

Implementation and Enforcement of Nuclear-Weapon-Free Zone Treaties and the Implications for Nuclear Disarmament

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Sydney protest against French nuclear tests, 1995

“... Recalling that militarily denuclearized zones are not an end in themselves but rather a means for achieving general and complete disarmament at a later stage...”

Preamble, 1967 Treaty of Tlatelolco

“... in the meantime, until an agreement is reached to abolish nuclear weapons, NWFZs are still the best way to continue the journey toward general and complete disarmament...”

Edmund Vargas Carreño,
Secretary General of OPANAL, 2004

Introduction

- The world is in a state of flux: after the end of the Cold War it has gone unipolar, later on half a dozen actors have emerged to make it multipolar or poly-centric (with unequal capabilities).
- The old nuclear world order is juxtaposed by new challenges with a lot of hope and impending despair.
- The nuclear deterrence in a globalized and networked society could see a new shift from its traditional value because new kinds of existential threats are in the process of emergence.

Significance

- The nuclear weapons threat is one of the existential threats, defined in terms of:
 - the danger of new proliferation
 - the risk of new kinds of nuclear weapons
 - the nature of nuclear war, including accidental nuclear war and nuclear war by irrational calculation
 - Nuclear terrorism
- In this case it is essential to realise that over the passage of time, creation of NWFZs could be legitimate mechanisms towards the anticipation of a nuclear-weapons-free world.

Overview of main NWFZs

1959 – Antarctic Treaty

1967 – Outer Space Treaty

1967 - Treaty of Tlatelolco (Latin America & the Caribbean)

1971 – Sea-bed Treaty

1979 – Moon Treaty

1985 – Treaty of Rarotonga (South Pacific)

1995 – Treaty of Bangkok (Southeast Asia)

1996 – Treaty of Pelindaba (Africa – not yet in force)

2000 – Mongolia (single-State NWFZ)

2006 – Treaty of Semipalatinsk (Central Asia - in force January 2009)

Status of NWFZs

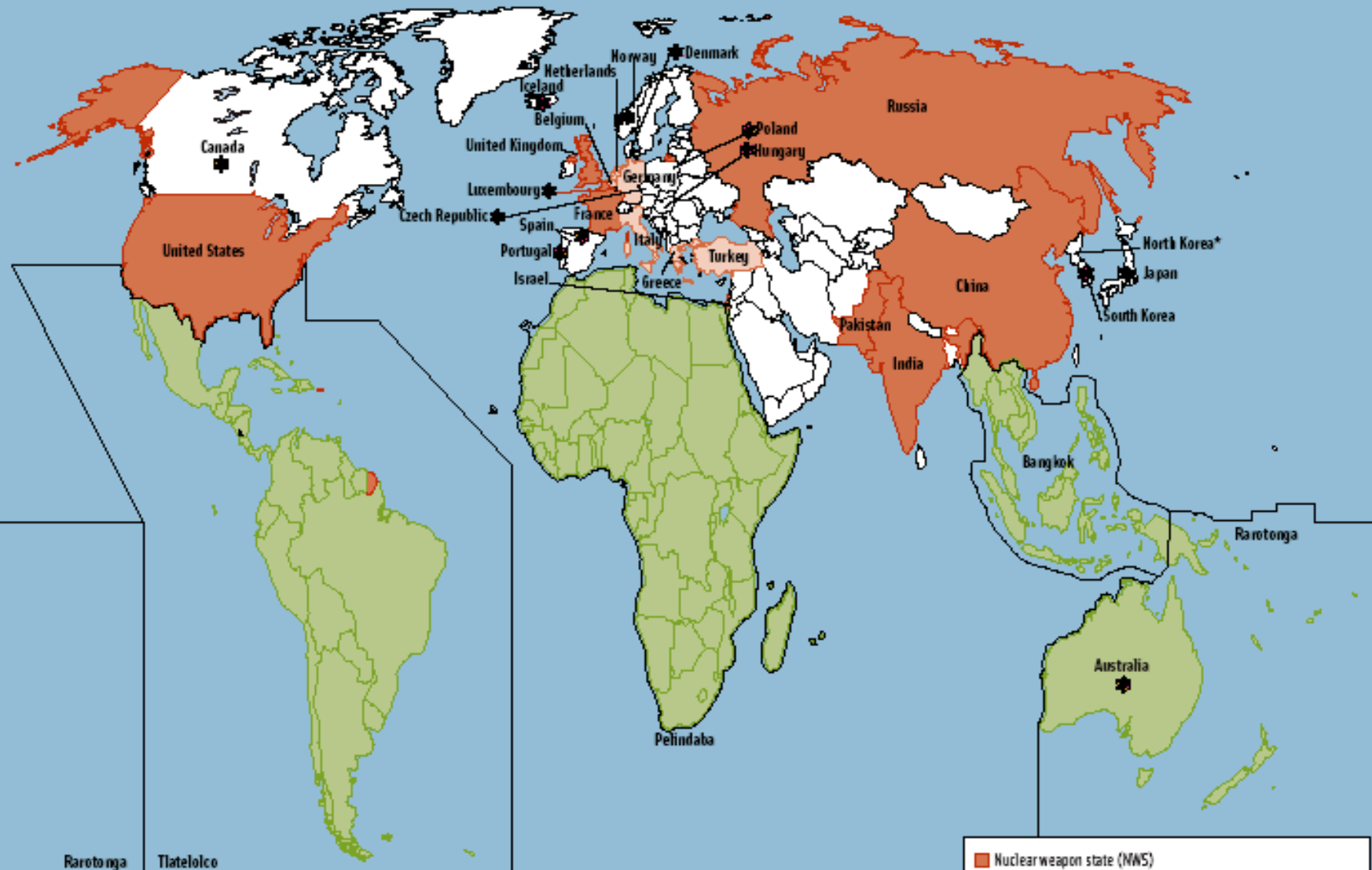
| | | |
|----------------|---------------------------|-------------------|
| Tlatelolco | (Latin America & Caribb.) | 33 parties |
| Rarotonga | (South Pacific) | 13 |
| Bangkok | (Southeast Asia) | 10 |
| Pelindaba | (Africa) | 53 (not in force) |
| Mongolia | | 1 |
| Semipalantinsk | (Central Asia) | 5 |

TOTAL **115** = approx. 60% of all States

...virtually the entire Southern Hemisphere

(Plus others – Austria, Iraq, Palau, Philippines, NWFZs created by federal law or Constitution, and thousands of cities worldwide which are self-declared NWFZs)

Nuclear Weapons and Nuclear Weapon-Free Zones in 2001



- Nuclear weapon state (NWS)
*North Korea may have produced a small number of nuclear weapons.
- Non-nuclear weapon state (NNWS) hosting NWS nuclear weapons
- Other NNWS under NWS "nuclear umbrella"
- NNWS member of international Nuclear-Weapon-Free Zone

NWFZ - Effects

- Enhances confidence in non proliferation controls – removes the excuse to retain NW
- Helps to de-legitimize existence of NW
- Security and development benefits
- Promotes regional peace & security
- **Potential solidarity in multilateral arenas**

Implications

- Following INF Treaty (1987), it was already stated:
 - A nuclear war cannot be won, therefore it should not be fought
 - Again, after the findings of the TTAPS group (Turco, Toon, Ackerson, Pollack, Sagan) about nuclear winter, a global nuclear war seems to be a distant possibility
 - The danger of limited or sublimited nuclear exchange in some regions of the world cannot be ruled out
 - Nuclear terrorism also looms large over the horizon
 - It is the time to have a paradigm shift: support of God's reason instead of Fox's reason (cleverness in political decision-making)
 - It is therefore for the civilized nation states to realise which way to go. It would be in favour of justice and far-sightedness to follow God's reason for the survival of humanity.

Compliance and Enforcement



Sydney protest against French nuclear tests, 1995.

Compliance and enforcement

- Treaties are binding upon the States Parties at the international level (inter-State)
- However, violations of treaty norms are committed by individuals (state officials and non-state actors)
- Except for international crimes included in the Statute of the International Criminal Court and meeting the criteria for ICC jurisdiction, crimes cannot be addressed at the international level (NW use possibly could meet definition of crime against humanity or genocide, depending upon intention)
- National law enables enforcement at the national level

National legislation to implement and enforce international obligations

- None of the NWFZ treaties require national measures to be taken
- 1969 Vienna Convention on the Law of Treaties (article 27) implies that national law will be brought into line with international obligations
- In some legal systems, treaties automatically form part of national law
- In almost all cases, automatic incorporation of treaty into national law does not enable criminal prosecution and punishment for violations

Significance of national legislation

- Required under the principle of legality for enforcement (fundamental principle of criminal law: *Nullum crimen, nulla poena sine lege* (no crime, no punishment without law)), enshrined in the Universal Declaration of Human Rights (Article 11(2))
- Complies with other international obligations (e.g., UN Security Council resolution 1540 requiring the adoption of national nonproliferation measures and other NW treaties to which the State may be party regarding safety, security and safeguards of nuclear materials)
- Entrenches the international norm at the national level

Elements of legislation

- Acts prohibited by the treaty are defined as criminal offences in the national law or penal code
- Penalties are set
- Applicability of the law to State actors (hinders policy changes which are contemplated to respond to shifting politics – makes policy change subject to approval by the legislature)
- Applicability of the law extraterritoriality to nationals of the State (makes the act a criminal offence regardless of where the crime is committed – facilitates extradition and prosecution)

NWFZ as a process – Mongolian case

- 1992 - withdrawal of Soviet troops
- 1992 – declaration by Mongolia of itself as a single-State NWFZ
- 1998 – formal recognition by the UNGA
- 2000 – adoption of national legislation creating Mongolia as a NWFZ
- 2000 – unilateral declarations by 5 NWS to respect Mongolian NWFZ
- 2005 – participation of Mongolia in the Conference of States Parties to NWFZ Treaties in Mexico City
- 2006 – Mongolian NWFZ inspired the Central Asian states (Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan, Uzbekistan) to conclude their regional NWFZ treaty
- 2008 – Roundtable on NWFZ concept organised by Mongolian Ministry of Foreign Affairs
- 2008 – Submission of Mongolian working paper to the Preparatory Committee for the 2010 NPT Review Conference
- 2009 – Negotiating agreements with Russian Federation and China on respect for Mongolia's NWFZ status

Public policy advantages

- Contributes to national and regional security (disrespect by NWS for NWFZ could provoke international censure)
- Contributes to the nuclear disarmament process by eliminating areas of the earth where NW activities can be carried out
- Deterrent effect (eliminates safe havens for violators and enables prosecution of nationals regardless of where they commit the crime)
- Ultimately protects health and the environment

Thank you!
Questions?



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