it would strengthen confidence and the regional economic cooperation. This would result in a win-win outcome for all.

Dr. Dastan Yeleukenov
Director of the International Security Department of the
Ministry of Foreign Affairs of the Republic of Kazakhstan

Informal Workshop on Good Practices and Lessons Learned
with respect to the Existing Nuclear-Weapon-Free Zones

Online, 8 July 2020

Theme 4: How zones address relations with external States, including security assurances

Topic: How the Central Asian States navigated their partnerships with nuclear-weapon States while successfully obtaining security assurances

Distinguished colleagues,

It is rather challenging task to describe in short presentation how the Central Asian States navigated their partnerships with nuclear-weapon States while successfully obtaining security assurances, especially taking into account that one has put a full stop to this almost success story, indeed

A very important document is, of course, the Protocol to the Semipalatinsk Treaty signed by representatives of all five nuclear weapon states - China, France, Russia, the United Kingdom and the United States. The Protocol provides negative security assurances (NSA) to the Parties of the Treaty.

The process of consultations on the provision of NSA started long before the Semipalatinsk Treaty entered in force. Fortunately, we were able to reach a common understanding with nuclear weapon states regarding the interpretation of some provisions of the Treaty (Articles 3, 4 and 12).

It happened on 6 May 2014 during the Third Prepcom of the NPT Revcon 2015 when the high-ranking representatives of the nuclear-weapon states simultaneously signed the Protocol (although some of them did it with interpretative statements). It has been recognized as a significant diplomatic success for the Central Asian states and certainly for the “P5” states, which have shown goodwill and support for the non-proliferation effort of the region.

At the signing ceremony of the Protocol to the Semipalatinsk Treaty members of the “nuclear five” made the following interpretive statements.

Russia, expressing its full support for the Treaty, made a statement that it would not consider itself bound by the obligations stipulated by the Protocol in case of any attack on it and its allies or on the state with which it is bound by security obligations. Other reasons for a possible failure to abide may be the entry into ports, landing or transit to the airfields of the Central Asian republics of foreign military vessels and aircraft with nuclear weapons.

The United Kingdom and France made reservations that Articles 3 and 5 of the Central Asian Treaty (*prohibiting countries of the region from developing, producing, stockpiling and testing nuclear weapons*) must be strictly enforced, and

Article 12 (*which states that the 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*) should not become the basis for actions prohibited by Articles 3 and 5.

Obviously, the UK and France wanted to prevent the deployment of Russian nuclear weapons in the Central Asian region in accordance with the Collective Security Treaty (CST). After convincing them that Article 12 of the Semipalatinsk Treaty could not be interpreted as the opportunity for Russia to deploy nuclear weapons in Central Asia, which fundamentally contradicts the main goal of the Treaty - ensuring nuclear-free status of the region, all claims and concerns were removed.

China's principled position was to sign the Protocol without any reservations in order to emphasize its full support for the Central Asian nuclear-weapon-free zone.

So far, the United Kingdom, China, Russia and France have ratified the Protocol. We hope that the United States will complete this process as soon as possible (the Semipalatinsk Treaty, as well as the Pelindaba and Rarotonga Treaties, submitted by the US Administration to the US Senate for ratification).

Distinguished colleagues,

Nuclear-weapon-free zones remain one of the effective tools of disarmament and non-proliferation of weapons of mass destruction. Kazakhstan believes that the creation of new nuclear-free zones, including in the Middle East, in Northeast Asia and Europe, can expand the geography of a nuclear-weapon-free world. Nuclear-weapon-free-zones and nuclear-weapon-free states, as Mongolia is, are patches of security blanket thrown over our planet. It is perfect example of synergies between regional and global efforts towards creating a world free of nuclear weapons.

Kazakhstan is implementing the initiative of our First President Nursultan Nazarbayev to strengthen the interaction between all existing zones free of nuclear weapons. In this regard, we organized in cooperation with the UNODA a seminar of representatives of all existing zones in Nur-Sultan last year and donated the creation of the UN website on NWFZs with great assistance of UNODA. The essence of this work is to maintain a permanent mechanism for cooperation and coordination between the existing and newly created nuclear-weapon-free zones. This will help us in our common work with nuclear-weapon states, including for obtaining negative security assurances, and with international organizations and expert community.

Thank you for your attention.

Mongolia's experience in promoting the concept of single-State NWFZs
by Dr. Enkhsaikhan, Chairman, Blue Banner NGO

Workshop on Good Practices and Lessons Learned with Respect to the
Implementation of Treaties Establishing Nuclear-Weapon-Free Zones
on-line, 7-9 July 2020

Ulaanbaatar, Mongolia

July 6, 2020

A Nuclear Weapon-Free Zone (NWFZ) bans the manufacture, deployment and transit of nuclear weapons in a specific geographical region and expects the nuclear weapon states not to threaten or use nuclear weapons against such zones or states therein. Politically it is also an effective regional measure that promotes confidence and predictability in the region. NWFZs today cover 56% of the Earth's surface, 60% of the United Nations membership and 39% of the world's population. That is indeed a remarkable accomplishment which did not come easy.

So far the concept and practice of establishing such zones have been focusing on regional or group approach, i.e. established "on the basis of arrangements freely arrived at among the States of the region concerned". However, some states due to their geographical location or for some other valid reason, cannot form part of such regional (group) zones. Hence the issue of establishing single-State NWFZs has not yet been conceptually considered thus leaving more than a dozen states outside the NWFZ umbrella. 45 years have passed since the international community had undertaken a study on NWFZs. Now it is time to conduct a second study on NWFZs so as to not only to draw lessons, enrich the experience acquired in establishing NWFZs, but also to make sure that even individual states would not be left out as "blind spots" or "grey areas". Mongolia's experience in promoting its single-State NWFZ is still work in progress but could be instructive as a case study.

One of the regions that needs to be looked into as the next possible NWFZ is Northeast Asia where a conceptual approach is needed to start the ball rolling. To trigger a discussion of some of the issues involved Blue Banner shares its view on how it sees them.

A history lesson

All the five existing nuclear-weapon-free zones (NWFZs) had their own political and regional reasons to be established about which some of the previous panelists have pointed out in their papers. There is also plenty of literature available on the related issues. However, not much is known or written about Mongolia's reason for its 1992 proposal to establish a single-State NWFZ (SS-NWFZ) nor what has so far been achieved or yet to be achieved. There were two main reasons for the initiative: its geographical location and the cold war lesson.

Mongolia's policy has always been to support establishment of NWFZs as a regional arrangement that went beyond NPT obligationsⁱ and that the zones ensured that no nuclear weapon would be placed there under any circumstances or pretexts. Mongolia, former member of the Soviet block and ally of the Soviet Union, in 1967-1992 hosted the latter's military bases. In 1969, the Sino-Soviet ideological dispute turned into a military standoff which led to border clashes along some parts of their common eastern border and resulted in more than 1000 casualties. There was a risk of a possible Soviet preemptive surgical strike against Chinese nuclear facilities and installations with all the ensuing devastating military and political consequences. The Soviets at that time hinted about the possible surgical strike to their Warsaw pact allies and sounded possible U.S. reaction to such a strike. The U.S. response was that such Soviet action would lead to World War III. Had the U.S. indicated that it would remain "neutral" or "look the other way" to a possible Soviet strike that would surely have involved the U.S. as well, the 1962 Cuban missile crisis would have been just a footnote in history compared to the possible Sino-Soviet war. Mongolia, hosting Soviet bases nearest to the Chinese capital and its nuclear military infrastructure, would surely have been turned from the eastern "strategic bridge-head" of the Soviet bloc alliance to an actual battlefield of the two immediate nuclear "communist" rivals. The lesson learned by Mongolia from that incident was that hosting of foreign military bases, especially those that had dual use weapons meant that similar weapons of the countering sides would be trained on those bases and in case of conflict would have been used. Hence such a dangerous situation should never be allowed to repeat.

Mongolia proposes to establish a single-State NWFZ

With the withdrawal of Russian bases from its territory, Mongolia was no longer ally of a nuclear-weapon state and therefore had to address its security issues in the new circumstances based on its own national and broader regional interests. Mindful of the cold war lesson as well as Sino-Russian joint pledge not to use territories of bordering third states against each other, in September 1992 Mongolia declared its territory a NWFZ and pledged to work to have that status internationally guaranteed.ⁱⁱ The initiative was in line with its vital interests and the emerging post-cold war policy of non-nuclear-weapon states to actively promote reduction of regional tension and nuclear non-proliferation. When doing so Mongolia also bore in mind General Assembly resolution 3472 (XXX) regarding the concept of NWFZs and the understanding that "even individual states" may establish NWFZs. The goal in 1975, when the world was still divided into two competing military-political blocks, was to encourage establishment of zones "on the basis of arrangements freely arrived at among the States of the region concerned". Hence Article VII of the NPT read as follows: "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." Since there was no proposal to establish a SS-NWFZ, the issue was not pursued at that time at conceptual or practical levels. That of course did not rule out that such a zone could not be established in the future.

P5 position regarding SS-NWFZs

Mongolia's initiative was welcomed by the international community as a positive step contributing to enhancing regional stability and confidence-building. Even the P5 welcomed the initiative, though their support was limited to welcoming it only as a peace-loving declaration of intent of a United Nations member state, not more. They were not interested in giving full support to the initiative itself seeing it as potentially setting a precedent with unpredictable for them political and military consequences. Even the wide support of over 110 member states of the Non-Aligned Movement of the initiative declaring it as "a commendable contribution to regional stability and confidence building"ⁱⁱⁱ did not alter the P5 position on the issue. That is why in order to promote the issue more forcefully through multilateral diplomacy, in 1997 Mongolia proposed to United Nations Disarmament Commission, Assembly's subsidiary deliberative body, to consider the issue of establishing SS-NWFZs in parallel with the issue of guidelines of establishing new NWFZs "on the basis of arrangements freely arrived at among the States of the region concerned". To that end it submitted for the Commission's consideration a working paper on the issue^{iv} for the Commission's consideration.

Despite Mongolia's efforts and the growing international support of the initiative by the non-nuclear-weapon states, as a result of the uncompromising stance of the P5 and application of the rule of consensus when adopting the guidelines, its final text did not contain any reference to the concept or practice of single-State zones. However, on the insistence of Mongolia, a footnote to the guidelines mentioned Mongolia's initiative.^v At the meeting when the guideline was adopted in the Commission, Mongolia expressed the hope that with the passage of time the footnote would serve as a foothold to revisit the issue. In the meantime due to P5 negative position, Mongolia decided to demonstrate the possibility of establishing such a zone with its practical action and growing international understanding and support.

Development of NWFZ concept

Based on the experience of establishing the NWFZ in Latin America and the Caribbean, and in fact encouraged by it, in 1974 United Nations General Assembly has decided to undertake a comprehensive study of the question of NWFZs in all its aspects so as to promote establishment of such zones in various parts of the world. For that purpose in 1975 Ad Hoc Group of Qualified Governmental Experts that was established submitted its report on the Assembly.

The report underlined that "obligations relating to the establishment of nuclear-weapon-free zones may be assumed not only by groups of states, including entire continents or large geographical regions, but also by small groups of states and (underlined by the author)."^{vi} Having considered the report, the General Assembly in part A of its resolution 3472 (XXX)^{vii} has expressed appreciation to the Governmental experts for the study and invited all Governments, the IAEA and other international organizations for their comments and asked the Secretary-

General to submit a report thereon. In its part B of the resolution, the Assembly has agreed to the following:

I Definition of the concept of a nuclear-weapon-free zone

1. A “nuclear-weapon-free zone” shall, as a general rule, be deemed to be any zone , recognized as such by the General Assembly of the United Nations, which any group of States, in the free exercise of their sovereignty, has established by virtue of a treaty or convention whereby:
 - a) The statute of total absence of nuclear weapons to which the zone shall be subject, including the procedures for the delimitation of the zone, is defined;
 - b) An international system of verification and control is established to guarantee compliance with the obligations deriving from that statute.

II. Definition of the principal obligations of the nuclear-weapon States towards nuclear-weapon-free zones and towards the States included therein

2. In every case of a nuclear-weapon-free zone that has been recognized as such by the General Assembly, all nuclear-weapon States shall undertake or reaffirm, in a solemn international instrument having full legally binding force, such as a treaty, a convention or a protocol, the following obligations:
 - a) To respect in all its parts the statute of total absence of nuclear weapons defined in the treaty or convention which serves as the constitutive instrument of the zone;
 - b) To refrain from contributing in any way to the performance in the territories forming part of the zone of acts which involve a violation of the aforesaid treaty or convention;
 - c) To refrain from using or threatening to use nuclear weapons against the States included in the zone.

III. Scope of the definitions

3. The above definitions in no way impair the resolutions which the General Assembly has adopted or may adopt with regard to specific cases of nuclear-weapon-free zones nor the rights emanating for the Member States from such resolutions.”

The definition reflected agreement of states in some areas and disagreement on others. Since there were disagreements on some aspects of the definition, the resolution was adopted by a vote of 82-10-36. Thus some states registered reservations regarding the definition considering it as

an attempt to impose a set of universal guidelines on states wishing to form such zones or requiring that zones conform to an established form or pattern. Views were also expressed that NWFZs should not jeopardize the legitimate security interest of states and that the definition needed to reflect the wider security implications and the prevailing political environment. Despite the mandate given to the Ad Hoc group, the study did not focus on “all aspects” of NWFZs but only on establishing “regional” (i.e. group) zones since at that time that was perceived to be the main viable form of zones.

Encouraged by the progress in establishing of NWFZs in Southeast Asia and on the African continent, in January 1997 United Nations General Assembly has asked the Disarmament Commission to take up the issue of “Establishment of NWFZs on the basis of arrangements freely arrived at among the States of the region concerned” (i.e. reflecting the regional or group approach to NWFZs) so as to help promote establishment of additional zones. In 1997-99 the Commission has considered the issue and presented its outcome to the Assembly. Based on the report the Assembly adopted resolution A/RES/54/56 in which it endorsed the principle and guidelines of establishing NWFZs “on the basis of arrangements freely arrived at among the States of the region concerned”^{viii}. The guideline has pointed out that each NWFZ is a product of the specific circumstances of the region concerned and highlights the diversity of situation in different regions, and that establishment of NWFZs is a dynamic process and that the experience of established zones clearly demonstrates that they do not have “static structures”. Reflecting the different positions of states or groups of states, the guidelines also underlined that it can be regarded as “non-exhaustive list of generally accepted observations in the current stage of the development of NWFZs and were based on current practices and available experiences only.” All these underline once again that the definition was work still in progress.

The initiative leads to a special status

Mongolia’s goal was to acquire security assurances of the P5, including of its immediate neighbors Russia and China. Therefore it worked to explain to them its goal and why it would benefit the P5 as well. The P5 informed Mongolia that they had nothing against the initiative per se however they were against setting a precedent whereby other individual states would be encouraged to declare their territories single-State NWFZs and expect P5 security assurances. A long search for mutually acceptable resolution of the issue resulted in a temporary compromise whereby Mongolia would not insist on single-State zone concept, while the P5 would agree to Mongolia’s special status, continued consideration of the issue in General Assembly and address Mongolia’s broader security concerns. Thus in 1998 General Assembly adopted resolution 53/77 D entitled “Mongolia’s international security and nuclear-weapon-free status”^{ix} in which the Assembly welcomed Mongolia’s declaration of its nuclear-weapon-free status and expressed conviction that internationally recognized status of Mongolia would contribute to enhancing stability and confidence-building in the [Northeast Asian] region.^x

In implementation of the resolution, in February 2000 Mongolia adopted a national legislation on the issue. On their part, in October of that year the P5 have made a joint statement providing security assurances to Mongolia in connection with the status,^{xi} in which they reaffirmed that their commitments reflected in Security Council resolution 984 (1995) of 11 April 1995 to provide positive and negative security assurances to the non-nuclear-weapon states parties to the NPT applied to Mongolia. Though Mongolia officially welcomed the P5 joint statement as an important step in institutionalizing the status,^{xii} unofficially it complained both about its form and content. Content-wise it said that the statement had been made in the spirit of the cold war period and did not reflect the real situation on the ground or Mongolia's relations with each one of them. As to the form, it said that it was a political statement and not a legally binding commitment that are provided to NWFZs. After almost decade of on-again and off-again talks on the issue, it was agreed that if Mongolia would not press for conclusion of an international treaty providing security assurances to it, the P5 could agree to sign a joint declaration affirming their intent to respect the status and not to contribute to any act that would violate it. With that understanding in September 2012 the P5 and Mongolia signed parallel declarations^{xiii} as a result its quest for conclusion of a multilateral international treaty providing security assurances came to an end.

Work still in progress ...

However, its quest for other forms of security assurances based on part III of General Assembly resolution 3472 (XXX) that declared that resolutions “which the General Assembly had adopted or may adopt with regard to specific cases of nuclear-weapon-free zones nor the rights emanating for the Member States from such resolutions”. Since 1998 the General Assembly has adopted without vote 11 resolutions on the issue welcoming its declaration and efforts. This fact itself already says a lot. Since 2010 the P5 have been co-sponsoring these resolutions that express the conviction that the internationally recognized status of Mongolia would contribute to enhancing stability and confidence-building in the [Northeast Asian] region. Yet the P5 is still reluctant to formally “welcome the status” in the resolution on the issue.

Is Mongolia's case an exceptional one ?

Mongolia's case cannot be considered as an exceptional one, even by the definition given by the General Assembly in 1975 or the guidelines adopted in 1999. Contemporary international relations are based on the sacred principles of sovereign equality of states. It is the duty of the P5 that are also Permanent Members of the Security Council that according to UN Charter of the United Nations is conferred with the “primary responsibility for the maintenance of international peace and security”. There are other cases that could be considered as serving the interests of not only of an individual country but the region as a whole. Take the example of South Asia. Pakistan proposed to establish a NWFZ in South Asia as far back as in 1972. The issue acquired political importance especially after India's 1974 nuclear testing. Since then the issue was constantly on the Assembly's agenda. With the 1998 nuclear weapon tests by India and Pakistan

when they crossed the nuclear Rubicon, both have become de facto nuclear-weapon states. With that the proposal of establishing of a NWFZ in South Asia came to a halt since the region's two militarily most significant states had acquired nuclear weapons. Judging by their past relations these two states have had a number of wars, conflicts and border skirmishes. Since 1998 their nuclear arsenals have rapidly increased. No wonder that when studies were undertaken on humanitarian consequences of nuclear weapons, the most cited example of possible use of nuclear weapons was between India and Pakistan due to various reasons, including increase in tension over the disputed territories in Kashmir, a possible terrorist attack and that both states are bordering on each other so time for decision making on the possible use of such weapons is almost non-existent.

Bearing the above in mind, ideas are being flagged to have Nepal declare itself a SS-NWFZ declaring reflecting that status the country's Constitution.^{xiv} A similar idea of establishing a single-State zone or a limited NWFZ is flagged in Sri Lanka.^{xv} There is also an idea to declare its SS-NWFZ status and link it with the Southeast Asian NWFZ. In Bangladesh a draft bill to establish there a NWFZ had been submitted to its parliament. The draft legislation makes reference to principles and goals of the United Nations Charter, the NPT and other international instruments aimed at nuclear disarmament, the 1996 ICJ Advisory Opinion, UNSC resolution 1540 and other relevant international documents. The draft also includes a provision on banning investment of government funds in ventures connected with manufacturing of nuclear weapons or their delivery vehicles. According to the draft the violators of the legislation would pay compensation for damages *as per* "polluter pays" principle.^{xvi}

Beyond the South Asian region, one can to look at other non-nuclear-weapon states that are not members of political-military alliances nor form part of established NWFZs. There are a dozen states, including some island states in the vast Pacific region that might chose to clearly define their nuclear-weapon-free status (not necessarily as a single-State NWFZ) and acquire from the nuclear-weapon states (where needed) or regional powers pledges that they would respect the status and would not contribute to any act that would violate it. Such understanding that practically reduces further the areas of nuclear-weapon related activities is especially important at a time when a new vertical nuclear arms race is underway that might "require" placing of not actual nuclear weapons but of supporting structures such as surveillance, tracking or homing devices, etc.to serve the nuclear weapon systems.

Land-locked Mongolia borders on two nuclear-weapon states that are known in history for their adversarial relations. They also have adversarial relations with other nuclear weapon states, especially the U.S. In such a case Mongolia, as a state with internationally recognized nuclear-weapon-free status, needs a more credible security assurance than a declaration of intent that it will not be pressured under any circumstances to violate its status and thus harm the legitimate interests of others and regional stability. Mongolia's policy is clear and is widely recognized as contributing to regional confidence and predictability. On the other hand, other states or territories that are not in such an unenviable location as Mongolia, may not to require legally

based security assurances from the P5 or regional powers. In such a case the goal would be to ensure that nuclear weapons or upholding such weapon infrastructures are kept out of the respective states or territories, contributing thus to greater regional confidence and stability. In that sense they would not serve as “blind spots” or “grey areas” for creeping nuclearization and instead would become part of an inclusive nuclear non-proliferation world governance.

Another issue that could contribute to the reduction of nuclear tension and promoting greater confidence is to have political-military alliances reduce reliance on nuclear weapons or even forego the nuclear option for which demand is increasing. Thus following the examples of four members of the NATO alliance, other members can forego stationing of nuclear weapons in peacetime, while those five that host nuclear weapons could work for their gradual reduction and total withdrawal. That would be in the spirit of the NPT and mark a concrete contribution to moving the world to a nuclear-weapon-free world through the alliance structures. These are not easy tasks but given common sense and rising expectations they are doable.

Establishing a NEA-NWFZ

The issue of denuclearizing the Korean peninsula is one of the hot topics on security and nuclear weapons agenda. However, to be more effective a broader approach to the issue seems to be needed, i.e. denuclearizing the entire Northeast Asian region. That means establishing a NWFZ consisting of the two Koreas and Japan, with the U.S., Russia and China providing security assurances to them, known as the 3+3 formula. Establishing a NEA-NWFZ has extensively been discussed for the past two decades, though mainly on an unofficial level, mainly at the levels of think tanks and civil society organizations. These discussions have produced a list of useful ideas and proposals. The most recent ones are a comprehensive approach to the issue proposed by the Nautilus Institute^{xvii} which was modified and further developed by the RECNA^{xviii}. Panel on Peace and Security of Northeast Asia (PSNA) established in 2016 is providing a venue for experts, academics and civil society organizations for frank exchange of views and ideas on the issue. In 2013 UN Advisory board on Disarmament matters recommended to UN Secretary-General at that time to “take action towards establishing NEA-NWFZ”, however no tangible action has been undertaken.

There is a saying in Mongolia that a duck is calm when the lake is calm. In other words the country’s interests are best served when the regional security environment is stable. Hence in 2013 at the UN High-Level meeting on disarmament Mongolia has stated that the country was “prepared, on an informal basis, to work with the countries of Northeast Asia to see if and how a NWFZ could be established in the region. Though ... that would not be easy and would require courage, political will and perseverance, it is doable”^{xix}. A number of informal meetings of civil society organizations, including on the sidelines of NPT prepcoms and revcons have been held, however no concrete result has yet been registered.

Blue Banner, Mongolian NGO committed to promoting the goals of non-proliferation and nuclear disarmament, has undertaken an independent study of the issue (called Plan B) and has come to a conclusion that a bold conceptual approach is needed, first and foremost from the U.S. and the DPRK to start discussing more seriously the issue of denuclearizing the Korean peninsula. The DPRK needs to make a decision in principle to denuclearize under certain conditions and not only work “towards” that goal. On the other hand, the U.S. needs to review its nuclear umbrella doctrine at least with respect to South Korea and Japan since they separately and together with the U.S. have overwhelming conventional advantage. Extended deterrence that *excludes* nuclear weapons would not be against the basic bilateral security commitments of the US to Japan and the Republic of Korea. Such tailored ‘non-nuclear’ extended deterrence would allow to consider the issue of establishing a NEA-NWFZ. Unlike the JCPOA^{xx} or the Budapest memoranda^{xxi}, NWFZ security assurance would be legally binding so that no change of government or administration would allow renegeing on or violating the agreement. It would also be logical and politically more acceptable if the U.S. provides security assurances to the DPRK while at the same time the other two nuclear-weapons states i.e. Russia and China would provide security assurances to the two U.S. allies as parties to NEA-NWFZ. The security assurances provided by the U.S., China and Russia would signal that their assurances would equally be credible for their recipients. Content wise, the NEA-NWFZ treaty could also contain provisions on providing broad economic assistance to the DPRK in the form of a mini Marshall Plan that would benefit all states or groups of states involved and would strengthen confidence and the economic basis of regional cooperation. Blue Banner believes that it would result in a win-win outcome for all.

Conclusion. All the above mentioned suggestions as well as the wealth of experience accumulated in establishing the five traditional NWFZs in the past 45 years indicate that it is time to undertake the second comprehensive study of the question of NWFZs this time truly “in all its aspects”. The study should make sure that the security assurance provided by the nuclear-weapon states are more credible, that the reservations and interpretative declarations that are made by the P5 when signing protocols to NWFZs are in line with the object and purpose of respective zones and meant to assure the states parties to NWFZs. The study should make sure that non-traditional (meaning the non-group NWFZs) cases are given serious consideration and thus making sure that no “blind spots” or “grey areas” are left in promoting a truly inclusive nuclear-weapon-free world. The issue of establishing NEA-NWFZ as well as establishing Middle East as a zone free of nuclear weapons and all other weapons of mass destruction need to be given special considerations, especially the political challenges that hinder progress.

ⁱ Meaning prohibition of placing nuclear weapons on the territory of a NWFZ under any pretext

ⁱⁱ See UNGA document A/47/PV.13 of 6 October 1992

ⁱⁱⁱ Para. 86 of the Final document of the IX Summit held in Cartagena in October 1995

^{iv} See document A/CN.10/195 of 22 April 1997

^v Footnote “g” of the guidelines read as follows: “Owing to its unique geographical circumstances, Mongolia had declared its nuclear-weapon-free status in order to promote its security. This status was welcomed by the General Assembly in its consensus resolution 53/77 D of 4 December.”

^{vi} See UNGA, 30th Session. Official Records. Document No. 27A (A/10027/add.1, p.31)

^{vii} See UNGA resolution 3472 (XXX) adopted on 11 December 1975

^{viii} See document A/51/182/Rev.1, pp. 71-79

^{ix} See UN document A/RES/53/77 D of December 4, 1998

^x More about this issue see: Enkhsaikhan Jargalsaikhan. A Model for an Innovative Approach to Nuclear-Weapon-Free Zones. *The Non-Proliferation Review*, Vol. 12, 2001 – Issue 1, also Enkhsaikhan Jargalsaikhan. Converting a Political Goal to Reality: The First Steps to Materialize Mongolia’s nuclear-weapon-free status. *The Mongolian Journal of International Affairs*. Vol. 17, 2012

^{xi} See UN document A/55/530 - S/2000/1052 of 31 October 2000

^{xii} See UN document A/55/491 - S/2000/994 of 17 October 2000

^{xiii} See UN documents A/67/393 – S/2012/721 of 26 September 2012 and A/67/517 – S/2012/760 of 15 October 2012

^{xiv} Nepal As a Single-State NWFZ. Achin Vanaik. see www.article-9.org

^{xv} <https://www.dailynews.lk/2018/07/31/features/158367/revisiting-nuclear-weapon%E2%80%93free-zones-south-asia>

^{xvi} https://www.worldfuturecouncil.org/wp-content/uploads/2016/02/WFC_2012_National_Legislative_Measures_to_Further_Nuclear_Abolition.pdf

^{xvii} The Nautilus Institute for Security and Sustainability and Woodrow Wilson International Center for Scholars, USA

^{xviii} Research Center for Nuclear Weapons Abolition, Nagasaki University, Japan

^{xix} See UN document A/68/PV.11 of 26 September 2013 (p.6)

^{xx} Joint Comprehensive Plan of Action of 2015, also known as the Iran nuclear deal

^{xxi} International documents signed by the U.S., Russia and the United Kingdom providing political security assurances to Ukraine, Byelorussia and Kazakhstan in connection with the latter three transferring Soviet nuclear weapons on their territories to the Russian Federation and acceding to the NPT.

**“The contribution of bilateral arrangements to regional and
global peace and security objectives”**

Marco Marzo

ABACC – Brazilian-Argentine Agency for Accounting and Control of Nuclear Materials

This year marks the 30th anniversary of the Foz do Iguazu Summit Declaration. This Declaration was made by the presidents of Argentina and Brazil on November 30, 1990. It constituted a milestone in the process of rapprochement between the two countries, which had begun in the mid-1980. This achievement was the fruit of a stepwise process of confidence building that included declarations, cooperation arrangements, technical visits and joint meetings.

Through this Declaration the two countries decided: (a) to approve the Common System of Accounting and Control of Nuclear Materials; (b) to establish a system of mutual safeguards inspections, as provided in that Common System; (c) to undertake negotiations with the International Atomic Energy Agency to conclude a joint comprehensive safeguards agreement based on the Common System; and (d) once the comprehensive safeguards agreement with the IAEA is concluded, to fully put into force the Treaty for the Prohibition of Nuclear Weapons in Latin America, the so-called Treaty of Tlatelolco.

Almost eight months later, in July 1991, the Agreement between the Republic of Argentina and the Federative Republic of Brazil for the Exclusive Peaceful Use of Nuclear Energy - the Bilateral Agreement - was signed in Guadalajara, Mexico. This Agreement entered into force in December 1991.

The Bilateral Agreement created the Brazilian-Argentine Agency for Accounting and Control of Nuclear Materials (ABACC) to administer the Common System for Accounting and Control of Nuclear Materials.

ABACC's mission is to verify that all nuclear materials in all nuclear activities in the two countries are used for exclusively peaceful purposes, or in other words, to ensure that both countries are complying with the terms and commitments of the Bilateral Agreement.

The Common System for Accounting and Control of Nuclear Materials goes far beyond the regime of inspections and other safeguards verification activities implemented by ABACC. The General Procedures of the Common System define, with force of law, from the

safeguards standpoint, the rights and obligations of the Operator of each nuclear facility, and of the National Authorities of the two countries.

The Bilateral Agreement reaffirms the principles of the Treaty of Tlatelolco. Thus, in applying its safeguards, ABACC is also ensuring that the two countries are fulfilling their commitments under the Treaty of Tlatelolco. Moreover, in the case of a critical non-compliance with the terms of the Bilateral Agreement by one Party, the other Party is authorized to notify it to the UN Secretary-General, and the Secretary-General of the Organization of American States.

Furthermore, it is worth noting that ABACC and the Agency for the Prohibition of Nuclear Weapons in Latin America (OPANAL) signed a cooperation agreement in May 1993, which set up the basis for consultations between the two organizations. In this context, ABACC provides to OPANAL a semi-annual report with its safeguards' conclusion.

The entry into force of the Bilateral Agreement represented a significant historical fact, unique in the world, which marks the deepening of cooperation between two countries that for many years were seen as participants in a nuclear race.

The mutual trust and confidence established by Argentina and Brazil through the Bilateral Agreement in a sensitive area such as nuclear energy made it possible that, one year later, the Common Market between the two countries, Paraguay and Uruguay, called Mercosur, was created. As a result, trade between the two countries went from US\$1.5 billion in 1991 to about US\$ 30 billion in recent years. The mutual trust between the two countries was reflected not only in the commercial area, but also in the political, diplomatic and cultural sectors. In summary, this unique approach strengthens national, regional and international security.

In its nearly 30 years of activity, ABACC has carried out about 3,000 safeguards inspections in nuclear facilities of both countries. During this period, the two countries provided around US\$150 million to support ABACC. Currently, ABACC verifies about 3500 Significant Quantities of nuclear material in 77 nuclear facilities in both countries. ABACC has a permanent staff of 12 technical officers (6 Argentineans and 6 Brazilians) and 10 administrative people. In addition, ABACC has 101 inspectors nominated by the countries, who are summoned for inspection missions. The inspection effort is in the order of 1000 inspectors-day, which means that, on average, three ABACC inspectors are daily involved in an inspection mission. The current budget of ABACC is US\$ 4.5 million, divided equally between the two countries.

The success of the ABACC's model was only possible with the continuous political and technical support that the two countries provided to ABACC. It should be noted that this support has been maintained over the last 30 years throughout six Argentinean administrations and six Brazilian administrations with different political orientations. That reflects the long-standing commitment of the countries to non-proliferation and the peaceful use of nuclear energy.

The Bilateral Agreement and, in particular, the implementation of the Common System, paved the way to the negotiation and entry into force of a comprehensive safeguards agreement with the IAEA. In fact, the “Agreement between the Republic of Argentina, the Federative Republic of Brazil, the Brazilian-Argentine Agency for Accounting and Control of Nuclear Materials and the International Atomic Energy Agency for the Application of Safeguards for the Application of Safeguards” was signed as early as in December 1991 and entered into force in March 1994. It is worth noting that in applying their respective safeguards, ABACC and the IAEA should each reach independent conclusions and, at same time, avoid duplication of activities. This requires continuous coordination of activities between the two organizations.

In conclusion, the bilateral arrangement between Argentina and Brazil, which ABACC and its safeguards system represent, is a relevant contribution to the nuclear non-proliferation regime at regional and international levels. The existence of ABACC within the context of the Tlatelolco Nuclear Weapons Free Zone reinforces the nuclear non-proliferation architecture of a region of peace. The process and the lessons learnt from this experience may serve as an inspiration for other regions in the world.

Furthermore, the permanent and unequivocal commitment of Argentina and Brazil with relevant nuclear activities to the exclusively peaceful use of nuclear energy and the successful implementation of the safeguards system that ABACC administers serve to promote the cooperation in the nuclear field and beyond this technology and the strengthening of ties of friendship and mutual confidence. It generates trust between the two nations that is a key element to strengthen national, regional and international security.



African Commission on Nuclear Energy

Unit B2003, Corobay Corner Building, 169 Corobay Avenue, Waterkloof Glen 0010
Pretoria, South Africa. Email info@afcone.org Tel: **0027 (0)87 096 0175**

INFORMAL WORKSHOP ON GOOD PRACTICES AND LESSONS LEARNED
WITH RESPECT TO THE EXISTING NUCLEAR-WEAPON-FREE ZONES
7 to 9 July 2020 (Virtual Meeting/ UNODA)

Theme 5: How zones address arrangements for regional control and cooperation

Mr. Messaoud Baaliouamer,

Executive Secretary, African Commission on Nuclear Energy

The role of regional organizations in facilitating peaceful uses of nuclear energy

1. Introduction:

The African Union Commission (AUC) is the Depository of African Nuclear Weapon Free Zone Treaty, also known as the Treaty of Pelindaba.

The African Nuclear-Weapon-Free Zone Treaty prohibits the research, development, manufacture, stockpiling, acquisition, testing, possession, control or stationing of nuclear weapons, as well as the dumping of radioactive wastes.

The Treaty also prohibits any attack against nuclear installations in the zone by Treaty parties and requires them to maintain the highest standards of physical protection of nuclear material, facilities and equipment, which are to be used exclusively for peaceful purposes.

Nothing in the Treaty shall be interpreted as to prevent the use of nuclear sciences and technology for peaceful purposes. As part of their efforts to strengthen their security, stability and development, the Parties undertake to promote individually and collectively the use of nuclear science and technology for economic and social development. To this end they undertake to establish and strengthen mechanisms for cooperation at the bilateral, sub regional and regional levels.

The Treaty requires all parties to apply full-scope International Atomic Energy Agency safeguards to all their peaceful nuclear activities.

Nuclear disarmament, nuclear non-proliferation and the peaceful uses of nuclear energy are therefore firmly entrenched in the Pelindaba Treaty.

2. Pelindaba Treaty Membership Status:

The list of the 41 Countries which have ratified the Pelindaba Treaty is as follow:

Algeria, Angola, Benin, Botswana, Burkina Faso, Burundi, Cameroon, Chad, Comoros, Republic of Congo, Cote d'Ivoire, Equatorial Guinea, Ethiopia, Gabon, Gambia, Ghana, Guinea, Guinea Bissau, Kenya, Lesotho, Libya, Madagascar, Mali, Malawi, Mauritania, Mauritius, Mozambique, Namibia, Niger, Nigeria, Rwanda, Sahrawi Arab Democratic Republic, Senegal, Seychelles, South Africa, Swaziland, Tanzania, Togo, Tunisia, Zambia, Zimbabwe.



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Unit B2003, Corobay Corner Building, 169 Corobay Avenue, Waterkloof Glen 0010
Pretoria, South Africa. Email info@afcone.org Tel: **0027 (0)87 096 0175**

The Current Membership Status in Figures is as follow:

- Total of African Union Members: 55
- Number of signatures: 52
- Number of ratifications: 41

(Ref: https://au.int/sites/default/files/treaties/37288-sl-the_african_nuclear-weapon-free_zone_treaty_the_treaty_of_pelindaba_3.pdf)

3. Status of the 3 Protocols to the Pelindaba Treaty:

The Treaty has three Protocols:

Under Protocol I, the Parties undertake not to use or threaten to use a nuclear explosive device against Any Party to the Treaty; or any territory within the African nuclear-weapon-free zone for which a State that has become a Party to Protocol III is internationally responsible as defined in annex I.

Under Protocol II, the Parties undertake not to test or assist or encourage the testing of any nuclear explosive device anywhere within the African nuclear-weapon-free zone.

Under Protocol III, the Parties undertake to apply, in respect of the territories for which it is de jure or de facto internationally responsible situated within the African nuclear-weapon-free zone, the provisions contained in articles 3, 4, 5, 6, 7, 8, 9 and 10 of the Treaty and to ensure the application of safeguards specified in annex II of the Treaty.

- ✓ Protocols I, II and III of the Treaty of Pelindaba were signed the same day, 11 April, 1996, by France, while the United Kingdom of Great Britain and Northern Ireland, China, and the United States of America signed only Protocols I and II.
- ✓ The Russian Federation signed Protocols I and II on 5 November 1996.
- ✓ France has ratified Protocols I, II and III.
- ✓ China, the United Kingdom and the Russian Federation have ratified Protocols I and II.
- ✓ Spain has neither signed nor ratified Protocol III of the Treaty.

(Ref: https://au.int/sites/default/files/treaties/37288-sl-the_african_nuclear-weapon-free_zone_treaty_the_treaty_of_pelindaba_3.pdf)

4. Important highlights of the genesis of the ANWFZ Treaty:

The signature of the Pelindaba Treaty culminates a 32-year quest for a nuclear free Africa. In this context, the entry into force of the Treaty on the Nuclear-Weapon-Free Zone in Africa, the Pelindaba Treaty, on 15 July 2009, is the realization of the Declaration on the Denuclearization of Africa, adopted by the First Ordinary Session of the Assembly of Heads of State and Government of the then Organization of African Unity (OAU), held from 17-21 July 1964, in Cairo, Egypt.

With the support of the United Nations, the OAU held meetings of experts in 1991 and 1992 to examine the modalities and elements for the preparation and implementation of a convention or treaty on the denuclearisation of Africa. At these expert meetings observers from other nuclear-weapon-free zones, notably the Treaty of Tlatelolco and Treaty of Rarotonga, as well as representatives from the IAEA provided valuable contributions by sharing their experiences.



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The work of these experts in considering issues such as the scope of territorial application, scope of the treaty, peaceful uses of nuclear energy, verification and institutional arrangements, provided a firm basis upon which the formal negotiations and subsequent drafting of the Pelindaba Treaty took place from 1993 until 1995.

Although the experiences of other nuclear-weapon-free zone treaties provided a valuable insight into how their respective treaties were negotiated, no such treaty is merely a copy of another, as region-specific security interests and concerns have to be taken into account.

5. **Mechanisms of Coordination:**

For the purpose of ensuring compliance with their undertakings under this Treaty, the Parties agree to establish the **African Commission on Nuclear Energy** (hereinafter referred to as the Commission or/and AFCONe). The Commission is responsible inter alia for:

- (a) Collating the reports and the exchange of information,
- (b) Arranging consultations, as well as convening conferences of Parties on the concurrence of simple majority of States Parties on any matter arising from the implementation of the Treaty,
- (c) Reviewing the application to peaceful nuclear activities of safeguards by IAEA,
- (d) Bringing into effect the complaints procedure;
- (e) Encouraging regional and sub-regional programmes for cooperation in the peaceful uses of nuclear science and technology;
- (f) Promoting international cooperation with extra-zonal States for the peaceful uses of nuclear science and technology.

AFCONe, as the African Nuclear-Weapon-Free-Zone Treaty body, is the AU Specialised Agency for nuclear activities on the continent. AFCONe comprises 12 States Parties that serve for three-year terms and report to the Conference of States Parties (CSP).

AFCONe is served by a Secretariat based in Pretoria, South Africa, and headed by an Executive Secretary.

6. **AFCONe Current priorities:**

The AFCONe Strategy adopted by the 4th Conference of States Parties in 2018 is as follow:

- Priority given to the most pressing needs of the States Parties: Peaceful nuclear applications, Radioactive waste management, Safety, Security and Safeguards,
- Capacity building in Africa: Establish a critical mass of specialized teams and African experts, in each of the fields of activities related to the provisions of the Pelindaba Treaty,
- Make Full Use of the infrastructure, already available in Africa (Research Centers, Institutes and Universities, Agencies, Institutions), recognized (at regional and/or international level) for their Excellence,
- Optimal Synergy and Maximum Cooperation with all Regional and International Partners considering the parameters: convergence of objectives, complementarity of activities (avoiding duplication) and optimization of human and financial resources.



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AFCONE Organisation:

The AFCONE is subdivided in 4 Thematic Working Groups (TWGs):

1. Scientific Nuclear Applications,
2. National Compliance and Verification (National Reports),
3. Safety, Security, Safeguards, Radioactive Wastes,
4. International Cooperation & Partnerships (Resources Mobilization)

AFCONE will be supported by African Resources specialised in Fields of Activities covering the Pelindaba Treaty Provisions including Nuclear Safeguards, Nuclear Safety, Nuclear Security and Non-Proliferation & Disarmament:

1. Specialised Experts and Teams from Africa,
2. Regional Collaborating/ Resource Centres

AFCONE works to promote and enhance the peaceful application of nuclear science and technology for socio-economic development, and to foster regional and international cooperation in peaceful applications as well as nuclear disarmament and non-proliferation. (See AFCONE Website: <https://www.afcone.org>)

7. Internal and external Working Environment of AFCONE Secretariat.

The work of AFCONE Secretariat will continue to be affected by the regional development landscape and imperatives which are driving the development agenda of Africa.

Being a African Union Treaty Body and Specialized Agency, AFCONE is aligning its strategic goals and enablers with those adopted by the African Union Commission (AUC), and should remain sensitive and alert to any existing and future regional initiatives and transformation which may influence or affect the way it delivers on its mandate.

AFCONE's Vision, Mission and Core Values stem from and aligned with those of the African Union Commission which is the Depository of the Pelindaba Treaty. The 41 State Parties (52 Signatories) to the Treaty represent the majority of the 55 AU Member States, who have adopted, following large consultations with all Stakeholder, the AU Strategies, Policies and development Agendas.

African Union Vision Statement:

The Vision of the African Union is that of an Africa Integrated, Prosperous and Peaceful, an Africa Driven by its own Citizens, a Dynamic Force in the Global arena

AFCONE Vision Statement:

To Be the African Organization Leader Promoting Nuclear Disarmament, Preventing Nuclear Proliferation and Coordinating & Developing All the Efforts, including of Cooperation, at the Continental Level, towards Safe and Secure Nuclear Science & Technology Programs for Peaceful Applications targeting Sustainable Social and Economic Development Charted by the AU Agenda 2063.



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The adoption by the AUC of the agenda 2063, coupled with the commitment made by all African countries to the universal development agenda 2030 and associated SDGs, brings along serious regional challenges and opportunities of critical importance to the work of AFCONE.

Another source of challenges but also of profitable opportunities for **Nuclear Science & Technology** is the United Nations Framework Convention on Climate Change, particularly since the adoption in 2015 of the Paris Agreement.

In the other hand, both the AUC 2063 Agenda and the universal Agenda 2030 with its SDGs recognize the role of **Science, Technology and Innovation (STI)** as essential enablers for development and place the priority on partnerships as a critical means of implementation. In this context, the demand for nuclear techniques will continue growing at a fast pace to address many of these development challenges, including those pertaining to poverty and hunger, human health, energy, water and climate change. As a result, it is expected that there will be increased needs at national and regional levels in the medium term for building or further strengthening nuclear infrastructure and enhancing nuclear expertise and know-how to enable the African end-users to respond more effectively to their development priorities.

In this respect, AFCONE will be a major vehicle for driving this new momentum by facilitating and enhancing the development of NS&T and know-how and their transfer to and amongst the State Parties to the Pelindaba Treaty.

AFRA Agreement: At the operational level, the African countries engaged, since 1990, in a regional agreement to enhance collectively their ability to upscale the contribution of NS&T to address their socio-economic development problems through the *African Regional Cooperative Agreement for Research, Development and Training Related to Nuclear Science and Technology (AFRA)*, which is an inter-governmental Agreement under the auspices of the International Atomic Energy Agency (IAEA).

Given the solid regional foundation of AFRA and the outreach achieved through its technical cooperation programmes in the field of NS&T, it is expected that AFCONE Secretariat and AFRA will pursue in the medium term their strong collaboration to help their State Parties to upscale the contribution of NS&T in support of their development programmes (*Article 08 of the Pelindaba Treaty*).

Forum of Nuclear Regulatory Bodies in Africa: On the regulatory side, the sustained utilization of peaceful applications of NS&T for socio-economic purpose requires strong national and regional safety and security frameworks to effectively protect the users, the general public and the environment from the harmful effects of ionizing radiation. Accordingly, the African countries have established, in collaboration with the IAEA, national regulatory authorities, and in 2009, the Forum of Nuclear Regulatory Bodies in Africa (FNRBA) to be the platform for exchanging experiences, sharing knowledge and advancing excellence in nuclear regulatory systems in the region. The purpose of the FNRBA is to contribute for the enhancement and harmonization of nuclear and radiation safety and nuclear security regulatory infrastructure in accordance with IAEA safety standards and for fostering regional cooperation and sharing good practices. The work of FNRBA is of high relevance to the AFCONE Secretariat since it represents an integral part of its statutory mandate, particularly in relation to the pillar dealing with Safety & Security (2S). (*Articles 07,08 and 10 of the Pelindaba Treaty*)



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International Atomic Energy Agency (IAEA): At the international level, the work of AFCONE will also be influenced by the technical cooperation programme of the IAEA in Africa, which has been on-going for more than 60 years. It has been instrumental in building nuclear capabilities and expertise to address priority areas such as human health, water and environment and food security, Human capacity building has been the cross-cutting priority that has received a particular attention over the 60 years of the IAEA existence. The similarities between the statutory mandates of the AFCONE Secretariat and the IAEA are obvious, particularly in terms of verification, compliance and monitoring functions (safeguards, safety, and security) and promotion of peaceful applications of NS&T for the purpose of socio-economic development (*Articles 08,09,10 and 12 of the Pelindaba Treaty*).

In Conclusion: the work of the AFCONE Secretariat will be significantly influenced by the continuously evolving working environment, which is characterized by the determination of the State Parties to enhance the utilization of NS&T for socio-economic development, particularly to meet the requirements of African Union Strategic Plans and the Agenda 2030, through the achievement of the national targets; and by the legitimate concern of safety and security while benefitting from the added values of ionizing radiation.

8. Africa, One Continent, One Voice:

Considering the Article 03 of the African Union Constitutive Act, in particular the following objectives:

- a. accelerate the political and socio-economic integration of the continent,
- b. promote and defend African common positions on issues of interest to the continent and its peoples,
- c. coordinate and harmonize the policies between the existing and future Regional Economic Communities for the gradual attainment of the objectives of the Union,

Considering the Agenda 2063 “The Continent pledges to continue to speak with one voice and to act collectively to promote its common interests and positions in the international arena”,

Considering the Common African Position on the Post-2015 Development Agenda (CAP) and the sustainable development goals (SDGs), emphasize that “the post-2015 Development Agenda provides a unique opportunity for Africa to reach consensus on common challenges, priorities and aspirations, and to actively participate in the global debate on how to provide a fresh impetus to the MDGs and to examine and devise strategies to address key emerging development issues on the continent in the coming years”

The African Union (AU) looks at the nature of Africa’s partnerships with a view to rationalizing them and enhancing the benefits for its transformation and integration efforts, notably by (a) strengthening its common perspectives on partnerships, and (b) speaking with one voice on global matters.

(Ref: Africa Speaking As One : <https://www.un.org/en/africa/osaa/advocacy/onevoice.shtml>)

AFCONE, which Secretariat Premises are in Pretoria (South Africa), *according to the Host Agreement signed between the African Union Commission and the Government of the Republic of South Africa*, is developing all the efforts to implement the following missions and tasks:



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- Promote, Follow Up and Support, from Africa, the Continental Programmes in the all the Fields of Activities in Nuclear Science & Technology, including the cross-cutting ones related to education & training and safety & security,
- AFCONe Secretariat, *based in Africa*, to be considered as the “In the Field Management Unit (FMU)” for AFRA and FNRBA (and the African recognized networks active in NS&T),
- Strengthen the coordination with AFRA, FNRBA and the Other Regional Networks, and consolidating their linkages and relationship with the African Union Departments and Programmes,
- Support to AFRA, FNRBA and the operational African recognized networks in NS&T, through its Communication and Resources Mobilisation Strategies, in particular with the African Union Strategic Partners and the Parties to the Protocols of the Pelindaba Treaty,
- Better Serve the Development of the Continent, AFCONe support, through its Programmes and Activities, *from Africa and with the full support of the African Union Commission*, the following Groups, Organisations and Institutions:
 - o *The African Young Generation in Nuclear (YGN Africa)*
 - o *The Women in Nuclear (WIN Africa) Organisation,*
 - o *The African Institutions delivering E&T in nuclear science and technology & in non-proliferation and disarmament affairs,*
 - o *The African & Diaspora Experts specialised in Nuclear Sciences and Technology*

9. **AFCONe 2019-2020 Activities:**

AFCONe is implementing its programmes and activities, including developing strategic plans, building capacity and contributing to the regional and international efforts towards close coordination & cooperation in peaceful uses of nuclear energy and non-proliferation & disarmament:

- Active Contribution to the IAEA-AUC-AFCONe Meeting held in Kigali (February 2019): Development of an Action Plan,
- Participation to the AUC STC on Infrastructure and Energy held in Cairo (April 2019): Nuclear Power to be considered by each interested African Country in the Energy Mix Strategy,
- Briefing of the African Union Peace and Security Council (AU PSC) held in Addis Ababa (April 2019) on the Implementation of the Pelindaba Treaty Provisions, in particular the issues related to safety, security and safeguards,
- Contribution to the 30th AFRA Technical Working Group Meeting held in Johannesburg (July 2019): Statement and Call for Synergy and Consolidated Regional Cooperation,
- Participation to the UNODA & Kazakhstan Seminar on Strengthening and Fostering the NWFZs Cooperation (Nur Sultan, August 2019): Appreciation of the VCDNP Task Force 2018 Report – Submission of recommendations- Consultations with the Other NWFZs, IAEA, CTBTO and UNIDIR,
- Contribution to the 63th IAEA General Conference (September 2019): Statement on behalf of the AUC to the Plenary and Call for (a) the ratification of the Pelindaba Treaty by all the African member states and the Parties to the 3 Protocols, (b) strengthening the regional and international cooperation in safe and secure peaceful uses of nuclear energy (c) developing all the international efforts towards the creation of a NWFZ in the Middle East,



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- Participation to the UNODA-UNREC- UNRCPPD Expert Meeting held in Bangkok (December 2019): Discussions & Consultations on the Subject,
- Participation to the UNODA Regional Meetings organised in Preparation to the 2020 Review Conference (Addis Ababa August 2019, Vienna November 2019 & Abuja December 2019): AFCONe position presentation and consultations,
- Participation to the AUC STC Education, Science and Technology, Expert and Minister Meeting held in Addis Ababa (December 2019): Strong recommendation mandating AFCONe to deliver all the Efforts in order to develop Education & Training and Research & Development in Nuclear Science and Technology for Safe and Secure Peaceful Uses of Nuclear Energy in Africa,
- Contribution, during the ICONS 2020 IAEA Conference (Vienna, February 2020), to the Coordination Meeting with the IAEA, AFRA and FNRBA: Decision to sign, *hopefully during the 64th IAEA General Conference, to be held in September 2020*, of a Quadripartite MoU formalising and strengthening the cooperation in Africa, considering the Official mandate of Each Organisation,
- Co-Organisation with Wilton Park & Canada, of a Conference in February 2020 in South Africa “In support of Africa's Agenda 2063: pathways forward for expanding peaceful uses of nuclear energy and nuclear technology in Africa”: Final Report and Recommendations to all the Stakeholders and Contribution to the NPT 2020 Review Conference,

AFCONe is considering, for its Strategic Plan 2021-2025, the following scheme, outlining “who is doing what”, to successfully reach the required synergy and optimal & efficient coordination in Africa, according to the mandates & strategic plans & programmes of each stakeholder: African Union Commission (and its Specialised Agencies), African Commission on Nuclear Energy (AFCONe), United Nations (and its Specialised Agencies and UNREC), IAEA, AFRA and FNRBA. The cooperation plans of actions with the Development Partners will be elaborated according to the final approved regional projects.

Organisation / Field of Activity	African Union & Specialised Agencies	AFCONe	United Nations & Specialised Agencies & UNREC	IAEA	AFRA	FNRBA
Energy						
Health						
Food & Agriculture						
Water						
Industry						
Environment						
R & D in NST						
E & T in NST						
Nuclear Safety & Security & Safeguards						
Disarmament & Non-Proliferation						

Synthesis Table: Field of Activities & Regional and International Organisations involved



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Regarding the Verification Mandate: AFCONE formulates its Reports to the Conference of State Parties, based on the National Reports transmitted (Article 13 of the Pelindaba Treaty) and the IAEA Annual Conclusions and Statements on Nuclear Safeguards (Article 09, 10 and 12 of the Pelindaba Treaty). AFCONE has recently, in addition and for the development of regional capacities and ownership, invited the State Parties and the Signatories to submit Candidatures for the Selection of African Regional Collaborating Centres in the Fields of (a) Nuclear Safeguards (b) Nuclear Safety and Security.

In terms of International Cooperation: AFCONE formalised also through practical agreements (PAs) and Memorandums of Understanding (MoUs) its cooperation and partnership programmes (including safety, security, safeguards, non-proliferation, nuclear energy, health, industry, water resources and agriculture) with international and regional stakeholders.

These include a PA with the International Atomic Energy Agency (IAEA) and MoUs with the European Safeguards Research and Development Association (ESARDA) and the International Science and Technology Centre (ISTC).

Additional MoUs are currently under discussions with the Comprehensive Nuclear-Test-Ban Treaty Organization (CTBTO), the Regional Agreement AFRA & the African Regulators Forum “FNRBA”.

Further Cooperation Agreements are under discussion with the AU strategic partners, including the European Union, Russia, India and China. Further consultations will be continued in 2020 with the other African Union Strategic Partners: United States of America, Japan, Korea, Turkey, Australia...

Engagement with other existing zones: In order to foster the cooperation and strengthen the coordination with the other Nuclear Weapon Free Zones, AFCONE is currently consulting OPANAL (Treaty of Tlatelolco Agency) and Kazakhstan (Chair/Treaty of Semipalatinsk) for the Signature of Memorandums of Cooperation, including to encourage and develop cooperation on peaceful uses of nuclear energy between the specialised institutions/organisations in the Zones.

AFCONE launched consultation with Kazakhstan, UNODA and the South African national authorities for the organisation in Pretoria of a NWFZ Coordination Meeting (as a follow up to the Nur Sultan August 2019 Seminar: This meeting is planned in Pretoria in 2020, will be organised as soon as possible according to the COVID 19 Pandemic.

Conclusion and Recommendations:

As previously developed, among the AFCONE Mandate and Priority Programme:

- ✓ the promotion and development of “*Safe and Secure Peaceful Uses of Nuclear Energy in Africa*”,
- ✓ the close coordination, *within the AU Auspices*, of all the regional Organisations and Networks, in order to promote coherent, focused and responsible “Peaceful Nuclear Applications” in Africa.

The AFCONE Expectations are as follow:

- ✓ Efficient Implementation of the AFCONE Agenda, in Particular in the Fields of Safety, Security and Safeguards, considering the required regulatory environment for the Peaceful Uses of Nuclear Energy,



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- ✓ Adoption of the 2021-2025 Strategic Plan, with the Long-Term Vision coherent with the AU Agenda 2063 Aspirations & Ambition, Integrating the Safe & Secure Peaceful Nuclear Applications Programme,
- ✓ Further Development of the Regional and International Partnership and Cooperation Programmes, in Particular, the Providers of Nuclear Science and Technology, including Knowledge in Nuclear Safety, Security and Safeguards, for a Sustainable Continental Programme (HRD, Maintenance Skills, Technology Transfer, Expertise...).

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Appendixes:

Figures (01 to 14) on Activities Developed





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African Union

Strengthening the Relationship with the African Union Commission & Bureau of the 4th CSP

Strengthening the Relationship with the African Union Commission:

- Meetings with Their Excellencies the AUC Vice Chair, the Commissioners Peace & Security and Human Resources and Science & Technology,
- Participation to the AUC Chair Office Workshop on “Treaty Bodies and African Union Specialised Agencies (SAs)” (Zim 2019): AFCONE, Unique Organisation in Africa mandated to Address the Nuclear Issues.

Meetings with HE the Chair of the 4th Conference of the State Parties (PT)
AFCONE INITIATIVE Supporting the Unique African Candidate to the IAEA DG Position (8-10/19)








Fig 01: Strengthening Relationship with the African Union Commission

African Union

Formalisation and Strengthening of the Coordination & Cooperation with the Regional & International Organisations & Networks Operational in the Field: IAEA, AFRA and FNRBA:

2 Meetings held (Vienna/ Sept 2019 & Feb 2020) in conjunction with the IAEA 63rd GC & ICONS 2020 Conferences):

- Decision to Sign a Quadripartite MoU in 2020 (5th Pelindaba Treaty Conference of State Parties (Johannesburg/ June 2020) OR 64th IAEA General Conference (Vienna/Sept 2020)
- Approach fully Supported by the Partners (USA, Canada, Argentina, UK) and the African Experts participants to the Pretoria Conference on PUNE (25 27 February 2020).









Fig 02: IAEA – AFCONE – AFRA – FNRBA Coordination & Cooperation (Feb 2020)



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Peaceful Uses of Nuclear Energy (PUNE) in Africa (Art 08):

- “In support of Africa’s Agenda 2063: pathways for expanding peaceful uses of nuclear energy and nuclear technology in Africa”,
- Regional Conference in South Africa (25-27 February 2020)
- Support by 2 Partners (Canada (Global Affairs) & UK (Wilton Park))
- Sessions Dedicated to Nuclear Power, Health, Agriculture, Safety, Security & Safeguards, Regional and International Cooperation...

<https://www.wiltonpark.org.uk/event/np176/>

Fig 03: Peaceful Uses of Nuclear Energy (PUNE) in Africa. Regional Conference/ South Africa Feb 2020

**Health in Africa: Nuclear Applications (Art 08):
FIGHTING CANCER**

Fig 04: Health in Africa: Focus on Fighting Cancer



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African Union
AFCONE

Nuclear Power in Africa (Art 08) (I)

- AUC Expert & Ministerial Meeting STC TTIET (Cairo/ April 2019) & Recommendation Adopted by the Ministerial Meeting to consider by Each African MS, Nuclear Power in its Energy Mix,**
- Consultations with the IAEA Nuclear Energy Department (September 2019)**
- Participation of AFCONE to the Nuclear Power Conference (Business Platform organised in Nairobi/ Kenya (October 2019))**





3.9. Commission africaine de l'énergie nucléaire (AFCONE):

42. Le représentant de la Commission africaine de l'énergie nucléaire (AFCONE) a donné un aperçu du contexte, des activités et des projets de l'AFCONE, ce qui a permis de mettre en exergue les points saillants de son programme de travail pour l'exercice 2018-2020 et du plan visant à élaborer un plan stratégique qui sera harmonisé avec l'Agenda 2063 de l'UA.

Recommandation:

Étant donné que la priorité du continent est de développer les programmes d'énergie renouvelables, les États membres sont exhortés à examiner l'option nucléaire conformément aux exigences de l'Agence internationale de l'énergie atomique (AIEA).

"Africa is hungry for energy, and nuclear power could be part of the answer for an increasing number of countries,"

Says Mikhail Chudakov, Deputy Director General and head of the Department of Nuclear Energy at the International Atomic Energy Agency (IAEA),

Fig 05: Nuclear Power in Africa

African Union
AFCONE

Nuclear Science and Technology: Research & Development (Art 08):



REPORT OF THE 2018 SPECIALISED TECHNICAL CONFERENCE ON EDUCATION, SCIENCE AND TECHNOLOGY - ACCM ABABA, ETHIOPIA, 10 TO 11 DECEMBER 2019

CONCEPT PAPER

Title Sent to the "AccApp'20"
On "Networking the African Particle Accelerator Operators and Users"
(April 2020, VNU, Vietnam)

(XXV) APPLICATION OF NUCLEAR ENERGY TECHNOLOGIES

47. **The Ministers,**

(a) **RECALLED** the decision of the Executive Council (EX/CL/Dec.339 (0) (2007) on the contribution of nuclear energy to peace and sustainable development; and

(b) **REQUEST** the African Commission on Nuclear Energy (AFCONE) and the African Union strategic partners in collaboration with the International Atomic Energy Agency (IAEA) to develop the Nuclear Sciences and Technology Research and Development Programs, undertake capacity building education and training for the safe and secure use of nuclear energy.



Fig 06: Nuclear Science & Technology: Education & Training and Research & Development



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Fig 07: Capacity Building in Nuclear Safety, Security & Safeguards

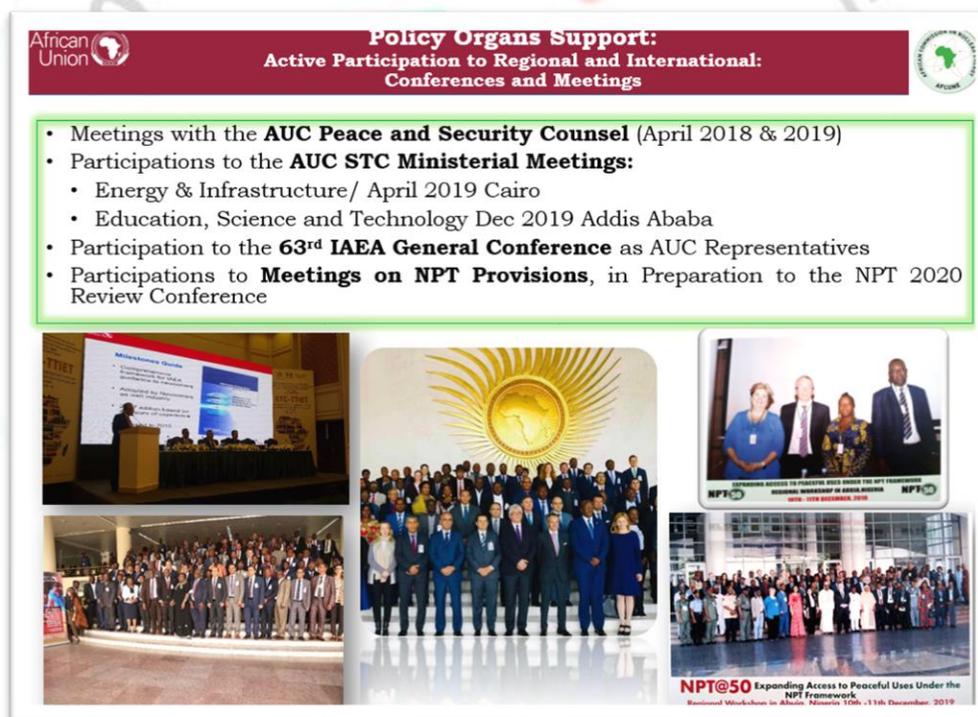


Fig 08: Regional & International Cooperation with Policy Organs



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African Union
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Nuclear Safety, Security and Safeguards in Africa (8 over 9 PT Articles) (I):

- Cooperation with **IAEA TCAF, AFRA and FNRBA** on the Coordinated Programmes:
 - PAs signed with the IAEA (Sept 2019) & Consultations started with the Nuclear Safety and Security Department (Vienna/Sept and Nov 2019) & Contribution to the ICONS 2020 (Feb 20)
- Cooperation with the European Safeguards Research and Development Association (**ESARDA**) in the Field: Signature of a MoU to Develop Cooperation (May 2019) & Organisation of Joint Regional Events (2020-....)
- Cooperation with the International Science and Technology Center (**ISTC**) in the Field: Support to the ISTC Project on Safety, Security and Safeguards in the SADC Region & Joint Events Agreed
- Consultations with the International Nuclear Safeguards Engagement Program (**INSEP/ NNSA/ USA**) for the Joint Organisation of Regional Events: INSEP Participation to the AFCONE EOS Cooperation Session (Feb 2019) & AFCONE Participation to INSEP Event (Nov 2019)

Fig 09 & 10: Strengthening International Cooperation in Nuclear Safety, Security and Safeguards

African Union
AFCONE

NEW: Nuclear Safety, Security and Safeguards in Africa (8 over 9 PT Articles) (II):

- Participation to the International Conference on Nuclear Security (ICONS 2020/ Vienna 10-14 Feb 2020),
- Contribution to the **ISTC - VCDNP** Side Event on “**Safety, Security and Safeguards in Africa**”



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African Union
AFRICAN COMMISSION ON NUCLEAR ENERGY

International Cooperation: Formalisation & Strengthening of the Cooperation with the Development Partners (I)

- Meeting with **AFCONE Partners** during the EOS held in Algiers/ 12-13 Feb 2019),
- Formalisation of the Cooperation Framework with **IAEA: Signature of a Practical Arrangements in September 2019** during the 63rd IAEA General Conference;
- Participation to the **ESARDA** Steering Committee Meeting & International Symposium and **Signature of Cooperation Agreements (MoU) with ESARDA (JRC/EUC) (May 2019)**;
- Discussions with **ISTC (Kazakhstan)** High Level Delegation and **Signature of a Cooperative Agreement (MoU) (August 2019)**;

Fig 11 & 12: Development of the International Cooperation with Development Partners

African Union
AFRICAN COMMISSION ON NUCLEAR ENERGY

International Cooperation: Formalisation & Strengthening of the Cooperation with the Development Partners (II)

- Meetings, during the IAEA 63rd General Conference and ICONS 2020, with Several Delegations, in particular the African Union Strategic Partners: USA, USA, India, European Union, Germany, Canada, UK, OPANAL) and **Preparation of MoUs with Some AU Strategic Partners: Russia, India, China.**

Russia (VIC/Sept 2019)

India (VIC/Sept 2019)

China (VIC/Feb 2020)



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African Union

Cooperation with the Nuclear Weapon Free Zones (NWFZs) (I)

- ✓ Participation to the UNODA Seminar organised in Nur Sultan (Kazakhstan) in August 2019, aiming to Strengthen the Coordination and Cooperation between the NWFZs and the Preparation of the 4th Conference of the Zones,
- ✓ Consultations (Sept 2018, Algiers 2019, August 2019 and Sept 2019) with OPANAL (Latin America NWFZ Agency) to develop the Cooperation with AFCONE and Signature of a Cooperation MoU,









Fig 13 & 14: Cooperation with the Nuclear Weapon Free Zones (I): Nur Sultan Seminar & OPANAL (II): Central Asia NWFZ

African Union

Cooperation with the Nuclear Weapon Free Zones (NWFZs) (II)

- Consultations (2019 & 2020, Pretoria) with the Kazakhstan Embassy for the development of Cooperation between the Central Asian NWFZ and AFCONE: Concurrence & Draft MoU under Review,
- Consultations underway with ISTRC, Kazakhstan Embassy in Pretoria, UNODA New York and DIRCO RSA, for the Organisation in Pretoria of a NWFZ Coordination Meeting: Pretoria, planned early in August 2020








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“The role of the International Atomic Energy Agency in connection with existing nuclear-weapon-free zone treaties”

(Workshop on Good Practices and Lessons Learned from Existing Nuclear Weapon Free Zone Treaties (online), United Nations Office for Disarmament Affairs, 7-9 July 2020)

Established in 1957, the International Atomic Energy Agency (IAEA) pursues the objective of accelerating and enlarging the contribution of atomic energy to peace, health and prosperity throughout the world while ensuring that assistance provided by it is not used in such a way as to further any military purpose. In this context, the IAEA plays an essential role in deterring the proliferation of nuclear weapons by detecting early misuse of nuclear material or technology and by providing credible assurances that States are honouring their safeguards obligations.

IAEA role under Nuclear-Weapon-Free Zones treaties

The IAEA is the competent authority responsible for verifying that States are complying with safeguards agreements concluded with the IAEA in fulfilment of their non-proliferation obligations under the Treaty on the Non-Proliferation of Nuclear Weapons (NPT) and five existing nuclear-weapon-free zone (NWFZ) treaties; namely, the Treaty for the Prohibition of Nuclear Weapons in Latin America and the Caribbean (Treaty of Tlatelolco, 1967), the South Pacific Nuclear Free Zone Treaty (Treaty of Rarotonga, 1985), the Southeast Asia Nuclear-Weapon-Free Zone Treaty (Treaty of Bangkok, 1995), the African Nuclear Weapon Free Zone Treaty (Treaty of Pelindaba, 1996) and the Treaty on a Nuclear-Weapon-Free Zone in Central Asia (Treaty of Semipalatinsk, 2006).

Accordingly, as stated in the latest IAEA General Conference resolution, “IAEA safeguards are a fundamental component of the international nuclear non-proliferation regime, promote greater confidence among States, inter alia, by providing assurance that States are complying with their obligations under relevant safeguards agreements, contribute to strengthening their collective security and help creating an environment conducive to nuclear cooperation”.¹

The IAEA is not a party to the NPT or to NWFZ treaties. However, the safeguards requirements set out in NWFZ treaties are similar to those in the NPT as they require States parties to conclude comprehensive safeguards agreements (CSAs) with the IAEA. The Treaty of Semipalatinsk also requires States parties to conclude with the IAEA, an Additional Protocol (AP) to their respective CSAs.

Like the NPT, the Rarotonga, Bangkok, Pelindaba and Semipalatinsk treaties also include provisions requiring IAEA safeguards as a condition of supply of source or special fissionable material, or equipment or material especially designed or prepared for the processing, use or

¹ Strengthening the Effectiveness and Improving the Efficiency of Agency Safeguards, IAEA General Conference resolution GC(63)RES/11, adopted on 19 September 2019.

production of special fissionable material to a non-nuclear-weapon State (NNWS). The Treaty of Semipalatinsk additionally requires the conclusion of an AP as a condition of supply of such material and equipment to a NNWS. Those treaties do not, however, specify a role for the IAEA in verifying that States are meeting such supply conditions.

The IAEA plays a crucial independent verification role, aimed at assuring the international community that nuclear material, facilities and other items subject to safeguards are used only for peaceful purposes. Accordingly, IAEA support with respect to NWFZs is principally in the form of the provision of credible assurances that States are honouring their safeguards obligations pursuant to CSAs concluded in connection with the NPT, which are deemed to also satisfy the legal requirements of the different NWFZ treaties for the conclusion of safeguards agreements with the IAEA.

Additionally, the IAEA has provided support at the request of the States concerned during the process of elaboration the Pelindaba and Semipalatinsk treaties. Such support included participation in meetings and workshops of the States parties. The IAEA also assists its Member States parties to those treaties, through its legislative assistance programme, in developing and amending their respective national legal frameworks governing the peaceful uses of nuclear energy and ionizing radiation in order to enable them to implement at national level the relevant international legal instruments on nuclear non-proliferation, safeguards, nuclear safety and security and liability for nuclear damage to which they adhered.

The 1967 Treaty for the Prohibition of Nuclear Weapons in Latin America and the Caribbean (Tlatelolco Treaty)

The Treaty of Tlatelolco was the first NWFZ treaty concluded, before the entry into force of the NPT.

Under this Treaty, each Contracting Party is required to conclude multilateral or bilateral agreements with the IAEA for the application of safeguards to its nuclear activities (Article 13). It should be noted that the majority of the States parties concluded CSAs with the IAEA pursuant to both the Treaty of Tlatelolco and the NPT. Article 16.1 of the Treaty envisions that the Agency for the Prohibition of Nuclear Weapons in Latin America (OPANAL) and the IAEA may carry out special inspections, in accordance with Article 12 of the Treaty and in accordance with the safeguards agreements referred to in Article 13 of the Treaty. An Agreement between the IAEA and the OPANAL, concluded in 1972, provides for a framework of cooperation between the two organizations on matters of common interest.

The Tlatelolco Treaty also includes Additional Protocol I, which is open to all States which have territories within the zone of application of the Treaty for which they are, *de jure* or *de facto*, responsible, with respect to which those States agree, *inter alia*, to conclude agreements for the application of safeguards to nuclear activities carried out in those territories.

The thirty-three States parties to the Tlatelolco Treaty have concluded safeguards agreements with the IAEA. In addition, three States have also concluded with the Agency safeguards agreements

pursuant to Additional Protocol I of the Treaty of Tlatelolco, covering their respective Additional Protocol I territories.

Twenty States within the zone of application of the Tlatelolco Treaty have received legislative assistance from the IAEA, to develop or further enhance their respective nuclear legal framework (Antigua and Barbuda, Barbados, Belize, Bolivia (Plurinational State of), Chile, Colombia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Trinidad and Tobago and Venezuela (Bolivarian Republic of)).

The 1985 South Pacific Nuclear-Free-Zone Treaty (Rarotonga Treaty)

The Rarotonga Treaty was the first NWFZ treaty concluded after the entry into force of the NPT. Thus, it was the first such treaty to require States parties to conclude safeguards agreements which either are, or are the equivalent in scope and effect to, those required in connection with the NPT. It was also the first NWFZ Treaty to contain an explicit requirement of IAEA safeguards as a condition of exports by States parties of source or special fissionable material, or equipment or material especially designed or prepared for the processing, use or production of special fissionable material.

Pursuant to Article 4 of the Treaty, in the case of exports to NNWSs, the safeguards required are those provided for in Article III.1 of the NPT; in the case of exports to nuclear-weapon States (NWSs), the supply must be subject to “applicable safeguards agreements with the [IAEA]”.

Eleven States parties to the Treaty of Rarotonga have concluded safeguards agreements with the IAEA.²

Two States within the zone of application of the Rarotonga Treaty have received legislative assistance from the IAEA, to develop or further enhance their respective nuclear legal framework (Fiji and Papua New Guinea).

The 1995 Treaty on the Southeast Asia Nuclear-Weapon-Free Zone (Bangkok Treaty)

Under Article 5 of the Bangkok Treaty, each State Party which has not done so is required to conclude an agreement with the IAEA for the application of full scope safeguards to its peaceful nuclear activities. The Bangkok Treaty also contains language similar to that contained in Article 4 of the Rarotonga Treaty requiring NPT safeguards as a condition of supply to NNWSs and requiring that any such exports to NWSs be “in conformity with applicable safeguards agreements with the IAEA”.

Ten States parties to the Treaty of Bangkok have concluded safeguards agreements with the IAEA. Nine States within the zone of application of the Bangkok Treaty have received legislative assistance from the IAEA (Brunei, Cambodia, Indonesia, Lao People’s Democratic Republic, Malaysia, Myanmar, the Philippines, Thailand and Viet Nam).

² The NPT safeguards agreement with New Zealand also applies to Cook Islands and Niue.

The 1996 African Nuclear-Weapon-Free Zone Treaty (Pelindaba Treaty)

The IAEA assisted the African States in the development of a treaty establishing the African NWFZ, including through participating in meetings and workshops.

The Pelindaba Treaty requires that each State party conclude a CSA with the IAEA. Under Annex II to the Treaty, entitled “Safeguards of the International Atomic Energy Agency”, the safeguards agreement required under the Treaty “shall be, or shall be equivalent in its scope and effect to, the agreement required in connection with the [NPT]”.

States party to the Treaty undertake not to provide source or special fissionable material, or equipment or material especially designed or prepared for the processing, use or production of special fissionable material, to any NNWS unless subject to a CSA concluded with the IAEA.

The Pelindaba Treaty also includes Protocol III, which is open to all States which have territories within the zone of application of the Treaty for which they are, *de jure* or *de facto*, responsible, with respect to which those States agree, *inter alia*, to ensure the application of safeguards specified in Annex II of the Treaty.

Forty-seven States within the zone of application of the Pelindaba Treaty have concluded safeguards agreements with the IAEA and three States have signed but not brought into force yet a safeguards agreement with the IAEA.

Forty-four States in the zone of application have received legislative assistance from the IAEA, including 35 State parties (Algeria, Angola, Benin, Botswana, Burkina Faso, Burundi, Cameroon, Chad, Comoros, Congo, Côte d'Ivoire, Eswatini, Ethiopia, Gabon, Ghana, Kenya, Lesotho, Libya, Madagascar, Malawi, Mali, Mauritania, Mauritius, Mozambique, Namibia, Niger, Nigeria, Rwanda, Senegal, Seychelles, Togo, Tunisia, United Republic of Tanzania, Zambia and Zimbabwe), and nine State signatories that have not ratified the treaty (Central African Republic, Democratic Republic of Congo, Djibouti, Egypt, Eritrea, Morocco, Sierra Leone, Sudan and Uganda).

The 2006 Treaty on a Nuclear-Weapon-Free Zone in Central Asia (Semipalatinsk Treaty)

Upon request of the Central Asian States, the IAEA participated in expert meetings and provided support on a variety of issues during the negotiation and drafting of the Treaty of Semipalatinsk.

Under the Semipalatinsk Treaty, each party is required to conclude with the IAEA an agreement for the application of safeguards in accordance with the NPT, and, as noted above, an AP. States parties also undertake not to provide any source or special fissionable material, or equipment or material especially designed or prepared for the processing, use or production of special fissionable material, to any NNWS unless that State has concluded with the IAEA both a CSA and an AP.

The five States parties to the Central Asian NWFZ treaty have concluded safeguards agreements with the IAEA and APs as well.

Four States within the zone of application of the treaty have received legislative assistance from the IAEA (Kazakhstan, Kyrgyzstan, Tajikistan and Uzbekistan).

Single State NWFZ – Mongolia

The IAEA supports Mongolia in meeting its safeguards obligations and nuclear non-proliferation commitments, in accordance with its nuclear-weapon-free status. In this regard, Mongolia has concluded with the IAEA a CSA and an AP thereto. IAEA support has also included assistance in enhancing Mongolia's capacity for maintaining an effective State System of Accounting for and Control of Nuclear Material (SSAC), organizing technical workshops in Mongolia and providing legislative assistance.

Conclusion

The IAEA's role with respect to NWFZs is mostly in the form of the provision of credible assurances that States are honouring their safeguards obligations pursuant to CSAs concluded with the IAEA, pursuant to their obligations under the NPT and NWFZ treaties. Additionally, the IAEA will continue sharing its technical expertise in support of the development of NWFZs, as requested and in line with decisions and resolutions of its Policy Making Organs, as it has been the practice.

Finally, the safe, secure and peaceful use of nuclear energy in a given State can be better assured with the promulgation and implementation of an effective national nuclear legal framework. In this regard, the IAEA will continue to assist its Member States parties to those treaties through its legislative assistance programme in developing and revisiting their respective national legal frameworks governing the peaceful uses of nuclear energy and ionizing radiation in order to enable them to implement at national level the relevant international legal instruments on nuclear non-proliferation, safeguards, nuclear safety and security and liability for nuclear damage to which they adhered.



OPANAL
Agency for the Prohibition of Nuclear Weapons in Latin America and the Caribbean

Secretariat

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**INFORMAL WORKSHOP ON GOOD PRACTICES AND LESSONS LEARNED
WITH RESPECT TO THE EXISTING NUCLEAR-WEAPON-FREE ZONES**

Statement by

Ambassador Flavio Roberto Bonzanini,

Secretary General of the Agency for the Prohibition of Nuclear Weapons in Latin America
and the Caribbean (OPANAL)

**Theme 6: How zones institutionalize arrangements for regional peace, disarmament
and non-proliferation**

*Proposed Topic: The role of international organizations in promoting regional and
international norms.*

The Treaty of Tlatelolco and the institutionalization of the norm

Thank you, Mr. Wang.

It is truly an honor to share, at least virtually, the floor with this panel. And, of course, I would also like to thank the organizers for inviting the Agency for the Prohibition of Nuclear Weapons in Latin America and the Caribbean (OPANAL) to take part in this panel.

My presentation will be devoted to providing you with an overview on the role of international organizations in promoting regional and international norms. In this regard, I will present the experience of OPANAL -organization which I have the honor to be its Secretary-General- in establishing and consolidating the international law institution created by the Treaty for the Prohibition of Nuclear Weapons in Latin America and the Caribbean, best known as the Treaty of Tlatelolco.

Dear colleagues,

The Treaty of Tlatelolco is the first practical expression on the prohibition of nuclear weapons in International Law. It is not a political declaration, nor a statement of principles. It contains provisions establishing rights and obligations, for its 33 States Party, on nuclear non-proliferation and peaceful uses of nuclear energy.

Moreover, it established an institution and created a machinery to ensure its enforcement and compliance. By means of the Treaty of Tlatelolco, our region has contributed to the codification and evolution of International Law. Now, the norm created by the Treaty of Tlatelolco has been consolidated and it represents a key component of the international nuclear disarmament and non-proliferation regime.

The Treaty of Tlatelolco and the institutionalization of the norm

Dear colleagues,

International organizations play a critical role in implementing, consolidating and reinforcing new norms. Through its moral standing and technical expertise, international organizations act as forces of change at different levels. Its work is driven by the need to find innovative solutions to support norm observance and norm development involving different actors. And the creation of new areas for regional and international collaboration constitutes forms to socialize initiatives led to norm strengthening. Nonetheless, empathy and political will of all actors involved are critical in order to succeed on this goal.

Latin America and the Caribbean, as the eldest among the nuclear-weapon-free zones, has long devoted efforts to strengthen and consolidating the norm of the prohibition of nuclear weapons in vast populated areas. In that regard, I would like to highlight some of the most recent efforts carried out by OPANAL, which contribute to institutionalize the norm regionally and globally:

As part of its **regional efforts**, OPANAL encourages its member states to agree on *joint declarations and common positioning*. These positions, and many others, are adopted unanimously by all Latin American and Caribbean States on two special occasions: The Commemoration of the Opening for signature of the Treaty of Tlatelolco -on 14 February- and the International Day for the Total Elimination of Nuclear Weapons -on 26 September-. Although these 33 States may not share identical interests and beliefs, they absolutely endorse these declarations and stand on common ground regarding the threat posed by nuclear weapons and their catastrophic impact. Besides its role of ensuring the effectiveness of the Treaty of Tlatelolco, OPANAL serves as a permanent forum that allows the expression of common stands by the States Party.

Regarding its **global efforts**, OPANAL takes advantage of two of the main multilateral fora in which the issues on nuclear disarmament and non-proliferation are addressed: *the UN General Assembly and the NPT Review Process and Conference*. Every three years,

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OPANAL prepares the zero-draft resolution on the Treaty of Tlatelolco, agreed by all its member states, which is later presented by the depositary state at the First Committee. At the NPT Review Process and Conference, OPANAL submits working papers with those elements that are priority to the region. These working papers represents a contribution of Latin America aimed to the success of the Conference, including the content of its Final Document.

Finally, but not least significantly, it is important to mention one of the most relevant initiatives conceived and encouraged by OPANAL: The Conferences of Nuclear Weapon Free Zones. Since 2005, OPANAL contributes to convene these Conferences through the elaboration of a UN General Assembly resolution which is adopted every five years prior to the NPT Review Conference. The resolution convening the IV Conference of Nuclear Weapons Free Zones, originally scheduled to be held this year, was not the exception. OPANAL will also contribute to the resolution that will be presented this year in order to agree further dates in 2021 for the celebration of the Conference.

Dear colleagues,

As you can see with the brief overview that I presented, OPANAL -as an international organization entirely devoted to nuclear disarmament and non-proliferation- is fully committed with the strengthening and consolidation of the norm prohibiting nuclear weapons. Even more, OPANAL has been engaging and establishing close contact with other nuclear-weapon-free zones in order to explore further ways to work towards the establishment of a more formal, sustained dialogue and cooperation, as well as the necessary mechanisms to that end.

The Treaty of Tlatelolco and the institutionalization of the norm

Finally, I want to highlight that the greatest challenge for international intergovernmental organizations to consolidate regional and international norms is achieving the necessary political will of all parties involved. It is always far from being an easy task to agree on common positioning, even in a region with an historic tradition in favor of nuclear disarmament and non-proliferation such as Latin America and the Caribbean. However, both organizations and its member states have the responsibility and commitment to find ways to further advance in joint initiatives and reach compromise. We should not take for granted the existence of nuclear-weapon-free zones. It is our responsibility to preserve the NWFZ as institutions that actually work and play a significant role in promoting and consolidating international norms on nuclear disarmament and non-proliferation.

I thank you for your kind attention.

The potential for organizations established by nuclear-weapon-free zones to contribute to regional peace, stability and other political objectives

Patricia Lewis
Chatham House

I. Same but Different

It is neither new nor provocative to observe that the notion of a WMD Free Zone in the Middle East is – in the words of Sir Humphrey in *Yes Minister*¹ – ‘very courageous’. The proposals for the Zone are building on a long history of nuclear weapons free zones but doing so in the context of a highly fractured region riven with violent conflict and historical grievances and – if that were not difficult enough – adding in chemical and biological weapons into the mix.

But there are good reasons for this. The region has a history of obfuscation and deception when it comes to nuclear weapons programmes. The one state in the region widely accepted to have developed a full nuclear weapons capacity – Israel – does not declare itself as a nuclear weapons possessor. Rather, it keeps its status highly secret and, at the same time, does not deny the many analyses and accusations that point to the likelihood of a fully-fledged nuclear weapons programme. Other states – such as Libya and Syria – have flirted with the idea of developing a military nuclear programme. Iraq went much further down that road, developing an advanced capability in the 1980s only to have it dismantled by the IAEA and UNSCOM following the 1991 conflict and the Ceasefire UNSC Resolution 687². The decades-long concerns over Iran’s nuclear energy programme and the current state of the JCPOA³ coupled with Saudi Arabia’s more recent statements⁴ suggesting a possible nuclear capability ahead do little to inspire confidence in prospects for going forward.

Including the elimination of chemical and biological weapons in the Zone was – and remains – a good idea in principle. The use of chemical weapons in the region is a repeating tragedy. From their use in Yemen, the Kurdish regions of Iraq and Iran, and to more recent use in Iraq and Syria by state and non-state actors has been horrific. And to fully comprehend their legacy in the region, we must never forget the use of chemical weapons in the gas chambers of the Third Reich and the impact that had on the creation and collective memory of Israel. Failure to deal with these abhorrent weapons in the Middle East is a failure to deal with the inhumanity of military use of chemicals and undermines the strenuous efforts by the OPCW and the CWC for global elimination.

¹ *Yes Minister*, BBC, https://en.wikipedia.org/wiki/Yes_Minister

² UN Security Council Resolution 687 (1991), <https://www.un.org/Depts/unmovic/documents/687.pdf>

³ Joint Comprehensive Plan of Action, 14 July 2015, http://eeas.europa.eu/archives/docs/statements-eeas/docs/iran_agreement/iran_joint-comprehensive-plan-of-action_en.pdf

⁴ Reif, K., Saudi Arabia Threatens to Seek Nuclear Weapons, *Arms Control Today*, June 2018 <https://www.armscontrol.org/act/2018-06/news/saudi-arabia-threatens-seek-nuclear-weapons>

Given the history of chemical and nuclear weapons programmes in the region, the threat of biological weapons use cannot be taken lightly. The current pandemic of COVID-19, the outbreaks of MERS and past pandemics including the 1918 influenza and the 1980s-1990s HIV devastation, not to forget the ever-present danger of Ebola on the borders have increased focused attention on biosecurity in the region, including the risk of inadvertent or deliberate release of communicable emerging diseases.

II. Inspiration

When we compare the extant nuclear weapon free zones, there are some similarities across them on which a Middle East WMD free zone can build. Each is inspirational, each took enormous amounts of effort and each was challenged by specific regional security issues which seemed insurmountable at the time.

The Treaty of Tlatelolco⁵ was negotiated at a time when countries in Latin America were in a constant turmoil of tension, conflict and war. The Nuclear Weapons Free Zone did not solve these problems, but it did address some of the most worrying aspects of regional security – such as the growing nuclear capabilities of Brazil and Argentina and the aftermath of the Cuban missile crisis. The process of negotiation and the adoption of the Treaty in themselves was a process of discovery, honesty and relationship-building. It wasn't easy (REF) but it was worthwhile and led to many positive offshoots such as the clever mechanism for entry-into-force⁶ and ABACC⁷. At heart of the Zone's success is OPANAL. Established to facilitate the treaty's functioning, OPANAL has proved itself to be an effective mechanism for a wide range of activities that build confidence and trust in the region.

The Treaty of Rarotonga⁸ that created the nuclear weapon free zone in the South Pacific was negotiated at a time when nuclear weapons tests were being conducted on the islands of the Pacific Ocean and nuclear weapons were being taken into ports and harbours against the wishes of most of the region's populations and governments⁹. The institutional arrangements for the Treaty are different to that of Tlatelolco and have adapted over time to new political drivers and new risks in the region.

The South East Asian Zone (SEANWFZ)¹⁰ was established by the Treaty of Bangkok and is implemented by the SEANWFZ Commission, assisted by the SEANWFZ Executive Committee and its Working Group. The region perhaps manages political tension well in that it has a

⁵ Treaty of Tlatelolco, <https://www.opanal.org/en/treaty-of-tlatelolco/>

⁶ Latin America Nuclear Weapons Free Zone Treaty (Treaty of Tlatelolco), <https://www.armscontrol.org/treaties/latin-america-nuclear-weapons-free-zone-treaty>

⁷ ABACC, <https://www.abacc.org.br/es/>

⁸ Treaty of Rarotonga, <https://www.nti.org/learn/treaties-and-regimes/south-pacific-nuclear-free-zone-spnfz-treaty-rarotonga/>

⁹ Hamel-Greene, M., Regional Arms Control in the South Pacific: Island State Responses to Australia's Nuclear Free Zone Initiative, *The Contemporary Pacific*, Volume 3, Number 1, Spring 1991, 59-84, <https://core.ac.uk/download/pdf/5097963.pdf>

¹⁰ Treaty on the Southeast Asia Nuclear Weapon-Free Zone, https://asean.org/?static_post=treaty-on-the-southeast-asia-nuclear-weapon-free-zone

wider forum for discussing security issues – the ASEAN Regional Forum (ARF) – and ASEAN itself as a mechanism for discussing and moving forward on larger concerns including trade and human rights issues. Having said that however, the Zone exists in one of the most militarized regions of the world and is constantly aware of its nuclear neighbours – China, the US, Russia and North Korea – and the various states of tension and conflict between each of these. It also exists on the border of the US-Japan, US-South Korea and US-Australia nuclear alliances which affects the limits of the Treaty – particularly around issues of transit, harbour/port visits and the US policy of neither confirm nor deny (NCND) in regard to the present of nuclear weapons on its vessels.

The Central Asian Nuclear Weapon Free Zone¹¹ was agreed in a very different political climate today and has undergone a number of stresses to its integrity but it remains a trailblazer in terms of the requirement for the Additional Protocol and full participation in the CTBT. The Treaty did not establish an organization to monitor implementation and or provide compliance assistance, instead the states of the Zone hold ‘annual meetings of their representatives, on a rotating basis, as well as extraordinary meetings, at the request of any Party, in order to review compliance with this Treaty or other matters related to its implementation’¹².

The Treaty of Pelindaba¹³ that establishes a nuclear weapon free African continent was negotiated at a time of considerable hope for the elimination of nuclear weapons, with South Africa emerging from decades of apartheid, eliminating its developed nuclear weapons programme and joining the nuclear Non-Proliferation Treaty (NPT) which was then extended indefinitely. However, it would be a mistake to imagine that it was an easy negotiation. Many of the countries in Africa were in a state of violent conflict with neighbours, thus hampering diplomacy and progress. And although the Treaty was signed in Cairo, Egypt – along with other African Arab states - has yet to ratify out of concern that ratification might tie its hands further in negotiating the Middle East WMD free zone. The organizational arrangements however - specifically the African Commission on Nuclear Energy (AFCONE)¹⁴ - are of most interest to the Middle East zone proposals - primarily because the arrangements are a) the most recent and have learned lessons from the other NWFZs and b) include several Arab states which will have a strong incentives to prevent contradictions between the two zones and reduce future duplication of effort in implementing both treaties.

III. Unique but Connected

Institutional arrangements for what might eventually become a WMD Free Zone in the Middle East have to work for all the countries in the region to help provide confidence in

¹¹ The Central Asia Nuclear Weapon Free Zone (CANWFZ) <https://www.nti.org/learn/treaties-and-regimes/central-asia-nuclear-weapon-free-zone-canwz/>

¹² Treaty on a Nuclear-Weapon-Free Zone in Central Asia (CANWFZ), <http://disarmament.un.org/treaties/t/canwzf/text>

¹³ The Pelindaba Treaty <https://www.afcone.org/pelindaba-treaty/>

¹⁴ The African Commission on Nuclear Energy AFCONE <https://www.afcone.org>

the works of the Zone. They will also do well if they at least don't contradict or undermine the arrangements already in place for the Pelindaba Treaty under the auspices of AFCONE.

In a much earlier paper (when hopes were somewhat higher than they are today) Nabil Fahmy and I proposed a "Commission on Nuclear Energy in the Middle East" (CONEME)¹⁵ as an organization with the responsibility for monitoring and assisting with compliance of a MEWMDZF. All of the states of the region would be represented in the governing bodies. CONEME would be empowered with gathering its own information, interacting with and transmitting reports to the IAEA. For routine inspections we proposed that states would depend primarily on IAEA safeguards. We also suggested joint inspections with the IAEA, (involving, for example, three stages: pre-inspection, inspection in situ and post-inspection) – an idea inspired by ABAAC. Indeed, as the Rarotonga Treaty permits, the organization could be granted the right of a special inspection by a team of suitably qualified, vetted inspectors. We also proposed, as in the Pelindaba and Bangkok Treaties, that the organization would have the right to establish its own inspection mechanisms and be empowered to conduct – for the purposes of mutual confidence-building or to resolve an ambiguous situation – fact-finding, technical visits and inspections, as is permitted in the Treaty of Bangkok.

This framework could also be adapted for the chemical and biological weapons commitments also. It has long been assumed that, as part of the MEWMDZF, all states in the region would join the CWC and BWC. Working with the OPCW in a manner described above for the IAEA, would be practical. The OPCW has worked effectively with other organizations in the Middle East over the use of chemical weapons in the region. This has been controversial, but the OPCW has stood its ground and kept its integrity despite the pressures to bend to the political insinuations of several countries. The BWC is a much harder issue, given that the Convention has no verification mechanism. However, the confidence-building measures and the technical processes now encapsulated in the BWC are areas that could lend themselves to a special focus by the organization via assisting and encouraging states in the region to participate with their own expertise and specialist knowledge. In addition, following on from recent outbreaks of disease, it may be possible to establish a system for regional joint border controls that could focus on biosecurity more generally rather than on bioweapons specifically.

The OPANAL initiative¹⁶ to hold international conferences of nuclear-weapon-free zones – although not always easy to convene – could be a venue for sharing experiences and assisting in the setting up of an organization such as CONEME. As time goes on, the Middle East Zone could likewise feedback unique information and learning from its experiences that will help other Zones to develop and be sustained and the same regions could build on these experiences in for example, implementing CWC and BWC and increasing regional biosecurity measures.

¹⁵ N. Fahmy & P. Lewis, Disarmament Forum 2011

¹⁶ XVI Session of OPANAL General Conference (Lima, Peru, November 30, 1999) Resolution CG/Res 338 <http://www.opanal.org/wp-content/uploads/2015/12/CG16res388i.pdf>

IV. Visions, strategies and tactics

Such arrangements however could do more than just implement and monitor the MEWMDFZ. If we can imagine a ME Zone, we can imagine a moment in the future – however fragile – when it might be possible to set aside grievances, differences, conflict and fear in the region for the greater good of the whole. A moment where common sense outweighs decades of emotion and a decision can be made to be pragmatic and move forward for the sake of future generations. As unrealistic as it may sound today, it has happened in other regions, and it could happen here.

So, if a Zone can be negotiated, could a wider framework for developing peaceful modes of cooperation be part of that? A spin-off from that? Or something that would remain an aspiration? Or, indeed, could this be set up in advance of the Zone – perhaps by a group of like-minded states in the region – to assist in creating an atmosphere of peace and security cooperation that could help lead to a Zone?

The best outcome of course would be a negotiation of a WMD Free Zone with all states in the region that establishes a regional organization to assist implementation and monitor compliance in collaboration with all the states parties and the relevant international organizations. This could lead – or be supported by – a regional security forum in the region, that could be held under UN auspices or created through a regional process¹⁷.

This would be the ideal. However, the problem is that for the current security and political environment in the region, both a WMD Free Zone and a regional security organization remain elusive for the foreseeable future. Putting our all our regional security eggs into these improbable baskets is falling into the old trap of making the best the enemy of the good. In the meantime, perhaps some practical frameworks that would help prepare for the zone could be established. These would help build confidence, establish trust and achieve useful outcomes in their own right and prepare the way for the best outcomes, namely the WMD Free Zone and a collaborative regional security organization or framework.

Such practical frameworks could start, for example, with enhanced collaboration over border controls. Shared borders and ports are vital points of control for both sides of a border or for countries in the region. Under various UN regimes, such as UNSC Resolution 1540, national legislation for preventing the spread of illicit commodities, including CBRN have been supported widely in the region. Although far from leak-proof, working and effective border controls are in everybody's interests. The World Customs Organization

¹⁷ Kane, C., Murauskaite, E., *Regional Security Dialogue in the Middle East: Changes, Challenges and Opportunities*, Routledge (June 2014), <https://www.routledge.com/Regional-Security-Dialogue-in-the-Middle-East-Changes-Challenges-and/Kane-Murauskaite/p/book/9781138018495>

(WCO¹⁸) has been developing the concept¹⁹ of ‘coordinated border controls’²⁰ in regions for which there are a number of potential models with varying degrees of regional cohesion (from low cohesion whereby the regional network is based on the bilateral border arrangement and loosely coordinated depending on need to full integrated regional border system) . Such collaboration is vital and already exists in across many borders in the regions. Coordinating the national border agencies in a way that focused on specific issues for which there is a strong regional agreement – for example on bio security, particularly in the light of COVID-19, MERS and Ebola – could provide a regional framework on which to build regional cooperation for regional security.

Another way forward would be to to build on the EU Chemical Biological Radiological and Nuclear Risk Mitigation Centres of Excellence Initiative (CoE)²¹ that strengthen the institutional capacity of countries outside Europe to mitigate CBRN risks – be they deliberate, inadvertent or accidental in nature. The CoE has a network in the Middle East, North Africa and Gulf regions and is centred around a worldwide network of local experts and collaborating partners with the aim of ‘strengthening regional security by increasing local ownership, local expertise and by ensuring long-term sustainability’. Harnessing the expertise that has been developed by the CoE through training and sustained technical support, the EU could help develop a more coordinated network across the region that would both enhance the work of the CoE and develop a framework for CBRN risk mitigation throughout the whole region.

Each of these networks – the regional coordinated border framework and the CBRN risk mitigation network - could work together and build a security framework that is based on risk reduction for issues that are of great and common concern in the region. Biosecurity is clearly one issue that would be of considerable interest in the current climate – how to develop a common framework for risk mitigation and border security for infectious diseases could be the basis for a common project in the Middle East that would serve the peoples of the region going forward, provide the basis for coordinated working and feed into one of the most difficult aspects of a WMD Free Zone, once the states in the region are ready to negotiate.

¹⁸ The following countries are members of the World Customs Organization: Algeria, Bahrain, Egypt, Iraq, Iran, Israel, Jordan, Kuwait, Lebanon, Libya, Morocco, Oman, Palestine, Qatar, Saudi Arabia, Sudan, Syrian Arab Republic, Tunisia, United Arab Emirates and Yemen. <http://www.wcoomd.org/-/media/wco/public/global/pdf/about-us/wco-members/list-of-members-with-membership-date.pdf?db=web>

¹⁹ Inter-Agency Forum on Coordinated Border Management, World Customs Organization, <http://www.wcoomd.org/-/media/wco/public/global/pdf/topics/wto-atf/working-documents/cbm-flyer-mb-v5.pdf?la=en>

²⁰ Aniszewski, S., Coordinated Border Management – a concept paper (June 2009), WCO Research Paper No. 2, <http://www.wcoomd.org/-/media/wco/public/global/pdf/topics/research/research-paper-series/cbm.pdf?db=web>

²¹ <https://ec.europa.eu/jrc/en/research-topic/chemical-biological-radiological-and-nuclear-hazards/cbrn-risk-mitigation-centres-of-excellence>

**Informal Workshop on Good Practices and Lessons Learned of Existing
Nuclear-Weapon-Free Zones
7-9 July 2020 (held virtually)**

Participating States

People's Democratic Republic of Algeria
Kingdom of Bahrain
Republic of Djibouti
The Arab Republic of Egypt
Republic of Iraq
Islamic Republic of Iran
Hashemite Kingdom of Jordan
State of Kuwait
Republic of Lebanon
State of Libya
Islamic Republic of Mauritania
Kingdom of Morocco
Kingdom of Saudi Arabia
Republic of the Sudan
Syria Arab Republic
The Republic of Tunisia
United Arab Emirates
Republic of Yemen

Observer States

People's Republic of China
United Kingdom of Great Britain and Northern Ireland
French Republic
Russian Federation

Relevant international organisations (GA decision 73/546)

International Atomic Energy Agency - IAEA
Biological Weapons Convention Implementation Support Unit - BWC-ISU

Regional and NWFZ organizations

African Union
African Commission on Nuclear Energy (AFCONE)
Pacific Islands Forum
OPANAL (Council President; Secretary-General)
Brazilian-Argentine Agency for Accounting and Control of Nuclear Materials (ABACC)

Member States of Nuclear-Weapons-Free Zones (which have no zone organizations)

Malaysia

Kingdom of Thailand

Republic of Kazakhstan

United Nations entities

United Nations Institute for Disarmament Research (UNIDIR)

Academia & NGOs

Middlebury Institute of International Studies at Monterey

Verification Research, Training and Information Centre

Victoria University, Melbourne, Australia

Vienna Centre for Disarmament and Non-Proliferation

Chatham House

Blue Banner (Mongolia)