



The Southeast Asia Nuclear-Weapon-Free Zone: A US Perspective on the Treaty and Its Future

Christine Parthemore

Summary

Prior to 2017, prospects seemed positive for the five nuclear weapon states to sign onto the protocol for the Southeast Asia Nuclear-Weapon-Free Zone treaty. While this would have marked a positive step for regional security, recent political changes in the United States may now be the biggest obstacle regarding the SEANWFZ protocol. Until the United States reaffirms or changes its policy regarding SEANWFZ, the international community will have a number of indicators to help gauge its prospects. As the situation evolves, the SEANWFZ states should continue to push for all five nuclear weapon states to sign the protocol together. At the same time, its parties can pursue numerous options to extend the moral authority the treaty lends them and promote additional methods of reducing nuclear risks, including by supporting creative arms control and non-proliferation measures.

1. Nuclear weapon-free zones (NWFZs) play an important role in reducing global nuclear threats. They lower the utility of nuclear weapons for non-strategic purposes, clarify intentions of the five nuclear weapon states (NWS)¹

¹ According to the NPT only the five countries that had tested a nuclear explosive device prior to 1 January 1967 (China, France, Russia, UK and US) can be described as NWS with resulting NPT-derived legal rights and obligations. The APLN and CNND use "nuclear-armed state" to refer to any country that possesses nuclear weapons (the five NWS plus India, Israel, North Korea and Pakistan). The

and form positive frameworks within which nuclear-armed states and non-NWS can work together. The Southeast Asia NWFZ (SEANWFZ) will be uniquely important among these zones given its specific standards, geographic expanse and protocols to reduce ambiguity regarding peaceful nuclear intentions.

2. Through 2016, prospects seemed good for all five NWS to sign the protocol to SEANWFZ. Recent political changes in the United States, however, may alter this trajectory. As the Southeast Asian signatories of the treaty navigate this evolving environment, they may use SEANWFZ as a platform for advocating broad measures to mitigate nuclear and other weapons of mass destruction (WMD) risks, while continuing to promote the treaty itself.

The Treaty and its Status

3. The Treaty on the Southeast Asia Nuclear-Weapon-Free Zone has been signed by all ten member states of the Association of Southeast Asian Nations (ASEAN): Brunei Darussalam, Cambodia, Indonesia, Laos, Malaysia, Myanmar, Philippines, Singapore, Thailand and Vietnam. It entered into force in March 1997 with the goal of promoting peace and security in the region. Under SEANWFZ, these countries

five NWS happen to coincide with the five permanent members of the United Nations Security Council (P5); however, the SEANWFZ protocol explicitly requires signatures of the five NWS rather than the P5 (Security Council permanent members). Editor.

pledge not to develop, possess, test or acquire nuclear weapons, nor allow other countries to use, possess or station nuclear weapons in their territory. These provisions extend to the airspace above land- and sea-based territories of each country. The parties to the treaty also pledge not to pollute radioactive waste into the sea or atmosphere or otherwise breach the safeguards and standards set by the International Atomic Energy Agency (IAEA).

4. Several aspects of SEANWFZ will play an important role in maintaining high international confidence in the peaceful intentions of any of its signatory countries that continue to pursue expanded nuclear energy systems. The treaty generally increases confidence that its signatories will not pursue nuclear weapon capabilities and shows they take seriously their commitments to reduce nuclear threats. Articles 12 and 13 are particularly helpful for assuring the international community of the signatory countries' commitments to non-proliferation, as they stipulate that if situations of ambiguity arise or if a state party's actions "may give rise to doubts about compliance with the provisions of this Treaty," the other SEANWFZ parties have the right to request both clarifying information and a fact-finding mission to resolve the concerns.²

5. The latest push among ASEAN and the five NWS for signature of the SEANWFZ protocol began in 2011. Since 2012, the NWS have regularly indicated their interest in proceeding. After their September 2016 meeting, the five NWS reaffirmed their support for nuclear weapon-free zones in general and their intention of signing the SEANWFZ at the earliest possible time.

6. Despite this support, the not one of the five NWS has yet signed. Public accounts of the causes of this delay point to several factors. In recent years, some experts and officials from the NWS have expressed concerns regarding specific details of SEANWFZ. Perhaps the most frequently cited is that the treaty extends to the continental shelves and Exclusive Economic Zones (EEZs) of its parties. This is not com-

mon to other NWFZs. Article 2 of SEANWFZ affirms that "nothing in this Treaty shall prejudice the rights or the exercise of these rights by any State" under the standards set by the United Nations Convention on the Law of the Sea (UNCLOS). The competing territorial claims in the South China Sea coupled with the treaty's inclusion of EEZs have raised concerns by some experts, though to date the N5 countries have been comfortable that SEANWFZ is flexible enough to allow any territorial concerns to be handled among the disputing parties and by the mechanisms set forth in UNCLOS.

7. Other concerns have centred on how the five NWS would interpret the reservations put forth by France, Russia and the United Kingdom, and possible future reservations that may be included in the signing statement that would customarily accompany US ratification. According to one former senior official from Singapore, the most serious reservation was one submitted by Russia, "with Moscow asserting the right to retract from the entire Protocol if it should unilaterally determine that ASEAN members had allowed foreign vessels or aircraft with nuclear weapons to enter or transit their waters and airspace."³ While the five NWS countries seem to have grown comfortable that no reservations detract from the treaty's utility, not all SEANWFZ parties have fully accepted that the five NWS countries should proceed if reservations remain.

8. None of these concerns, or others raised since the entry into force of SEANWFZ, need necessarily detract from NWS support for the treaty or their willingness to sign onto its protocol, as extensively explained by nuclear expert Tong Zhao in a 2017 Asia-Pacific Leadership Network policy brief. As he concluded:

³ Bilahari Kausikan, "A Nuclear Weapon Free World and Other Delusions," *The American Interest*, 1 July 2014, <http://www.the-american-interest.com/2014/07/01/a-nuclear-weapon-free-world-and-other-delusions/>. See also "4 nuke states postpone signing SEANWFZ protocol next week," *Xinhua News*, 8 July 2012, http://news.xinhuanet.com/english/world/2012-07/08/c_131702340.htm and NTI, "Southeast Asia Nuclear Weapons Free Zone (SEANWFZ) Treaty (Bangkok Treaty), updated 22 September 2016, <http://www.nti.org/learn/treaties-and-regimes/southeast-asian-nuclear-weapon-free-zone-seanwzf-treaty-bangkok-treaty/>

² Association of Southeast Asian Nations, "Treaty on the Southeast Asia Nuclear Weapon-Free Zone," http://asean.org/?static_post=treaty-on-the-southeast-asia-nuclear-weapon-free-zone

The evolving strategic environment in the region, combined with the ever louder calls of non-NWS for progress on disarmament, will give important incentives for the NWS to deliver tangible results on their disarmament commitments. Technological development has also made some of the previous concerns about the protocol increasingly less relevant. Making the SEANWFZ protocol enter into force as soon as possible serves everyone's interests.⁴

9. Political changes in the United States are now likely to become the biggest obstacle to progress in the five NWS signing the SEANWFZ protocol. This paper will therefore focus on what SEANWFZ signatories and the other NWS partners might look for in navigating the evolving US situation, beginning with a brief overview of the US position during the administration of President Barack Obama (2009–17).

The US Position through 2016

10. Through 2016, the US government supported NWFZs and sought to work with the other four NWS and signatory countries to sign protocols to abide by these treaties. The United States signed and ratified the protocols to the Treaty of Tlatelolco and signed the protocols for the Treaties of Semipalatinsk, Pelindaba and Rarotonga (but has not yet ratified them). The Obama administration pushed for ratification of these treaties and worked to advance protocol signature for SEANWFZ, applying these specific criteria to determine US support for each NWFZ:

- “the initiative for the creation of the zone should come from the States in the region concerned;
- all States whose participation is deemed important should participate;
- the zone arrangement should provide for adequate verification of compliance with its provisions;
- the establishment of the zone should not disturb existing security arrange-

ments to the detriment of regional and international security or otherwise abridge the inherent right of individual or collective self-defence guaranteed in the Charter of the United Nations;

- the zone arrangement should effectively prohibit its Parties from developing or otherwise possessing any nuclear device for whatever purpose;
- the establishment of the zone should not affect the existing rights of its Parties under international law to grant or deny other States transit privileges within their respective land territory, internal waters and airspace to nuclear powered and nuclear capable ships and aircraft of non-party nations, including port calls and overflights; and
- the zone arrangement should not seek to impose restrictions on the exercise of rights recognized under international law, particularly the high seas freedoms of navigation and overflight, the right of innocent passage of territorial and archipelagic seas, the right of transit passage of international straits, and the right of archipelagic sea lanes passage of archipelagic waters.”⁵

11. Through the end of 2016, the US government affirmed that SEANWFZ meets the standards it had set and took a firm position that the treaty would promote regional security and US interests. The US 2015 report to the Nuclear Non-proliferation Treaty (NPT) Review Conference indicated that the country would continue to pursue negative security assurances and supported protocol to NWFZs. On SEANWFZ, it stated “The United States is committed to signing the revised Protocol to the Southeast Asia Nuclear-Weapon-Free Zone (SEANWFZ) Treaty and continues to stand ready to assist in resolving remaining concerns.”⁶

⁴ Tong Zhao, “Nuclear Weapon States and the Southeast Asia Nuclear Weapon Free Zone,” APLN/CNND *Policy Brief* No. 28 (February 2017), http://apl.org/briefings/briefings_view/Policy_Brief_28_-_Nuclear_Weapon_States_and_the_Southeast_Asia_Nuclear_Weapon-Free_Zone

⁵ US Department of State, “Nuclear Weapon Free Zones,” Archived Webpage, <https://2009-2017.state.gov/t/isn/anwzf/index.htm>

⁶ US Department of State, “Report of the United States of America Pursuant to Actions 5, 20, 21 of the 2010 Nuclear Non-Proliferation Treaty Review Conference Final Document,” Updated 2015 Report: 27 April 2015.

12. For the United States, the Department of State spent several years working to reassure ASEAN allies that neither the treaty's protocol nor reservations by the other NWS regarding the treaty create any legal obstacles to US security commitments in the region. Despite US efforts, concerns remain in some partner countries that SEANWFZ may open the door to political and security obstacles if signatory countries decide to use the treaty to challenge the US ability to freely navigate and make port calls in the region with nuclear-weapon-capable vessels. It is noteworthy that through 2016 this concern was not held by the US government, as the government has not interpreted the treaty as creating such inhibitions.

13. In addition to these delays in signing the protocol for SEANWFZ, the US Senate has refused to ratify most treaties in recent years, including its continual delay in ratifying UNCLOS despite significant support from Republican and Democratic presidents, US military leaders, the US Chamber of Commerce, environmental groups and other constituencies. While there is not significant Senate opposition to most NWFZs, the US Senate also lacks vocal champions for them. As a result, a small bloc in the Senate that opposes US participation in treaty systems writ large, under the belief that they erode sovereignty, has continually prevented serious consideration of most treaties for more than a decade.

Future US Policy on SEANWFZ

14. For the United States, it is difficult to say as of this writing whether the Trump administration will support SEANWFZ and seek to sign it. While Hillary Clinton would likely have remained committed to the policies towards both Southeast Asia and nuclear weapons espoused by the Obama and George W. Bush administrations, Donald Trump has stated little regarding policy preferences for the Asia-Pacific or Southeast Asia. There is a chance that the administration will make its intentions clear regarding SEANWFZ in the near term; it may also announce whether it will maintain or alter the criteria for US support for NWFZs outlined earlier in this paper.⁷ Short of these kinds of spe-

⁷ As of this writing, the Department of State website does not have any content regarding nuclear-weapon-free zones.

cific policy pronouncements, several indicators may shed light on the forthcoming direction of the Trump administration.

15. As of this writing, the Trump administration has given relatively few specific details of its future policies for the Asia-Pacific region – and almost no detail regarding its approach for Southeast Asia – aside from President Trump's withdrawal from the Trans-Pacific Partnership during his first week in office.⁸ The January 2017 confirmation hearing for Secretary of State Rex Tillerson and other statements he has made may hint at future administration policy. Tillerson has called nuclear non-proliferation one of the vital roles of the Department of State and has signalled respect for non-proliferation and arms control treaties. On the other hand, his statement to Congress that "We're going to have to send China a clear signal that first, the island-building stops and second, your access to those islands is also not going to be allowed" with regard to the South China Sea may complicate progress on SEANWFZ in particular.⁹

16. More detail regarding relevant Trump administration policies will be revealed through the next Nuclear Posture Review, which the president ordered by January 2018 as part of the production of a new National Defense Strategy.¹⁰ There are several specific aspects of the 2010 Nuclear Posture Review conducted by the Obama administration that relate to US support for nuclear-weapon-free zones. Changes to any of these policies in the next Nu-

⁸ William Mouldin, "Donald Trump Withdraws US From Trans-Pacific Partnership," *The Wall Street Journal*, 23 January 2017, <http://www.wsj.com/articles/trump-withdraws-u-s-from-trans-pacific-partnership-1485191020>; see Mira Rapp-Hooper, "Deciphering Trump's Asia Policy: What 'America First' Will Mean for Regional Order," *Foreign Affairs*, 22 November 2016, <https://www.foreignaffairs.com/articles/asia/2016-11-22/deciphering-trumps-asia-policy>

⁹ Katie Hunt, "Tillerson sets stage for showdown with Beijing over South China Sea," *CNN*, 12 January 2017, <http://www.cnn.com/2017/01/12/politics/china-tillerson/>; C-SPAN Secretary of State Confirmation Hearing video and transcripts, January 11, 2017, <https://www.c-span.org/video/?421335-1/secretary-state-nominee-rex-tillerson-testifies-confirmation-hearing>

¹⁰ Presidential Memorandum, "Rebuilding the US Armed Forces," January 2017, https://www.scribd.com/document/337707193/Draft-Order-Military#fullscreen&from_embed

clear Posture Review may affect US policies in support of these zones:

- The commitment to reducing the role of nuclear weapons in US national security strategy;
- The 2010 move to strengthen negative security assurances, including by stating that the country “will not use or threaten to use nuclear weapons against non-nuclear weapons states that are party to the NPT and in compliance with their nuclear non-proliferation obligations”;¹¹
- The policy that reserves space for nuclear weapons to be used as a deterrent against non-nuclear threats (for example, chemical and biological weapons and other extreme scenarios), rather than adopting a policy that the sole purpose of US nuclear weapons is to deter nuclear attacks.

17. Should the next Nuclear Posture Review remove the US commitment to continue reducing the role of nuclear weapons in national security strategy, this may move the Department of State to change course from the past US support for NWFZs. On the other hand, a new review that continues to strengthen negative security assurances would show that the United States would be more likely to continue its support for nuclear-weapon-free zones and similar measures. Likewise, continuing to reduce the role of nuclear weapons by adopting a “sole purpose” policy would indicate that the United States will continue to take seriously its respect of the norms set by these zones.

18. The most detailed indicator of the Trump administration’s forthcoming policies regarding SEANWFZ, as of this writing, may be draft White House memos that would cut US financial support for the United Nations and set a moratorium on pending multilateral treaties that are not directly germane to national security or trade.¹² It is possible that these draft

documents may be changed or scrapped. However, they are consistent with campaign promises by Trump to pull the United States back from multilateral and international organizations and, if signed as drafted, they are likely to prompt a review of the US position regarding SEANWFZ.

19. Other dynamics may play a role in the Trump administration’s approach to SEANWFZ. Both President Trump and Secretary of State Tillerson have indicated a preference for working closely with Russia on shared security interests. This could influence next steps by the United States. As is the case for any administration, personnel will also matter. The inclinations of forthcoming, sub-cabinet appointees could tilt US policy preferences for or against proceeding with signing the SEANWFZ protocol based on their foreign and security policy experiences and depth of knowledge on Asia-Pacific affairs.

20. Of course, the speed President Trump has taken in directing policy changes also shows that a future US administration may easily revert back to support for SEANWFZ, even if the Trump administration suspends that support during its tenure. At that time, the ability of the United States to proceed with the protocol may depend on the positions taken by the other four NWS in the intervening years and the inclinations of the US Senate, for which 33 of 100 seats will be up for re-election in 2018. If the United States continues to pursue signing and ratifying the SEANWFZ protocol in the future, American officials will have to continue reassuring Southeast Asian partners that the agreement is flexible enough that it will not impede US security support and that the treaty benefits international security and stability.

Looking Ahead

21. The states parties to SEANWFZ should by all means continue to promote all five NWS signing the treaty’s protocol. To date, the NWS have sought to act in unison regarding SEANWFZ. While it is difficult to tell if this dynamic might change given developments in the United States, the SEANWFZ states should con-

¹¹ U.S. Department of Defense, “Nuclear Posture Review Report,” April 2010, p. viii, http://www.defense.gov/Portals/1/features/defenseReviews/NPR/2010_Nuclear_Posture_Review_Report.pdf

¹² Max Fisher, “Trump Prepares Orders Aiming at Global Funding and Treaties,” *The New York Times*, 25 January 2017,

https://www.nytimes.com/2017/01/25/us/politics/united-nations-trump-administration.html?_r=0

tinue to push for all five NWS states to sign the protocol together.

22. At the same time, its parties can pursue a number of options to extend the moral authority that the treaty lends them and promote additional methods of reducing nuclear risks. All of the SEANWFZ countries, for example, voted for the United Nations resolution to begin negotiations in 2017 to ban nuclear weapons.¹³ While the NWS states have not participated in most of the deliberations related to this resolution, there are many ways Southeast Asian countries can seek to work with and influence the five NWS, singly and collectively, in the years ahead regarding SEANWFZ and other matters.

23. NWFZs focus on shaping the policies of nuclear-armed states by restricting deployment, employment and movement. This does not immediately affect the primary area of nuclear weapon decisions over which President Trump has indicated a strong preference: modernizing the US nuclear arsenal. In addition to his stated support for increasing the overall US defence budget and lifting the budget caps currently set in place by Congress, Trump stated during presidential debates his concern that the US nuclear weapons modernization process has lagged behind that of Russia.

24. While parties to the SEANWFZ may continue to pressure Russia and the United States to continue numerical reductions, these countries may consider advocating for all the nuclear-armed states to think creatively about how reducing certain types of nuclear weapons could reduce security risks and reinforce the taboo against nuclear weapons use. Non-strategic nuclear weapons should be the first priority in this category. For example, this can include advocating for South Asian countries to avoid the lure of committing additional resources to developing tactical nuclear weapons.

25. To leverage the currently strong US focus on modernization, another approach may focus on nuclear-armed cruise missiles. During the May 2016 Open-Ended Working Group, the Swedish and Swiss governments proposed that “States initiate or engage in a process to reduce risks associated with nuclear armed cruise missiles.”¹⁴ This proposal stemmed from several trends. For the United States, there is increasing concern that the planned modernization of its air-launched nuclear-armed cruise missile into what will be called the long-range standoff weapon may upset strategic stability.

26. Russia and France also have nuclear-armed cruise missiles, and India and Pakistan have tested capabilities that indicate their interest in developing these weapons in South Asia.¹⁵ While China has refrained from developing stockpiles of them, it could alter its calculations based on developments in the Asia-Pacific or by the United States. Southeast Asian nations promoting a halt to these specific nuclear weapons would be consistent with the norms espoused in SEANWFZ and lean into the preference of the five NWS for promoting the step-by-step approach towards disarmament.

27. The parties to SEANWFZ may also continue expanding upon the treaty by developing new tools to keep the region free of all WMD. While there is not an exact analogue with nuclear weapons regarding deployment and transit of biological and chemical weapons, the region can play an important role in reinforcing norms against all WMD and contributing to confidence-building measures. With Myanmar’s 2014 ratification of the Biological and Toxin Weapons Convention and 2015 ratification of the Chemical Weapons Convention, all SEANWFZ states are now party to the basic WMD non-proliferation treaties. This gives the countries a good platform to work together on specific threat reduction activities and protocol, including promoting strong peaceful-use norms among scientific communities, creating

¹³ International Campaign to Abolish Nuclear Weapons, “Voting on UN resolution for nuclear ban treaty,” 23 December 2016, <http://www.icanw.org/campaign-news/voting-on-un-resolution-for-nuclear-ban-treaty/>. See also John Carlson, “A Nuclear Weapons Ban: Finding Common Ground,” APLN/CNND Policy Brief No. 30 (February 2017), <http://www.apln.org/briefings/briefings-view/Policy-Brief-30-A-Nuclear-Weapons-Ban-Finding-Common-Ground>

¹⁴ “Nuclear armed cruise missiles,” Paper submitted by Sweden and Switzerland to the UN Open-ended Working Group, Geneva, 2016.

¹⁵ Joshua Berlinger, “South Asia’s nuclear one-upmanship ramps up with Pakistan missile test,” CNN, 10 January 2017; Rahul Bedi, “India’s fourth Nirbhay cruise missile test flight fails,” *IHS Jane’s Defence Weekly*, 22 December 2016.

strong regulatory environments and expanding participation in measures such as the Proliferation Security Initiative and the Convention on the Physical Protection of Nuclear Material.

28. All these steps could help in efforts to ensure that SEANWFZ is accepted and adhered to and its protocol adopted by the NWS when that becomes politically feasible. Moreover, these steps contribute to the overarching goals of the treaty to extend peace and security in Southeast Asia and reduce WMD threats in the region.

29. Additionally, SEANWFZ signatories should develop a plan with specific measures that may help maintain an opening for the five NWS to sign the protocol in the future, even if that is most likely to occur after the next change in US administration. SEANWFZ countries should continue to engage with the individual NWS states most amenable to signing the protocol and encourage them to raise the treaty among the other NWS. Specifically, these countries may emphasize that signing the SEANWFZ protocol might help to renew confidence in the step-by-step approach towards disarmament favoured by all five NWS and reduce the pressure the ban treaty is creating. The SEANWFZ parties with defence ties to the United States should also continue to discuss the regional security benefits of the treaty, perhaps in 2+2 channels (bilateral meetings including both defence and diplomatic representatives).

30. Verification is another angle that parties to the SEANWFZ can productively pursue with the NWS, nuclear-armed states and non-NWS, in addition to their pledged cooperation with the IAEA. Verification cooperation can include technical collaboration, discussions on methods and implementation with other NWFZ states and other steps that can increase countries' capabilities to remain in step with the treaty while building confidence and trust.

Conclusion

31. In closing, prospects were good for all five NWS to sign the SEANWFZ protocol through 2016. However, the evolving US political environment may change this trajectory. The international community will have a number of indicators to use in gauging its prospects in the coming years, even if specific US policy decisions are not clear in the near term. Regardless, the other NWS countries and SEANWFZ parties should continue to push for ratification of the treaty's protocol by all five NWS, while finding creative ways to use the moral authority the treaty conveys to advance peace and security in Southeast Asia.

The Author

CHRISTINE PARTHMORE is a consultant and adjunct professor at Johns Hopkins University, covering issues in countering weapons of mass destruction, arms control and disarmament, energy, and the security implications of climate change. She was previously a Council on Foreign Relations International Affairs Fellow in Japan researching civil nuclear cooperation. She was the senior adviser to the assistant secretary of defence for nuclear, chemical, and biological defence programs from 2011 to 2015, and has worked in several think tanks. The views expressed in this article are those of the authors and do not represent the official policy or position of the Department of Defense or the US government.

APLN/CNND Policy Briefs

These express the views of the authors, and do not necessarily reflect the views of APLN members or the CNND, or other organizations with which the authors may be associated. They are published to encourage debate on topics of policy interest and relevance regarding the existence and role of nuclear weapons.

APLN and CNND

The **Centre for Nuclear Non-Proliferation and Disarmament (CNND)** contributes to worldwide efforts to minimize the risk of nuclear-weapons use, stop their spread and ultimately achieve their complete elimination. The director of the Centre is Professor Ramesh Thakur. See further <http://cnnd.anu.edu.au>.

The **Asia Pacific Leadership Network (APLN)** comprises around eighty former senior political, diplomatic, military and other opinion leaders from fifteen countries around the region, including nuclear-weapons possessing states China, India and Pakistan. The objective of the group, founded by former Australian Foreign Minister and President Emeritus of the International Crisis Group Gareth Evans, is to inform and energize public opinion, and especially high level policy-makers, to take seriously the very real threats posed by nuclear weapons, and do everything possible to achieve a world in which they are contained, diminished and ultimately eliminated. The co-Convenors are Professors Chung-in Moon and Ramesh Thakur. The Secretariat is located at the East Asia Foundation in Seoul, Republic of Korea. See further www.a-pln.org.

Funding Support

APLN gratefully acknowledge the generous support of the Nuclear Threat Initiative, Washington DC.

Contact Us

APLN, East Asia Foundation
4F, 116 Pirundae-ro
Jongno-gu, Seoul 03535
Republic of Korea
Email: apl@keaf.org
Tel: +82 2 325 2604-6