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Time to Draw on the Untapped Potential of NWFZs

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NUCLEAR
WEAPON-FREE
ZONE

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TIME TO DRAW ON THE UNTAPPED POTENTIAL OF NWFZS

INTRODUCTION

Great power rivalry is again impacting all areas of human activity. Relations between the United States (US) and Russia have deteriorated and their bilateral negotiations on reducing nuclear weapons arsenals have come to a standstill, with the exception of timid efforts at keeping the New START agreement alive. Meanwhile, the world is witnessing rapid technological changes affecting the geopolitical environment with the introduction of hypersonic, space, cyberspace, various drones, and other weapons, all while efforts are being made by civil society and states parties to the Treaty on the Prohibition of Nuclear Weapons (TPNW) to delegitimize nuclear weapons. Absence of any movement in the US-Russia bilateral talks and in multilateral talks does not automatically mean that the entire disarmament machinery must come to a halt. On the contrary, this machinery needs to be made greater use of, especially at the regional level.

One regional initiative that is widely recognized by the non-nuclear weapon states (NNWS) in strengthening the nuclear non-proliferation regime is the practice of establishing nuclear-weapon-free zones (NWFZs). Such zones, which can be established without the direct support of the five nuclear-weapon states (NWS, also known as the P5), need to be encouraged and supported alongside the TPNW.

ROLE AND DEFINITION OF NWFZS

The first United Nations Special Session on Disarmament (SSOD-I) held in 1978 identified NWFZs as important disarmament measures. This position was also reflected in Article VII of the Treaty on the Non-Proliferation of Nuclear Weapons (NPT), adopted in 1968, which states that “nothing in the 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.”¹ In the spirit of that article, in 1975 the United Nations General Assembly (UNGA) adopted Resolution 3472, part B of which defined a NWFZ as:

- “...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 procedure 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.”

This resolution also defined the principal obligation of NWS to refrain from performing or contributing in any way to the performance of acts that would violate the status of NWFZs and from using or threatening to use nuclear weapons against states included in these zones. Outlining the scope of the definitions, the resolution resolved that the above definitions in no way impair the resolutions which the General Assembly has adopted or may adopt with regard to specific cases of NWFZs, nor the rights emanating for member

¹ Treaty on the Non-Proliferation of Nuclear Weapons (NPT), Text of the Treaty, United Nations Office of

Disarmament (UNODA), <https://www.un.org/disarmament/wmd/nuclear/npt/text/>

states from such resolutions.² It should be noted, however, that there was no unanimity regarding the definitions: Resolution 3472 was adopted by a vote of 82-10-36, with over one-third of the UN membership not directly supporting it.

When the concept of NWFZs was first elaborated and welcomed by the international community in the late 1960s, the main interest of the P5—and in fact of the international community in general—was to involve as many NNWS as possible in the emerging NWFZ regime, via initiatives that could be taken at the regional level. This regional approach has been successful, leading to the establishment of five NWFZs in populated areas: Latin America and the Caribbean, the South Pacific, Southeast Asia, Central Asia, and a zone embracing the entire African continent. Today, these zones include more than 115 states parties, 39 percent of the world's population, and 60 percent of United Nations members.

However, despite this success, nearly two dozen NNWS cannot be included in the existing NWFZs due to their geographical locations or for credible political or legal reasons, including perhaps strict neutrality policies, thus creating blind spots and grey areas in the pursuit of the nuclear-weapon-free world (NFWF). One should not forget that any system is only as strong as its weakest link(s). To address this problem, the **NWFZ concept needs to be made inclusive, incorporating the security interests and needs of individual states** and making use of whatever comparative advantages they might have to strengthen the non-proliferation regime. The establishment of so-called 'second-generation' NWFZs is currently being

discussed, in regions with on-going intra-state disputes, or where the P5 have particular interests or stakes, such as in the Middle East,³ Northeast Asia, and the Arctic. A 2016 study of the possibility of establishing a NWFZ in Europe proved discouraging due to the opposition of the US, NATO, and Russia.

Establishing single-state NWFZs is not a purely academic or new exercise. It was first mentioned in a 1975 report of an ad hoc group of qualified governmental experts on NWFZs⁴ and later in 1992 when Mongolia declared itself a NWFZ.⁵ But in today's world of growing geopolitical tensions and arms race dynamics, the possibility of additional countries declaring their territorial sea, land, and airspace nuclear-weapon-free zones should be seriously explored, including for Pacific Island countries that are not party to the Rarotonga Treaty.

COLD WAR LESSON

The Cold War period demonstrated that being an ally of a nuclear weapon state and hosting the latter's military bases turns that particular country into a target of an adversarial nuclear weapon state. Therefore, instead of contributing to the alliance's strength and power, that host country may become a source of instability and heightened insecurity. That was Mongolia's experience during the Cold War, when it was a treaty ally of the Soviet Union and hosted the latter's military bases and dual use delivery weapons. In 1969, when the Sino-Soviet ideological dispute turned into a military standoff (resulting in more than 1000 casualties on both sides), there was a risk of Soviet pre-emptive strikes against Chinese nuclear weapons and related facilities, an act which

² UNGA resolution 3472 (XXX), part B III, December 11, 1975.

³ Now known as a zone free of weapons of mass destruction (WMD) in the Middle East.

⁴ Special Report of the Conference of the Committee on Disarmament. General Assembly. Official Records:

Thirtieth Session. Supplement No. 27A (A/10027/Add.1). New York, 1976.

⁵ See UNGA document A/47/PV.13, 47th Session. *Provisional Verbatim Record of the 13th Meeting*. September 25, 1992.

could have had devastating political, military, humanitarian, and ecological consequences for Mongolia and the region. Indeed, the Soviets hinted to their Warsaw Pact allies about the possibility of such strikes,⁶ which could have prompted a US retaliation (at the time, Washington warned that surgical strikes by Moscow would lead to World War III).⁷ By hosting Soviet military bases nearest to the Chinese political center and its nuclear military infrastructure, any nuclear exchange would have surely turned Mongolia from an eastern 'strategic bridgehead' of the Soviet bloc to an actual battleground—not only of the two communist rivals but of three nuclear weapon states. Even if US policy were to have it remain 'neutral' in the event of a Sino-Soviet conflict, the 1962 Cuban missile crisis would have been just a footnote by comparison.

A Sino-Soviet conflict would have had devastating consequences for Mongolia, turning it into 'trampled and irradiated grass' as many observed. That was the lesson Mongolia learned during the Cold War. Once Soviet bases and troops had been withdrawn, Mongolia declared its territory to be a NWFZ on 25 September 1992 at the UNGA, and pledged to have that status internationally guaranteed. To that end, in 2000 Mongolia adopted national legislation defining its NWFZ status, which mirrored the basic commitments set out in regional NWFZ treaties.

INTERNATIONAL RESPONSE TO MONGOLIA'S NWFZ

The overall international reaction to Mongolia's single-state NWFZ initiative was positive: it was seen as an important and constructive move, including by the P5. However, the latter were not supportive of this idea's further propagation, believing that it could set a precedent, and discouraged the establishment of further regional zones.⁸ But Mongolia counter-argued that excluding individual states from the NWFZ concept would create blind spots or grey areas that would only weaken the entire NWFZ regime. With this in mind, in 2015, a Mongolian Non-Governmental Organization (NGO) devoted to promoting the country's nuclear-weapon-free status called Blue Banner⁹ conducted a study on single-state zones, their role in international relations, and in geopolitical predictability and confidence building.

It is no secret that states primarily pursue their own interests through their foreign policies. The P5 are no exception, as can be observed from their position and policies at the United Nations Security Council, at the NPT Review Conferences, and when addressing regional conflicts. The nuclear deterrence policies of the P5 have led observers to conclude that nuclear weapons, if they were actually used, would not be targeted on the P5 territories or those of their allies but elsewhere, likely perhaps on the

⁶ Document No. 7, "Note of Conversation between Ion Gheorghe Maurer and Zhou Enlai, 11 September 1969," *Cold War International History Project Bulletin*, Issue 16, pp.427-28, https://www.wilsoncenter.org/sites/default/files/media/documents/publication/CWIHPBulletin16_p4.pdf. See also Andrew Osborne and Peter Foster, "USSR Planner Nuclear Attack on China in 1969," *The Telegraph*, 13 May 2010, <https://www.telegraph.co.uk/news/worldnews/asia/china/7720461/USSR-planned-nuclear-attack-on-China-in-1969.html>

⁷ The Daily Dish, "The Nuclear War That Wasn't," *The Atlantic*, December 6, 2010, <https://www.theatlantic.com/daily->

[dish/archive/2010/12/the-nuclear-war-that-wasnt/178914/](https://www.dish/archive/2010/12/the-nuclear-war-that-wasnt/178914/),

⁸ On Mongolia's talks with the P5, see Jargalsaikhan Enkhsaikhan, "Converting a Political Goal to Reality: The First steps to Materialize Mongolia's nuclear-weapon-free status", *Mongolian Journal of International Affairs* (2012), No. 17, <https://doi.org/10.5564/mjia.v0i17.80>.

⁹ Blue Banner is a Mongolian NGO, established in 2005. The organization is devoted to promoting the country's nuclear-weapon-free status policy nationally and internationally as well as contributing to the common efforts to promote nuclear non-proliferation and disarmament.

territories of other states through proxy wars. Hence, there is a need for NNWS to minimize areas where nuclear weapons might be used, gradually limiting this potentiality to the territories of NWS and their allies, and then eventually to the territories of NWS only. That would facilitate progress towards a nuclear weapons-free world. The point is that if additional NNWS pursue single-state NWFZs, their combined soft power policies will affect the hard power politics of NWS, helping to revive the momentum toward disarmament. This in itself demonstrates the importance of making NWFZ concept inclusive.

LEGAL STATUS OF NNWS NOT PARTY TO CURRENT TRADITIONAL NWFZ REGIMES

From a purely legal point of view, excluding other NNWS from the NWFZ concept weakens the NWFZ regime. It also undermines the NPT regime and violates the fundamental principles of the UN Charter, such as the sovereign equality of states and their right to individual or collective self-defense. It also goes against the spirit of Chapter VIII of the UN Charter regarding regional arrangements. If need be, an advisory opinion by the International Court of Justice (ICJ) could be sought on this issue. It should be pointed out that here we are speaking in principle of the inalienable or inherent rights of states, rights that need to be recognized as such under international law. In practice, of course, it would be up to each NNWS to decide whether or not it would exercise this sovereign right.

In Mongolia's case, in 2000 the P5 issued a joint statement announcing that they would not use or threaten to use nuclear weapons against it. Mongolia welcomed this as a step in recognizing the rights of individual states, but pointed out that it did not clearly reflect Mongolia's official NWFZ status, nor did it

reflect its relations with its immediate neighbours or with other nuclear weapon states. Further talks led to a P5 joint declaration providing to Mongolia non-treaty-based assurances, and on 17 September 2012 the P5 and Mongolia signed parallel declarations whereby Mongolia reaffirmed its commitment to the NPT and to its domestic legislation enshrining its nuclear weapon-free status as recognized by UNGA Resolution 53/77 D of 1998.¹⁰ On the other hand, the P5 jointly welcomed the passage of Mongolia's nuclear-free legislation, pledging to respect its status and to not contribute to any act that would violate it. This P5 joint declaration represents yet another step in recognizing rights and interests of NNWS not reflected in the current definition of NWFZs nor in international law.

Since the notion of 'strength in numbers' cannot be applied to single-state zones, thus leaving individual states vulnerable to external pressures, international **measures need to be taken to protect their interests in international law and practice.** However, the form of assurances provided to these states should reflect post-Cold War-era realities and needs, and should protect such states from being forced to pick sides in the nuclear power rivalries. Their commitments should be to reaffirm their NPT obligations, and to not contribute to the vertical proliferation of technologies that would enable the use or threat of use of nuclear weapons (such as radars, launchers, delivery vehicles and drones, warheads, communication and surveillance facilities, and elements of command, control, communications, and information or C³I facilities). Security assurances provided to single-state zones need to reflect their actual security needs and not necessarily Cold War-era bloc assurances. Thus, mindful of the unlikelihood of the P5 providing legally-binding security assurances

¹⁰ See UNGA Resolution A/RES/53/77 D, December 4, 1998, [https://documents-dds-](https://documents-dds-ny.un.org/doc/UNDOC/GEN/N99/760/45/PDF/N9976045.pdf?OpenElement)

[ny.un.org/doc/UNDOC/GEN/N99/760/45/PDF/N9976045.pdf?OpenElement](https://documents-dds-ny.un.org/doc/UNDOC/GEN/N99/760/45/PDF/N9976045.pdf?OpenElement)

to each one of these individual states, **such assurances could take the form of a joint P5 declaration.** This P5 declaration would be addressed to NNWS not party to traditional NWFZs and to each other. Several commitments could be included: 1) they would **declare single-state zones to be part of the NWFZ regime**; 2) they would **pledge not to use single-state zones or their territories in ways deemed detrimental to their security interests or needs**, nor to international confidence and stability in general; and 3) they would **respect the policies of such states and not contribute to any act that would violate their nuclear weapon-free status.** This could be considered as “security assurances-lite” as compared to Cold War-era hard assurances.

Individual states, based on their geographical or other comparative advantages, can play useful roles in their particular region or internationally in monitoring and verifying the commitments made by the P5. In doing so, they would contribute to strengthening the NWFZ and NPT regimes, and serve as indispensable stepping stones towards the creation of the nuclear weapons-free world.

WHAT NEEDS TO BE DONE TO TAP THE POTENTIAL OF NWFZS

In order to achieve this, **a second comprehensive study on NWFZs in all their aspects¹¹ needs to be undertaken**, one that would contribute to unleashing the enormous potential of NWFZs by **expanding the current narrow definition of NWFZs and making the concept inclusive.** Individual states would need to adopt **national legislation or declarations that would clearly define or reaffirm their NPT commitments as well as underline the expectations of P5 security**

assurances-lite. That would strengthen the principles of international law regarding NWFZs, contributing to confidence building and representing practical contributions by such states to the common cause.

This second study should also **clearly define the legally binding assurances to traditional NWFZs** so as to exclude politically driven reservations or unilateral interpretations of P5 commitments. Such assurances need to become legally binding within a specified time period while defining the responsibilities of the P5 in the case of their violations of their protocol commitments, including the threat of use of force. Blue Banner also believes that excluding the four de-facto nuclear armed states prevents the NWFZ or NPT regimes from becoming stronger. Undertaking this study would provide an opportunity to discuss this so far “taboo” issue.

Mindful of their growing role and the potential of national, regional, and international NGOs in promoting non-proliferation and regional confidence-building, it is important to encourage and support their contributions by involving them, to the fullest extent possible, in the monitoring and verification of NWFZ activities on par with state actors. Blue Banner¹² is ready to further develop this concept with interested think tanks, NGOs, and individuals as a concrete contribution by the NNWS in strengthening the NWFZ and NPT regimes.

¹¹ The first and only such study was undertaken in 1975. See UNGA document A/10027/Add.1, New York, 1976, [https://documents-dds-](https://documents-dds-ny.un.org/doc/UNDOC/GEN/NG9/059/41/PDF/NG905941.pdf?OpenElement)

[ny.un.org/doc/UNDOC/GEN/NG9/059/41/PDF/NG905941.pdf?OpenElement](https://documents-dds-ny.un.org/doc/UNDOC/GEN/NG9/059/41/PDF/NG905941.pdf?OpenElement)

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Enkhsaikhan Jargalsaikhan is an international lawyer and diplomat who has served at the Ministry of Foreign Affairs of Mongolia, representing his country in Austria and at the United Nations. He also served as the foreign policy and legal advisor to President P. Ochirbat, the first democratically elected President of Mongolia, and as the Executive Secretary of the National Security Council of Mongolia when the State Great Hural (parliament) considered and adopted the country's first concepts of national security and foreign policy in 1994. As the country's Permanent Representative to the United Nations, he served as the focal point in promoting Mongolia's nuclear-weapon-free status.

ABOUT APLN

The **Asia-Pacific Leadership Network for Nuclear Non-proliferation and Disarmament (APLN)** is a Seoul-based organization and network of political, military, diplomatic leaders, and experts from across the Asia-Pacific region, working to address global security challenges, with a particular focus on reducing and eliminating nuclear weapons risks. The mission of APLN is to inform and stimulate debate, influence action, and propose policy recommendations designed to address regional security threats, with an emphasis on nuclear and other WMD (weapon of mass destruction) threats, and to do everything possible to achieve a world in which nuclear weapons and other WMDs are contained, diminished, and eventually eliminated.



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