

# **A Nuclear Weapon-Free Zone in Europe Concept – Problems – Chances**

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## ABSTRACT

The nuclear weapon free-zone (NWFZ) concept has been explored thoroughly in the decades since its introduction, and several regions throughout the world have succeeded in the challenging task of establishing such a zone and thus promoting nuclear non-proliferation and peace.

The 2010 Review Conference of the Nuclear Non-Proliferation Treaty (NPT) called on all states to establish additional NWFZ in regions, where such zones do not exist. The possible establishment of a NWFZ in conflict areas where the threat of nuclear weapons is present, such as the Middle East or South Asia, has already been at the center of much diplomatic and research effort for some time.

This study takes on a new challenge and explores the idea of establishing a NWFZ in the heart of Europe, a region least likely to be associated with this concept: three major European states (France, Russia and the UK) are official nuclear weapon states and an extra-regional nuclear weapon state (the US) is heavily present through its practice of nuclear sharing with its European NATO allies.

In this study, the various objectives that a NWFZ in Europe could achieve are enumerated. These include, inter alia, both narrow security objectives for zonal members (e.g. reducing their chances of involvement in a nuclear exchange), as well as political-symbolic objectives (e.g. strengthening the nuclear non-proliferation regime). This study sets out under the assumption that despite political and strategic challenges, the exploration of the idea to establish a NWFZ in Europe would have multifold advantages. Most notably, it will serve to awaken the debate on nuclear weapons in Europe, and thus maintain and rejuvenate the discourse on disarmament. Likewise it would contribute substantially to the delegitimation of nuclear weapons.

In practical term, this study discusses the elements and content of a possible NWFZ in Europe, while presenting both opportunities and challenges that different ways of establishing such a zone would entail. Based on a thorough review of the NWFZ concept and its application in regions where such zones have been established, coupled with an analysis of the current situation in Europe, this study offers an evaluation of central provisions which could be included in a NWFZ arrangement in Europe, including members' rights and obligations, verification mechanisms, and treaty protocols, and it further proposes innovative mechanisms to broaden support for such an initiative on the sub-state level. It analyzes and assesses the obstacles and objections – political, organizational, and technical – that a NWFZ in Europe would face, and explores ways to diffuse them.

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## 1. INTRODUCTION<sup>1</sup>

US President Barack Obama has changed the international debate on nuclear weapons in 2009 by committing unambiguously to the objective of a world free of nuclear weapons as enshrined in the Nuclear Non-Proliferation Treaty (NPT). To achieve this final objective is not only the duty of the nuclear weapon states (NWS). Article VI establishes the undertaking of all NPT parties to work towards nuclear disarmament.

Some may maintain that the present international climate – the serious crisis in Europe on Ukraine that puts NATO and Russia at loggerheads, the stagnation in nuclear arms control between the United States and Russia, the rivalry and incipient arms race in East and Southeast Asia – indicate that it is not the time for any new consideration or initiatives in this field. But such reasoning contradicts the spirit and basic purpose of the NPT and is not conducive to fostering peace. The preamble of the NPT puts the Treaty squarely in the context of world peace. It establishes the intimate mutual relationship between nuclear disarmament and a peaceful and non-violent foreign policy as indispensable ways to both prevent nuclear war and secure international peace. For that reason, the current international situation, and most of all the Ukrainian events that take place in the shadow of nuclear armed opponents, call even more than before for strong and innovative efforts in this field. As stated, this is not a burden that lasts exclusively on the shoulders of the nuclear weapon states, but the duty of all parties.

In “Action 9” of the plan for action in its final document, the 2010 NPT Review Conference emphasized one way for non-nuclear weapon states (NNWS) to implement this undertaking: It encouraged states to establish nuclear-weapon-free zones (NWFZs) in regions where no such zone yet exists. Together with Northern America, the Middle East, South Asia, the heart of the Eurasian landmass that is Russia, and East Asia, Europe is one of the regions without a NWFZ treaty. This study explores the road towards the establishment of such a zone in Europe, for NPT member states who want to implement the mandate enshrined in “Action 9”.

NWFZs are a well-established concept, and indeed a political and legal reality in many areas of the world. Attempts to install such a zone proved elusive in the Middle East, South Asia and East Asia, the three regions most bothered by nuclear proliferation in the present era. Europe, once the place with the densest deployment of nuclear weapons anywhere in the world, has not become nuclear-weapon-free as well. Proposals for zones in Europe have been put forward the earliest, namely already in the fifties, but failed on the rocks of the Cold War. Despite recurrent efforts to re-open the debate by new proposals, including some after the end of the East-West conflict, a broad discussion has not occurred ever since, even though the political reason for its erstwhile failure – the antagonistic conflict between the two blocs and their alliances – was put to the dustbin of history more than two decades ago. Forces of nuclear inertia proved formidable.

This study takes a fresh approach to the issue. It does so motivated by the risk that the process of nuclear disarmament might stall and revert into a nuclear arms race, this time not of a bipolar but a multiple nature, involving established nuclear powers, nuclear weapon possessors not party to the NPT, and maybe even emerging ones that are still within the NPT. Such a nuclear competition would be harder to control but easier to destabilize, with sombre prospects for upholding the taboo against nu-

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<sup>1</sup> The authors wish to thank the Governments of Austria and Switzerland for supporting this study, and the participants in an workshop at Vienna in July 2013, who diligently and thoughtfully scrutinized the study and engaged in an enriching and challenging discussion: Heinz Gärtner, Gerard Keown, Rebecca Johnson, Alexander Kmentt, Benno Laggner, Patricia Lewis, Sverre Lodgaard, Benoît Pelopidas, William Potter, Marco Roscini, Tom Sauer, Nicolai Sokov, Elena Sokova, Roland Sturm, Reto Wollenmann.

clear weapon use that has prevailed since Hiroshima and Nagasaki. A revived multiple arms race would most probably multiply and accelerate proliferation processes around the world for security and status reasons, engendering additional risky consequences for nuclear conflagration and escalation. To forestall such a scenario which is distinctly possible but by no means inevitable, thinking out of the box is required. Europe is a place where nuclear thinking has been in the box for all too long, guarded by four NWS and the formidable North Atlantic Treaty Organization (NATO) bureaucracy. The nuclear issue has receded into the background in Europe for long, but has witnessed a certain revival in the course of the Ukraine crisis. The enhanced tension between Russia – a nuclear armed state – and NATO – a nuclear armed alliance with three nuclear weapon states as members has not only re-emphasized deterrence as a security strategy, but Russia in particular has explicitly articulated the role of nuclear weapons in its defence posture through repeated hints at the deployment of Iskander short range missiles in the Kaliningrad district, provocative manoeuvres of its bomber fleet near NATO air space, nuclear threats against the NATO Member Denmark or the placement of nuclear capable aircraft in the freshly annexed Crimea peninsula.

These worrying developments have been unfolding while a cornerstone of European security – the 1987 Intermediate-Range Nuclear Forces Treaty (INF) – has come under pressure due to US accusations of non-compliance directed to Russia (July 2014), which were rebuffed by Moscow. At the same time, several experts within the Russian strategic community have been questioning the value of the INF over the last years; and the US DoD is already evaluating its options to counter Russian intermediate-range nuclear forces.<sup>2</sup> In the extreme case, a collapse of the INF could lead to a renewed nuclear arms race in Europe.

Exploring the idea of a NWFZ in the region under these new circumstances definitely requires thinking out of the box. It is an attempt to find ways and options for states who want to prevent the re-emergence of a nuclear confrontation and competition in Europe in a situation in which such (preventive) policies are most needed but less probable. The project opens the possibility to look for new, bold ways to bring movement into both nuclear debates and nuclear politics in Europe and to open new roads for political action which could change the landscape of nuclear politics for the better.

“Action 9” of the 2010 NPT Review Conference’s plan for action, as indicated above, opens an interesting road for European NNWS to foster the cause of nuclear disarmament and to implement their related undertaking under Article VI of the NPT to “pursue negotiations in good faith on effective measures relating to cessation of the nuclear arms race at an early date and to nuclear disarmament”, to which NWFZs are a significant contribution. Such an activity would fit the re-emphasis since 2010 on the active role of NNWS in nuclear disarmament. We see increasing activities on their side, e.g. the initiative to re-introduce the humanitarian aspect into the debate, or the engagement of the Non-Proliferation and Disarmament Initiative (NPDI) on nuclear transparency. Especially the popularity of the humanitarian initiative has generated renewed momentum for nuclear disarmament, not least due to a widely noticed “Austrian pledge” to “cooperate with all relevant stakeholders ... in efforts to stigmatise, prohibit and eliminate nuclear weapons in light of their unacceptable humanitarian consequences and associated risks.” “Action 9” offers another, particularly salient opportunity to realize this undertaking.

Of course, the project is facing formidable obstacles. Europe is a continent in which three NWS reside and a fourth is powerfully present, all of which regard nuclear weapons to a larger or lesser extent as part of national identity and certainly of the national security posture for the time to come. NATO, the most powerful alliance of democracies, calls itself a “nuclear alliance” and deploys sub-strategic nuclear

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2 <http://www.politico.com/story/2015/02/ash-carter-russia-vladimir-putin-defense-115421.html>

weapons of the superior alliance partner, the United States, on the territories of several NNWS members. All NATO member states subscribe to the role of nuclear weapons in their security, some with great conviction and emphasis, and others with great reluctance and even resentment. The present enhanced feeling of a threat from Russia felt in the Alliance's easternmost member states has enhanced the felt need for a continued nuclear umbrella and the continuing presence of US nuclear weapons on European soil. This is the case although there are arguments that the crisis demonstrated the lack of utility of these weapons and thus would even present another argument for their withdrawal in favour of more conventional investments.<sup>3</sup> Nevertheless, for all NATO members, there is presently an obvious political contradiction between NATO membership and the project of a NWFZ. One of the purposes of this study is assessing how formidable these obstacles really are, and if there are ways and means either to overcome or to circumvent them. In an ironic twist, taking up a very old and almost forgotten idea from the distant past forces us to engage in an original, creative and almost revolutionary endeavour. And while some people might be quite sceptical how realistic this approach may be, the authors are ambitious enough to aim at practical, operative steps to start the long road to realization. But they do so in an analytical, not an advocacy mood.

We begin in Chapter two with a review of the concept and the historical experiences with the zone approach. The objectives of NWFZs are recalled, and the crucial question whether they have value added over global regimes is visited. This is not just discussed in abstract, but inquired and demonstrated with examples from existing zones. The chapter closes with a reminder of past approaches for a European NWFZ.

Chapter three states the objectives of a political initiative to bring such a zone into life in the present political landscape in Europe and globally. These objectives include confidence-building in the region, a diminished risk for zone members to become involved in nuclear crises and exchanges, a push for the process of nuclear disarmament, a move to contribute to the delegitimation of nuclear weapons, and the awakening of the sleepy public opinion on this issue by stimulating a debate across borders. In the present situation, it is also aimed at building down the tensions emerging from the Ukraine crisis. This will not be possible without a strong parallel effort on all sides to heed the Minsk agreement. Political and nuclear confidence-building has to go hand in hand.

Chapter four addresses the difficult issue of how to negotiate. On the one hand, there are experiences from other regions on which we can draw, hoping for some enlightenment on how to proceed here. On the other hand, the European situation is unique given the presence of a nuclear alliance, including NWS that are, of course, unwilling to join such negotiations: how to reconcile this condition with the prescription that NWFZs are to be based on "arrangements freely arrived at among the states of the region concerned", as the UN Disarmament Commission repeated in its report from 1999 as a principle in its guidelines for establishing such zones? The guidelines, while not legally binding, are the most important reference text and cannot be easily ignored. However, they also state that NWFZs are "the product of the specific circumstances of the region concerned" and take account of "the diversity of situations in the different regions". This creates space to accommodate the uniqueness of the European constellation. In addition, the guidelines note that the "establishment of nuclear-weapon-free zones is a dynamic process". This recognizes that it might be an extended process in which membership shifts and expands from the beginning to the end as might well be the case in the European theatre. This reminds us that, in any case, promoters of the project have to be in for the long haul and need to think strategically rather than focus on the short term. The policy should thus enjoy some degree of supra-

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<sup>3</sup> Kulesa, Lukasz (2014). *Careful What You Wish For: Nuclear Reductions and Conventional Deterrence in Europe after Crimea*. PISM. Strategic file No. 15 (51). Warsaw; Kristensen, Hans M./Mount, Adam (2014). *Why NATO should eliminate its tactical nukes, despite Russian belligerence*. *Bulletin of the Atomic Scientists*.

partisan consensus in the countries concerned and be firmly anchored in the set of national objectives which practitioners in the ministries concerned pursue as a self-explanatory part of their duties.

The fifth chapter goes into the main provisions which a zone treaty might contain such as, inter alia, obligations or verification. This seems to be familiar ground as existing zone treaties are a treasure of stimulation. However, defining the necessary mixture of rights and duties for a zone in Europe is tricky at the same time, as the conditions mentioned in the last paragraph may also impact upon the undertakings of the parties and other items to be addressed, such as accession. A particularly interesting issue concerns protocols: The zone is not only divided into the dichotomy of nuclear and non-nuclear weapon states, but includes in addition alliance members with and without a nuclear role. Being populated by democracies with an active population and political entities (such as provinces and communities) below state level with an elected self-government, and being placed in an institutional environment in which “multilevel governance” has become a respected term in both the academic and the political debate, considering the possibilities of protocol relations to the zone by sub-state entities might prove worthwhile. We are entering new territory here for international law, but it is worth deliberating about such possibilities in an era when lawyers, political scientists, and practitioners note that states have ceased to be the only relevant actors on the international scene.

Chapter six visits the politics of zone-making by anticipating the political reactions of several types of actors to a zone initiative, and discusses possibilities of addressing their objections, concerns, but also ways to marshal and organize support. The conclusions in chapter seven summarize the findings and pull together operative options to a strategy which leads to suggestions for the first useful steps.

We want to be clear about the character and purpose of this study. It does not present a draft treaty, but discusses – in non-legal language – elements for the content of a zone treaty. It is not a strategy paper for zone promoters, but identifies opportunities as well as impediments on the road towards a NWFZ in Europe. And it is not a decision-making blueprint, because weighing of the pros and cons, the trade-offs between a zone and other political goals, the diplomatic risks and promises of the debate which will inevitably follow, and their own domestic contexts, is genuinely in the purview of the initiators and beyond the competence – and purpose – of the authors.

## 2. NUCLEAR WEAPON-FREE ZONES: CONCEPTS AND EXPERIENCES

### 2.1 *Objectives of nuclear weapon-free zones*

In the late 1950's, the groundwork for the nuclear non-proliferation regime was laid with parallel efforts on both the global and the regional fronts. These endeavours resulted in the institution of the global regime with the NPT at its core, and the elaboration and establishment of NWFZs as a regional mechanism, one of which – the Treaty of Tlatelolco – even predated the NPT.<sup>4</sup>

NWFZ are regional multilateral agreements intended to isolate specifically designated territories in the world from the presence of nuclear weapons. The NPT does not require the complete absence of nuclear weapons territorially, because it does not explicitly prohibit stationing of nuclear weapons by NWS in the territories of NNWS.<sup>5</sup> NWFZs extend therefore beyond the NPT in “freeing” entire re-

4 William Epstein, “The Making of the Treaty of Tlatelolco”, *Journal of the History of International Law*, Vol. 3 (2001), pp. 155–156.

5 Although the NPT does not explicitly prohibit stationing, the interpretation according to which nuclear stationing and nuclear sharing under NATO arrangements in Europe do not constitute a violation of the NPT is highly controversial and contested, as these arrangements provide for the transfer of weapons to the air forces of some NATO NNWS when the decision to use them is taken, while the preamble of the NPT declares it as the goal of the Treaty to prevent nuclear war. People have argued that thus, NATO plans are in contradiction of the core objective, and thus of spirit and letter, of the NPT.

gions from nuclear weapons, and offer a localized way of strengthening the non-proliferation regime. Since the establishment of the NPT, which mentions the zone concept favourably in its Article VII, such zones are considered a complementary element of the non-proliferation regime: they allow states to address shortcomings of the NPT regime and go beyond its undertakings, while supporting its normative structure.<sup>6</sup>

In 1975, the United Nations General Assembly (UNGA) accepted Resolution 3472 – “A Comprehensive Study of the Question of Nuclear-Weapon-Free Zones in All its Aspects”.<sup>7</sup> The resolution presented its definition for a NWFZ:

“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 (1) 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, (2) an international system of verification and control is established to guarantee compliance with the obligations deriving from that statute”.

The key obligations of NWS to parties to a NWFZ were also defined – NWS should undertake, via a legally binding international instrument, to respect the status of total absence of nuclear weapons, to refrain from contributing to violations, and to refrain from the use or threat of use of nuclear weapons against state parties to the zone.

The comprehensive study by an ad hoc group of governmental experts, on which this Resolution is based, discussed at length the historical background and concept of NWFZ, as well as the obligations of states within and outside of the zone.<sup>8</sup> It emphasized that NWFZs enhance national, regional and also global security, constitute an important disarmament measure<sup>9</sup> and make an important contribution to strengthening the international nuclear non-proliferation regime. State parties to a NWFZ, according to the study, should not develop, test, produce, possess or acquire nuclear weapons, nor permit anyone to store, install or deploy them in territories under their jurisdiction. Furthermore, they should not give, seek or receive assistance in development or production of such weapons. The zone’s viability will depend on an effective system of verification and control to ensure its nuclear weapon free status.

In 1999, the UN Disarmament Commission submitted to the UNGA a condensed report on the 1975 study, entitled “Establishment of Nuclear-Weapon-Free Zones on the Basis of Arrangements Freely Arrived at Among the States of the Region Concerned”.<sup>10</sup> The study consists of non-binding guidelines, meant to assist regional states in the development of a NWFZ in their region.

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6 Scott Parrish and Jean Du Preez, *Nuclear Weapon Free Zones: Still a Useful Disarmament and Non-Proliferation Tool?* Paper submitted to the Weapons of Mass Destruction Commission (2006), pp. 2–3. It is also interesting to note that the NPT includes an article in support of the establishment of NWFZ (article VII: “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”). This article did not appear in the original draft of the Treaty, and was proposed for inclusion by Mexico, the leading actor in the concurrent negotiations on the Latin American NWFZ.

7 United Nations General Assembly Resolution 3472 (XXX), *Comprehensive Study of the Question of Nuclear-Weapon-Free Zones in All its Aspects*, 11 December 1975.

8 *Comprehensive Study of the Question of Nuclear-Weapon-Free Zones in All its Aspects – Special Report of the Conference of the Committee of Disarmament*, 8 October 1975 (A/10027/Add.1).

9 The First Special Session of the General Assembly on Disarmament (1978) also mentioned in its Final Document that the establishment of NWFZ on the basis of arrangements freely arrived at by the states in the region and respected by NWS constitute an important disarmament measure (First Special Session of the General Assembly devoted to Disarmament (1978), A/S-10/2 Final document of SSOD-I: Resolution and Decisions of the Tenth Special Session of the General Assembly, article 33).

10 United Nations General Assembly Supplement no. 42 (A/54/42), Report of the Disarmament Commission, 6 May 1999.



The guidelines stress that the initiative for a NWFZ should emanate from within the region, and that it should be supported by the international community. NWS, according to the Report, should be consulted during negotiations on the Treaty, so as to ensure their support for the final wording. Similarly, states with territories within the proposed zone should be consulted with as well during negotiations. In both the 1999 report and the original study from 1975, it was agreed that the issue of transit through the zone should be left to the discretion of state parties, most likely because it was understood that completely restricting movement of nuclear-armed/propelled vessels would not be accepted and the zones would never materialize.

NWFZ are designated to prevent development and deployment of nuclear weapons and they do not provide – in practical terms or in conceptualization – the vision or guidelines for regional disarmament (the single exception is the African NWFZ, which contains a unique clause on reversal of nuclear weapons programs; discussed below in section 2.3.4). When weapons deployed by NWS on the territory of NNWS in the zone have to be removed as a consequence of establishing a zone and might then be scheduled for dismantlement, the zone would make a moderate contribution to nuclear disarmament. By limiting the freedom of action of NWS to deploy and move their weapons, they also contribute their share to the delegitimation of nuclear weapons. Beyond that, zone treaties are treaties of non-proliferation and regional security rather than of disarmament, and the role and commitments of NWS are therefore substantial for ensuring the lack of nuclear weapons in the region. Without NWS's respect for and adherence to the zone's provisions, the absence of nuclear weapons cannot be guaranteed. Since a NWFZ is intended to enhance regional states' security, another essential component is the extension by NWS of negative security assurances – guarantees not to use or threaten to use nuclear weapons against states parties to the zone. These undertakings by NWS are usually stipulated in protocols that are integral parts of the zone treaty.

## 2.2 *The value added of nuclear-weapon-free-zones compared to global regimes*

The advantage of regional non-proliferation arrangements lies in the possibility of tailoring them according to a region's specific needs and reality. In a localized, regional context, conditions are theoretically more favourable to the achievement of a comprehensive agreement due to the smaller number of actors involved and therefore reduced complexity, compared with negotiations on the global level. A global arrangement, because it must fit a multitude of actors – and therefore necessities and concerns – presents inevitably the lowest common denominator, while in a regional context, a more comprehensive arrangement can be created under favourable circumstances.

An arrangement which is specifically moulded for a region's requirements can include provisions on issues that are of particular relevance for the region, and verification mechanisms, for instance, could be construed with a view to meet the specific confidence-building needs of regional states, an aspect that has been repeatedly emphasized with regard to a possible zone in the Middle East. A NWFZ would therefore be able to enhance the security of states and establish greater confidence in the region, by focusing its provisions on the region's security requirements and expanding beyond the limited scope of a global regime, or narrowing its attention to specific matters of concern.

NWFZ were conceptualized already in the 1950s as a regional approach to non-proliferation, aimed at preventing the more states from obtaining nuclear weapons,<sup>11</sup> but they materialized to mostly serve the purpose of fencing-off nuclear weapons from outside of particular areas, rather than preventing nuclearisation within the region. NWFZ have been developed in light of regional realities and consequently attempt to address shared regional concerns. For example, while the establishment of a regional non-

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11 Jozef Goldblat, "Nuclear Weapon Free Zones: A History and Assessment", *The Non-Proliferation Review* (Spring-Summer 1997), p. 18.

proliferation mechanism could theoretically allow for better, more intrusive and comprehensive verification which would ensure that regional states do not manufacture nuclear weapons, none of the existing NWFZ has in fact developed a sophisticated region-specific verification mechanism, because this was not the central concern behind their establishment and the services of the International Atomic Energy Agency (IAEA) were considered sufficient. Preventing deployment of nuclear weapons, nuclear testing and nuclear waste dumping by NWS served as the central incentives for the development of most existing NWFZ, and their contribution to non-proliferation is most notable in these aspects.

NWFZ provide a back-up for a weakening of the NPT, and create an additional barrier against the withdrawal of a NNWS from its undertakings not to arm itself with nuclear weapons. Should the NPT fade, verification measures pursuant to the zone treaties would continue, thereby preserving a highly important element of regional confidence-building and security. The consequences of NPT decay would thus be significantly reduced for the regions hosting nuclear weapon free zones, and the global community could concentrate its efforts to contain damage to the remaining regions where such zones are lacking.

Beyond strengthening NNWS's non-proliferation commitments and emphasizing their right to civilian uses of nuclear energy, NWFZ prohibit nuclear testing and the deployment of nuclear weapons by NWS in the territories of states parties to the zones. A global regime on the prohibition of nuclear testing has been established with the Comprehensive Nuclear Test-Ban Treaty (1996, CTBT), and of course the NPT includes the basic non-proliferation commitments of NNWS. The prohibition on stationing or deploying nuclear weapons is therefore the most meaningful contribution of NWFZ treaties. It is this prohibition which supposedly "frees" or eliminates the zones from nuclear weapons. Because none of the existing NWFZ goes further to expressly prohibit the transit of nuclear weapons through the zone's territory, the distinction between "stationing" and "transiting" has been called into question (mostly through the time dimension – when is an extended transit considered transit?<sup>12</sup>).

Another particular contribution of NWFZs, which seems only possible through a regional mechanism, is the negative security assurances which NWS are requested to offer parties to the zone. These assurances are found in the protocols for the NWS attached to the treaties, not all of which have been ratified by the NWS. Slow ratification by NWS of the protocols illustrates how complex this matter is, yet on a regional level legally binding negative security assurances are apparently more achievable than on the global.

Additional non-proliferation provisions – such as physical protection of nuclear material – enrich these treaties beyond NPT-like undertakings, and give emphasis to their contributive role in the non-proliferation regime. Prohibitions of nuclear waste dumping or the obligation to ratify the Vienna Convention on Early Notification of Nuclear Accidents add an additional environmental dimension to some of the existing NWFZ (the testing prohibition has both non-proliferation and environmental benefits).

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12 It is interesting to note, in this context, a proposal raised by two island states, Vanuatu and Papua New Guinea, to address this issue in the context of the Rarotonga South Pacific Nuclear-Free Zone Treaty, due to its introduction of the implicit exclusion of transit and port visits from the zone (that later became the standard of all NWFZ treaties). The proposal called for including restrictions on the *duration* or *pattern* of port visits. Mentioned in Michael Hamel-Green, "The Rarotonga South Pacific Nuclear-Free Zone Treaty", in Ranginui Walker and William Sutherland (ed.), *The Pacific: Peace, Security and the Nuclear Issue* (The United Nations University: 1988), p. 100.

### 2.3 Existing nuclear-weapon-free zones: Description and analysis of specificities

Five NWFZs have been established, through multilateral treaties, in densely populated areas in the world:

*Latin American and Caribbean* – Treaty of Tlatelolco (1967, entered into force (eif) 2002);

*South Pacific* – Treaty of Rarotonga (1985, eif 1986);

*Southeast Asia* – Treaty of Bangkok (1995, eif 1997);

*Africa* – Treaty of Pelindaba (1996, eif 2009);

*Central Asia* – Treaty of Semipalatinsk (2006, eif 2009).

There are additionally three other multilateral denuclearization agreements, which include the Treaty of Washington on Antarctica (1959, eif 1961); Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies (so-called Outer Space Treaty, 1967, eif 1967); and Treaty on the Prohibition of the Emplacement of Nuclear Weapons and Other Weapons of Mass Destruction on the Sea-bed and the Ocean Floor and in the Subsoil Thereof (Seabed Treaty, 1971, eif 1972).<sup>13</sup>

Existing NWFZ treaties share an essential basic goal, namely, the banning of nuclear weapons from explicitly designated regions. This is accomplished by prohibiting the development, possession and testing of nuclear weapons or nuclear explosive devices by state parties to the zone, as well as their deployment by other states. All existing zones also determinedly ensure that peaceful uses of nuclear energy remain available for the regions' development needs, echoing Art. IV, 1 of the NPT. A protocol for the recognized NWS is attached to all NWFZ treaties, in which their commitments to the zone are enumerated, and generally includes the obligations to respect the zone and not to use or threaten to use nuclear weapons against zone parties. However, all treaties leave to the discretion of each state party the decision on transit rights, i.e. foreign vessels' visits to ports and travel through air space and territorial waters. To ensure compliance with treaty obligations, all zones establish a control system which is based on IAEA Safeguards and additional supporting mechanisms, such as reports, exchange of information and clarifications, to be managed by a designated entity or a body established expressly for this purpose. All NWFZ treaties are in force indefinitely, and none allow reservations.

The existing NWFZ include definitions of central concepts referred to in the treaties. The treaties of Tlatelolco and Bangkok use 'nuclear weapon', while the treaties of Rarotonga and Pelindaba use 'nuclear explosive device', and the treaty of Semipalatinsk uses 'nuclear weapon or other nuclear explosive device' (as does the NPT); a definition for this fundamental term is not included in the NPT. The NWFZ treaties further define the territory which is covered under the agreement, the term stationing or deployment, and additional concepts which are relevant to their provisions (e.g. dumping, radioactive/nuclear material, and nuclear installation/facility).

As envisioned for such regional security arrangements, the existing NWFZs were designed to address region-specific concerns. While the five zones are in principle similar and include the same basic undertaking, aimed at ensuring the absence of nuclear weapons from the zone, they build on each other and add additional dimensions relevant at the time of their negotiation and in accordance with regional non-proliferation needs and concerns.

The first NWFZ – in Latin America – was initially proposed as early as 1958, but the idea gained currency following the Cuban Missile Crisis, with the deployment of Soviet nuclear missiles in Cuba and the possibility of a nuclear exchange in the region between the superpowers. Indeed, such an exchange would have grimly illustrated the proverb which became associated with the Non-Aligned Movement

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13 There are a few treaties stipulating the de-militarization of certain territories (e.g. the Aaland Islands) which implicitly also prohibit stationing nuclear weapons there.

during the Cold War: “When elephants fight, it is the grass that suffers”. All five NWFZ share this fundamental concern regarding nuclear interference from outside the region, and parties’ undertakings to refraining from proliferation (not to develop) are balanced by equally weighty provisions aimed at preventing extra-regional states from using the region for nuclear-related activities (deployment, testing, dumping or – as in the case of the Bangkok Treaty – use of nuclear weapons from within the zone). The record of securing ratification of NWS to the protocols of NWFZ which concern them has not been perfect, due to attempts by the NWS to preserve their freedom of action.<sup>14</sup> Several such protocols have not yet been ratified by the NWS, and reservations have been attached to others. Despite this, the establishment and entry into force of five NWFZ is a celebrated and meaningful achievement in the nuclear non-proliferation regime. The recent past has seen an enhanced diplomatic effort to clear the way for signature and ratification of the relevant protocols of several zones by the nuclear weapon states.

#### The Treaty of Tlatelolco

The Tlatelolco Treaty for Latin America was established prior to the NPT, and introduced the basic obligations and mechanisms which the following NWFZ treaties would be based on – prohibitions on manufacturing, testing, possessing or deploying nuclear weapons. Befitting its time, the treaty of Tlatelolco (as its contemporary, the NPT) allows nuclear explosions for peaceful purposes, due to their association with development. This prerogative does not appear in any of the subsequent zones to be established, although the language in the Tlatelolco Treaty concerning such explosions is considered ambiguous and has led to differing interpretations.<sup>15</sup>

One of the greatest challenges in the negotiation of the treaty was ensuring the cooperation of relevant extra-regional states.<sup>16</sup> This included, first and foremost, the commitment of NWS to respect the zone, and their obligation not to use or threaten to use nuclear weapons against parties to the zone. Furthermore, for the complete coverage of the designated territory, the cooperation of specific extra-regional powers which administer colonies within the zone had to be secured. The protocols annexed to the treaty contain the obligations for extra-regional states, without which the zone’s non-nuclear status could not be guaranteed.

#### Treaty of Rarotonga

The next regional denuclearization arrangement, negotiated in the mid 1980’s, was designed to be broader and therefore labelled the South Pacific Nuclear-Free Zone, known as the Treaty of Rarotonga. The basic prohibitions of testing and stationing were more extensively described, and several new prescriptions were introduced, according to the region’s particular experience. In particular, regional concerns over nuclear testing and dumping of nuclear waste in the South Pacific by NWS motivated

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<sup>14</sup> See Annex for a table comparing the prescriptions of the existing zones and detailing their status of ratification, including that of the protocols.

<sup>15</sup> Article 18 of the Tlatelolco Treaty allows peaceful nuclear explosions and spells out the procedures under which said explosions may be carried out. It specifically states that such explosions may be carried out provided that they are in accordance with other articles of the Treaty, especially articles 1 and 5. These articles deal with the general prohibitions of using and testing nuclear weapons and the definition of a nuclear weapon, respectively. This definition states that a nuclear weapon is “any device which is capable of releasing nuclear energy in an uncontrolled manner and which has a group of characteristics that are appropriate for use for warlike purposes”. Because a distinction cannot be made between explosive devices with “warlike purposes” and those without, a limited reading of article 18 would consider peaceful nuclear explosions as prohibited, unless and until technology advances enable the development of devices not capable of being used for weapon purposes. Joseph Gallacher, “Article VII, The Treaty of Tlatelolco and Colonial Warfare in the 20th Century”, in Ian Bellany, Coit D. Blacker and Joseph Gallacher, eds., *The Nuclear Non-Proliferation Treaty* (London: Cass, 1985), p. 77.

<sup>16</sup> William Epstein, “The Making of the Treaty of Tlatelolco”, *Journal of the History of International Law*, Vol. 3 (2001), pp. 153–179.

the emphasis on these issues.<sup>17</sup> The Treaty of Rarotonga introduced a third protocol for NWS, in which they specifically undertake not to test nuclear weapons in the region. A similar protocol for NWS regarding testing was included also in the Pelindaba Treaty on Africa's denuclearization; indeed both regions' experience with nuclear testing justifies this specific attention to testing by NWS.

As the first zone negotiated after the establishment of the global non-proliferation regime, the Treaty of Rarotonga includes several references in support of the NPT, and introduced the commitment by state parties not to provide source or special fissionable material for peaceful uses to states that are not subject to IAEA Safeguards according to the NPT. This commitment appears in comparable – though not identical – form in all NWFZ treaties since (under the Treaty of Bangkok, safeguards “as required by the NPT” are prescribed; under Pelindaba, material must be subject to a comprehensive safeguards agreement concluded with the IAEA; under Semipalatinsk, comprehensive safeguards as well as the Additional Protocol are needed). The Rarotonga Treaty did not address the issue of US military facilities in Australia that were part of the global US nuclear posture because these facilities did not host nuclear weapons. Thus, their existence did not obviate the basic objective of the zone.

#### The Treaty of Bangkok

The Bangkok Treaty, which denuclearizes Southeast Asia, emphasizes the prohibition of dumping, and includes also definitions for the relevant concepts, such as radioactive material and waste. The promotion of responsible handling of nuclear material was introduced through parties' undertaking to dispose of radioactive wastes and other radioactive material in accordance with IAEA standards and procedures, and their commitment to subject peaceful nuclear energy programs to rigorous nuclear safety measures in conformity with IAEA guidelines. In addition, the Bangkok Treaty alone requires members to accede to the Convention on Early Notification of Nuclear Accidents.

The subsequent NWFZ treaties of Pelindaba and Semipalatinsk also adopted provisions concerning nuclear safety following the introduction of this subject in the Bangkok Treaty, and refer explicitly to the Convention on the Physical Protection of Nuclear Material (CPPNM), according to which zonal parties must secure their nuclear material. The Treaty of Semipalatinsk also prohibits disposal of radioactive waste in the zone by other states, and includes an undertaking by member states to assist each other in efforts toward environmental rehabilitation of territories contaminated by past nuclear activities. This reflects in particular the concerns of Kazakhstan about the contamination caused by decades of testing Soviet nuclear weapons at the test site of Semipalatinsk.

The inclusion of continental shelves and exclusive economic zones in the definition of the NWFZ's territory in the Bangkok Treaty is unique to this treaty and reflects, in particular, the interests of the island states (Indonesia, Philippines, Brunei, and Malaysia). This is considered the main hindrance to ratification of the treaty's protocol by NWS, because the coverage of the treaty is thereby greatly extended. According to reservations voiced by the US, the treaty's area of application includes sea areas over which states do not have sovereignty, according to the Law of the Sea.<sup>18</sup> Despite a clear statement in the article on the treaty's application, that nothing in the treaty shall prejudice any state's rights under the Convention on the Law of the Sea, NWS are concerned over possible restrictions on the right of free passage for nuclear-armed and –powered vessels.<sup>19</sup> A further cause for concern is the Bangkok

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17 These prohibitions also appear in the Antarctic Treaty (1959; eif 1961), which designates the region for peaceful uses only and was the first region in the world to be declared denuclearized: “any nuclear explosions in Antarctica and the disposal there of radioactive waste material shall be prohibited”.

18 Amitav Acharya and J.D. Kenneth Boudin, “The Southeast Asia Nuclear Weapon-Free Zone Treaty”, *Security Dialogue*, Vol. 29 (1998), pp. 225–226.

19 Surya P. Subedi, “Problems and Prospects for the Treaty on the Creation of a Nuclear-Weapon-Free Zone in Southeast Asia”, *The International Journal of Peace Studies*, Vol. 4, No. 1 (January 1999) (available at <http://www.gmu.edu/programs>)

Treaty's Protocol for NWS, which is more sweeping than NWS protocols in any of the other zones, because of the expanded undertaking not to use or threaten to use nuclear weapons against state parties to the zone or anywhere in the zone.<sup>20</sup> This implies the extension of the guarantee towards states not parties to the zone (though this point has become irrelevant as all states in the zone area are now parties) as well as warships of third parties (NWS included) passing through the zone due to its maritime coverage.

Although no NWS has so far signed the protocols of the Bangkok treaty, US concerns over the protocol provisions seem to have receded over the last years. On 1 June 2014, U.S. Assistant Secretary of State for International Security and Non-proliferation Thomas Countryman urged all P5 states to sign the protocol to the Southeast Asia Nuclear-Weapon-Free-Zone in a speech at the Shangri-La Dialogue in Singapore.

#### The Treaty of Pelindaba

The Treaty of Pelindaba, which covers the African continent, introduced a novel article which deals with existing nuclear weapons programs within the region, on top of the provisions which by then had become the standards of NWFZ treaties. Article 6, entitled "Declaration, dismantling, destruction or conversion of nuclear explosive devices and the facilities for their manufacture", offers state signatories the opportunity to reverse their nuclear weapon programs. According to this article, parties undertake firstly to declare their capability to manufacture nuclear explosive devices, and secondly to dismantle any such devices they had manufactured before the treaty's entry into force and to destroy facilities for the manufacturing of such devices or convert them to peaceful uses. The dismantling, destruction and conversion must be verified by the IAEA and the African Commission on Nuclear Energy, established under the treaty.

An additional unique feature of the Pelindaba Treaty is its prohibition of armed attack against nuclear installations, which combines the concern for environmental contamination and protection of nuclear energy uses, which are strongly promoted in the treaty. Lastly, the Pelindaba Treaty introduced a prohibition on conducting research on nuclear explosive devices, and this prohibition was also included in the Semipalatinsk Treaty, the following NWFZ to be negotiated, for Central Asia. This goes clearly beyond the NPT whose prohibition applies to the activity of "manufacturing" nuclear weapons or other nuclear explosive devices.

#### The Treaty of Semipalatinsk

The Treaty of Semipalatinsk established the first zone located completely in the northern hemisphere, and the latest to date, to be denuclearized. In this treaty, the control system that verifies compliance is significantly strengthened by its parties' undertaking to conclude not only a Comprehensive Safeguards Agreement with the IAEA, but also the Additional Protocol. Providing nuclear material to NNWS is likewise contingent on their having concluded both agreements with the IAEA.

The Semipalatinsk Treaty is the only NWFZ treaty in which the issue of transit by land is explicitly included in the clarification according to which parties are free to decide whether to allow transit rights. In the other treaties in which transit is explicitly mentioned (all but Tlatelolco), parties remain

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*/icar/ijps/vol4\_1/subedi.htm*). Subedi further emphasizes that the word "transport" is not included in the activities of extra-regional states which parties to the treaty undertake not to allow; so parties are not required to prohibit transport of nuclear weapons by other states, as long as it is permissible under the Convention on the Law of the Sea. This is on top of the clear statement that parties can decide for themselves on transit port calls, which leads Subedi to conclude that the Treaty of Bangkok does not hinder NWS's freedom of navigation.

20 Amitav Acharya and J.D. Kenneth Boudin, "The Southeast Asia Nuclear Weapon-Free Zone Treaty", *Security Dialogue*, Vol. 29 (1998), pp. 225–226.



free to decide on visits of foreign ships and aircraft to their ports and airfields, on transit through their airspace by foreign aircraft and navigation of their territorial seas by foreign ships. However, the treaties of Rarotonga and Pelindaba include, in their definition of “stationing”, also transport on land, and since they prohibit stationing, such transport is therefore prohibited as well.<sup>21</sup>

The article on “other agreements” within the Treaty of Semipalatinsk was considered controversial for NWS. This article firstly confirms that parties’ rights and obligations under treaties concluded before the NWFZ shall not be affected, and secondly clarifies that parties shall take all necessary measures for effective implementation of the treaty’s objectives. The point of contention is the Tashkent Collective Security Treaty, which links two regional states with Russia, and according to which parties undertake to render all necessary assistance to one another in case of aggression. While the first part of the article was inserted to reassure Russia that its security and regional interests were observed, the second was introduced to reassure the western NWS that Russia should not retain special nuclear privileges in the zone area. This somewhat contradictory structure led to persistent contentions.<sup>22</sup> However, in spring 2014 after extended negotiations all five NWS signed the protocol and undertook to expedite the process of ratification. Meanwhile, France, the UK and China have ratified, while the US Administration submitted the protocol to the US Senate for its advice and consent to ratification.

#### Unilateral / Domestic Nuclear-Weapon-Free Status

The UN’s Comprehensive Study of the Question of Nuclear-Weapon-Free Zones in All its Aspects states 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 smaller groups of states and even individual countries”.<sup>23</sup> Several states have unilaterally and domestically established themselves as nuclear-weapon-free territories, including the Philippines, New Zealand, Austria, and Mongolia.<sup>24</sup>

The Philippines’ constitution from 1987 includes a clause establishing itself as nuclear-free: “The Philippines, consistent with the national interest, adopts and pursues a policy of freedom from nuclear weapons in its territory” (article II, section 8). This clause was introduced already several years prior to the opening for signature in 1995 of the Southeast Asian NWFZ under the Treaty of Bangkok, to which the Philippines is party. The Philippines was involved in the original declaration of ASEAN in 1971 to establish, when conditions permit, a zone of peace, freedom and neutrality in Southeast Asia, from which the Bangkok NWFZ Treaty evolved.<sup>25</sup>

21 The Bangkok Treaty includes the prohibition of transport under its clause on stationing, but transport is not further defined, nor does the definition of stationing include this term explicitly. No reference to land is included, either.

22 According to Jozef Goldblat, the Tashkent and Semipalatinsk treaties cannot be considered incompatible, since the use of nuclear weapons in defence of a treaty member will not be rendered impossible by Semipalatinsk’s restriction on deployment. He further suggests that the controversy over “other agreements” be settled by a statement in the form of a binding international treaty in which regional states would pledge to settle any disputes in this context according to article 30 of the Vienna convention of the Law of Treaties, which stipulates that the earlier treaty applies only to the extent that its provisions are compatible with those of the later treaty. Jozef Goldblat, “Denuclearization of Central Asia”, Disarmament Forum, Vol. 4 (2007), pp. 30–31. See also Marco Roscini’s interpretation of this article: “only those provisions of previous treaties that do not prejudice the effective implementation of the purposes and objectives of the Semipalatinsk Treaty are preserved”. Marco Roscini, “Something Old, Something New: The 2006 Semipalatinsk Treaty on a Nuclear Weapon Free Zone in Central Asia”, China Journal of International Law, Vol. 7, No. 3 (2008), p. 599.

23 Comprehensive Study of the Question of Nuclear-Weapon-Free Zones in All its Aspects – Special Report of the Conference of the Committee of Disarmament, 8 October 1975 (A/10027/Add.1), p. 41.

24 See Parliamentarians for Nuclear Non-Proliferation and Disarmament: <http://www.pnnd.org/issues/Nuclearweaponfreezoens.htm>; also the Federation of American Scientists: [http://www.fas.org/programs/ssp/nukes/ArmsControl\\_NEW/nonproliferation/NFZ/NP-NFZ-SS.html](http://www.fas.org/programs/ssp/nukes/ArmsControl_NEW/nonproliferation/NFZ/NP-NFZ-SS.html).

25 Amitav Acharya and J.D. Kenneth Boudin, “The Southeast Asia Nuclear Weapon-Free Zone Treaty”, Security Dialogue, Vol. 29 (1998), p. 220.

In **New Zealand**, subsequent to the creation of the South Pacific Nuclear-Free Zone, the New Zealand Nuclear Free Zone, Disarmament and Arms Control Act from 1987 was installed. The Act prohibits acquisition of nuclear explosive devices, their stationing or testing, and also their transit – foreign warships may only enter into the internal waters of New Zealand if they do not carry nuclear explosive devices, and foreign military aircraft may not land if carrying nuclear explosive devices. Furthermore, entry of nuclear-powered ships into New Zealand’s internal waters is also prohibited (see further on New Zealand’s prohibition of transit in section 4.1.2).<sup>26</sup>

In **Austria**, a Federal Constitutional Act concerning a Nuclear-Free Austria was passed in 1999. The Austrian constitutional law from 1955, when the state obtained its status of neutrality, already included a prohibition of nuclear weapons on its territory. Popular opposition to nuclear energy as well was growing since the 1970’s, and in 1999 the Constitutional Law was passed, forbidding both nuclear weapons and nuclear energy.<sup>27</sup> Accordingly, it is prohibited in Austria, *inter alia*, to produce, store, transport or test nuclear weapons, and facilities or installations for their deployment may not be established.

In 1992, the president of **Mongolia**, speaking before the UN General Assembly, declared Mongolia a NWFZ and stated that his country will work towards having this status internationally guaranteed. Mongolia’s unique geopolitical location, between NWS China and Russia, as well as the novelty of seeking international recognition for a single-state free territory, has burdened this endeavour.

In the years following its 1992 declaration, Mongolia pursued its goal of becoming internationally recognized and enjoying the same security guarantees as NWFZ, and also consulted with NWS in the framework of those efforts. Over time, its definition as a “zone” changed to “status”, and in 1998 a UNGA Resolution indeed welcomed Mongolia’s declaration on its nuclear-weapon-free status.

In February 2000, Mongolia presented to the UN its law on the country’s nuclear-weapon-free status adopted that month. The law prohibits developing, manufacturing, acquiring or having control over nuclear weapons, stationing or transporting such weapons by any means, their testing or use. It further specifies national and international verification measures, including the international institutionalization of the nuclear-weapon-free status.<sup>28</sup>

Mongolia is thus far the only state to have sought international recognition of its nuclear-weapon-free status.<sup>29</sup> In September 2012, the five NWS and Mongolia signed parallel political declarations that formally recognized the latter’s nuclear-weapon-free status. The NWS pledged to respect this status, and not to use or threaten to use nuclear weapons against Mongolia. These declarations of recognition may or may not be legally binding, yet they formalize Mongolia’s status.<sup>30</sup>

The Mongolian case is of some significance for the project analysed in this study. It shows the possibility for a single state to pursue non-nuclear status not only as a national policy, but in interaction with the

26 See full Act at <http://www.legislation.govt.nz/act/public/1987/0086/latest/whole.html#DLM115139>.

27 Klaus Renoldner, “From Referendum to Constitutional Prohibition of Nuclear Energy: the Austrian Experience”, in International Physicians for the Prevention of Nuclear War and Physicians for Social Responsibility (Switzerland), *Rethinking Nuclear Energy and Democracy After September 11, 2001* (2004), p. 69 (available at <http://www.ippnw.org/pdf/rethinking-nuclear-energy.pdf>).

28 UN document A/55/56 S/2000/160, 29 February 2000 (available at <http://www.un.org/documents/ga/docs/55/a5556.pdf>).

29 On Mongolia’s difficult endeavour for international recognition and struggle for recognition of Single-State Nuclear-Weapon-Free Zones, see Nyamosor Tuya, “Mongolia’s Nuclear-Weapon-Free Status: Recognition vs. Institutionalization”, Brookings Institution’s Center for Northeast Asian Policy Studies, Working Paper (August 2012) (available at <http://www.brookings.edu/~media/research/files/papers/2012/8/nuclear%20weapon%20free%20mongolia%20tuya.pdf>).

30 Daryl G. Kimball, “Mongolia Recognized as Nuclear-Free Zone”, *Arms Control Today*, October 2012 (available at [http://www.armscontrol.org/act/2012\\_10/Mongolia-Recognized-as-Nuclear-Free-Zone](http://www.armscontrol.org/act/2012_10/Mongolia-Recognized-as-Nuclear-Free-Zone)).



international community, thereby receiving international recognition of this policy and the ensuing status. There is no principled hindrance for two or more states to conduct this type of policy jointly as a shared project.

Measures to foster and institutionalize cooperation between existing zones

Throughout the past decades, attempts are made to establish formally (or at least regularly) relations between the existing zones, so as to enhance their impact on disarmament and non-proliferation efforts worldwide, and to magnify their impact through their successes. These attempts include annual UN resolutions on a nuclear-weapon-free Southern Hemisphere, and the holding of international conferences of the established NWFZs.

Since 1996, annual resolutions in the UNGA call upon states parties to the existing regional NWFZs to explore the possibility of creating a consolidated zone – a Nuclear-Weapon-Free Southern Hemisphere and Adjacent Areas (NWFSH).<sup>31</sup> The first resolution from 1996 called the states parties and signatories of the Tlatelolco, Rarotonga, Bangkok, and Pelindaba Treaties “to promote the common goals envisaged in those treaties, to explore and implement further ways and means of cooperation, including the consolidation of the status of the nuclear-weapon-free southern hemisphere and adjacent areas”.<sup>32</sup> It is not proposed that such a consolidation should include the negotiation of a new treaty mechanism for the Southern Hemisphere, rather that the zones would undertake increasing cooperation between themselves, for instance in the form of holding a conference of states parties, in order to consider common action to further nuclear disarmament goals.

The latest resolution on the Southern Hemisphere, from 2014, calls upon all states concerned to facilitate adherence to the zones’ protocols by the relevant states, and upon members of existing zones to explore and implement further ways and means of cooperation among themselves and their treaty agencies. The resolution further “encourages efforts to reinforce the coordination among nuclear-weapon-free zones with a view to the convening by Indonesia of the third Conference of States Parties and Signatories to Treaties that Establish Nuclear-Weapon-Free Zones and Mongolia”.<sup>33</sup>

The first Conference of the established NWFZs was held in April 2005 in Mexico, and brought together the parties to the Treaties of Tlatelolco, Rarotonga, Bangkok, and Pelindaba as well as Mongolia. The Conference Declaration states that the meeting was held in order to explore cooperation in contribution to achieving a nuclear-weapon-free world, and encourages respect for the zones (e.g. calling upon NWS to ratify the zones’ protocols). The Declaration reaffirms the commitment of parties to the zones to work to reach common objectives and advance the goals of the NWFZs through such mechanisms as joint meetings of the states parties, signatories and observers, and cooperation agreements.<sup>34</sup>

The second Conference of States Parties and Signatories of Treaties that Establish Nuclear-Weapon-Free Zones and Mongolia was held in 2010 in New York. The conference adopted the Outcome Document which reiterated the final declaration of the 2005 Conference and welcomed the entry into force of the African and Central Asian NWFZ as well as the efforts of Mongolia to institutionalize its nuclear-weapon-free status. The parties declared their intent “to foster cooperation among the nuclear-weapon-free zones to fully implement the principles and objectives of the treaties and to exchange relevant ideas

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31 It is interesting to note that well before the actual establishment of the zones, which together now cover almost completely the planet’s Southern Hemisphere, the Australian and New Zealand Labour Parties proposed in 1962 the establishment of a regional Southern Hemisphere Nuclear-Free Zone (SHNFZ). Mentioned in Michael Hamel-Green, “The Rarotonga South Pacific Nuclear-Free Zone Treaty”, in Ranginui Walker and William Sutherland (ed.), *The Pacific: Peace, Security and the Nuclear Issue* (The United Nations University: 1988), p. 93.

32 Resolution A/RES/51/45 (B) of 10 December 1996, “The nuclear-weapon-free southern hemisphere and adjacent areas”.

33 Resolution A/RES/69/35 of 2 December 2014, “The nuclear-weapon-free southern hemisphere and adjacent areas”.

34 The Declaration can be found here: <http://www.acronym.org.uk/sites/default/files/docs/0504/nwzf.pdf>.

and best practices in areas of mutual interest. To maintain continuity in the enhanced interaction among the nuclear-weapon-free zones generated at this Conference, we will explore, through diplomatic channels, the appropriate modalities for maintaining contact and disseminating relevant information among the nuclear-weapon-free zones during the inter-sessional period”.<sup>35</sup>

In preparation for the third conference, scheduled for 2015, three preparatory meetings have already been held. In the conference, parties to existing NWFZs and Mongolia will further explore initiatives aimed at improving the cooperation and coordination between them, for the purpose of reaching a nuclear-weapon-free-world. The conference will take place in Mid-April 2015.

#### 2.4 *The project of a nuclear-weapon-free zone in Europe – previous approaches*

##### Approaches before the end of the Cold War

The idea of establishing a NWFZ in Europe goes back to the mid-1950s when only the United States, the Soviet Union and the United Kingdom were in possession of nuclear weapons. The first plan was raised by the Soviet Union in 1956, when Moscow proposed to the United States to completely ban the stationing of nuclear weapons in Europe. The next initiative was a sub-regional approach, the so-called Rapacki Plan (1957),<sup>36</sup> which envisaged a Central European NWFZ, covering the area of Poland, Czechoslovakia, the German Democratic Republic and the Federal Republic of Germany, prohibiting both the stockpiling and the production of nuclear weapons.

The Rapacki Plan was followed by a number of other sub-regional proposals. The 1957 Balkan Initiative wanted to close all foreign military bases in the territories of Romania, Bulgaria, Yugoslavia, Albania, Greece and Turkey which would have guaranteed a NWFZ in the region.<sup>37</sup> The 1963 Mediterranean Initiative, proposed by the Soviet Union, suggested the elimination of nuclear weapons and missiles in the Mediterranean region, including several North African (Algeria and Tunisia) as well as Middle Eastern (Egypt, Lebanon, Syria and Jordan) countries.<sup>38</sup> The Nordic Initiative was also proposed in 1963 by Finland. This plan aimed to create a NWFZ on the territories of Denmark, Finland, Iceland, Norway and Sweden, banning the production, deployment and transfer of nuclear weapons.<sup>39</sup> In 1964 Poland proposed again a Central European plan, which gave up on the idea of a nuclear weapon free sub-region and proposed only a freeze on nuclear weapons.<sup>40</sup>

Five years later, in 1969 the Soviet Union revised its Balkan Initiative and extended it into a Balkan and Adriatic proposal, including the Adriatic Sea, as well. The most important objectives of the region were non-deployment of nuclear weapons, a ban on transfer and the negative security guarantees of the NWS.<sup>41</sup>

In 1982 the Palme Commission, named after its chairman, former Swedish Prime Minister Olof Palme, proposed a new approach and suggested a battlefield-NWFZ in Central Europe, with the potential to

35 The Outcome Document can be found here: [http://www.opanal.org/Docs/seminars/2010NWFZConf/NWFZ-CONF.2010-1\\_english.pdf](http://www.opanal.org/Docs/seminars/2010NWFZConf/NWFZ-CONF.2010-1_english.pdf).

36 Zoltán Maruzsa, “Denuclearization in Central Europe? The Rapacki Plan during the Cold War.” *Öt kontinens* (Eötvös Lóránd Tudományegyetem, 2008) (available at <http://tortenelemszak.elte.hu/data/20376/Maruzsa.pdf>).

37 Nansen Behar and Ivan Nedev, “The Balkan Nuclear Weapon-Free Zone”, in Joseph Rotblat and Alessandro Pascolini (eds.), *The Arms Race at a Time of Decision, Annals of Pugwash 1983* (Macmillan, 1984), p. 142.

38 P. Moorthy, *Nuclear Weapon Free Zone* (Concept Publishing, 2006), pp. 12–13.

39 Magne Barth, “The Movement for a Nuclear-Weapon-Free Zone in the Nordic Region: Impact of the Karlskrona Incident”, *Security Dialogue*, Vol. 13, No. 2 (1982), pp. 145–148.

40 Aleksandr Sychou, “Status of the Initiative to Create a Nuclear-Weapon-Free Zone in Central and Eastern Europe”, *The Monitor*, Center for International Trade and Security (Spring-Summer 1998), pp. 20–23.

41 Bart van der Sijde, “Nuclear Weapons Free Zones in 1998”, *Transnational Institute* (1998) (available at [http://www.tni.org/archives/nukes-docs\\_vdsijde](http://www.tni.org/archives/nukes-docs_vdsijde)).

extend the zone to a corridor from the Baltic to the Balkans.<sup>42</sup> The key obligations were a complete ban on atomic demolition mines, nuclear artillery and missiles with a range up to 1000 km. Besides, the proposal also contained obligations to eliminate storage sites for nuclear munitions and cease all manoeuvres which simulated nuclear operations.

We can discover three motivations for these diverse proposals: From the Soviet side, the priority was to undercut NATO's nuclear strategy and related deployment patterns, thereby undermining the core of NATO's defence posture and what the allies at the time regarded as the "glue" of the Western alliance. Smaller Warsaw Treaty member states' communist governments may have shared this motive, but promoted zone proposals with a second objective, namely to minimize Soviet nuclear and other military presence on their territory.<sup>43</sup> Neutral countries wanted to be secured as much as possible against nuclear war in Europe, and aimed at confidence-building between East and West in order to diminish risky tensions.

During the Cold War most of the initiatives failed because of the lack of support from at least one of the NWS (both in and outside Europe). As long as the Iron Curtain divided Europe, deciding over nuclear issues and establishing a NWFZ in the continent by all means required the consent of the two superpowers. In addition, since most proposals would have required a change in NATO nuclear policy and overall defence strategy, most allies, non-nuclear weapon states included, were not prepared to accept such a profound turn in national and common defence.

#### Approaches after the end of the Cold War

After the Cold War, two major changes occurred. First, Belarus and Ukraine took over the leading role in advocating for a European NWFZ, shifting the focus to Central and Eastern Europe. Belarus came up with three slightly different proposals (1990, 1995, and 1996) to establish a Central-Eastern European NWFZ.<sup>44</sup> The first proposal was called a Nuclear Weapon Free Belt in Europe, stretching from the Baltic to the Black Sea (Belarus, Ukraine, Lithuania, Latvia, Estonia, Poland, Czechoslovakia, Hungary, Romania and Bulgaria). The belt was supposed to rest on the unilateral declarations of the states that they are not willing to host nuclear weapons on their territory. The plan originally included a ban on nuclear power plants, as well, and a comprehensive ban on nuclear weapons testing.<sup>45</sup>

The second Belarus initiative, introduced at the 1995 NPT Review and Extension Conference was a "classical" NWFZ initiative for Central and Eastern European states (Belarus, Ukraine, Lithuania, Latvia, Estonia, the territory of the former German Democratic Republic, Poland, the Czech Republic, Slovakia, Hungary, Austria, the Republic of Moldova, Romania and Bulgaria). The main obligations of the proposed zone were: non-possession, non-development, a ban on testing and a ban on stationing nuclear weapons in the territory of the states of the zone.

The third Belarus initiative in 1996 was a Central and Eastern European Nuclear-Weapon-Free Space. It expanded the idea of the previous zonal approach and set up three different membership categories with different obligations. The core states mostly remained the same with unchanged obligations. In addition

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42 "Common Security", Report by the Independent Commission on Disarmament and Security Issues (the Palme Commission) (Simon and Schuster – New York, 1982), p. 147.

43 During the Cold War, Soviet nuclear weapons were deployed in several Central and Eastern European countries, including Lithuania, Latvia, Estonia, Hungary, Poland, Czechoslovakia and the German Democratic Republic. The Baltic states altogether hosted around 780 nuclear weapons while the remaining Central and Eastern European countries hosted another 3000 Soviet nuclear weapons, see "Nuclear Notebook – Where the Weapons Are", Bulletin of the Atomic Scientists (November 1991), p. 49.

44 Aleksandr Sychou, "Status of the Initiative to Create a Nuclear-Weapon-Free Zone in Central and Eastern Europe", The Monitor, Center for International Trade and Security (Spring-Summer 1998), pp. 20–23.

45 William C. Potter, "The Politics of Nuclear Renunciation: The Cases of Belarus, Kazakhstan, and Ukraine", The Henry L. Stimson Center, Occasional Paper No. 22 (April 1995), p. 13.

to this, a second group of states (Sweden, Finland, Austria, States of the former Yugoslavia and Albania) were to take political obligations and help maintain and promote the nuclear weapon free space. A third group of states (Norway, Denmark and Germany – all NATO member states in 1996) were supposed to contribute through the specificity of their legislation and the international agreements on nuclear weapons.

These initiatives are evidence of continuity in Belarusian thinking on nuclear weapons deployment and indicate a firm non-nuclear stance regardless of Moscow's policy preferences. Belarus and Ukraine were striving for a full-fledged NPT membership since the 1960s and their unified efforts after 1990 reflect the same desire to demonstrate a degree of independence from Russia and to impede an enlargement of NATO or, if it happened, prevent the deployment of NATO sub-strategic nuclear weapons east of the Western part of Germany. Until today, the nuclear-weapon-free status of the new NATO members is based only on a declaration by the Alliance, not on any legal undertaking.<sup>46</sup> This is different from the situation in the former German Democratic Republic, for which the Two Plus Four Treaty of 1990 (settling re-unification and the end of constraints on German sovereignty by occupation rights of the victorious powers of World War II) prohibited the stationing of nuclear weapons; parties to this treaty were the (then) two German states, France, Russia, the United Kingdom and the United States.

Besides the shift in the focus area, the second major change after the Cold War was the attitude of the Central and Eastern European states. As most of them were aiming Western European political and military integration, many became hesitant to join nuclear weapon free initiatives and refused to embrace the idea of a sub-regional NWFZ in Europe – therefore it became even harder to realize the proposal.

In summary, proposals for a NWFZ in Europe so far were related to strategies of the Cold War or national interests of the proposing states after the end of the Cold War. Neither was integrated into a long-term strategy for nuclear disarmament and/or the delegitimation of nuclear weapons. Nevertheless, as long as NATO's policy continues not to deploy nuclear weapons in member states that had acceded after the end of the Cold War and all European states stick to their NPT undertakings, the Belarus notion of a nuclear weapon free "belt" between the former West Germany and Russia would be a *de facto*, but not *de jure* reality.

### 3. OBJECTIVES OF A NUCLEAR WEAPON-FREE ZONE IN EUROPE TODAY

Why revive the idea right now? What is the purpose of a serious effort to adapt a concept that was invented for mitigating the risks of a nuclear conflagration in the midst of the "Old Continent", risks that emerged from a political and military constellation that is no more, after previous efforts to rejuvenate it under the new circumstances met no resonance? What goals could such an effort aspire to achieve? The answers to these questions must start from the present, highly ambiguous state of the global nuclear debate and seen in the light of the renewed tensions in Europe vividly documented by the Ukrainian crisis.

President Barack Obama's pledge to work for a nuclear weapons free world has changed the playing field a bit, but not decisively. For the first time, the leader of a nuclear weapon state (and the most powerful one at that) has committed in a quite unambiguous way to the political goal of eliminating nuclear weapons from the face of the earth. However, the initiative has found a mixed reception among the nuclear armed peers, to say the least. While some (welcome) positive steps have been taken, namely the New START Treaty of 2010, the speed of nuclear disarmament remains very low, the resistance in the nuclear establishments and their political allies is tangible, and public resonance, except the traditional pro-

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<sup>46</sup> In 1997, the Alliance and Moscow concluded the so called Founding Act or NATO-Russia Charter. It lays down the basis of their future cooperation, including a pledge on the non-deployment of nuclear weapons to new NATO member countries.

disarmament groups and the respectable, but still relatively small groups of new allies from the mainstream security community in several NATO states, remains limited. The situation of the nineties, when the demise of the immediate nuclear threat led to diminished public interest in the matter, does still obtain. Without such public commitment, nuclear disarmament lacks the necessary political momentum.

In Europe, NATO has decided to stick to a low-number nuclear posture with a declared high threshold of possible use, but still a first use option. The debate was controversial: some NNWS (including some with nuclear weapons on their territory) pleaded for a different doctrine and removal of the weapons, but others, notably some members from the eastern part of NATO and the NWS, opted for continuing NATO as a “nuclear alliance” in the same form as before. This position is firmer than ever given the re-enforced concerns of these states about a Russian threat. Russia remains interested in keeping its nuclear weapon status (and a four-digit number of non-strategic nuclear weapons) as well, for both security and status reasons.<sup>47</sup> While the latest version of the Russian military doctrine, issued December 2014 amidst the Ukraine crisis, has not changed the spectrum of contingencies for which Russia would consider the use of nuclear weapons (response to nuclear or other WMD attack on Russia or its allies, and to a conventional attack that presents an existential threat), as some observers had feared, nuclear weapons remain an essential part of Russia’s defence posture and a key tool to counter American superiority at the conventional level. The latter aspect is important, as the document emphasizes US ballistic defence and conventional global strike assets.<sup>48</sup> Out of Europe, Chinese, Pakistani, Indian and presumably North Korean nuclear weapons holdings continue to grow, though they remain still relatively insignificant compared to what the US and Russia possess, even counting the effects of New START. Israel holds fast to its small nuclear arsenal, but might not work hard to expand it. Overall, this makes for a highly mixed balance for nuclear disarmament, and the whole process might as well grind to a halt. At least, the present situation does not augur well for determined nuclear disarmament.

The plan of action adopted by the 2010 NPT Review Conference as part of its final document “encourages” in Action 9 the establishment of new NWFZs as part of the general effort expressed in the plan of action to revive the disarmament process. The appeal of Action 9 is directed towards the NPT parties as a whole and opens a road to activity for NNWS to participate actively in the disarmament process within their own region.

In this perspective, a revived debate on a NWFZ in Europe aims at the political and the symbolic level. The objectives can be divided into two categories, hard-core security objectives and objectives of a political-symbolic nature. As it will turn out, the second category is by far the more relevant for the project under scrutiny: Its immediate impact on regional security is less salient than its effect on the political and ethical discourse.

### 3.1 *Security objectives in the narrow sense*

#### Confidence-building in the regional neighbourhood

Most established NWFZs had as a priority target the improvement of regional security by enhanced confidence among neighbours. In Latin America, Africa and Southeast Asia, the possibility that one or more regional powers might consider acquiring nuclear weapons for security or status reasons was higher than zero when negotiations on establishing a zone came under way. A NWFZ initiative in Europe nowadays would have a different emphasis. All states in the region are loyal parties to the NPT, and for many of them, membership goes beyond compliance and involves active promotion of the spirit and letter of that

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47 Harald Müller, “Flexible Responses: NATO Reactions to the US Nuclear Posture Review”, *The Nonproliferation Review*, Vol. 18, No. 1 (2011), pp. 103-124.

48 Dmitri Trenin: *Russia’s New Military Doctrine Tells It All*, <http://carnegie.ru/eurasiaoutlook/?fa=57607>, hit April 15, 2015.

treaty. While in a distant past about half a dozen among Europe's NNWS once considered procuring nuclear weapons<sup>49</sup>, today not a single one is suspected of having such intentions, and it would require a complete political upheaval to reverse this situation. In that sense, regional confidence building as an objective of a NWFZ does not concern hard core security, but would rather signal a convergence of basic ethical values in the thinking on security. It would be part of a process to tie the members of the emerging European security community<sup>50</sup> ever closer together, but would not represent a process in which former rivals and enemies overcome the security dilemma to establish cooperation – the European non-nuclear weapon state have left this phase of their history, happily, behind them. The zone therefore would just confirm and demonstrate to the outside what is already established: The strong confidence in the regional neighbourhood. This assessment applies as long as the membership of the zone will remain restricted to non-NATO states. If the development of the zone reaches a stage when all NATO NNWS have become parties, and, by consequence, nuclear weapons will be removed from their territory, this will serve as a confidence-building measure vis à vis Russia where these weapons are still seen as somehow threatening. Reciprocal measures by Russia which would serve to de-emphasize nuclear weapons in Moscow's security doctrine would enhance the feeling of security of her Western neighbours, thereby helping to re-establish confidence. One such step could be the commitment not to deploy nuclear weapons outside of Russian territory, turning a factual situation into a legal obligation. In this process of mutual confidence-building steps, the zone might even function as a vehicle for transforming the West-East relations in the European region as a part of a re-juvenated arms control and disarmament process that will probably have to start sooner or later, as it did start at the US-Soviet and the NATO-WTO levels one year after the Soviet invasion of Czechoslovakia in 1968.

#### Irreversibility and Stability

Legal obligations, bolstered by verification, are hard to revoke. Breaching them or withdrawing from them is a weighty act that influences negatively the relationships of a state with its complete neighbourhood. As far as there is irreversibility in international politics, the zone would contribute significantly to it. By enhancing the barriers to re-introducing nuclear weapons into the region, the trust of regional states in that the nuclear threat in the region has gone from "very remote" to "nil" will be enhanced. Therefore, the zone would also make a valuable contribution to the stability of security in the region.

#### Immunizing the region against the consequences of a nuclear confrontation

Both the crisis in Ukraine and the conferences on the humanitarian impact of nuclear weapons of the recent years were a dramatic reminder for European states that nuclear risks haven't vanished after the Cold War. A NWFZ in Europe might mitigate the risk to be affected by a nuclear confrontation. As a matter of fact, one objective of any NWFZ has always been to protect the region concerned against becoming a nuclear battleground: By not offering targets of high priority in a nuclear war, the region concerned eliminates incentives to target any intraregional sites as a matter of strategic urgency. In order to obtain a legal guarantee of its strategic irrelevance in a nuclear conflict, NWS are invited – indeed urged – to sign and ratify protocols which oblige them (a) not to obviate the spirit and letter of the zonal treaty and (b) not to threaten with, or actually employ nuclear weapons against, the countries of the region under any circumstances. This objective is no doubt of higher priority in Europe today than the first one (confidence-building among NNWS). The probability of a nuclear conflict has been since 1990, to use NATO's language, "extremely remote", but not zero. The Ukraine crisis has not enhanced this risk to the

49 Harald Müller/Andreas Schmidt 2010: The Little-Known Story of Deproliferation: Why States Give Up Nuclear Weapons Activities, in: Potter, William C./ Mukhatzhanova, Gaukhar (Eds.), *Forecasting Nuclear Proliferation in the 21st Century*. Vol. I: The Role of Theory, Stanford University Press, pp. 124–158.

50 Michael Barnett and Emanuel Adler, "Studying security communities in theory, comparison, and history", in Emanuel Adler and Michael Barnett (eds.), *Security Communities* (Cambridge, Cambridge University Press, 1998), pp. 413–44.



level of the fifties, sixties or early eighties, but has documented that the danger has not shrunk to zero. NATO and Russia still reserve the right to use nuclear weapons against each other in extremis, even though they have vowed not to target each other (a commitment that has become a bit unclear on the Russian side because of a variety of statements about the consequences of deploying ballistic missile defence assets in NATO's NNWS).<sup>51</sup> For non-NATO NNWS, the assurances connected to NWFZ membership may add to the feeling of security emerging from alliance non-membership, but it would not protect them from the consequences of radioactive fall-out in their neighbourhood in the case of an all-European war with a nuclear component. Furthermore, the negative security assurances by the NWS for the zone members to which they commit themselves by signing the protocols reduce the military significance of nuclear weapons, they weaken their symbolic status, and they limit the options of giving them a role in military scenarios.

It is impossible to write on security assurances today without addressing the impact of the failure of the Budapest Memorandum of 1994 to protect the security of Ukraine as it was intended to do in the process of Ukraine renouncing nuclear weapons. The Budapest Memorandum is an unusual security assurance in two respects. First, it is meant to ensure the security of a state in exchange not for a pledge not to acquire nuclear weapons as in the NPT and other NWFZ, but for the practical act of getting rid of nuclear weapons that were already in its possession. Second, the Budapest Memorandum was not just an assurance against nuclear threat or attack, but also a guarantee of territorial integrity and economic security. That despite this assurance, part of the territory of Ukraine was annexed by a nuclear weapon state and another part ravaged by non-state armed actors supported by a nuclear weapon state, and that this nuclear weapon state used nuclear policy verbally and in exercises to bolster its own position during the crisis opens critical questions concerning other security assurances given to non-nuclear weapon states.<sup>52</sup> This experience would probably necessitate deep and innovative thinking in the context of assurances for a European NWFZ. It is probably too early to give this operational thought as the fog about the further development of the Ukraine crisis would have to be lifted to address this issue, and we are not yet there. But it is inevitable to mark the issue and to keep in mind that one might feel the need to go beyond the scope of the standard assurance type that will be discussed in this study in chapter 5.5.1.

### 3.2 *Political-symbolic objectives*

This takes us to the second group of objectives which are all more of a symbolic-political nature. However, this makes them by no means less relevant than those seemingly closer to "hard security". The risks of a nuclear war in Europe can still be rated as low at the moment and in the foreseeable future, extraordinary circumstances excluded. The impact on global nuclear policy thus gains in importance relative to "hard core" security issues. The reason is that the security of European countries, NATO members or not, is likely to be affected by global events as much as by the development on the European scene itself which despite disturbing tensions still offers much more experiences with reasonable crisis management and institutional tools than any other region of the world.

#### Strengthening the non-proliferation regime

NWFZs are an instrument *sui generis* to prevent the spread of nuclear weapons. They complement the global regime of the NPT and are recognized in this capacity in Article VII of the NPT. There is the option that parties to a NWFZ may agree to accept obligations beyond those in the NPT, and the existence

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51 Anatoly Antonov, "Further Nuclear Arms Limitation: Factors and Prospects", *Security Index*, Vol. 19, No. 2 (2013), pp. 14–15. See also the recent Russian threats to target Danish warships with nuclear missiles, if Copenhagen joined NATO's missile defence system.

52 Meier, Oliver (2014). *Die nukleare Dimension der Ukraine-Krise*. Stiftung Wissenschaft und Politik (SWP). SWP-Aktuell 66.; Arbatov, Alexei (2015). *When It Comes to Nuclear Weapons, Words Are Deeds*. Carnegie Moscow Center. Moscow.

of zones around the world provides a safety net in case the NPT may collapse: In that case, the NWFZs with all their obligations, notably verification of the parties' undertakings, will still be in place. Even in a region little prone to proliferation like Europe, this is a reassurance against the regression into past times. It secures the build-up of the European security community against the worst reversal scenario and can thus be seen as an instrument of irreversibility.

But there could be a value added beyond the reassurance goal. Europe has been the most nuclearized region in all history. The presence of non-strategic nuclear forces in NATO NNWS remains a bone of contention in the NPT community, even though in purely legal terms, it might be said that deploying those weapons on the territory of NNWS is no breach of the Treaty as long as they remain in the control of a nuclear weapon state (as is the case), and that a breach would only occur once the transfer into the physical control of a NNWS would be effected (however, one could also make the argument that the intention to do so under certain circumstances, as NATO plans provide for, would constitute a potential breach of the NPT).

Be that as it may, NATO's arrangements have been a bone of contention in the NPT community, and the more so the longer the memory of the Cold War faded into the past.<sup>53</sup> For states in more troubled regions of the world than Europe and which are not initiated in the intra-NATO culture it is hard to understand why the most powerful military association in history has to insist on the option of first use, needs nuclear weapons deployed in NNWS, and intends to hand them over to those states' air forces in the unlikely case that they would be used. The project of a NWFZ holds the promise of terminating this ambivalent state of affairs in the long run, and of closing the hypothetical prospect of the transfer of nuclear weapons into the hands of NNWS. The gap between NATO's NNWS and the non-aligned world would thus narrow, a healthy development for the NPT as one of the frontlines of acerbic dissonance would disappear – at least in a long-term perspective if we assume that NATO countries would accede to the zone, one by one over time, but most likely not immediately.

The strength of the non-proliferation regime, as for all cooperative international regimes, hinges on the unity among the membership. The stronger the sense of a common purpose, the stronger the regime as such; one of the main reasons for this correlation between consensus and strength is the likelihood to mobilize the membership successfully against serious breaches of undertakings (like the one we have been facing for long in the Iranian case). A divided membership will not face up to rule-breakers. A united membership with a high level of satisfaction about regime efficiency will. It is here that the establishment (and incremental growth) of a NWFZ in Europe might have an impact.

#### Fostering nuclear disarmament

Sub-strategic nuclear weapons are today one of the most nagging issues for nuclear disarmament. It is obvious that they must be included in the disarmament process. Even with strict safety and use control arrangements in place, they are more prone than those in the strategic arsenals to be intentionally employed in conflict, but also stolen, used without authorization, and that implies becoming instruments of terrorism. And generally, the idea of nuclear disarmament means that no weapon type must be excluded from the process.

A NWFZ in Europe would intend to, eventually, cover an area in which NATO's sub-strategic nuclear weapons are presently sited and to stimulate adequate reciprocal concessions by Russia concerning her capabilities in the same weapons category that would raise the level of security in Eastern Europe, whatever the specific shape of these measures might be. To be clear, establishing the zone would be a drawn-out process of incremental accession. The effect of enhanced security would be reached over time. But its

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53 Harald Müller, "A Nuclear Nonproliferation Test: Obama's Nuclear Policy and the 2010 NPT Review Conference", *The Nonproliferation Review*, Vol. 18, No. 1 (2011), pp. 219–236.



double contribution to disarmament and security would be obvious from the first moment on when the zone would be introduced into the political debate, and would be one of the main aspects shaping this debate (besides opening questions about French and British nuclear weapons). First, the debate about the elimination of sub-strategic nuclear weapons, which was first initiated by the 2000 NPT Review Conference and picked up again (though unfortunately in a more convoluted form) by the 2010 NPT Review Conference would gain momentum.

Second, the effect of enhanced security would be reached over time. The double impact of freeing a region from nuclear weapons and enhancing security among two actors – NATO and Russia – between which the nuclear issue played ( despite relatively favourable political circumstances ) still a disproportionate role would make a significant contribution to the overall disarmament process. By incrementally defusing the residues of the nuclear confrontation in Europe, it will contribute to the framework conditions which facilitate nuclear disarmament. Some NWS point to the conditionality of going to zero which, they claim, can only be possible under favourable circumstances. The de-nuclearisation of regions counts among these conditions.

#### Helping delegitimize nuclear weapons

The issue of the legitimacy of nuclear weapons has been debated ever since Hiroshima and Nagasaki. It reached a culminating point with the International Court of Justice's Advisory Opinion of 1996. It is, of course, intimately linked to the basic principles of international humanitarian law and, in this context, to the humanitarian consequences a use of nuclear weapons, not to speak about a major nuclear war, would engender. This latter aspect was written into the first preambular paragraph of the NPT, making the effort to avoid the humanitarian disaster of nuclear use the first objective ascribed to this treaty.

The issue has never been dormant, but it has lived through waves of more and less emphasis. It experienced a strong revival at the 2010 Review Conference and since has been the subject of a major campaign in the NPT membership, driven by a coalition of like-minded states and non-governmental organizations. Through three international conferences, the last one held in Vienna in December 2014, it has attracted more and more supporters and developed considerable momentum.

The humanitarian argument is a strong tool in an attempt to delegitimise nuclear weapons. Again, this desire and related actions are not new. The much heralded “nuclear taboo”, and unwritten but factually efficient norm never to use nuclear weapons, gives a name to a norm which is unwritten and without legal force, but appears to guide very much the practice of the nuclear weapon states.

The present humanitarian campaign pursues this line but goes beyond. Not only the use of nuclear weapons is to be deprived of legitimacy, but the mere existence of these weapons which, in the view of the campaigners, implies the conditional intention to be ready to use and thus, consequently, should be stigmatized (tabooed) as well. While some involved in the campaign see this as a long-term process accompanying incremental disarmament steps with a view to prepare the normative ground for a nuclear weapons free world, others view it as the jumping board into negotiations on a convention banning nuclear weapons in analogy to the BTCW and the CWC. It is clear to these protagonists that a nuclear weapons convention (other than the BTWC or the CWC) has no chance to attract the possessors of the weapons to be banned any time soon. The nuclear weapons convention thus is a symbolic step in which those who would negotiate it and accede to it use their sovereign right to give legal status to their normative position that nuclear weapons are incompatible with international humanitarian law and the moral values informing it and thus, whether they are of military use or not, must be banned. The Convention would open for them a chance to express their stance clearly in legal terms in a way the NPT does not. Many countries acting in that way would mount strong pressures on reluctant parties to follow suit.

From this vantage point, the project of a European NWFZ might look like a distraction for a minor objective. Rather than aiming at a global norm, the zone is constrained to regional scope. Investing political

and social capital in that project, thus, could be seen as less worthwhile than investing the same effort into the global objective. However, three objections can be offered to see the regional project as at least complementary, if not more sensible, than the global one.

First, the nuclear weapons convention requires complex negotiations among many parties. This makes it a difficult and probably controversial endeavour even if the nuclear weapon states and their allies abstain completely from participating. The success, notably in the short run, is thus all but ensured. This leads to the second objection, which concerns the ambition of a nuclear weapon convention which is doubtlessly universal in character. In order to satisfy this ambition, some critical mass of participation is needed. Short of this, it might be looked at as a failure. The complexity of the negotiations involved puts some doubts whether this critical mass could be achieved. A regional approach is less ambitious, notably if promoters make it clear at the outset that they do not expect the region as a whole to participate from the beginning (see below). Nevertheless, being party to a small scope regional NWFZ gives the same sovereign expression to the humanitarian position in a legal form as membership in the convention would.

Fourth, there is the particular characteristic of Europe which makes this a particular region in the justification/delegitimation discourse on nuclear weapons. There are three layers of justifying the existence of nuclear weapons. The first one is the proposition that they provide an insuperable deterrent which counters any clear and present danger to the survival of a nation. Such a danger could arise when an aggressor is about to prevail in a conventional contest or one in which the enemy employs chemical or biological weapons. The second justification maintains that nuclear weapons prevent the emergence of any violent conflict even at the non-nuclear level by the sheer possibility of (nuclear) escalation / retaliation and the ensuing immense damage. The third one suggests that nuclear weapons help to preserve the security of allies covered by a guarantee pronounced by a nuclear weapon state. These three arguments together have been providing a degree of legitimacy to nuclear weapons in the national security discourses of NWS as well as certain NNWS. Incidentally, the third argument relates not only to states that are legally members of the Western alliance. It has also been applied to states that just happen to be sited in the region but which have not decided to become alliance members. It has been stated that some of them are bounded to NATO through non-public commitments, or by the implicit implications of NATO deterrence policies (a free riding posture). The allegation – whether true or not – that officially neutral countries also profit from alliance nuclear deterrence is no doubt a legitimacy asset for extended deterrence.

The situation is a powerful barrier to the complete delegitimation of nuclear weapons. Europe is populated with liberal democracies that wave the banner of human rights and humanitarianism. That these states should intend, directly or indirectly, to use nuclear weapons as a legitimate instrument of national security weakens the case that these weapons, by their very nature of being indiscriminate and causing disproportionate and lasting suffering to victims, fall squarely under the criteria that stigmatize them as inhumane. But when more and more of the same democracies would accede to a NWFZ, this would indicate a move away from implicitly endorsing the legitimate character of these weapons. The severe curtailment of the freedom of movement of nuclear weapons by potentially excluding the territory of zone members as transit route at least on the ground (depending on the undertakings laid down in the zone treaty) would add a tangible consequence to this delegitimation effect. The delegitimising effect of this process would be further strengthened by explicit preambular language of the zone treaty confirming the incompatibility of nuclear use with international humanitarian law e.

#### Provoking a regional public debate

The last two paragraphs have already alluded to the main function the zonal initiative will fulfil: The revival, and then sustainment, of a debate on nuclear policy in European societies and politics. It has been rightly observed that the slow progress, and even the temporary reversal during the last decade, of the process of nuclear disarmament, has been facilitated by the public disinterest in the matter after the end

of the Cold War seemed to lay nuclear dangers to rest. The impact of public opinion on the course of events was proven by the only major campaign in the nuclear field during this period, namely the conclusion of the CTBT; and the fading of this campaign with the opening up for signature of this treaty helped foes of a nuclear test ban in the US to stall it in the Senate. In the absence of continued testing, it proved impossible to get the campaign back on track.

The same consideration applies to nuclear disarmament in general. The new momentum (probably already being threatened by asphyxiation) came about by a civilian initiative, unexpectedly from the heart of the US security establishment by the Wall Street Journal article of Kissinger and Co. in January 2007. This triggered a wave of commitment by other well-known security experts in a new and unprecedented alliance with traditional disarmament groups. The campaign which included the US and major allied countries proved strong enough to motivate a US President to make nuclear disarmament a part of US security policy. It did not prove strong enough to create irresistible momentum. For this, a more powerful and sustainable public debate would be needed.

The NWFZ in Europe approach might have the potential to trigger, and then sustain, such a debate. It is surprising, and thus an eye-catcher and it is controversial, and thus interesting. Since it involves practical steps that extend over time, it will not be over in a few months, but drag on and thus be capable of keeping a debate alive. The confluence of diverse attributes might help to focus attention on the nuclear issue not only in those countries that have been disarmament-minded all along, but also in NATO NNWS and, eventually, Europe's NWS as well.

It is surprising by the combination of subject and initiator. Since such a zone has not been on the agenda for a very long while, it might generate some media interest across the Continent. At the same time, it might not catch attention at all if it would emerge from the "usual suspects" among disarmament-minded non-governmental organizations. Being introduced by a group of governments makes a difference. Public attention will be much higher because of the surprise effect, and the announcement of practical steps then might create a focus on which the NGO-community can zoom in (if a NATO member were in the group, or would join later, this attention would no doubt be even higher). Campaigning for a zone is much less abstract than campaigning for eliminating all nuclear weapons or a global ban on nuclear weapons, as the humanitarian initiative envisages. While a non-governmental initiative alone will not stimulate the necessary interest, and a purely governmental activity runs the risk of losing the momentum gained after a brief period, the combination of the two has a much higher potential for sustainability.

The second factor that supports both interest and sustainability is the controversial character of the initiative. Running counter to established NATO positions and being anathema to the European NWS (Russia included) (see chapter 6), the project triggers what media like most: conflict of interests and controversy. If the public debate takes off, it will be impossible for the NWS to simply ignore the approach. The humanitarian initiative may serve as an example: after boycotting the conferences in Oslo and Nayarit in 2013, the US and the UK were no longer able to ignore an initiative, which had attracted a critical number of states, and – as a consequence – Washington and London sent official delegations to the 2014 Vienna Conference on the Humanitarian Impact of Nuclear Weapons.<sup>54</sup> Taking a stance against an initiative such as the NWFZ in Europe enhances interest and prolongs the discussion. If we envisage a drawn-out process over years wherein additional countries decide to become party to the zonal treaty in irregular intervals (as was the case with NPT accession or with countries embracing the phase-out of nuclear energy as national policy), then there will be a continuous debate (or a stream of debates) on the future of nuclear weapons, as each new accession – or even the discussion on accession in domestic politics – will revive international public interest in the matter. This is a close to perfect precondition for political sustainabil-

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54 Chinese delegates also attended the Vienna conference, although officially as non-governmental observers.

ity. The permanent substantial and political discussion offers an apt platform to broaden support for the stigmatizing of nuclear weapons and for promoting nuclear disarmament. In opening and maintaining this process lies the greatest and lasting value of the NWFZ in Europe project for the cause of nuclear disarmament. It should also be noted that in this way, the leverage of small state policies can be multiplied beyond the material capabilities of the initiators.

Of course, this deliberation is speculative. The flux of public opinion is harder to predict than the weather that will result from a particularly complex meteorological situation. But it is worth a try. For governments as well as non-governmental pro-disarmament actors, the question is always one of the economies of effort. They have limited resources, including social and political capital to spend, and thus must be selective concerning the topics they pick up and propagate. But it is probably unwise to bet all resources on a single item; the zone issue has its promise, and should be part of the overall menu which disarmament-minded actors offer to the public.

### 3.3 *Adapting defence policies to the political situation in Europe*

One of the most frequently heard observations by non-Europeans is the disconnect between the nuclear constellation and the political situation in Europe. The relation between the West and Russia is not without disputes and occasional tensions, as the year 2014 painfully showed, but the idea of a war against each other sounds still far-fetched. The EU and Russia called each other strategic partners, there is a NATO-Russia Council discussing mutually interesting security matters – presently suspended, but for how long?, and economic relations have been developing and will probably do so again when, one day, the sanctions end. Yet NATO and Russia are still considering, if in a “remote” way, using nuclear weapons against each other. The zone project is an important step to confront and overcome this strategic absurdity. One could make the case that the sobering experiences with the Ukrainian crisis make such a step all the more urgent as the confrontational potential in the European theatre has proven bigger than one might have estimated.<sup>55</sup>

## 4. OPTIONS FOR NEGOTIATIONS

### 4.1 *Experiences from other regions*

The existing NWFZ were established in regions in which no substantial nuclear threats emanated from within the region, and none of the treaties necessitated direct disarmament or withdrawal of nuclear weapons deployed within its territory. Although the NWFZ treaties share a similar outline, they also each represent the particular realities of each region, and are each “a product of the specific circumstances of the region concerned and highlights the diversity of situations in the different regions”.<sup>56</sup> Several negotiation dynamics and resultant treaty clauses hark back to these regional specificities, and the experiences are of relevance to the European case, where nuclear weapons or related programs had existed in the region concerned or where nuclear armed neighbours had an impact on the region.

#### Latin America

Negotiations on the Treaty of Tlatelolco, which culminated in a novel and ground-breaking agreement, required resourcefulness and innovation management, as well as the design of creative mechanisms. The original idea for the denuclearization of Latin America was proposed already in 1958 by Costa Rica at the Organization of American States. In 1962, following the Cuban Missile Crisis, Brazil introduced the concept to the UNGA First Committee, and was later joined by three other regional states.

<sup>55</sup> Podvig, Pavel (2015). *What to do about Russian belligerence*. Bulletin of the Atomic Scientists.

<sup>56</sup> United Nations General Assembly Supplement no. 42 (A/54/42), Report of the Disarmament Commission, 6 May 1999.

In 1963, Mexico and several other Latin American states issued a joint declaration on the denuclearization of the region, in which they declared their preparedness to sign a multilateral agreement undertaking not to manufacture, receive or store nuclear weapons and to cooperate with other regional states to obtain recognition of the region as denuclearized. A UNGA Resolution later that year, which gained the support of more regional states, noted the Joint Declaration with satisfaction.

In a meeting hosted by Mexico in 1964, 17 regional states decided to establish the Preparatory Commission for the Denuclearization of Latin America which would be charged with preparing a preliminary draft for a regional denuclearization treaty. This Commission, called COPREDAL, met in Mexico several times between 1965 and 1967 to negotiate that draft, and received technical assistance from the UN Secretary General. Non-regional states, including NWS, observed the plenary sessions of COPREDAL during this time. By its last session in 1967, COPREDAL was attended by all regional states (except Cuba), and all NWS were observing (except the Soviet Union).

COPREDAL established three working groups to discuss different aspects of the agreement. The first working group focused on the extent of the zone and was charged with solving the question of non-independent territories, i.e. “colonies”; the second dealt with obligations as well as verification, inspection and control provisions; the last working group was charged with obtaining NWS declarations. When, in 1966, Brazil submitted a rival draft treaty to the 1965 working draft, a working group was established to reconcile the two drafts.

Private negotiations were held behind the scenes of the UNGA annual meeting during those years, especially with the NWS. Mexico, as the central advocate of the endeavour, was keeping the UNGA informed of the work of COPREDAL, as well as the Eighteen-Nation Committee on Disarmament, which was negotiating the NPT at the same time. When a draft was approved by COPREDAL, it was circulated between all participants, as well as the NWS. In February 1967, the Commission approved the draft treaty unanimously.<sup>57</sup>

While at the time of negotiation none of the regional actors possessed nuclear weapons, several holdouts were complicating the process, most of all Argentina and Brazil, whose nuclear programs and plans were ambiguous. Both states opposed limitations on their nuclear programs (also in the global framework, they contested the NPT regime and export control restrictions), and their position on the NWFZ was in contradiction to that of most other regional states.

Tlatelolco’s sophisticated entry into force mechanism is the result of a compromise reached following a demand put forward by Brazil, insisting that ratification by all regional states and extra-regional states would be a prerequisite to the treaty’s entry into force. The general view during negotiations was that ratification by a significant number of regional states is enough to allow entry into force, while conditioning this on NWS protocol ratification might delay entry into force substantially.<sup>58</sup>

The treaty, as stipulated in article 29, shall enter into force upon the fulfilment of four conditions: ratification by all regional states, ratification of Protocol I by all extra-regional states which control territories in the zone, ratification of Protocol II by NWS, and conclusion of safeguards agreements as stipulated in the treaty. However, each state has the right to waive, wholly or in part, these requirements, and the treaty shall enter into force for those states immediately. Thus, the Treaty entered into force fully and for all its

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57 On Tlatelolco negotiating history, see William Epstein, “The Making of the Treaty of Tlatelolco”, *Journal of the History of International Law*, Vol. 3 (2001), pp. 153–179; John R. Redick, “The Tlatelolco Regime and Nonproliferation in Latin America”, *International Organization*, Vol. 35, No. 1 (Winter, 1981), pp. 103–134.

58 William Epstein, “The Making of the Treaty of Tlatelolco”, *Journal of the History of International Law*, Vol. 3 (2001), pp. 164–168; also – Paul D. Beamont and Thomas Rubinsky, “An Introduction to the Issue of Nuclear Weapons in Latin America and the Caribbean”, *International Law and Policy Institute, Nuclear Weapons Project, Background paper no. 2* (December 2012), pp. 5–6.

members only in 2002, when universality was achieved upon the ratification of the last regional state, Cuba. Brazil, while ratifying the treaty already in 1968, waived these requirements only in 1994, at which time the treaty entered into force for it. It should be noted that this formula betrayed high respect for the sovereignty of each state of the region (which is a sovereignty-conscious region). States who believed that a couple of conditions would be required to make membership in the zone acceptable were not coerced into a compliance status with the zone undertakings unless their conditions were met. States who wanted to enter the conditions of legally assured non-nuclear status were permitted to do so as well. This approach has some bearing on the situation in Europe.

The Treaty also offers the option of amendments, which can be proposed by any party, and accepted by a two-thirds majority. This provision proved useful in bringing into the regime the two regional actors who were suspected of pursuing nuclear weapons. After several revisions Argentina and Brazil proposed in 1992 were accepted by all parties and the treaty was amended, both states finally fully joined the Tlatelolco Treaty in the mid 1990's, waiving the draconian entry into force conditions.<sup>59</sup>

The enabling of NWS to attach 'interpretative statements' to their ratification of Tlatelolco's NWS protocol (despite the treaty's explicit provision that it would not be subject to reservations) was another sophisticated mechanism which supported the NWS's commitment to the zone.<sup>60</sup>

#### South Pacific

The initiative for denuclearization of the South Pacific came from New Zealand as early as the mid 1970's, and was supported at the 1975 meeting of the South Pacific Forum, where members decided to bring the issue to the attention of the UNGA. In the same year, a draft resolution by New Zealand, Fiji and Papua New Guinea was adopted by the GA.

It wasn't until the early 1980's, after conservative governments in both Australia and New Zealand were replaced by Labour, that the process picked up pace. At the South Pacific Forum meeting in 1983, Australia presented a nuclear-free zone proposal, which was discussed with no substantive outcome. However, during the following year's meeting, Forum members agreed to establish a Working Group to prepare a draft treaty before the Forum's 1985 session.

The Working Group held five meetings to negotiate a draft, and various members of the South Pacific Forum participated in the negotiations. The actual treaty drafting was conducted by a legal subcommittee established for that purpose. The draft was adopted by the South Pacific Forum in 1985 and the Treaty opened for signature. The Forum could only agree on wording on the Protocols the following year, and they were opened for signature in 1986.<sup>61</sup>

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59 Julio C. Carasales, "The Argentine-Brazilian Nuclear Rapprochement", *The Nonproliferation Review* (Spring-Summer 1995), p. 43. The amendments, which were requested by Argentina and Brazil along with Chile, focused on the control procedures and special inspections (articles 14, 15, 16, 19, 20). The task of performing special inspections was placed exclusively under the responsibility of the IAEA, since OPANAL was considered to be lacking technical means and personnel for undertaking verification and inspections activities. Control procedures were considered too intrusive, and Argentina and Brazil especially were concerned with ensuring their commercial and technical/industrial secrets. The amount and type of information which parties report to OPANAL was reduced to information relevant to the Agency's activities only (while complete reports still must be presented to the IAEA). See also John R. Redick, "Nuclear Illusions: Argentina and Brazil", Henry L. Stimson Center Occasional Paper no. 25 (December 1995), pp. 34-36.

60 Mexico, which introduced this idea, claimed that 'interpretative statements' would lack the judicial character of reservations, but allow an informal mechanism for reservations. Indeed, the US, UK, France and China attached such statements to their protocol ratification. See John R. Redick, "Latin America's Emerging Non-Proliferation Consensus", *Arms Control Today*, Vol. 24, No. 2 (1994), p. 4.

61 On Rarotonga negotiating history, see Pieter Glebbeek, "South Pacific nuclear free zone Treaty: a lost battle against the superpowers?", *ISS Working Paper Series / General Series*, Vol. 73 (January 1990); Savita Pande, "Regional Denuclearisation—II Treaty of Rarotonga: Nuclear-Free South Pacific?", *IDSAs Strategic Analysis* Vol. XXII, No. 2 (May 1998) (available at <http://www.idsa-india.org/an-may8-4.html>).



The Treaty of Rarotonga was meant to be more encompassing than Tlatelolco, and was labelled a nuclear-free zone, not only nuclear-weapon-free. However, since differences in opinion between negotiating parties limited its further-reaching objectives, those regional states that called for stricter limitations eventually applied them unilaterally, domestically.

The difference between the position of Australia and that of New Zealand regarding the nuclear-free zone exemplifies how contentions over the multilateral mechanism's scope can be alleviated by further far-reaching domestic legislation. Although New Zealand sought a more comprehensive and extensive nuclear-free zone, it nevertheless supported a more conservative regional arrangement, in line with Australia's position. The latter opposed a ban on port visits because of its military alliance with the US, and objected to a prohibition on all nuclear-related activities due to its uranium exports. The treaty eventually was indeed not radical in its scope, but New Zealand committed itself domestically, via the New Zealand Nuclear Free Zone, Disarmament and Arms Control Act, to stricter non-proliferation standards, and introduced more stringent domestic legislation where treaty provisions, in Wellington's view, were too lenient.<sup>62</sup>

During the Treaty's negotiations, Australia took care to present its interpretation of the proscriptions. It clarified that Article 3 of the Treaty, the renunciation by parties of actions that assist or encourage the manufacture or acquisition of nuclear explosive devices by any state, by no means prohibits the "export of uranium or other nuclear materials that might conceivably be used for nuclear weapon manufacture, or scientific/military/diplomatic co-operation with nuclear weapons powers". Furthermore, it implied that "various forms of support for a nuclear power, that could be justified as contributing to the maintenance of 'nuclear deterrence', would be permitted under the Treaty".<sup>63</sup>

This support of nuclear deterrence as part of its national security policy was the reason why Australia had to reconcile its engagement for the zone with its commitment to the US.<sup>64</sup> Australia considered it of crucial importance to maintain its security relations with the US. The question of facilities serving nuclear strategic systems is therefore most relevant in the context of Rarotonga, because Australia hosts such installations for the US. The Treaty of Rarotonga eventually does not include prohibitions regarding nuclear support facilities and installations for command, control, communication and intelligence, "although these constitute an integral part of nuclear war fighting and preparedness".<sup>65</sup>

While Australia was eager to maintain the 1951 tripartite security alliance between Itself, New Zealand, and the United States (Australia, New Zealand, United States Security Treaty, ANZUS) and its security relations with the US, New Zealand enacted and implemented far reaching national restrictions on port visits even at the cost of its ANZUS membership. New Zealand's "stricter standards" were its complete ban on port calls by nuclear vessels, which would be maintained by confirming that visiting vessels are in

62 Pieter Glebbeek, "South Pacific nuclear free zone Treaty: a lost battle against the superpowers?", ISS Working Paper Series / General Series, Vol. 73 (January 1990), pp. 9, 14.

63 Michael Hamel-Green, "The Rarotonga South Pacific Nuclear-Free Zone Treaty", in Ranginui Walker and William Sutherland (ed.), *The Pacific: Peace, Security and the Nuclear Issue* (The United Nations University: 1988), p. 98.

64 US defence communication facilities in Australia include Naval Communication Stations, Defence Space Research and Space Communications Facilities. Pieter Glebbeek, "South Pacific nuclear free zone Treaty: a lost battle against the superpowers?", ISS Working Paper Series / General Series, Vol. 73 (January 1990), p. 2.

65 Toshiki Mogami, "The South Pacific Nuclear Free Zone: A Fettered Leap Forward", *Journal of Peace Research*, Vol. 25, No. 4 (Dec., 1988), pp. 415-416. Mogami finds that "although prohibiting such facilities may not be essential to a N(W)FZ, it is inconsistent to ban the stationing of nuclear weapons while accepting such facilities" (p. 416). Joseph Goldblat presents a different view on the need to prohibit such facilities. One of the purposes of a NWFZ is to render nuclear attacks against parties to such a zone less likely, by ensuring that they are militarily unjustifiable. Goldblat considers nuclear-weapon-related support facilities, such as communication, surveillance, and intelligence-gathering facilities, as well as navigation installations, serving the nuclear strategic systems of NWS to be potential targets of nuclear strikes, which should therefore be removed from denuclearized areas. Joseph Goldblat, "Nuclear Weapon Free Zones: A History and Assessment", *The Non-Proliferation Review* (Spring-Summer 1997), p. 20.

fact non-nuclear (this included both nuclear-carrying and nuclear-powered). This policy clashed with the longstanding policy of the US, particularly with regard to the Navy, to “neither confirm nor deny” (NCND) the absence or presence of nuclear weapons on board of their vessels.

While the US policy of ‘constructive ambiguity’ through NCND was supposedly meant to withhold information from its adversaries, it is in fact mostly useful in securing access to “friendly and allied ports in states where anti-nuclear sentiment is strong”.<sup>66</sup> In other words, like in the case of NATO keeping nuclear weapons in the territory of NNWS members against the will of their population, other US alliances must admit calls on port of possibly nuclear armed vessels against the will of the host state’s population, and democratically elected governments are kept in the dark whether nuclear weapons are or are not in the country they are supposed to govern. Once more, nuclear weapon policies come into contradiction with basic requirements of democracy. In defence of these requirements, and unlike other states with anti-nuclear policies who accept NCND, New Zealand insists on confirming the non-nuclear status of the visiting vessels. When in 1985 New Zealand refused a request for a port visit by a US warship, because it could not unambiguously ascertain that it was non-nuclear, the US responded harshly, breaking off its commitments to New Zealand in the framework of ANZUS. In 1986, the US formally suspended its security obligations to New Zealand, while reaffirming its bilateral ties with Australia.<sup>67</sup> ANZUS has not been formally abrogated, despite the fact that the US and New Zealand no longer maintain a security relationship.

New Zealand’s nuclear-free policy led to its desire to separate all nuclear aspects from the alliance, by prohibiting visits of nuclear vessels to its ports. The ANZUS Treaty “makes no mention of nuclear weaponry or unconditional access to ports, and the New Zealand Government argued that it was entitled to disengage from nuclear deterrence whilst remaining an active member of the Western Alliance”.<sup>68</sup> New Zealand, in particular, clearly did not perceive of ANZUS as a nuclear alliance.<sup>69</sup> The harsh response by the US proves that it interpreted New Zealand’s obligations under ANZUS differently: it considers New Zealand’s prohibition on nuclear vessels’ port calls to have “effectively prevented practical alliance cooperation under ANZUS”.<sup>70</sup>

Although diverging interpretations of the nature of ANZUS merit a more comprehensive discussion than appropriate in this framework,<sup>71</sup> it is important to emphasize that it was not membership in the nuclear-free zone that was perceived by the US as contradictory to ANZUS, since the US indeed continues the security guarantees to, and cooperation with, Australia, a founding member of the South Pacific Zone. The Rarotonga Treaty neither bans nor restricts in any way “nuclear transit, nuclear related support facilities and programmes, exercises and operational alerts involving nuclear weapons, [or] military alliances

66 Michael C. Pugh, *The ANZUS Crisis, Nuclear Visiting and Deterrence* (Cambridge: Cambridge University Press, 1989), p. 2.

67 Amy L. Catalinac, “Why New Zealand Took Itself out of ANZUS: Observing ‘Opposition for Autonomy’ in Asymmetric Alliances”, *Foreign Policy Analysis*, Vol. 6, No. 4 (2010), p. 319. It may be worthwhile to mention that ANZUS has no treaty organization. The Treaty’s text can be found here: <http://www.austlii.edu.au/au/other/dfat/treaties/1952/2.html>.

68 Michael C. Pugh, *The ANZUS Crisis, Nuclear Visiting and Deterrence* (Cambridge: Cambridge University Press, 1989), p. 2.

69 New Zealand Prime Minister Lange, who implemented to ban on port visits in the 1980s, stated that “ANZUS is not the southern hemisphere replica of NATO” and that “New Zealand does not ask, nor do we expect, to be defended by nuclear weapons”; as quoted in Ted Galen Carpenter, “Pursuing a Strategic Divorce: the US and the ANZUS Alliance”, *CATO Policy Analysis* no. 67 (1986) (available at <http://www.cato.org/pubs/pas/pa067.html>).

70 See <http://www.state.gov/r/pa/ei/bgn/35852.htm>: “Even after the U.S. announcement in 1991 that its surface ships do not normally carry nuclear weapons, New Zealand’s legislation prohibiting visits of nuclear-powered ships continues to preclude a bilateral security Alliance with the United States”.

71 For more on the New Zealand and US interpretations of the nature of ANZUS, see Ted Galen Carpenter, “Pursuing a Strategic Divorce: the US and the ANZUS Alliance”, *CATO Policy Analysis* no. 67 (1986) (available at <http://www.cato.org/pubs/pas/pa067.html>).



involving potential use of nuclear weapons”.<sup>72</sup> The attempt by New Zealand to go beyond the scope of the Rarotonga Treaty was what triggered the suspension by the US of its commitments to New Zealand under ANZUS. It took more than twenty years for a thaw in the security relationship. During the Obama administration, the US and New Zealand laid to rest the nuclear dispute in the “Wellington declaration” (2010), after military cooperation had resumed silently already in 2007. In 2012, the ban on New Zealand’s warships to US ports, a remnant of the dispute, was finally lifted.

#### Southeast Asia

A declaration on the establishment, when possible, of a zone of peace, freedom and neutrality in Southeast Asia was issued by the five members of ASEAN in 1971. As political conditions were not suitable for this far-reaching proposal, the idea to promote the denuclearization of the region came up in the 1984 meeting of ASEAN.

In 1986, a committee of officials was directed to study the principles, objectives and elements of a NWFZ in Southeast Asia, and to begin drafting such a treaty. Only after the end of the Cold War did conditions ripen, and in 1993 ASEAN foreign ministers reaffirmed their commitment to the zone of peace and to pursuing denuclearization of the region. A final draft was ready in 1995 and the summit of ASEAN adopted the draft in December 1995, at which time all ASEAN members signed on the same day.<sup>73</sup>

None of the NWS has yet signed the Bangkok Treaty’s protocol as a result of reservations regarding the treaty’s extended territorial area of application, and the extensive negative security assurances in the protocol. Nevertheless, discussions with the NWS regarding adherence to the relevant protocol have been restarted in 2011, and there are a few encouraging signs that in the years to come an agreement may be reached which will overcome the reservations and the protocol will enter into force.<sup>74</sup>

#### Africa

While the states of Africa were keen early on to consider and elaborate the idea of regional denuclearization, negotiations only began in the 1990s, when conditions were considered favourable. Only after the end of Apartheid and the dismantlement of South Africa’s nuclear weapons program was it possible to realize the envisioned African NWFZ; it could not have been done without South Africa, the most advanced African state in nuclear energy.<sup>75</sup>

Following French nuclear tests in Africa, fourteen African states proposed in 1961 a UNGA Resolution calling on members to refrain from testing in Africa. In 1964, the Council of Ministers of the Organization for African Unity (OAU), at Ghana’s initiative, drafted a brief convention on denuclearization of Africa, which was sent to member states to study. The following year, the UNGA endorsed a declaration on the denuclearization of Africa. However, only with the end of Apartheid and the Cold War could efforts truly begin to realize Africa’s denuclearization.

72 Michael Hamel-Green, “The Rarotonga South Pacific Nuclear-Free Zone Treaty”, in Ranginui Walker and William Sutherland (ed.), *The Pacific: Peace, Security and the Nuclear Issue* (The United Nations University: 1988), p. 97.

73 On Bangkok negotiating history, see Amitav Acharya and J.D. Kenneth Boudin, “The Southeast Asia Nuclear Weapon-Free Zone Treaty”, *Security Dialogue*, Vol. 29 (1998), p. 219–230; Surya P. Subedi, “Problems and Prospects for the Treaty on the Creation of a Nuclear-Weapon-Free Zone in Southeast Asia”, *The International Journal of Peace Studies*, Vol. 4, No. 1 (January 1999) (available at [http://www.gmu.edu/programs/icar/ijps/vol4\\_1/subedi.htm](http://www.gmu.edu/programs/icar/ijps/vol4_1/subedi.htm)).

74 Kelsey Davenport, “SE Asian Nuclear Protocol Falts”, *Arms Control Today* (September 2012) (available at [http://www.armscontrol.org/act/2012\\_09/SE-Asian-Nuclear-Protocol-Falts](http://www.armscontrol.org/act/2012_09/SE-Asian-Nuclear-Protocol-Falts)). See also the U.S. call from 1 June 2014 to the P5 to sign the SEANWFZ protocols (chapter 2.3.3.).

75 Oluymemi Adeniji, “The Treaty of Pelindaba on the African Nuclear-Weapon-Free Zone”, UNIDIR/2002/16 (2002) (available at <http://unidir.org/files/publications/pdfs/the-treaty-of-pelindaba-on-the-african-nuclear-weapon-free-zone-297.pdf>): IX, 51.

In 1991, a group of experts was convened, comprised of representatives from several African states, OAU representatives, one from UN, observers from Rarotonga and Tlatelolco, and IAEA representatives. Support from UN and IAEA was considered crucial for the work of the UN/OAU group of experts.

The UN/OAU group's role was initially to lay the groundwork for a denuclearization agreement, by examining the modalities and elements for the preparation and implementation of such a treaty. Among the topics discussed were the political conditions needed for denuclearization, the area of application and the scope of prohibition. The expert group's mandate was extended, and it met again in 1992 to conclude its report. During the consideration of elements and modalities, those states that would be expected to adhere to the protocols were invited for consultations. These consultations proved useful for both the protocols as well as the treaty itself.

The incorporation of South Africa into the process was vital, and was enabled by the involvement of an NGO at a crucial point of the treaty's drafting. The Program for Promotion of Nuclear Non-proliferation held a meeting at the University of Zimbabwe in 1993, to which South Africa was invited, and in which it expressed its acceptance in principle of a regional NWFZ. Thereafter it was recommended that South Africa be invited as an observer to the negotiation process. The drafting process was slowed due to changes in the composition of the UN/OAU expert group in 1993, which prolonged discussions. In its meeting in 1995, the draft was finally agreed.<sup>76</sup>

The necessity to address South Africa's nuclear weapons stockpile distinguished the negotiations process for the African zone from those of the other zonal arrangements where no state possessing nuclear weapons was part of the region. Already during the pre-negotiations of the Pelindaba Treaty it was agreed that South Africa would have to be a member of the zone and subject to its obligations, due to its nuclear weapons capability and its continuing nuclear technology proficiency. As South Africa had already dismantled its small nuclear arsenal at the time it joined the zone, the other African states needed to be ensured that the elimination of nuclear weapons as well as of residual weapon production facilities was complete and not easily reversible. The conditioning of entry into force on South Africa's ratification was even contemplated. Furthermore, the importance of total transparency on the part of African states was considered necessary to ensure that the zone is indeed nuclear weapons free. The clause on reversal of nuclear weapons programs is a direct result of the unique nuclear situation in Africa.<sup>77</sup>

#### Central Asia

Upon Mongolia's declaration of its territory as a NWFZ in 1992, it called for a regional NWFZ. In 1993, Uzbekistan made a formal proposal for such a zone in the UNGA, and a year later, its approach was supported by Kyrgyzstan. At the 1995 NPT Review and Extension Conference, both states proposed the creation of a NWFZ in Central Asia.

The first substantial move was achieved in 1997, with the Almaty Declaration by the five presidents of the Central Asian states, endorsing the creation of a zone in their region. At the UNGA meeting later that year, all five states submitted a draft resolution, which after the addition of some amendments won the support of NWS, and was endorsed by the GA.

Treaty drafting began by the five Central Asian states, with support from the UN and the IAEA, as well as financial support from Japan. In a 1998 expert meeting held in Kyrgyzstan, basic principles for the zone

76 On Pelindaba negotiating history, see Oluyemi Adeniji, "The Treaty of Pelindaba on the African Nuclear-Weapon-Free Zone", UNIDIR/2002/16 (2002) (available at <http://unidir.org/files/publications/pdfs/the-treaty-of-pelindaba-on-the-african-nuclear-weapon-free-zone-297.pdf>); Helle Winge Laursen, "An Introduction to the Issue of Nuclear Weapons in Africa", ILPI Background Paper no. 1 (May 2012) (available at [http://nwp.ilpi.org/wp-content/uploads/2012/08/BP01-12\\_Africa.pdf](http://nwp.ilpi.org/wp-content/uploads/2012/08/BP01-12_Africa.pdf)).

77 Oluyemi Adeniji, "The Treaty of Pelindaba on the African Nuclear-Weapon-Free Zone", UNIDIR/2002/16 (2002) (available at <http://unidir.org/files/publications/pdfs/the-treaty-of-pelindaba-on-the-african-nuclear-weapon-free-zone-297.pdf>), throughout.

were discussed with representatives of the NWS. Significant points of disagreement halted progress until 2002, when compromise was achieved. The compromise draft treaty was sent to NWS for their endorsement, but the ambiguous language that was used to reach agreement between the five regional states proved problematic for the western NWS. The US communicated its concerns to the regional states. Russia and China, however, supported the draft. In 2005, the Central Asian states revised the draft slightly to address only some concerns voiced by the US, and the treaty opened for signature in 2006.<sup>78</sup> After extensive negotiations, all the NWS signed the protocol in May 2014, and China, France and the UK have ratified it since. On 27 April 2015 President Obama submitted the protocol to the U.S. Senate for its advice and consent to ratification.

### Summary

Analysis of the negotiation processes that led to the established NWFZs shows that all zones relied on, or at least were backed by, international support for the goal of regional denuclearization. UNGA Resolutions on regional denuclearization seem to have played a meaningful role in consolidating international and regional support for the endeavours.

For each of the five existing NWFZs, a regional working group or expert committee was created for the purpose of exploring the legal and political aspects of the free zone treaty: these groups eventually also drafted the treaties. These working groups enjoyed technical and other support from the UN and IAEA. In at least three treaties, the negotiation process was held in the framework of regional organizations, namely the South Pacific Forum, the Association of Southeast Asian Nations and the Organization of African Unity (for Rarotonga, Bangkok and Pelindaba, respectively).

Having stated the importance and contribution of international support, a crucial aspect for a NWFZ has been NWS endorsement, and ultimately their ratification of the relevant treaty protocols. As recommended in the UN's report on NWFZ from 1999, NWS were consulted during the negotiations of all existing NWFZ treaties, to differing degrees and differing levels of satisfaction. While not all of their reservations and discontent were incorporated into the treaties, their considerations were addressed where possible. Indeed, in a slow process, the NWS have almost completely ratified their respective protocols in three NWFZ treaties, namely Tlatelolco, Rarotonga and Pelindaba (US ratification is pending for the two latter, and was submitted in 2011 for the Senate's approval). For the Treaty of Semipalatinsk, there has been huge progress since spring 2014. For the Treaty of Bangkok, none of the NWS has yet signed the protocol; ongoing negotiations aim at bridging the gap opened by fundamental disagreements on specific provisions in the treaties.

The history of negotiation and establishment of existing NWFZ shows that "a Zone arrangement is a very flexible instrument that can accommodate many political and geographical peculiarities".<sup>79</sup> The existing zones required meaningful and momentous innovation, and while they are similar in their basic scheme, they are each a product of their regional environments and influenced by regional opportunities and constraints.

The case of the Pelindaba Treaty documents that zones can deal with a situation where a state in the region had built and dismantled a nuclear arsenal, while the Central Asian case demonstrates that zones can also address the constellation of deployment of weapons in states in the region that belong to someone else. While the circumstances differ significantly from those in Europe, the precedents show nevertheless that these issues can be successfully handled with sufficient creativity and good political will.

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78 On Semipalatinsk negotiating history, see Scott Parrish and William Potter, "Central Asian States Establish Nuclear-Weapon-Free-Zone Despite U.S. Opposition", CNS Research Story (2006) (available at <http://cns.miis.edu/stories/060905.htm>).

79 Jan Prawitz, "A Brief Sketch of the Proposed Zone", *International Relations*, Vol. 22, No. 3 (2008), p. 332.

Although NWFZs are theoretically intended to “eliminate” nuclear weapons from the denuclearized regions, the permissive provision on transit could be considered as rendering this intention and the title of these arrangements (“free” zones) incomplete. Nevertheless, and despite the hurdles that still remain for NWS ratification of several NWFZ protocols, all existing zones have entered into force, and are lauded as important parts of the non-proliferation regime. They thus entail a symbolic and normative significance, which is of great importance on its own and a meaningful achievement, considering the strategic and political obstacles facing NWFZ.

#### 4.2 *Options for negotiation in Europe*

The particular conditions, under which a NWFZ in Europe would be sought, as previously discussed, necessitate a closer look at the options how to negotiate it. In the following, four options are discussed and evaluated.

##### The conventional way

The usual approach is that all states in a region are invited (conventionally by a regional organization, if one exists) to hold negotiations on the scope and the provisions of a zonal treaty. This corresponds literally to the principle that zones must be “established on the basis of arrangements freely arrived at” by the countries in the region. As history has shown, the existence of countries sceptical about such a zone does not prevent the success of its negotiations. Brazil and Argentina had their concerns regarding a zone and were not particularly eager to accede to the Tlatelolco Treaty when the negotiations were completed, but they did not refuse to participate therein, although they represented the minority opinion regarding several topics during negotiations. Likewise, the existence of countries openly opposed to a zone because they possess nuclear weapons and want to keep them does not necessarily prevent the other countries of a region to deliberate about a zone (though true negotiations are not possible): The African Union, on Nigerian initiative, conducted such deliberations in the absence of then apartheid South Africa, and the Arab League, without Israeli and Iranian participation, came up with valuable ideas on how a zone treaty might be framed. Yet if the zonal treaty can only be opened for signature if the draft is adopted unanimously, and only enter into force when all members have ratified it, its validity remains forestalled until a landmark change in the sceptical and opposed countries has taken place. The Tlatelolco Treaty, with its opportunity for individual waivers, found a way around this difficulty. The 2010 NPT Review Conference chose in “Action 9” the wording “freely arrived at among States of the region concerned” which implies that (initially) not all states of the region must be involved. The same possibility is opened by the UN’s Comprehensive Study of the Question of Nuclear-Weapon-Free Zones in All its Aspects: it states 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 smaller groups of states and even individual countries”.<sup>80</sup> The respect for the sovereign will of the individual state which characterized the solution for the problem existing during the negotiations on the Tlatelolco Treaty is reflected in this wording of the UN study as well.

In any case, the situation in Europe makes the conventional approach inadvisable. The proper organization for the area – the Organization for Security and Co-operation in Europe (OSCE) – will probably not call for negotiations because any one of the four NWS belonging to this organization may veto such a move. In addition, a large number of regional states are NATO members or allied to the Russian Federation (like Belarus). It is unlikely that a majority of them would decide to participate in negotiations on a NWFZ right away, though they might be willing to engage in informal or bilateral talks about the project.

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<sup>80</sup> Comprehensive Study of the Question of Nuclear-Weapon-Free Zones in All its Aspects – Special Report of the Conference of the Committee of Disarmament, 8 October 1975 (A/10027/Add.1), p. 41.

While a few disarmament-minded NATO states might be ready to defy their nuclear armed or nuclear-minded allies, most would probably stay aside and just watch further developments. A general, public call for negotiations to which only very few would respond would to a certain degree symbolically delegitimize the project at the outset and probably impact negatively on its pivotal purpose to start a lasting debate. For this reason, going through the OSCE is inadvisable, and the initiative then rests with “states in the region”.

#### The Mongolian way

The way Mongolia pursued in the direction of a NWFZ is exactly the opposite extreme to the conventional way: The country declared itself (after preliminary talks with its two nuclear armed neighbours, Russia and China) a NWFZ consisting of a single state, and switched from “zone” to “status” later on grounds of persistent objections. It is conceivable to transfer the model to Europe: A particularly daring and committed European state would make such a declaration. The big advantage would be to have a zone realized right away, and the mere act would certainly attract sufficient attention to trigger a debate.

However, there are significant differences between the Mongolian and the European case. Mongolia has borders only to the two named neighbours. There are thus no further NNWS contiguous to Mongolia with which it would form a region that could be covered by a zone. Central Asia is several thousand miles away and Mongolia is not regarded, nor does it regard itself, a member of this region.<sup>81</sup> Mongolia had thus never any intention or ambition to star as the initiator and core of a future regional zone. Exactly that, however, would be the ambition of a single European state declaring itself a zone.

For a single-state zone, a declaration is sufficient. For a regional zone, a treaty is needed, because a balance of rights and obligations must be established as soon as more than one state actor is involved. To start a zone without a treaty and even without any negotiation is thus an odd procedure that would probably meet a lot of alienation even among sympathizers. The risk that the act would be successfully ridiculed and thus delegitimized, and that the debate would be virulent, but also short and not sustainable is thus high. For this reason, this option should probably also be avoided.

#### Closed negotiation of like-minded countries

The number of European states considering membership in a NWFZ in Europe must be currently expected to be relatively small. Apart from Austria and Switzerland, also Ireland, Liechtenstein, and Sweden might have sympathies. Whether Finland, an erstwhile promoter of such a concept during the Cold War, would feel comfortable to be in the forefront today is uncertain. Similarly, Norway might feel impeded by its NATO membership; but Oslo has shown considerable autonomy in nuclear weapons policies before and might be daring enough to consider the step. The Holy See, member of the NPT, might also feel fit to accede. Furthermore, there are a number of former Soviet Republics, which are shifting their foreign policy priorities towards establishing stronger ties with European countries and institutions. Some of these transition countries might sympathize with the idea of establishing a European NWFZ, first and foremost Ukraine and Belarus, but in principle also Georgia and Armenia (though Ukraine and Georgia might have concerns because of its continuing desire to enter NATO, even more so today than in former years; the possible reaction of NATO members is dealt with in chapter 6). Priority for accession to Western organizations might also caution Balkan states not presently members to NATO against taking a strong pro-zone stance. It might make sense for the initiators to quietly approach this group of presumably or possibly sympathetic countries with a view to explore their readiness to enter closed negotiations on the legal shape of the zone. This means that about half a dozen like-minded countries might eventually

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81 Though this might change, as Mongolia’s observer status to the Shanghai Organisation for Security Cooperation might indicate.

agree on a text which would then be published, signed and ratified, bringing the zone into existence (cf. chapter 4). It should be recalled that the initial round of negotiation on the Tlatelolco Treaty saw restricted participation as well.

Keeping the negotiations strictly to like-minded countries committed to the project from the outset would have the big advantage of confronting objections only when the main deal is already done and avoiding any veto situation which would stymie the whole project from the beginning. At the same time, it would avoid the perception of the project as the product of a lonely national idiosyncrasy which the “Mongolian way” might suggest. It would also result in a text that could present the rallying point for an ensuing campaign led by civil society actors, in contrast to the “Mongolian way”.

A disadvantage might be that the like-minded countries would be vulnerable to the accusation that they isolate themselves from the majority of possible participants, undermining the legitimacy of the project under the “arrangements freely arrived at among the States of the region” principle.

#### Ottawa way

The Ottawa way, labelled after the process that led to the Ottawa Convention to ban anti-personal landmines, would also start with like-minded countries but lead to drafting conferences where an initial draft by the like-minded would be discussed and amended by a larger group of interested countries on the basis of an invitation. The process would proceed through a – limited – sequence of meetings with a drafting character and result in a treaty that would then be opened for signature.

The initiators would invite all potential participants in a regional zone as well as representatives of civil society whose participation they deem useful for fostering the project, but the process would not be frustrated if some or even many would decide not to come or would in the end abstain from early accession. Since the format contains no veto position, but entitles those who wish to do so to eventually go forward, the flaws of the conventional approach would be avoided. Since the like-minded have control over procedure and protocol, the process could be completed within a desired time span and could not be delayed into the indefinite future by filibuster techniques of opponents.

In the end, a draft would be opened for signature. Even if most of the participating countries would abstain from signing and ratifying for the time being, their participation in the deliberations would add legitimacy to the process and create the hope that at one point in the future they may join the zone treaty for good. This chance would certainly be higher if they had the chance to introduce their own preferences and concerns into the deliberations by virtue of the Ottawa way. The participation of civil society would help with creating the basis for an accompanying as well as ensuing campaign and would establish a feeling of ownership which would enhance the motivation for campaigning.

#### Comparative Evaluation

The highly formal conventional way is too open to sabotage by countries averse to the whole project, while the Mongolian way is not fit for application for a regional (and thus multilateral) project. The closed approach suffers from legitimacy problems that should not be underrated. A combination of the closed approach with the Ottawa way might be best. The likeminded initiators would have to explore thoroughly the readiness of all potential NNWS participants to join a series of meetings designed to lead to a zone treaty. The invitation would go to all, the relevant NWS included, once a critical mass of participation would be ensured (including a clear commitment to remain ready to attend even if the NWS exert pressure to dissuade countries from participation). The likeminded would have to work closely together throughout the process and to become parties to the Treaty even if there would be little prospect that others would emulate their example immediately. The involvement of civil society in these meetings should not restrict them to observation only, but accord a serious opportunity to voice their views.



As will be discussed in the next chapter, this way of proceeding has consequences for the treatment of the territorial scope and entry into force questions. Before we go into that, however, we have to discuss two rather delicate problems that bother the negotiating setting for a NWFZ in Europe: The involvement of the UN and the IAEA, and the question whether and when the NWS should be consulted. Both questions are inevitable, as it has become customary to involve the two international organizations, and consultations with the NWS are part of the UN guidelines (discussed in section 2.1) and have been conducted in the run-up to all established NWFZ treaties.

#### Involvement of the UN and the IAEA

All NWFZs have asked the UNGA for support well before the opening of the treaties for signature. While there is nothing in international law which would require the consent of the UNGA for establishing a NWFZ, the custom has created a presumption that this procedure creates the necessary legitimacy for a zone project. In our case, this is a very problematic requirement. It can be hoped that a draft resolution asking for support for a NWFZ in Europe may attract the necessary two thirds majority due to the support by the vast majority of the non-aligned, notably the members of NWFZs established already, and the disarmament minded “Western” nations (such as New Zealand). But a UNGA vote might also show determined objections (e.g. France, maybe even all P-5) and a great number of abstentions (NATO countries and, maybe, Central Asian friends of Russia). The most embarrassing result might be that a vote would show that only a tiny minority among the potential members of the zone are presently supportive of the project – a rather unique situation in the history of NWFZs. While this constellation is probably a matter of fact, to demonstrate this in a highly symbolic UNGA vote might be detrimental to the legitimacy of the whole project. In weighing the negative impact on legitimacy of not going to the UNGA versus a vote with symbolically detrimental outcome, it might be wiser to avoid the UNGA until such time that a sizable portion of potential zone members is ready to vote “yes” in New York.

To achieve this result, the promoters should designate one among themselves to present the project in the UNGA plenary session of the year in which the plan to initiate a zone is made public. Initiators would consult key UN member states in advance and ask for their support. Consultations would be continued with a broader number of GA members at the margins of the session. When the initiators are sure that they have the required support, they would then introduce a resolution of support.

The IAEA has been routinely part of zone negotiations because of the expectation that the Agency would take over the brunt of verification duties. This would not exclude a complementary system of regional (*European Atomic Energy Community* – EURATOM), multinational (e.g. the involved NWS between each other), and supranational (IAEA) verification, but it is hardly conceivable that a system could be built without the experienced Vienna agency. The advice of the IAEA would probably be indispensable particularly for tricky issues such as how to integrate into the verification system those facilities that used to host nuclear weapons (as in the NATO NNWS with a nuclear role) or that have served military or dual-use purposes (as in France, Russia, and the UK), and for drafting language in anticipation of a far-away future where verification of such sites would become relevant. However, these tricky, complex contingencies may be avoided by restricting the verification system to the immediate tasks, while facilitating amendments meant to cover verification of former nuclear weapon states once they are ready to accede in the process of nuclear disarmament.

The problem is whether the Agency would feel free to enter related consultations. NWS and NATO NNWS have a strong voice in the Board of Governors, and there might be objections to the IAEA connecting to the zone business at all. Since consultations can be paid for from the regular budget routinely, such objections would have no immediate effect on a determined IAEA leadership, but the degree of determination depends on the person in charge (Blix or ElBaradei would have had no qualms), and this

person would always have to calculate the future costs of retaliation by the offended parties when the Agency engages against the expressed will of the NWS (and possibly all or part of NATO NNWS).

The first imperative is thus to explore informally whether the Agency leadership is willing to engage before a formal invitation is issued. If it turns out that the IAEA leadership is not willing to take risks, the alternative is to wait for a more courageous leadership and to consult with retired IAEA experts (and former leaders) whose availability is certainly not in question. The whole issue might be postponed if – as is to be expected – the original members of the zone would be neutral countries already covered by the NPT. The verification clause in the zone could then call for the application of NPT comprehensive safeguards and the Additional Protocol, with an opening clause that the verification system will be amended as circumstances change through new accessions (i.e. NATO states which have or had nuclear weapons on their territory, or NWS).

#### Consultations with NWS

The “guidelines” request, and the parties to zone negotiations so far have duly conducted, consultations with the NWS with a view to ensure their endorsement of the zonal project, not always with the desired success as the not-ratified protocols to some of the zones, and the drawn-out process of signature and ratification document. Indeed, it may be asked why a group of states whose compliance with their undertaking under Article VI of the NPT has come increasingly under criticism should hold a kind of veto position over the sovereign decision of a region, or certain states therein, to be nuclear-weapon-free. From today’s vantage point such a position looks rather alien. As the constellation of zones without ratified protocols shows, a region might defy NWS objections and develop in a zone anyway – at the cost of lacking the desired security assurances (this means that the NWS keep the option to attack NNWS with nuclear weapons not because of an urgent need of survival but because of annoyance about an uncomfortable constraint on their freedom of action – a strange position in itself). Nevertheless, again the custom has been established, and a European zone project would have to address it, one way or the other.

The “Ottawa option”, which is part of the hybrid which we recommend as a procedure for negotiations, assumes that NWS are invited to the table. Whether they will attend or not is an open question; their refusal to participate in the Oslo and the Nayarit meetings on the humanitarian aspects of nuclear weapons does not augur well for their readiness to take part in a project which they – or at least some of them – are probable to distinctly dislike.<sup>82</sup> In addition to this invitation, governments willing to pursue the zone project might ask for bilateral meetings on issues concerning nuclear disarmament and put the zone on the agenda for such consultations in the hope that at least some decent conversation might be possible.

As these deliberations show, this is one of the most difficult aspects in the negotiation setting, not the least because the reaction of the NWS is so incalculable. They might be willing to participate in consultations or even negotiations as such but be negative in the consultation/negotiation itself; they might refuse to participate in either consultations or negotiations, but willing to engage bilaterally and utter their objections. Or they may go incommunicado vis-à-vis the zone promoters. We just do not know.

If the dialogue between the NWS and the NNWS in the region and beyond develops positively, consultations in the run-up to establishing a NWFZ in Europe might foster the process and the general move towards nuclear disarmament. If the NWS are hostile, not having them in the negotiation room might constitute empowerment for the NNWS; such an effect was observed at the Oslo Conference. Promoters of the zone project would have to decide ad hoc which conditions obtain and what the best answer might be.

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<sup>82</sup> The American and British attendance of the 2014 Vienna conference does not hide the fact that Washington and London fundamentally dislike the humanitarian initiative.



## 5. CONTENT OF A NUCLEAR-WEAPON-FREE ZONE TREATY IN EUROPE

### 5.1 *Geographical scope and entry into force*

#### The “leaving it open” approach

Dealing with the (desired) geographical scope of the zone is a tricky issue. While the area covered by the OSCE or the Council of Europe could supply templates for the desired geographical extension, defining a scope in an operative paragraph (e.g. Tlatelolco Treaty) or in an Annex that is integral to the operative part of the treaty (e.g. Rarotonga Treaty) would mean taking the controversial step to create a legal reality (though virtual) over the objections of states in this geographical area which are predictably hostile or hesitant to the project at this moment. It might be seen as highly provocative and evoke stronger resistance than the promoters might wish to stimulate at this point in time. Such refusal from NNWS in the region would diminish the legitimacy of the project. The fact that states whose territory would be named as desired part of the zone had not ‘freely agreed to’ the project might also open a debate among lawyers that diverts energies and momentum from the political aim to popularize the zone idea. Promoters of the zone are thus well advised to search for options which do not require specifying the territorial scope of their zone right away.

The negotiations for the Tlatelolco Treaty weighed an option that was dropped after some discussion but could serve as a solution for the problem: “Opinion was divided as to whether to decide on a pre-determined regional zone or to adopt a more pragmatic approach and include in the zone the territory of each state party as it joined [emphasis added]. No decision was taken until the end, when the extent of the zone was finally defined.”<sup>83</sup> Given the situation in Europe, the “pragmatic approach” – eventually rejected by the Tlatelolco negotiators – appears an attractive option. One would not define in operational terms the whole area to which the ambition of initiators extends. The extension of the zone would be coterminous with the territory (including territorial waters) of those who had actually become parties to the zonal treaty by signing, ratifying and depositing their note of ratification with the depositary. The territorial scope of the zone would then be extended when additional states accede. For this reason, the zone would not be called “Nuclear-Weapon-Free Zone Europe”, but “Nuclear-Weapon-Free Zone in Europe”, thereby denoting the transitory and partial nature of its geographical scope.

On the other hand, it would be odd to have no notion in the treaty of the objective for geographical extension the agreeing parties have in mind. But rather than inserting it in the operational part, this notion should be confined to the preamble. Various formulations could be considered. A more daring one would be: “hoping that eventually all members of the OSCE with the exception of those already covered by a nuclear weapon free zone treaty might join the NWFZ in Europe in the free exercise of their sovereignty and in the process of nuclear disarmament as endorsed by the 2009 United Nations Security Council summit on nuclear non-proliferation and disarmament”. This formula (a) denotes the desired geographical scope, (b) in full compliance with the principle “freely arrived at”, (c) avoids a competitive relation with the Semipalatinsk Treaty<sup>84</sup> and (d) makes clear that the zone project is part of the broader disarmament process to which the highest authority in global security policy, the United Nations Security Council (UNSC), has already committed. If this approach would appear still too intrusive, an alternative would be to leave the desired scope vague by noting the desire of the members that one day “all states of Europe”

83 William Epstein, “The Making of the Treaty of Tlatelolco”, *Journal of the History of International Law*, Vol. 3 (2001), p. 161.

84 In principle, it would be thinkable to admit double membership (as Egypt would inevitably incur in both the African and the Middle East NWFZs once the latter would come into being). However, the treaties might contain non-identical or even contradictory provisions and obligations; for example, the Semipalatinsk Treaty contains the disputed “other agreements” clause which could be interpreted as to enable nuclear weapons to be introduced to the area as a consequence of mutual defence obligations. Such ambiguities would create a legal nightmare that should be avoided as it could lead to enduring controversies and thereby, once more, divert energies from much more important issues and activities.

might decide to become members of the zone; this approach follows the example of the European Union not to define what “Europe” eventually means – the EU formula has never been attacked.

A zone will be a challenge to NATO (and, to a lesser degree, to Russia), in any case. The question is whether the edge of the challenge can be softened even more by choosing very modest language on the scope issue. In order to display an maximum of modesty without renouncing any ambition for growth, the preamble paragraph as formulated above might be changed into something like: “The nuclear-weapon-free zone in Europe is an undertaking by neutral states, members of the OSCE, belonging to no military alliance and have chosen as a matter of their sovereign decision to remain free of nuclear weapons. The original signatories of this treaty hope that the zone might once extend beyond its present scope”.

The OSCE confidence-building measures approach: Complex and revolutionary

A third (particularly intriguing) possibility would be to mention explicitly the hope to extend the zone to the area where the confidence-building measures of the OSCE apply. The option is intriguing as this would include a considerable part of the Russian Federation (including a strip east of the Urals). The obvious objection that this would fail on Chinese/Japanese resistance could be neutralized by using the vast distances of Siberia to locate the weapons in an area where they would be at about equal distance to NATO and East Asia (the discussion preceding the INF Treaty is full of this sort of considerations). This option should be welcome to the most reluctant NATO members, the Baltic States, as it would remove Russian sub-strategic weapons out of range. Russia, at first glance, might be supposed to object because it would necessitate not only a re-deployment of sub-strategic nuclear weapons but even of some intercontinental ballistic missiles (ICBM) which are sited in this area. On the other hand, Russia would obtain, for a part of its territory including the capital, a security guarantee against nuclear threat and attack, provided Western NWS would be prepared to grant it. The condition would be that Russia has not previously attacked with nuclear means (something that negative security guarantees towards NWFZs usually presume, as, so far, the members of these zones have always been NNWS). The United States might consider the concession worth the candle given the required re-structuring of Russia’s nuclear forces and the possibility to remove the sub-strategic part far from Alliance borders. The UK will probably follow, for France, however, it would be a major change in doctrine and French readiness for such a change would not be assured. The Eastern European states, in turn, may have second thoughts if a conventional attack by Russia would be covered by their Western allies’ negative security guarantees. In other words, we would face a mindboggling complex situation. This prospect is so revolutionary as to defy imagination; still we found it necessary to mention it because it demonstrates the enormous potential for change which is inherent in the zone project even if, at this moment, it looks vastly utopian.

It is our own assessment that this complex stratagem would fail on the rocks of Russian objections. The more moderate approach would be for zone members to hope for the success of confidence-building members between NATO and Russia, and to enter, if possible, quiet discussions with Russia on possible positive reactions in case that NATO NNWS would accede to the zone. From today’s vantage point, it is likely that chances for an extension of the zone’s territorial scope would hinge in no small measure from the further development of the relationship between NATO and Russia. At any rate, being overambitious at the outset of the zone project might be the typical “best being the enemy of the good”.

Defining the minimum group of initial zone members

Using the approach with no fixation of the final geographical scope (other than in a modest preambular aspiration sentence) would also affect the entry into force question. Requiring the ratification by all states eligible for membership before the treaty could enter into force would invite sabotage and postpone legal validity ad infinitum. On the other hand, the discussion about the “Mongolian way” has demonstrated the shortcomings of the minimalist solution to establish the zone by the fiat of a single state. The initiators

should thus seriously explore how many countries would be ready to commit to early ratification. The entry into force should then be pre-conditioned on the ratification by a minimum number of states, fewer than those ready to commit to ratification (say, if six countries commit to prompt ratification, the condition might be set at four to have some safety margin against unforeseen developments in one or two of the committed proponents). The entry into force clauses in existing NWFZs also require a certain amount of ratifications (except for Tlatelolco, which has a more complex mechanism), and the suggested formulation would fit with the template. This approach would grant an early existence of the zone, an important step to create momentum for the political campaign.

#### The patchwork problem

It might be objected that this would establish the zone in a patchwork way, making it quite different from the zones that exist. There are two counterarguments: First – and most important – the European project is *sui generis* and thus special features and procedures cannot and must not be avoided. Second, one of the established zones is a patchwork not only in becoming, but in an enduring way, namely the South Pacific Nuclear-Free Zone. It is a patchwork by nature, since it extends across a gigantic Ocean, it comprehends land territory, territorial waters, and open seas which are *terra nullius* and are thus not under the sovereign rule of the members of the Rarotonga Treaty. But there are two additional features of great interest to the European case.

Rarotonga is open to signature by all South Pacific Forum (now called Pacific Islands Forum) members. Presently, that encompasses 16 states which are eligible to join the Zone, by virtue of their membership in the South Pacific / Pacific Islands Forum. Only three states are not parties to Rarotonga: Micronesia, Palau and Marshall Islands. All three are located north of the equator, and their territory is not part of the zone, as delineated in the Treaty's Annex 1 and the map attached thereto (the equator is the general northern border of the zone; parts of Papua New Guinea, Nauru and Kiribati are north of the equator, but in the delineation of the zone in Annex 1 these parts are accounted for and therefore included in the zone's territory of application).

When the Rarotonga Treaty was opened for signature in 1985, the South Pacific Forum had only 13 members (Australia, the Cook Islands, Fiji, Kiribati, Nauru, New Zealand, Niue, Papua New Guinea, the Solomon Islands, Tonga, Tuvalu, Vanuatu and Western Samoa). Later on, three additional states became members of the South Pacific Forum and therefore also eligible to become parties to the Zone – Micronesia, the Marshall Islands and Palau (the first two joined the Forum in 1987, the latter in 1994<sup>85</sup>). In 1985, these three states were the Trust Territory of the Pacific Islands, administered by the US. This territory was not included in the zone, as it was delineated in Annex 1 to the treaty.<sup>86</sup> Article 12(3) of the Rarotonga Treaty opened the possibility to extend the zone delimited by Annex 1 simply by the accession of states outside of this delimited territory, based on the agreement of the members of the South Pacific Forum.

85 Savita Pande, "Regional Denuclearisation – II Treaty of Rarotonga: Nuclear- Free South Pacific?," IDSA's Strategic Analysis, Vol. XXII, No. 2 (May 1998) (available at <http://www.idsa-india.org/an-may8-4.html>).

86 Mogami mentioned that it was considered questionable that the US's Trust Territory was not included in the zone, while French Polynesia was. Toshiki Mogami, "The South Pacific Nuclear Free Zone: A Fettered Leap Forward", *Journal of Peace Research*, Vol. 25, No. 4 (Dec., 1988), pp. 411–430. Mogami writes: "As delimited by Annex 1 of the Treaty, the zone includes French Polynesia but not US Trust Territory (sic). Some states called for this inconsistency to be redressed, with PNG insisting on its preference for the wider boundary of the South Pacific Commission (SPC)<sup>17</sup> which includes the Trust Territory. This was overruled, as it 'could complicate current negotiations on the constitutional future of these territories'. Such a zonal extension would have irked the US, for it would have included (1) Belau, where the termination of the trusteeship is yet to be effectuated because of American antipathy to Belau's non-nuclear constitution, and (2) the Marshall Islands – the US 'Air Force's Nuclear Bullseye' (Johnson 1984, Ch. 5) – which has the Kwajalein Missile Range (KMR) where American test missiles launched from Vandenberg AFB, California, splash down. The proposed zonal extension would have lent support, even if only moral, to the people struggling for a return to true peace; however, the majority of the Treaty framers chose to connive at the reality" (pp. 418–419).

Hamel-Green suggested that the Zone should be extended north of the equator to cover the Micronesian members of the South Pacific Forum. He states that “at the time the treaty was negotiated, these states’ territories were not included, primarily because of potential conflict with US strategic interests in the region and US requirements under its respective Compact of Free Association agreements with particular Micronesia States. Once such states have joined the Forum [South Pacific Forum], it is feasible for the treaty to be amended to include such states in its boundaries, although the legal or political necessity of gaining US approval may continue to be a constraint. On the other hand, now that the US has itself signed the treaty,<sup>87</sup> there could be less US opposition to Micronesian states joining, particularly in the context of reduced US reliance on overseas land-based stationing and storage of nuclear weapons”.<sup>88</sup>

The three states to emerge from the US’s Trust Territory are now the only three members of the Pacific Islands Forum which are not parties to Rarotonga (neither signed nor ratified). So according to our understanding and calculation, article 12(3) has not yet been executed.

The Rarotonga Treaty’s zone, as it is delineated in its Annex 1, includes territories of three extra-regional states – UK (Pitcairn); France (French Polynesia, Wallis and Futuna and New Caledonia); and US (American Samoa and Jarvis Island). So these territories fall under the geographical scope of the zone, as defined by the Treaty. Because these territories are under the responsibility of extra-regional states, there is the Protocol through which those states commit to impose the same prohibitions on those regions in the zone that are under their control (Tlatelolco and Pelindaba treaties – the Latin American and African NWFZs, respectively – have a similar protocol for extra-regional states with territories in the zone under their control). Protocol 1 to Rarotonga is open to signature by these three extra-regional states (US, UK, France) and through it they undertake the following:

“Each Party [to Protocol 1] undertakes to apply, in respect of the **territories for which it is internationally responsible situated within the South Pacific Nuclear Free Zone** [emphasis added], the prohibitions contained in Articles 3, 5 and 6, in so far as they relate to the manufacture, stationing and testing of any nuclear explosive device within those territories, and the safeguards specified in Article 8(2)(c) and Annex 2 of the Treaty.”

All three extra-regional states signed Protocol 1 in 1996; only the US has yet to ratify (France ratified 1996, UK ratified 1997).

By virtue of these two circumstances the Rarotonga Treaty has set two interesting precedents for the deliberations on a NWFZ in Europe: First, the possibility to extend the geographical scope beyond the initial delimitation, and second, the possibility to bring the zone into force while there are “holes” in the zonal tapestry. If we combine the two precedents, we are close to the European problematic: A zone that consists initially of non-contiguous “islands” free of nuclear weapons with a view to extend the geographical zone through new accessions.<sup>89</sup>

It should also be noted that the waiver clause in the Tlatelolco Treaty made the emergence of the zone a patchwork process as well. The difference as compared to the European project is that the scope of the zone in total was agreed by all countries concerned in advance in the case of Tlatelolco, while the realization of the zone took a patchwork path.

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<sup>87</sup> Meaning the relevant protocol

<sup>88</sup> Michael Hamel-Green, “The South Pacific – The Treaty of Rarotonga”, in Ramesh Thakur (ed.), *Nuclear Weapons-Free Zones* (Macmillan, 1998), p. 70.

<sup>89</sup> Mogami (op. cit) qualifies Rarotonga as “semi-zonal approach”: “This is typified by the idea to form a ‘non-nuclear club’, whereby the participants of the ‘club’ may establish a ‘zone’ but restrict the area of nuclear freedom to their own land and maritime territories. ‘Zone’ in this case means no more than the expression of the solidarity among the members, predicated upon their shared determination to free themselves from nuclear orthodoxy” (p. 426).

Finally, it should be noted again that international reference texts quoted above provide a solid base for a patchwork approach. According to the UN's Comprehensive Study of the Question of Nuclear-Weapon-Free Zones in All its Aspects, "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 smaller groups of" without specifying that this group of states must satisfy the criterion of contiguity.<sup>90</sup> "Action 9" of the 2010 NPT Conference's plan for action spoke of "states of the region concerned", not of "the states" or "all states". This formulation allows for the emergence of a zone with "holes" in its territorial space.

There is little doubt that the initial patchwork shape will lead to criticism from opponents of the project. The promoters should make it clear that the zone is held together by the common political will and by the common hope that it will expand. They might also argue – pointing to the support by bodies and citizens from other European states – that the zone of common political will extends in fact beyond their own borders. The stronger these two arguments are made, however, the stronger the challenge to outsiders, notably NATO states, will be. Whatever strategy is chosen, it should be clear that the patchwork form, while being a bit exceptional, is neither illegal nor principally incompatible with the basic idea of a NWFZ. It thus presents no serious stumbling block for those determined to pursue the NWFZ in Europe project.

In the European case, states establishing or later acceding to a zone make a political statement through this very act about their determination to delegitimize nuclear weapons and about their conviction that those weapons are not instruments of security but of inhumane mass murder, the very opposite of security. They also document their hope that the initial patchwork will grow into a carpet with a few holes and that, eventually, these holes will be fixed as well, a hope that, as we propose, will be inscribed in the preamble of the zonal treaty. The treatment of the issues of geographical scope and entry into force proposed here designs these elements in a way well fit to serve as a tool for the needed political campaign across Europe.

## 5.2 *Undertakings by the parties*

We differentiate between three sets of undertakings, distinguished by their relevance to the primary goal of the zonal treaty, and the prohibition of attaching a reservation to it or the permission to do so.

### Basic obligations without opting out

The following obligations should apply to all parties without the possibility to opt out by uttering a reservation. They represent the hard core of undertakings without which a zone would make no sense.

- The undertaking not to research on, develop, produce, acquire, possess, transfer, test or use nuclear weapons at any time or under any circumstances, not to admit nuclear weapons in the possession or control of another state on one's territory or to receive such weapons from another state for use and maintain and train forces for the purpose of receiving and using such weapons.

These comprehensive obligations reaffirm those which result from membership as a NNWS in the NPT, but add to that an explicit prohibition on testing as well as prohibitions that would be incompatible with the current practice of NATO nuclear sharing in its two aspects, a) the stationing of nuclear weapons on the territory of European NNWS and b) the arrangement that the air forces of some of these states would obtain nuclear weapons in the case of war, carry them to target and drop them. The preparation of armed forces for this mission in peacetime is also excluded.

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<sup>90</sup> Comprehensive Study of the Question of Nuclear-Weapon-Free Zones in All its Aspects – Special Report of the Conference of the Committee of Disarmament, 8 October 1975 (A/10027/Add.1), p. 41.

One might argue that this excludes a group of countries from the region some of which count among the most disarmament-minded in the Alliance (Netherlands, Belgium, Germany). While this is true, accepting NATO practice as an unchangeable given would defy the basic purpose of a NWFZ and would inevitably lead to resentment by the members of other zones and the Non-Aligned Movement as a whole, obviating the objective to bridge the cleavage within the NPT membership. If the zone project would not aim at changing a practice that many governments and citizens view as obsolete it would serve no serious political purpose at all. And it might well be that the very fact that accession would be impossible under present circumstances, while completely in agreement with the preference of both governments and populations in the countries concerned, would finally trigger the broad debate that would encourage executives and parliaments to break the painful deadlock.

These obligations would not change the situation for all those NATO countries which do not engage in nuclear sharing and/or harbouring US sub-strategic nuclear weapons on their territory. As the membership of Australia in the Rarotonga Treaty documents, even a country covered by a nuclear guarantee in the context of an alliance with a NWS (ANZUS in the Australian case) can be party to a NWFZ. By the same token, being nuclear-weapon-free does not contradict membership in such an alliance. In fact, during the Cold War, it was explicit Danish and Norwegian policy not to deploy such weapons on their territory, and Spain, when acceding to NATO, insisted that the nuclear deployment at Torrejon Airport be terminated. That position was compatible with NATO membership (and even membership in NATO's Nuclear Planning Group) at a time when nuclear weapons were thought to be absolutely essential for Alliance defence, a view that during the last decade has been openly disputed even within alliance membership. When NATO was extended, the Alliance gave a political promise to Russia not to deploy nuclear weapons in the new member states ("No need, no intention, no plan"); this commitment put the new members in an even more explicit non-nuclear position, since Norway, Denmark and Spain would be able to change policy at the national level, while it would take a decision by the whole Alliance to effect such a change for the new members. Turning the political posture of NATO's nuclear weapons free members into a legal obligation changes its formal status, but means no change in practice. It is thus not excluding NATO members not engaged in nuclear sharing from zone membership.

- The undertaking to work in all international contexts for a nuclear-weapon-free world and for the de-emphasis on nuclear weapons in international security policy.

This soft obligation, comparable to the wording of Article VI of the NPT, would apply to all parties, but assist NATO members party to the zone in their effort to persuade NATO and its reluctant members to give arms control and disarmament higher priority, to reduce the role of nuclear weapons in Alliance policy and to drop the still held option to use nuclear weapons first in conflict. This effort has been visible for a while, but has led so far only to limited progress.

Non-essential obligations with opting out

- Refrain from permitting the presence of nuclear weapons in the territorial waters of the party and from permitting transit through its territory.

Similar undertakings are found in the Rarotonga and Pelindaba Treaties where the prohibited "stationing" is defined as including "transport on land". Bangkok prohibits "station or transport of nuclear weapons by any means". This undertaking would not only exclude nuclear sharing, but interfere with the flexibility of NATO regarding its nuclear umbrella in peacetime, crisis and wartime once NATO members became party to the zone. While fully compatible with the objectives of a zone, it might be prohibitive to even disarmament-minded NATO members, thus limiting membership for the foreseeable future. It might thus be considered to put this provision under an "opting out" option by admitting a reservation. Alternatively, parties could be given unlimited discretion to permit transit, or only transit on the ground might be prohibited while overflight and passage through territorial waters and calls on port might re-



main in the national purview of the parties which could, by national legislation, go beyond the core undertakings of the zonal treaty, following the example of New Zealand.

- Renounce all participation in nuclear planning.

This would prevent zone members from participating in NATO's nuclear planning group. However, NATO members might claim that their membership in the planning group were indispensable to implement another obligation not subject to reservation, namely working for the de-emphasis on nuclear weapons. One should keep in mind that Norway, probably the most disarmament-minded NATO member, has been sitting in the nuclear planning group for decades. It might thus be useful to keep an opting-out clause on this provision or leave it completely to national discretion.

#### Non-essential but useful obligations

- Commit itself to restricting any nuclear energy and other technology use to strictly and unambiguously peaceful activities and observation of the toughest nuclear and radiological safety standards available and to refrain from dumping nuclear and radioactive material,
- Undertake to grant the IAEA verification rights in line with the Comprehensive Safeguards Agreement and the Additional Protocol and to make these rights permanent for all facilities, materials and technologies acquired, produced and/or maintained during membership in the Zone (for concrete verification measures see section 5.3),
- Adopt proliferation resistant technologies as they come along,
- Subject all fissile nuclear material and waste that is being present and has been produced on its domestic territory to appropriate safeguards and physical protection in line with the 2005 amendment<sup>91</sup> of the Convention on the Physical Protection of Nuclear Material,
- The undertaking not to produce or use highly enriched uranium in whatever mode.

These undertakings would go beyond the NPT and support a global trend, reinforced by the Nuclear Security Summits and led by the United States. It would be a contribution to global non-proliferation and give the zone a positive aspect from the perspective of US interests. While it is not absolute essential for establishing the zone, it is strongly recommended to consider it for inclusion in the zonal treaty.

Although these four undertakings do only entail commitments that already exist, they would have a considerable value added. They would clarify the ambivalence in the NPT concerning the endurance of safeguards after withdrawal by a party from the Treaty that in case of the nuclear test-ban, seen that the entry into force of the CTBT is still pending.

- Prohibition of attacks on nuclear installations
- Refrain from transferring nuclear material and nuclear dual use technology to any NNWS unless the recipient has concluded with the IAEA a Comprehensive Safeguards Agreement and signed the Additional Protocol.

A NWFZ could consider going beyond existing regulation also in case of proper nuclear waste management and the provision of nuclear material by following the Semipalatinsk treaty and stipulating the application of the *Convention on the Physical Protection of Nuclear Material* together with its 2005 amendment (entry into force still pending) and by making a signature of the IAEA Additional Protocol mandatory for the reception of nuclear material from states members to the zone. This would create value added in terms of nuclear security.

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<sup>91</sup> GOV/INF/2005/10-GC(49)/INF/6 (available at <http://www.iaea.org/About/Policy/GC/GC49/Documents/gc49inf-6.pdf>).

In general, it should be recalled that zone members are free to complement their undertakings with further-going legal commitments in form of national law, as long as the respective provisions do not contradict their obligations under the zone treaty and other treaties they are parties to. It will be useful to have discussions about “best practices” during review conferences of the zonal treaty where member states present and discuss such extra-treaty commitments.

Article for accession of nuclear weapon states and NATO states with a previous nuclear role

The modalities of the accession of NWS and NATO NNWS with (previously) nuclear weapons on their territories could be modelled after the related article in the Pelindaba Treaty.<sup>92</sup> In the sentence on verification, the “commission” might be replaced by “any organization or arrangement with a third party a state member of the zone might be party to whose mission is to verify the absence of nuclear weapons and related activities”. This would accommodate a mutual verification arrangement among NWS that is likely to be established in the process of complete nuclear disarmament and might become relevant to the zone once former NWS would wish to accede in the process of nuclear disarmament.

In order to enable NATO members to accede who had previously nuclear weapons on their territories and whose air forces had a role in nuclear sharing, an article should call for declaration of (former) sites with nuclear weapons and provide for the IAEA to verify the absence of nuclear weapons in these sites. It might be unnecessary also to verify the reconfiguration of aircraft for non-nuclear missions (because, most probably, present nuclear-capable dual use aircraft will be retired). If deemed necessary, however, such verification measures could draw on comparable verification procedures in the START Treaties. Generally, the IAEA should be given the authority to check continued non-deployment (see section 5.3 below on verification).

### 5.3 Verification

In its 1975 study, the UNGA stated that, among other characteristics, “an international system of verification and control” must be “established to guarantee compliance with the zone treaty obligations”.<sup>93</sup> It also states that the scope of a NWFZ means the “total absence of nuclear weapons”. Usually, verification tries to match the scope: it should be adequate and economical, not redundant. The “total absence” is commonly understood as a ban on the control, possession, testing, deployment, acquisition by any means, or transporting of nuclear weapons. The Treaties of Pelindaba and Semipalatinsk even ban “research and development”. Ideally, all of these activities should be verified; in the NWFZs that are in force today, this happens only to a certain extent.

The ban on “acquisition by any means” is verified by IAEA safeguards. Thereby, “possession” is verified as well, if an “acquisition” was successful. To a certain extent, safeguards cover also the detection of “development”, especially after the safeguards reforms over the past two decades. Verification reaches its limits in case of “research”. Furthermore, non-testing is verified, simply by the provision that any member of a NWFZ signs and ratifies the CTBT. The CTBT – though not yet in force – has a global and very

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92 “Each Party undertakes:

- (a) To declare any capability for the manufacture of nuclear explosive devices;
- (b) To dismantle and destroy any nuclear device that it has manufactured prior to the coming into force of this Treaty;
- (c) To destroy facilities for the manufacture of nuclear explosive devices or, where possible, to convert them to peaceful uses;
- (d) To permit the International Atomic Energy Agency (hereinafter referred to as IAEA) and the Commission established in article 12 to verify the processes of dismantling and destruction of the nuclear explosive devices, as well as the destruction or conversion of the facilities for their production”.

93 United Nations General Assembly Resolution 3472 (XXX), Comprehensive Study of the Question of Nuclear Weapon Free Zones in All its Aspects, 11 December 1975

effective verification system that operates already today.<sup>94</sup> What is not verified in existing treaties is the absence of “control”, “deployment”, and “transport” of nuclear weapons. This is relevant for NATO’s nuclear sharing arrangements, the ensuing deployment of nuclear weapons in NNWS’ territories and the nuclear capabilities of selected air forces.

Possible verification scenarios of a NWFZ in Europe could include IAEA safeguards, and some reporting or even inspection mechanisms to verify the absence of nuclear weapons on the participant’s soil, possibly by the instrument of challenge inspections; this would hardly ever be applied, since the trust prevailing in Europe is almost certain to prevent both cheating and challenge. It would be advisable to follow the precedent of most arms control treaties and to detail the verification system in a protocol, not the treaty itself, and to make the protocol easily adaptable to changing circumstances, notably improvements in verification technology.

#### Full-scope IAEA safeguards

In its 1999 report on NWFZs, the UN approached verification in a very specific way:<sup>95</sup> Verification should be provided “inter alia, through the application of full-scope IAEA safeguards to all nuclear activities in the zone”. This was understood as INFCIRC/153-type safeguards agreements with the IAEA. INFCIRC/153 (corr.) of 1972 is a model for the agreements that each state concludes with the IAEA. Full-scope safeguards cover the complete inventory of nuclear materials in a state and are applied to all its facilities in order to account for its total inventory of fissile materials. All NPT NNWS members are subject to full-scope IAEA safeguards, including all European countries except the NWS UK and France.<sup>96</sup> Each state with full-scope safeguards must maintain a State System of Accounting for and Control of nuclear materials (SSAC) that reports to the IAEA, which in turn verifies the correctness of this reporting.

In accordance with the 1999 UN Report, the verification provisions of all NWFZs that are in force today rule that the member states are at least subject to full-scope IAEA safeguards. Because today all members of a NWFZ are also NNWS members of the NPT, this requirement is easy to meet.

There is also a regional verification system in Europe, namely EURATOM, founded in the early 1950s. In the early ages of nuclear industry, it created international confidence as well as confidence among the members of the then European Community. EURATOM verifies all civilian nuclear activities in the EU. The early EU members do not run a national SSAC but use EURATOM for this function. They will continue this practice in case they become members of a NWFZ. EURATOM safeguards the entire civilian nuclear fuel cycle in the EU, including in the NWS UK and France. These safeguards are at least as intrusive as IAEA safeguards. Should UK and France one day decide to abolish their nuclear weapons and join a NWFZ, IAEA verification will be built upon the EURATOM safeguards already in place. EURATOM therefore could play a role in a NWFZ in Europe, and this already in the founding stage – provided opponents of the project which are members of the EU do not object; the role of EURATOM could be the same as for NPT verification. It might also be considered to offer EURATOM services to non-EU members in the future.

94 When the CTBT enters into force, it will also be possible to conduct inspections. So far, inspection exercises are already conducted in many countries.

95 Establishment of nuclear-weapon-free zones on the basis of arrangements freely arrived at among the States of the region concerned, Annex I in Report of the Disarmament Commission, UNGA, Supplement No. 42 (A/54/42), 1999.

96 INFCIRC/153-type safeguards make use of various methods, including declarations and material accountancy, containment and surveillance, non-destructive and destructive analysis methods, and on-site inspections in nuclear plants, storage, and transports.

### The Additional Protocol

Until 1992, the IAEA applied its safeguards only to materials and installations that a state party had declared. It worked under the tacit assumption that those declarations were complete, but the completeness, although required by INFCIRC/153, was not verified. This changed with the approval by the Board of Governors of INFCIRC/540, called “Additional Protocol”, which regulates additional rights of the IAEA to verify the absence of undeclared activities. All states with INFCIRC/153 type agreements are requested to conclude Additional Protocols.

The Additional Protocol requests access beyond nuclear sites, access on “short notice” or “no notice” during routine inspections, *expanded declarations* that ask for information about activities and equipment functionally related to fuel cycle operations, including exports and imports of such technologies, as well as ongoing research. The reform also permits taking environmental samples not only at an inspected facility (which had been already legal) but also in the vicinity under certain circumstances as well as remote monitoring. The Agency has established a database to store and retrieve safeguards-relevant information from open sources which assists in interpreting the expanded data and in depicting a proliferation or non-proliferation profile of a state. Furthermore, the new protocol allows the IAEA to make use of “third party information”, i.e. press reports or information provided by member states. The latter may also include intelligence information or national technical means.

All EU member states plus Norway and *Switzerland* have an Additional Protocol in force. For signatories Belarus, Liechtenstein, and Serbia it is not yet in force.<sup>97</sup> Overall, it would make sense to include the provision to adopt the Additional Protocol in a European NWFZ.

### Integrated Safeguards and the State Level Approach

After the Additional Protocol had been adopted, further development of IAEA safeguards led to the concept of *Integrated Safeguards (IS)*, i.e. the optimized combination of traditional *full-scope safeguards* and the new tools provided by the Additional Protocol, and they eliminate redundancies and inefficiencies due to the previous overlap of traditional and strengthened measures. States grant the IAEA more inspection and access rights, and in return, the higher detection probability of undeclared activities allows for a reduction of safeguards efforts of declared material by randomization of safeguards. An advantage is the reduction of costs.

States that qualify for IS are those with both *full-scope safeguards* and the Additional Protocol; they enjoy high trust and a low probability of non-compliance. In order to evaluate states and to find out whether they qualify for IS, the IAEA establishes an overall assessment for each state that takes into account various factors, including its non-proliferation credentials, the set of all its nuclear activities, the presence of equipment and installations, or consistency or inconsistency of nuclear material uses. It also includes information that the Agency obtains by other sources. This new approach is called *State Level Approach*.<sup>98</sup>

All EU NNWS with nuclear industry have qualified for IS, and so has Norway.<sup>99</sup> Some countries with Additional Protocols in place such as *Switzerland* are still abstaining, which can be probably explained by the still preliminary nature of the State Level Approach. The criteria for state assessments and the list of state-specific factors for evaluations are being further developed to minimize the degree of sub-

97 IAEA, Additional Protocol Status List, 31 December 2012.

98 James W. Tape, *The State-Level Approach: Moving Beyond Integrated Safeguards*, LA-UR-08-6/14, INMM/ESARDA Workshop Tokyo, October 2008.

99 IAEA Press Release, *Agreement Reached on Integrated Safeguards in European Union*, 8 January 2010; IAEA Safeguards Statement for 2010 and Background to the Safeguards Statement (<http://www.iaea.org/OurWork/SV/Safeguards/es/es2010.html>).

jectivity.<sup>100</sup> Switzerland has expressed interest but appears to wait for more clarification concerning the procedures.<sup>101</sup>

As the qualification for Integrated Safeguards is recognition of good standing in terms of non-proliferation, a NWFZ in Europe could set a precedent and require its members to strive for this qualification or to achieve it in a certain time frame.

Verification of the absence of deployment, transport, and control of warheads

States accede to the zone once they are nuclear-weapon-free. As nuclear weapons must thus be, as a matter of principle, absent from the zone, the verification system of a NWFZ in Europe would be relatively simple as long as membership remains confined to states where nuclear weapons have never been deployed. Members could notify the absence of nuclear weapons, and they could provide for baseline on-site inspections on military sites, by inspector teams composed of state party nationals or by the IAEA if it had acquired the necessary capabilities. Inspection goal would not be to verify the withdrawal of nuclear weapons but only their absence. Since initial membership would probably only include countries that had never hosted nuclear weapons on their soil, these baseline inspections might appear unnecessary

Should US deployment of warheads in Europe cease in the future, and host states accede to the NWFZ, inspections would probably start after the removal of these weapons. This could be left open in a treaty text. The IAEA should have the option to visit former nuclear weapon sites (baseline inspections). Verification of the absence of deployments has pros and cons: First of all, confidence is high anyway that all members comply, and problems among the member states are not to be expected. The verification is thus more a demonstration to the outside, and sends a signal that strengthens other nuclear disarmament efforts.

Verification of the elimination of nuclear weapons held by former NWS which had become nuclear weapons free and members of the zone would certainly fall in the scope of a nuclear disarmament treaty (that is, a “nuclear weapons convention”) and dealt with separately from the zone treaty. As mentioned earlier, the treaty should have an opening clause for easy amendment concerning this contingency because the modalities of elimination verification are yet unknown and should not bother the zone as such.

IAEA verification activities are mainly geared towards the nuclear fuel cycle and do not focus on the absence of nuclear weapons. However, the Agency has verified the absence of nuclear weapons several times before, twice in Iraq, in South Africa, and in the three former Soviet republics where strategic nuclear weapons had been deployed. The Agency has experience with integrating nuclear weapons experts from nuclear weapons states into its staff on an interim basis. This should thus create no major difficulties.

At any rate, there should be the possibility of short-term inspections or confirming the absence of nuclear weapons; probably, this instrument would not be used with high frequency.

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100 As an example, the Institute of Nuclear Materials Management has sponsored a workshop on “Evolving the IAEA State-Level Concept”, May 14–16, 2012, University of Virginia, USA.

101 In a statement at the 56th session of the IAEA General Conference on 19 September 2012, the Swiss delegate expressed this: „Concerning this issue, the Secretariat is introducing information elements into the basic system of safeguards as well as into the integrated safeguards. My delegation is highly interested in this development and encourages the Secretariat to inform the Board of Governors on the progress made in these deliberations, especially regarding the content of the objectives relating to the State-level approach, as well as the criteria that may be attached to them. My delegation would also like the Secretariat to provide information relating to the practical framework within which information will be independently evaluated“.

### Societal Verification

Europe is a democratic area with a vivid civil society. It behoves this region to support the concept of societal verification by adopting it for its own NWFZ. Information offered by non-governmental actors – individuals and organizations – should be legitimately used by the IAEA in its verification activities. Member states should be obliged not to harass or prosecute whistle-blowers and, if they do, the other parties should be empowered and obliged to offer asylum notwithstanding existing extradition commitments which, for this specific case, would be suspended by the zonal treaty.

### Consultation mechanisms

Verification must be complemented by a consultation mechanism managed by the organization founded by the zone treaty. It must provide for notifications in cases of problems, and regular and special meetings. There should be provisions for data exchange, transparency, notifications, clarifications, rules of procedure and collaboration with the IAEA and EURATOM with a view to allow additional IAEA inspections in case of need of clarification.<sup>102</sup>

## 5.4 Formal provisions

### Organization

The zone treaty would provide for an organization to administer the treaty as soon as it enters into force. The organization would consist of a secretariat and a general conference meeting annually to take relevant decisions. It would be charged with coordinating with the IAEA in the realm of verification. The organization would also be responsible for managing a website, a responsibility that could be explicitly mentioned in the treaty (this mentioning would give status to citizens endorsing the zone; see section 5.5.6 below).

### Depositary

Choosing a depositary for the zone is a tricky issue. The regional organizations (OSCE, EU) are likely to be prevented by member states opposed to the zonal project. The UN Secretary General has the authority to assume such a role without caring for the grumblings of permanent UNSC members, but it is not a regional authority and might thus be seen as an inadequate institution. The least complicated option would be to entrust one or more of the states that reassure each other to ratify the zonal treaty forthwith with the mission to act as depositary.

### Amendments

On amendments, two approaches are possible. First, to make the Treaty easily amendable in order to be able to cope smoothly with the accession of NATO states, notably those with a present nuclear role, and of course future membership of nuclear weapons states (or parts thereof). These changes might necessitate regulating aspects that were not thought through at the time the text was agreed between neutral NNWS. On the other hand, states might be shy to enter legally binding obligations that are easily changed. It might be reasonable to have different procedures for amending the Treaty with re-

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<sup>102</sup> The Treaty of Tlatelolco establishes the Agency for the Prohibition of Nuclear Weapons in Latin America (OPANAL). Its organs are a General Conference, a Council, and a Secretariat. The Council may request “special inspections” to be conducted by the IAEA. Treaty of Rarotonga also runs a “Control System”. In addition to the IAEA safeguards, it incorporates reports and exchange of information and consultation mechanism that may trigger special inspections. Similarly, the Treaty of Pelindaba establishes the African Commission on Nuclear Energy and consultation procedure. The Commission may request the IAEA to conduct an inspection in case of suspicions and disagreements. The Treaty of Bangkok establishes the Commission for the Southeast Asia Nuclear Weapon-Free Zone, an Executive Committee among whose tasks are, if requested, “fact-finding missions” in addition to IAEA safeguards. The Treaty of Semipalatinsk simply enables “consultative meetings” and the “settlement of disputes”, but does not trigger any additional IAEA inspections. See comparative chart in the Annex regarding the existing zones’ control systems.



gard to the first contingency – negotiating the accession of NATO states – and for all other business, where routine procedures for amendment are more advisable, such as amendment conferences requiring unanimity, and/or having the amendment in force only for those countries having ratified it.

#### Withdrawal

There are reasons to make withdrawal difficult in order to discourage reversal movements. Withdrawal from the obligation to stay nuclear weapons free in a region like Europe could be a highly destabilizing event which one might wish to make difficult enough. One far-reaching possibility would be that “supreme reasons related to the substance of the treaty” must be stated in detail well in advance of withdrawal becoming effective (say, one year), and submitted to the UNSC and the International Court of Justice for checking plausibility and validity. If one of the two bodies would find the justification wanting, withdrawal would be null and void. On the other hand, such strict rules might make states think twice before accession (notably NWS about to decide whether they should disarm). Measures which have been discussed for more than a decade now in the context of the NPT might be considered as well as the regional level: Having the UNSC scrutinizing the reasons given for withdrawal, having a conference of all members of the zone debate the withdrawal, if possible with the withdrawing party, making withdrawal invalid if it takes place in a state of non-compliance by the withdrawing party. In the end, given the expected small numbers of those initially ready to join, one would not make this item the reason why one or more of them would not. In this case, standard formulations like the one in the NPT might be the option of choice.

#### 5.5 *Protocols for non-members*

NWFZs require certain non-zonal states to respect the provisions of the zone and sign specific protocols which are attached to the actual treaty text. Therefore, whereas all states within a NWFZ are required to sign and ratify the actual treaty, selected states outside the NWFZ (and hence non-members of the zone) are expected to sign and ratify the relevant protocols attached to the treaty.

The peculiarity of the NWFZ in Europe lies in the fact, that – unlike in the other NWFZs – the dividing line between the in-group and out-group might change over time. Hence, a NWS in Europe, which would be considered a non-member today (and hence should sign the appropriate protocol), could theoretically become a NWFZ member tomorrow (and hence should sign the actual treaty), if it decides to denuclearize its territory. This holds even more for European NATO countries stationing nuclear weapons on their territory.

Extra-regional states required to sign NWFZ protocols historically comprised two types of actors: first, the five NWS recognized by the NPT; and secondly, states outside the zone, which controlled *de jure* or *de facto* territories within the NWFZ.<sup>103</sup> Since the latter case does not apply to the broad concept of “Europe” underlying this study (there are no regions under control of any extra-European power), the prime candidates to sign protocols pertaining to a NWFZ in Europe are the five NWS recognized by the NPT, and thus the US, Russia, China, France and the UK.<sup>104</sup>

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103 This was the case, for example, in the Latin American and Caribbean NWFZ, where the Netherlands, the United Kingdom, France and the United States were requested to comply with the prohibitions of the Tlatelolco Treaty in their overseas territory, which lied within the Latin American and Caribbean NWFZ, see Protocol I, Treaty of Tlatelolco. Analogous cases can be found in the Pelindaba Treaty and the Treaty of Rarotonga, in short, in all regions, which had experienced some colonial past and where former colonial powers still retained some control over some of the territory within the zone.

104 The question why other nuclear weapon possessors, who are not NPT Members, are not considered, is theoretically valid, but goes beyond the scope of this study. All other existing NWFZ limit themselves to require the “established” five NWS mentioned above to sign the attached protocols.

The importance of these non-member states should not be underestimated, since some observers see their participation in the regime as equally, if not more important than the participation of actual zonal states to the project of a NWFZ.<sup>105</sup> At the end of the day, NWFZs codify an obligation to forego nuclear arms, which states within the zone usually already fulfil, mostly through their membership to the NPT as NNWS; but through their protocols NWFZs impose real restrictions on (outside) NWS, both with respect to their freedom of movement (NWFZs become off-limits for their weapons, in terms of deployment or testing), and with respect to their nuclear doctrines, which must exempt states within a NWFZ from the threat of using nuclear weapons against them. Although in practice these restrictions have not proved to be perfectly water-tight, one should not discard the symbolical and normative dimension of these limitations. They contribute to the overall delegitimation of nuclear weapons as instruments of power (see also section 3.2.3).

Hence, by the spread of NWFZs and through the process of binding NWS into these zones, the “pandemic” of nuclear weapons can be gradually overcome, as a Mexican delegate put it at the UN Conference of the Committee on Disarmament in 1975: “the most natural and appropriate procedures in such case would be similar to those applied in the case of an epidemic, namely, an endeavour gradually to widen the zones of the world in which nuclear weapons are outlawed until the territories of the States that persist in possessing them become, as it were, contaminated islets under quarantine”.<sup>106</sup>

Since NWFZs affect the freedom of action of NWS, it is of no surprise that the protocols attached to the zones were often met with scepticism and sometimes with outright rejection by some NWS. A possible NWFZ in Europe will be no exception to this rule: it can be expected that several objections might be raised by NWS, when they are asked to sign and ratify the associated protocols to such a zone, and thus to show respect for the undertakings of the NWFZ.

#### Nuclear weapon states

As a matter of fact, the minimum demand to the NWS would be to show respect and commitment to a NWFZ in Europe. This would entail two basic obligations: first, to refrain from stationing any nuclear weapon within the zone, and secondly, to issue unambiguous negative security assurances (NSA) to all members of the zone. We recall here what has been said earlier in the study that the experiences concerning the Budapest Memorandum might have an impact on how security assurances for a European NWFZ might be shaped. These experiences did not include an explicit nuclear threat or attack, but the subtle use of military force accompanied by “nuclear diplomacy” which could be read by non-nuclear weapon states as implying a nuclear threat without uttering it. In the following, we restrict ourselves nevertheless to a more traditional consideration of negative security assurances.

Both issues will represent a challenge for the US and Russia, due to the “nuclear umbrella” Washington is providing to its NATO allies (which includes the stationing of 160-200 US B61 nuclear gravity bombs in Europe and Turkey) and the security partnerships between Russia and a number of European clients such as Belarus and Armenia. Should any of these clients join the European NWFZ, some NWS might face a dilemma. In the past at least, the US, France and the UK were reluctant to grant legally binding NSA to third parties, which were allied to other NWS.<sup>107</sup> The current US doctrine, how-

105 On this issue see Christopher Daase, “Ursache und Wirkung regionaler Nichtverbreitung: Ansätze zu einer Theorie Nuklearwaffenfreier Zonen”, in Constanze Eisenbart and Christopher Daase (eds.), *Nuklearwaffenfreie Zonen, Neue Aktualität eines alten Konzepts* (Heidelberg, 2000), p. 105.

106 Comprehensive Study of the Question of Nuclear-Weapon-Free Zones, Annex II, 41.  
<http://www.un.org/disarmament/HomePage/ODAPublications/DisarmamentStudySeries/PDF/A-10027-Add1.pdf>.

107 Leonard S. Spector and Aubrie Ohlde, “Negative Security Assurances: Revisiting the Nuclear Weapon-Free Zone Option”, *Arms Control Today* (April 2005). These reservations were of political nature, since – legally speaking – most security cooperation agreements were not incompatible with the undertakings of a NWFZ; for a legal analysis of this issue in the

ever, extends negative security guarantees to all non-nuclear weapon states in good standing with their non-proliferation undertakings; and the recent signature of the protocols of the CANWFZ by the US, France and the UK is another sign that being an ally of a NWS (as Kazakhstan is with respect to Russia) does not have to be in contrast with negative security assurances by other NWS.

A less problematic issue might arise in the context on how to regulate transit rights of NWS' ships and aircraft through a NWFZ in Europe. True, several European states are engaged in security partnerships with NWS through NATO, Collective Security Treaty Organization (CSTO, known as Tashkent Treaty), Commonwealth of Independent States (CIS) or specific bilateral agreements (Russia-Belarus; Russia-Azerbaijan; Russia-Armenia), and these partnerships can entail port calls, stopovers at national airfields and overflights by a nuclear-armed ally, and thus the transit of nuclear weapons through the zone. Still, if non-nuclear allies of NWS shall be eligible for the NWFZ in Europe, assuming they will not fundamentally challenge their existing security arrangements, the issue of transit rights shall not represent a major obstacle.<sup>108</sup> Hence, NWS could in principle continue their security commitments to their "clients" within the zone, as long as they refrain from stationing (permanently) nuclear weapons in the interested country.

The difficulties of the NWS with the treaty of Bangkok suggest also restraining the NWFZ in Europe to the land-masses and the corresponding territorial waters of the respective member states. Extending the NWFZ to the exclusive economic zone (as the treaty of Bangkok did) might prove problematic in the context of the Law of the Seas and in the light of the presence of Russia's Northern Fleet in the Baltic and the Barents Sea, and the US Sixth Fleet in the Mediterranean.

A further ingredient to a European NWFZ protocol should be the obligation to refrain from testing within the zone. This prohibition should be unproblematic, since the only active test site on European soil is represented by the Russian Novaya Zemlya archipelago in the Arctic Ocean. Since Moscow signed and ratified the CTBT (as did Paris and London, who had relied on extra-European test site before), signing a testing prohibition within a European NWFZ (as large as it might be) should not represent a major obstacle to the NWS.

Hence, a "minimalistic" protocol for NWS should include the prohibition of stationing and testing of nuclear weapons within the zone as well as a commitment not to threaten or to use nuclear weapons against any member of the zone. The NWFZ geographical scope should be restricted to the land masses and territorial waters and the treaty should be pragmatic on the issue of transit rights due to the complex security fabric of the Old Continent, which ties together different European states with four NWS: the US, France, the UK and Russia.

It might be considered to require additional commitments from member states and the NWS, such as not to attack nuclear installations within the zone and to refrain from dumping nuclear waste within the land and sea region covered by the zone. It is true that these commitments, so far, have been inserted into zone treaties for their members, but not for external powers, but one would wish to bind the states with the largest power projection capacity to these undertakings as well. Such clauses should not represent a major obstacle for NWS to sign their protocol to a NWFZ in Europe.<sup>109</sup>

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context of the CANWFZ, see Marco Roscini, "Something Old, Something New: The 2006 Semipalatinsk Treaty on a Nuclear Weapon-Free Zone in Central Asia", *Chinese Journal of International Law* (2008), Vol. 7, No. 3, pp. 593–624.

108 For a good and concise discussion on this issue see Roberta Mulas, *Nuclear Weapon Free Zones and the Nuclear Powers. Lessons for a WMD/DVs Free Zone in the Middle East*, Academic Peace Orchestra Middle East, Policy Brief No. 5 (December 2011). For an exhaustive discussion see Marco Roscini, *Le zone denuclearizzate* (Giappichelli Editore, Torino 2003), pp. 145–256.

109 The Pelindaba Treaty contains a clause obliging members not to attack nuclear installations in the zone. The NWS take this commitment indirectly by pledging to respect the objectives of the zone. An explicit clause could represent an obstacle for

The protocol should include a clause that its validity would cease when the signatory would become a member of the zone and the undertakings of the zone treaty would then substitute for those of the protocol.

#### NATO non-nuclear weapon states

According to well-informed nongovernmental sources, five NATO countries, which formally belong to the NNWS of the NPT, are currently hosting US tactical nuclear weapons (TNW) – B61 gravity bombs – in the context of NATO’s nuclear sharing arrangements.<sup>110</sup> These “stationing countries” are Belgium (10-20 estimated bombs), Germany (10-20), the Netherlands (10-20), Italy (60-70) and Turkey (60-70).<sup>111</sup> Although the bombs are under the physical control of US forces (which are deployed in these NATO countries) during peace times, they are planned to be used by the Belgian, Dutch, German or Italian air force in case a major war breaks out, pending the approval of the US President.

At the same time a number of NATO countries such as Denmark, Iceland, Norway and Spain have not been allowing the deployment of nuclear weapons on their territories for many years (this prohibition holds only during peace-time, though); Greece, who openly sympathized with the idea of a Balkan NWFZ during the Cold War, is believed to have worked successfully toward the quiet removal of US TNW from its soil at the beginning of the 21st century; and finally, after NATO’s pledge not to deploy its TNW to its new member states (Hungary, Czech Republic, Poland, Slovakia, Slovenia, Estonia, Lithuania, Latvia, Romania, Bulgaria, Albania and Croatia) there is a de-facto denuclearized (NATO) buffer zone in Central and Eastern Europe.

At first glance, it would seem sufficient that the five NATO countries with nuclear weapons on their territories would rule out to use the B61 bombs against any member of a NWFZ in Europe, and sign an appropriate protocol, as the official NWS do.<sup>112</sup> Still, the practical implementation of such a commitment would be problematic, since NATO does not mention the specific member states, which host TNW and are trained to deliver them, but rather emphasizes that the Alliance as a whole relies on nuclear deterrence and that all states contribute to this endeavour through their engagement in NATO’s Nuclear Planning Group and some appropriate burden sharing to implement the Alliance nuclear mission.

Therefore, even NATO countries without nuclear weapons on their territory are taking part in the Alliance’s nuclear posture. Although they will not deliver nuclear weapons in case of war, their nuclear engagement is visible in four fields: first, they shape NATO’s nuclear policies through their deliberations in the Nuclear Planning Group; second, they may take part in non-nuclear support missions to a nuclear strike (air refuelling, search and rescue operations etc.);<sup>113</sup> third, they “benefit” from NATO’s extended deterrence policy, which means that an armed attack against these (nominally) non-nuclear countries – for example from a state within the NWFZ in Europe – might well lead to nuclear retaliation.

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the WMDFZ in the Middle East, though, if Iran’s nuclear programme continues to cause distrust in the international community. It is unlikely that the US under these circumstances would commit to a pledge not to attack the Iranian nuclear installations under the current circumstances, even if a WMDFZ was established in the region. However, if there would be détente between Washington and Teheran, this situation might change.

110 Hans M. Kristensen and Robert S. Norris, “US tactical nuclear weapons in Europe”, *Bulletin of the Atomic Scientists*, Vol. 67, No. 1 (2011), pp. 64–73.

111 All estimates taken from Hans M. Kristensen, *Non-strategic nuclear weapons*, Federation of American Scientists, Special Report No. 3 (May 2012).

112 This issue should not preclude the fact, that they might become zone members at some later stage, if they decide to denuclearise their territory (the same holds for the European NWS).

113 „Already today, 15 nonnuclear NATO member states provide support to, as the NATO jargon says, SNOWCAT missions (Support of Nuclear Operations with Conventional Air Tactics)“. Karl-Heinz Kamp and Robertus C.N. Remkes, “Options for NATO Nuclear Sharing Arrangements”, in Steve Andreasen and Isabelle Williams (eds.), *Reducing Nuclear Risks in Europe. A Framework for Action*, NTI (Washington 2011).

tion by their NATO allies; fourth, some of these countries have a crucial role in the deployment of NATO's planned ballistic missile defence system (this holds especially for a number of new Alliance members). Ballistic missile defence systems are, of course, not armed with nuclear warheads, but they can have a critical impact on the strategic stability in a region and hence cannot be ignored in the overall strategic equation. Thus, it would be desirable that all NATO NNWS would rule out taking part, in whatever capacity, in a nuclear attack against members of the zone in case of an armed conflict and sign a corresponding protocol. In terms of security policy and strategic considerations this should not be problematic as long as the expected initial core of the zone is concerned. It would be more interesting and possibly controversial when countries like Belarus, Ukraine, or Armenia would accede to the zone while being engaged in security relations with Russia. However, as long as the US negative security assurance stays as it now stands, excluding the use of nuclear weapons against NPT non-nuclear weapons states in good standing, the dropping of US weapons on the territory of such states should be impossible notwithstanding whose air force is implementing the mission.

In sum, due to the fact that there are not only three NWS (Russia, the UK and France) in Europe, but also an extended nuclear alliance with the worldwide unique case of nuclear weapons deployed on the territory of a number of NNWS, both NWS and NATO Members should sign protocols codifying their respect to a NWFZ in Europe; the NWS and NATO Members should especially rule out any threat or use of nuclear weapons against any member of the zone. Russian allies should be invited to sign such protocols as well.

For NATO, such a request might prompt a review of the current strategic principles of the Alliance, which posit that NATO is a nuclear alliance that does not rule out nuclear retaliation in case of an armed attack on one of its members. If, as a consequence of such a review, NATO would adopt the current US position on negative security assurances – no nuclear threat or attack against NNWS in good standing with their undertakings under the NPT (or any equivalent legal commitment), there would be no substantial problem to sign the said protocol. However, measured by the positions taken during the last review of NATO's nuclear policy in 2010, France might be expected to express considerable objections to such a change.

As in the case of NWS joining the zone, the provisions of the protocol would cease to apply for NATO NNWS once they would accede as full members to the zone treaty.

#### A unified protocol

There might be objections to either type of protocol discussed above. Even though the NWS protocol is standard in all NWFZ treaties, under present circumstances (notably the humanitarian discourse about nuclear weapons and the campaign for a nuclear weapons convention), it might be argued by some disarmament-minded parts of civil society that spelling out negative security assurances would imply the legitimacy of nuclear use towards parties not covered by such assurances which would contradict the core of the humanitarian argument. Likewise, there might be concern that a legal commitment by NATO's NNWS not to participate in nuclear war against members of the zone might convey legitimacy to both attacks towards other states and NATO's nuclear sharing arrangements, an operation that some actors might wish to avoid. On the other hand, it might be objected that the relationship between NATO's NNWS and the potential members of the zone are so friendly, and likely to remain so, that such protocols are not only redundant, but could be seen by the potential signatories as a political offense.

From this perspective, a unified protocol for NWS and non-nuclear NATO members in which signatories commit just to respect the objectives and provisions of the zone treaty without spelling out in detail what this would mean might be the more desirable alternative. A security guarantee would be implicit rather than explicit, but since threatening or using nuclear weapons against the zone is an act

certainly not compatible with the notion of “respect” this might be good enough to accept. On the other hand, the vaguer language might stimulate less objections and concerns on the part of potential signatories. Yet it would be noted that this option would present a tangible difference to the standard established by other NWFZ.

#### No protocols

A more radical way to avoid political difficulties and moral hazards is to have no protocols at all. The relationship between zone members, on the one hand, and NWS and other states in the region, on the other hand would be dealt with in the preamble of the zone treaty. A preambular paragraph would state unambiguously, referring to the 1996 advisory opinion of the International Court of Justice, that a nuclear attack against a member of the zone is seen by all parties as a war crime against humanity and thus against international law and that this fact constitutes an obligation for all states to respect the objectives and integrity of the zone. The deviation from the standard could be justified, once more, with the particular political conditions in Europe, but there would probably be some criticism from members of other zones as well as from regions where states are striving for a zone (such as the Middle East) that renouncing explicit security guarantees would make the zone in Europe somehow deficient.

#### Declarations instead of protocols

The last possibility is to ask NWS and NATO member states to sign declarations rather than protocols. While declarations do not emanate the legally binding force which protocols contain, their politically binding effects might be good enough for the purpose. The content of the declarations could be as strictly formulated as a protocol, or be restricted to the expression of “respect”. In the case of Mongolia’s non-nuclear weapons status, the declaration was chosen as the best way to bind the NWS to the objectives of the zone. In September 2012, the five NWS and Mongolia signed parallel political declarations that formally recognized the latter’s nuclear-weapon-free status. The NWS pledged to respect this status, and not to use or threaten to use nuclear weapons against Mongolia. These declarations of recognition may or may not be legally binding, yet they formalize Mongolia’s status.<sup>114</sup>

#### Non-state actors

##### Commitment by sub-state administrative entities

#### **Option 1: Protocol on support for the zone:**

This is a revolutionary proposal which, however, reflects the spirit of our time. The idea is to open the opportunity for regional and provincial governments and the self-governments of cities and local communities to express their support for the zone project. This is a political statement that has no legal weight for the position of the related national government, but it adds to the momentum of the project and serves the objective of creating a sustained debate and campaign as it gives citizens opportunities for meaningful activities below the level of national security policy (where it is very difficult to affect positions, at least in the short term). The Protocol should contain a language like this: “Without prejudice to the position of our national government, sharing the hope noted in the Preamble ‘that the scope of the zone may grow in the future,’ [...] expresses its support for the objective of the nuclear-weapon-free zone in Europe.” Obviously, this language has declaratory character and does not create a legal obligation. This corresponds to the fact that the signing units have no authority to enter an international legal binding commitment of this kind. It has to be examined whether a protocol is the appropriate form for such a declaration, or if it should be put in a technical annex to the zone treaty.

#### **Option 2: The “Geneva Call Model”:**

<sup>114</sup> Daryl G. Kimball, “Mongolia Recognized as Nuclear-Free Zone”, *Arms Control Today*, October 2012 (available at [http://www.armscontrol.org/act/2012\\_10/Mongolia-Recognized-as-Nuclear-Free-Zone](http://www.armscontrol.org/act/2012_10/Mongolia-Recognized-as-Nuclear-Free-Zone)).



Promoters of the zonal project could be concerned that other states view this protocol as interference in their internal affairs. In order to prevent the possible diplomatic repercussions, they might prefer a less formal way to engage supporters of the zone at the sub-national level. They could “outsource” the collection of such supportive declarations to a disarmament-minded NGO or a group of such organizations. A good model for this activity is the successful effort of the NGO Geneva Call to persuade non-state combatant groups in civil wars to formally commit to humanitarian undertakings such as renouncing the use of landmines. In the same vein, NGOs could collect declarations of support from sub-state administrative entities and make them available to the public through electronic communication (website) and during review conferences of the parties to the NWFZ in Europe.

#### Civil society

The latter option has already proposed a specific role for civil society in the evolution of the zonal project. As with non-national administrative entities, addressing civil society directly reflects the situation in Europe as a continent with far developed democracies, and a vivid, active, and well informed mature civil society. The following considerations reflect on this situation and propose to use it for the zonal project.

#### Participation opportunity for individual citizens

As one main objective of the zonal project is to revive the debate on nuclear disarmament in Europe it is of utmost importance to open spaces for meaningful action by civil society. The protocol for sub-state entities goes a long way to achieve this objective, but it might be advisable to install opportunities for individual citizens as well. This might be done directly through the treaty or indirectly by establishing a link between the treaty community and non-governmental organizations engaged to foster the zonal project.

**Option 1:** Direct integration into the zone treaty. For this option, the website of the Organization of the Zone (or another public accessible tool for electronic communication) would contain a portal that would be explicitly mentioned in a technical annex to the treaty as one of the Organization’s missions. The portal would give the opportunity to citizens of European states to express their support for the zone. The portal allows the signature by citizens to a short text of support, similar to the one in the protocol for sub-state entities. There should be software which groups these signatures automatically according to the country the signing person is citizen of.

**Option 2:** Indirect connection to the zone treaty. Here, the likeminded countries would work with one or more non-governmental organizations engaged in nuclear disarmament in the preparatory phase of the zone treaty to mobilize public support. The NGOs would set up a website with a related portal on their own, but in close coordination with the likeminded states which would be used to mobilize citizens’ declarations of support. When the zone treaty would be signed, this support would thus already be visible. The treaty preamble then could take note of the support expressed by European civil society to this project. It could also be considered to give the related NGOs regularly the opportunity to report on the support given by Europe’s citizenship to the zone when the parties hold their annual conference. The connection between the expression of individual support and the legal and organizational structure of the zone would be markedly looser than in the first option, but it would still exist.

**Option 3:** Mobilization of support by civil society outside of the zone treaty. The treaty would not contain any language relating to civil society and individual support. NGOs, in contact to the likeminded states, would collect individual expressions of support and post them on a publically accessible website. It might still be considered to give these NGOs a spot during annual conferences to report on the attitude of the public towards the zone.

In comparison of the three options, the first option contains the largest mobilization potential because the stance taken by the individuals would be most meaningful. By the same token, the challenge to

states opposing the zone would be strongest through the “officialisation” of the deviant individual positions of their citizens, notably if the number of zone supporters in an opposing country would reach a significant threshold, and negative attitudes on part of the respective governments and thus diplomatic quarrels for the zone promoters could be expected. However, this would enhance media interest and thus give the issue more salience in public debate.

In the third option, the challenge (and thereby political tension as well as media interest) would be lowest, as the responsibility for mobilizing deviant opinion would squarely be with the non-governmental sector. Compared with the official recognition in treaty language, the slot given to the NGOs in the annual conferences would probably look much more harmless. Diplomatic repercussions would remain limited, but the same applies to the media interest and the mobilization potential. The second option falls between the extremes.

#### Final thoughts on involving actors other than governments

These new instruments open uncharted roads for civil society to make their activities practical. Rather than addressing national governments only with a view to persuade them to accede to the zone, they address also local governments and individual citizens to support the project in a globally visible way: Integrating these utterances of support into an international treaty gives it much more weight than similar expressions in a purely non-governmental environment, valuable as those are. Increasing numbers of collectivities and individuals from non-parties using this opportunity build up pressure on national governments to reconsider their stance.

As stated, this is a highly unconventional and innovative device and bound to engender objections. But it would be applied in Europe, in an environment where governments uniformly appreciate the increasing weight of civil society, call upon non-democratic governments to accept the importance of non-governmental organizations, and support such NGOs abroad when they take positions deviant from their national government. Thus, while innovative, this step is far from being illegitimate. Nevertheless, a thorough legal scrutiny under the auspices of treaty law, which is beyond the reach of this study, should be conducted before it is officially proposed. Also, zone promoters have to carefully weigh how much dispute they wish to risk with other states in the region, with due regard to the economy of investment of political and diplomatic capital. At any rate, what is discussed in this section necessitates a close relationship and intense dialogue between the initiators of the zone and civil society. This dialogue, in turn, serves one of the main objectives of the whole zonal project: to stimulate the discussion on nuclear disarmament in Europe.

## 6. POLITICS: ANTICIPATED REACTIONS

In this chapter, we speculate about the probable reactions of various types of states – NWS, NATO members, the EU, and several groups from the global South. We do not touch again the attitudes of those who are potential candidates of the **zone** which we discussed earlier (cf. section 4.2.3), as their potential candidacy implies the likelihood of a sympathetic or at least non-hostile position towards the zone project.

To some extent the ongoing humanitarian initiative can be seen as a litmus test on how a project such as the establishment of a NWFZ in Europe might be received by key international stakeholders: the humanitarian initiative was hailed by disarmament supporters, which included a number of (old) NATO members such as Norway and Denmark, it was supported with some caution if not reluctance by traditional US allies like Australia and Germany, and it was basically rejected by the NWS. Still, among the official NWS the positions were not uniform: France and Russia fiercely opposed the humanitarian initiative, whereas the US and the UK showed some willingness to engage the debate

through their attendance to the 2014 Vienna Conference. China kept a low profile on the issue. We might expect similar reactions, if a NWFZ in Europe were proposed today.

### 6.1 Nuclear weapon states

The NWS approach to NWFZs, as a rule, has been quite ambivalent, as attentive observers of the non-proliferation regime have noticed: as a matter of fact, “although all five of the NPT-recognized nuclear-weapon states have formally endorsed the principle of nuclear-weapon-free zones, in practice, they rarely have found a zone that they like. As a result, even when they do not actively oppose the creation of a zone, they typically have been slow to conclude the relevant protocols”.<sup>115</sup>

There will be no exception to this rule, when the NWS will be confronted with the prospect of a NWFZ in Europe. Still, it can be expected, that the reservations against such a zone will vary between them, first and foremost, because the establishment of such a zone in Europe will challenge the NWS to a different degree.

It will represent a direct challenge to France, Russia and the UK, because the project of a NWFZ in Europe (especially if crowned with success) will inevitably question their status as European nuclear powers and could force these countries to justify their non-membership in a project, which – more than anything else – symbolises the end of the Cold War in Europe and the realization of effective cooperative security as enshrined in the principles of the Conference on Security and Cooperation in Europe. This pressure will not only come from the NNWS, but might arise even from within these NWS, especially if more and more of their citizens and sub-state entities sign the online petition to become part of the European NWFZ (see the discussion in the previous section 5.5.6).

It will represent a special challenge to the US as well, since the American military footprint on European soil and Washington’s commitment to its European NATO allies goes way beyond any other security cooperation arrangement, which the US offers to other regions (Middle East, East Asia, and South Pacific/ANZUS). The NWFZ in Europe is an initiative taken outside of this arrangement with deep repercussions for NATO, though, depending on the way the zone treaty is shaped, these repercussions may create larger or smaller difficulties. It will not represent a specific challenge for China, which has no particular stakes in the European theatre.

**China.** Moreover, Beijing has been relatively sympathetic with NWFZs in other regions in the past – maybe with the exception of the Bangkok treaty, where China points to some unresolved territorial issues between Beijing and some of the zonal states.<sup>116</sup> But China has certainly been the most “forthcoming” NWS in the global debate on granting negative security guarantees to NNWS members to the NPT and in particular to members of NWFZs.<sup>117</sup> Hence, China might be the only NWS not openly opposing a NWFZ in Europe.

**Russia.** The Russian reaction to a NWFZ in Europe will critically depend on which countries are in the zone and which countries are outside of it. It is worthwhile to remember in this context that the Soviet Union and Russia have always shown sympathy for a denuclearized buffer zone between Moscow’s sphere of interest and Western Europe. Hence, a NWFZ in Central and Eastern Europe – as already

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115 Patricia Lewis and William C. Potter, “The Long Journey Toward A WMD-Free Middle East”, *Arms Control Today* (September 2011).

116 Jozef Goldblat, “Nuclear-Weapon-Free Zones: A History and Assessment”, *The Nonproliferation Review* (Spring/Summer 1997).

117 See the Chinese working paper on this issue submitted to the 2010 NPT Review Conference, NPT/CONF.2010/WP.67 in NPT/CONF.2010/50 (Vol. II); see also Leonard S. Spector and Aubrie Ohlde, “Negative Security Assurances: Revisiting the Nuclear Weapon-Free Zone Option”, *Arms Control Today* (April 2005).

envisioned some time ago<sup>118</sup> – could find Moscow’s support and endorsement. However, the NATO enlargement into Central and Eastern Europe has complicated the equation. Although NATO accompanied its eastward expansion with a declaration that it has no intentions to move its nuclear assets closer to the Russian border, Moscow made clear that it does not rely on these political commitments. Rather, Russia perceives all NATO states as members of a nuclear alliance. Thus, even if denuclearized NATO states might join a European NWFZ one day, it is doubtful that Moscow will provide these countries with negative security guarantees. Hence, for the time being, it can be assumed that Russia will only “respect” a zone of non-NATO countries; in order to accept a zone, which comprises also a number of NATO countries, the Alliance would probably have to solve some other outstanding issues with Moscow before (first of all in the realm of missile defence and the regulation of conventional forces in Europe). It can also be surmised that Russia might be most affected by a renewed debate on nuclear weapons in Europe as it has become part of Russia’s external policy to brandish their nuclear posture through “targeted utterances”, exercises with an explicit nuclear component, and deployment moves. As a consequence, Russia might attract increasing criticism propelled by the zone discussion and would possibly not like it. But if NATO and Russia overcome the present political crisis and, in the future, would show some flexibility they may agree on confidence-building measures and some constraints which would enhance the security of the zone. In fact, the efforts to find some way to newly calibrate the security relationship between NATO and Russia in all its aspects might indirectly and unwittingly foster the zone project.

**United States.** The establishment of a NWFZ in Europe will come as a surprise to Washington. Since the Obama Administration is pursuing other priorities in the field of nuclear arms control, it will probably see the project as an unwanted digression, even though Obama’s vision of a world without nuclear weapons, a vision, which emphasizes the incremental approach and is fully compatible with the approach to construct the zone step-by-step, country by country. A negative reaction from the Republican security establishment is certain. US conservatives, if they will not simply ignore the project, will almost certainly lambast and ridicule the whole endeavour and warn against its corrosive effects on US and NATO security. There might be supporters for the project among those actively working for a world without nuclear weapons. The US government will probably be reluctant to grant NSA to states in the zone, which maintain security partnerships with Russia (e.g. Belarus or Armenia), and – by doing so – might repeat its concerns it showed with respect to the Central Asian NWFZ.<sup>119</sup> Still, there are also signs that more flexibility is possible concerning these past reservations: Washington’s most recent Nuclear Posture Review (2010) exempts all countries from a potential nuclear attack, which are NNWS members of the NPT in good standing with their non-proliferation obligations. This holds for all NNWS in Europe, today.

Secondly, the US will probably be allergic to the idea that (some) NATO countries could join the NWFZ. Apart of the fact that these countries could not be used for stationing or storing US nuclear weapons any longer, Washington’s major concern could be that such a decision by an Alliance Member could compromise the freedom of movement of American nuclear forces within NATO-Europe, and thus repeat its experience it had with New Zealand within the ANZUS context (see chapter 4) and with a number of NATO members in the past (Denmark, Iceland, Norway and Spain do not allow the stationing of NATO nuclear weapons on their territories unless there is a major crisis). Washington would probably also be concerned that a difference of policy among NATO members on such a substantive issue of the common defence might indicate a deep division of the Alliance that is particularly

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118 Jan Prawitz, *A Nuclear-Weapon-Free Zone in Central and Eastern Europe*, Moutbatten Centre for International Studies (1997).

119 Member states of the Central Asia NWFZ and Russia have established security cooperation agreements.

unwelcome in a phase of sharp conflict with Russia and uncertainty about the future of NATO-Russian relations.

**France.** The major objection to a NWFZ in Europe could come from Paris. France's security discourse is still fully imbued in the orthodoxy of nuclear deterrence, and Paris has probably been the most vocal critic of Obama's vision of a world without nuclear weapons from the very beginning.<sup>120</sup> Whereas the UK has a lively debate both in Parliament and in the media on the future of the British deterrent, there is no comparable debate in France. Furthermore, unlike the US and the UK, Paris has not moved with respect to its opposition to "Global Zero" or the humanitarian initiative in the international arena either, and fights against any attempt to move the strategic discourse away from its concept of practically endless step-by-step nuclear disarmament. This French resistance was a key factor, why NATO's last Defence and Deterrence Posture Review (DDPR) had such a conservative (in the true sense of the word) handwriting: Paris simply resisted any attempts to change NATO's nuclear policy.<sup>121</sup> However, it might also be that Paris would find it more expedient to largely ignore the initiative and not confront the initiators.

**United Kingdom.** The UK position on a NWFZ in Europe can be expected to be more nuanced than the French stance. London's position on the zone will depend critically on the outcome of its domestic debate on the future of the British deterrent ("Trident replacement"). Should the UK opt to discontinue its nuclear status in the next years (an improbable, but not impossible option), it would probably be supportive of the zone. If, on the other hand, London decides to renew its nuclear-armed submarine fleet (which still seems the most probable outcome), its enthusiasm for the zone will be limited. But it is unlikely that London will oppose the zone with the same passion as Paris is expected to do. This is due to the fact that senior British politicians have shown sympathy with the Global Zero vision, and that one of the two parties forming the current government coalition (the Liberal Democrats) has repeatedly uttered its discomfort to continue the British nuclear mission more than two decades after the Cold War. It can also be surmised that a Labour-led government would pursue a smoother line than one with a conservative Prime Minister. One should also note that, unlike Paris, London attended the 2014 Vienna Conference on the Humanitarian Impact of Nuclear Weapons. Nevertheless, the most pivotal aspect in this matter would be how London would assess the consequences for NATO (see above the considerations for the United States).

## 6.2 NATO non-nuclear weapon states (old)

The enthusiasm for NATO's nuclear mission is diminishing among the Western ("old") Alliance members.<sup>122</sup> This discomfort is not a new phenomenon,<sup>123</sup> but has gained further momentum in the last years: first, in 2008 the conservative-liberal German government called for a withdrawal of US TNW stationed in its Western region of Rhenania-Palatinate. Secondly, Germany, the Netherlands, Poland and Norway wrote a joint letter to NATO's Secretary General in 2009 calling for the inclusion of NATO's TNW into an arms control approach with Russia with a view to withdraw and ultimately

120 Bruno Tertrais, "The Last to Disarm? The Future of France's Nuclear Weapons", *Nonproliferation Review*, Vol. 14, No. 2 (July 2007).

121 Edmond E. Seay III, *Dissecting the DDPR. NATO's Deterrence and Defence Posture Review and the Future of Nuclear Sharing*, ACA/BASIC/IFSH Nuclear Policy Paper, No. 10 (July 2012).

122 Malcolm Chalmers, "Back to the Present: The NATO Posture Review and Options for US Nuclear Weapons in Europe", in Malcolm Chalmers and Andrew Somerville, *If the Bombs Go: European Perspectives on NATO's Nuclear Debate*, Whitehall Report 1-11 (London, May 2011), pp. 1-9.

123 It should be mentioned that Denmark, Iceland, Norway and Spain have been prohibiting the stationing of NATO nuclear weapons on their territory for several decades, already. Accidents involving US nuclear weapons in Palomares (Spain) and Thule (Greenland / Denmark) in the early years of the Cold War have further nurtured the scepticism of these countries towards NATO's nuclear mission.

eliminate these weapons. Thirdly, the calls for increased transparency on TNW and arms control negotiations with Moscow on this issue grew louder during the deliberations of NATO's 2012 DDPR.

It is interesting to note that among the most vocal critics of NATO's current status quo, we find also three countries currently stationing US TNW on their territories: Belgium, Germany and the Netherlands.

It can therefore be expected that a number of "old" NATO countries might welcome the establishment of a NWFZ in Europe, since it confirms their desire to overcome a nuclear status quo, which they see as outdated since the end of the Cold War. Among these possible (moderate) supporters of the zone we might find the above-mentioned stationing countries Belgium, Germany and the Netherlands, together with Luxemburg, Norway, and possibly Denmark.<sup>124</sup> Greece, which discontinued the stationing of NATO nuclear weapons on its territory some years ago, is also likely to sympathise with the idea to denuclearize Europe. The strongest argument available to "old" NATO members willing to consider joining the zone is the fact that NATO has always lived with member states that refused to host nuclear weapons. If this has not weakened NATO's security during the Cold War, it is highly implausible that it should have this negative effect today. In addition, the US has indicated that US strategic nuclear weapons could grant extended deterrence (as long as it is seen to be needed) on their own, as is already the case for the US nuclear guarantees to its East Asian allies.<sup>125</sup>

Still, among these old NATO countries, Norway deserves a special mention, since Oslo fiercely advocated a core demand of NWFZs (legally-binding NSA) in the past, and since Norway is currently at the forefront within a global discourse aimed at delegitimizing nuclear weapons. It should not be forgotten that the Norwegian MFA hosted a world-acclaimed conference on the humanitarian impacts of nuclear weapons in March 2013, which was the effective starting shot for the current humanitarian initiative within the NPT.<sup>126</sup> Yet, one has to wait how the new Norwegian government positions itself on the nuclear issue.

Spain, Portugal and Italy are expected to keep a low-profile on the issue. They have been neither very eager to challenge nor to maintain the existing nuclear status quo, but rather strive for some balance and consensus on these issues.<sup>127</sup> Hence, they will probably neither embrace nor obstacle the establishment of a NWFZ in Europe at the beginning, and then "follow the trend". Still, all of the above mentioned "old" NATO countries might even become candidates to join the zone in the mid-term (pending a NATO review on its nuclear posture).

One has, however, to account for the impact of Russian policy during the Ukraine crisis. Moscow's readiness to use military force in various forms (what is called "hybrid") has opened the spectre of a threat which the disarmament-minded NATO members will not ignore. Even if they feel that this threat is limited, must thus not be exaggerated, and that arms control and disarmament is an indispensable policy element for overcoming the crisis even more now than before, they will move cautiously and with due regard for solidarity with the Eastern fellow members of NATO and alliance solidarity. In this regard, the Ukrainian crisis is working as a slow-down factor.

Turkey's position is difficult to predict, as Ankara currently finds itself in a difficult security environment (Iranian nuclear crisis and Syrian civil war); as long as these crises persist, Turkey is not expected to advocate the withdrawal of US TNW stationed on its soil and thus to join any NWFZ, neither in the

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124 Copenhagen appears to return to its traditional foreign policy approach, which was always characterized by certain scepticism towards great power (nuclear) policies and a desire to build bridges between potential antagonists.

125 US Department of Defense, Nuclear Posture Review Report, Washington, D.C., DoD, 2010.

126 Of course, Norway would have to fit its engagement for a zone with its other disarmament initiatives.

127 or Rome's current stance on the issue, see Paolo Foradori, Tactical Nuclear Weapons in Italy: Striking a Balance between Disarmament Aspirations and Alliance Obligations, *Nonproliferation Review*, Vol. 19, No. 1 (March 2012).



Middle East nor in Europe. Still, it can be expected that Ankara will put little resistance against the establishment of a limited NWFZ in Europe, provided it will not remain the only NATO country hosting US TNW.

Resistance to the zone is likely to emerge from within NATO's bureaucratic apparatus, since bureaucracies have the inevitable tendency to resist change and warn against alterations of the status quo. The experiences during the Ukraine crisis is certainly helping this political narrative justifying defence conservatism. NATO is a well-attuned machinery with a specific language regime, decade-old principles and several well-ingrained standard operating procedures. Therefore, it will be difficult to awake enthusiasm within NATO's bureaucracy to an innovative concept like the NWFZ in Europe, which challenges beloved principles of nuclear burden sharing, flexible response and indivisible security for all Alliance members.

### 6.3 *New NATO Countries*

In order to anticipate the reactions of the newer NATO countries (Albania, Bulgaria, the Czech Republic, Croatia, Estonia, Hungary, Latvia, Lithuania, Poland, Romania, Slovakia and Slovenia) it is worth taking a look at their attitude towards nuclear issues in general – NATO's DDR process might shed some light on it.

As none of the New NATO countries possesses or hosts nuclear weapons, only their NATO membership might constitute a political or technical obstacle to join a NWFZ initiative. Still, Central and Eastern European (CEE) countries probably would not support the idea of a NWFZ in Europe and are not the best candidates to join such an initiative in the first round, even though in principle, all these countries are supposed to be in favour of a world without nuclear weapons, as they had to give their consent to the 2010 Strategic Concept and the 2012 DDR document which clearly states that the alliance supports the vision of global zero.

During the debate over the new DDR, Central and Eastern European countries mostly advocated a "status quo" in NATO's military capabilities. They argued that the strategic nuclear forces of the United States, the United Kingdom and France, as well as the sub-strategic nuclear weapons stationed in Europe, missile defence and conventional capabilities all have their essential role in NATO's deterrence posture and all of them are necessary to protect the territory of the alliance and to provide the guarantees of Article V. Besides, CEE countries were mostly against major changes in the declaratory policy of the alliance, and they did not support the adoption of a universal negative security guarantee either (Poland was the only exception, which seemed to be open to the idea of a universal negative security guarantee).<sup>128</sup>

Although none of these countries seem to perceive U.S. sub-strategic nuclear weapons as actual war-fighting tools and none of them showed willingness to host these weapons, CEE countries declared that they would only support withdrawal of these nuclear weapons in case of reciprocal reductions with Russia. Poland appears to be the most flexible in looking for arms control solutions to the problem, working with Germany and with Norway on this matter. Poland was also the only new member to join a German initiative at the 2010 NPT Review Conference to put sub-strategic nuclear weapons on the disarmament agenda.

The reason why CEE states in general support NATO's nuclear sharing is that sub-strategic nuclear weapons are still considered the strongest physical evidence of US commitment towards the protection

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<sup>128</sup> Jacek Durkalec, "NATO Defence and Deterrence Posture: Central and Eastern European Perspectives", PISM Policy Paper, No. 29 (May 2012); Harald Müller, "Flexible Responses: NATO Reactions to the US Nuclear Posture Review", *The Nonproliferation Review*, Vol. 18, No. 1 (2011), pp. 103–124.

of Europe, it strengthens the notion of burden-sharing and it guarantees responsibility to all member states in the Nuclear Planning Group. Although as a result of political pressure from the French government the 2012 DDPR clearly states that “missile defence can complement the role of nuclear weapons in deterrence; it cannot substitute for them”<sup>129</sup> there is still some consideration among member states whether missile defence assets deployed in Eastern Europe might substitute for sub-strategic nuclear weapons as the new “glue” of the Alliance. The question remains whether this view survives the announcement by the US government to scrap the phase four of the planned system and to give up the development of the SM-3 Block IIB interceptors.<sup>130</sup> These interceptors were supposed to be deployed in phase four to Poland and Romania<sup>131</sup> and they were expected to have a limited capability to destroy ICBMs which was the primary reason of Russian concerns. Therefore, the US announcement was a clear gesture towards Moscow but it might undermine the willingness of some CEE states to support the withdrawal of sub-strategic nuclear weapons.

Besides these general considerations, some CEE states have additional region specific concerns which influence their attitude towards nuclear-related issues. The Baltic states usually emphasize the threat from Russia and the fear from growing aggression if NATO did not possess all elements of the strategic deterrence mixture. Romania and Bulgaria mentioned several times the possibility that Turkey might decide to start its own nuclear program if US sub-strategic nuclear weapons were withdrawn from its territory.

The Ukrainian crisis and ensuing Russian policy has strengthened the security concerns in the region and re-enforced the felt need to rely on extended deterrence. While the new members welcome the measures in the conventional sector which NATO has taken as a response and are investing disproportionately in their own defence posture, they are aware that the Alliance’s position to the East is rather a tripwire posture than one of solid conventional defence. Extended nuclear deterrence is thus believed to be indispensable, and the zone might be regarded as a distraction from this consideration. However, the same countries might welcome a debate triggered by the zone that would put a stronger critical light on the Russian nuclear posture and nuclear rhetoric

As a result of all these threat perceptions and strategic considerations, CEE countries are not likely to embrace the idea of a NWFZ in Europe. As long as they attach such an important strategic role to NATO’s nuclear capabilities, it is hard to imagine that they would undergo any limitations regarding nuclear weapons. Therefore, these states will definitely not be the first to stand up for such a proposal; however, there is a slight chance that if other NATO member-states find a way to join the initiative, some CEE countries might also follow suit in the distant future. The most possible candidates for that are Poland, the Czech Republic and probably Romania. During the DDPR process they seemed to be the most open to discussions on actual changes in NATO’s strategic posture and as all of these states will host essential elements of NATO’s ballistic missile defence system (Poland and Romania will host missile interceptors and the Czech Republic will host a radar station), the importance of nuclear sharing might lose significance for them and they might be persuaded to join the project of a NWFZ in Europe. The Baltic states, on the other hand, are probably the last three countries in the region to em-

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<sup>129</sup> North Atlantic Treaty Organization, “Deterrence and Defence Posture Review” (May 2012) ([http://www.nato.int/cps/en/natolive/official\\_texts\\_87597.htm?mode=pressrelease](http://www.nato.int/cps/en/natolive/official_texts_87597.htm?mode=pressrelease)).

<sup>130</sup> Chuck Hagel, “Missile Defense Announcement”, (March 2013) (<http://www.defense.gov/speeches/speech.aspx?speechid=1759>). Jacek Durkalec, “Modifications of the U.S. Missile Defence Plans in Europe”, *The Bulletin of the Polish Institute of International Affairs*, (2013) (<http://www.pism.pl/publications/bulletin/no-27-480>).

<sup>131</sup> Despite cancelling phase four of the European missile defence system, less advanced – SM-3 Block IIA – interceptors will still be deployed in both Romania and Poland in the framework of phase three.

brace this idea. But any change of attitude would certainly depend on a tangible reduction of NATO/Russia tensions and an ensuing significant improvement of the perceived security situation.

Will the controversy on the zone exacerbate the cleavage between the “old” and the “new” NATO members? First, it is no done deal that all “old” members will uniformly be in favour of the project or the new ones uniformly hostile (e.g. Slovenia). Second, much depends on how the controversy is handled by NATO members sympathizing with the project. Sympathizers of the zone would have to engage their Eastern neighbours in continuous consultations in which they take the security concerns of countries that had lived in the power shadow of the Soviet Union seriously. They would confirm their unswerving commitment to Art. V of the Washington Treaty, the undertaking to come to the support of a threatened or attacked member. They would also document their effort to work on Russia for reciprocal measures to enhance the security of NATO’s Eastern part.

Thirdly, we are not talking about a one-sided withdrawal from NATO solidarity by NATO sympathizers of the zone. In most of the countries that deploy US nuclear weapons on their territory, both governments and peoples want to get rid of them, and the popular opposition is not more explicit only for the simple reason that many citizens believe that these weapons are long gone – unconvincing as their mission is under current circumstances. Governments stick to NATO’s line against their own preferences and against the will of their peoples just for NATO solidarity. It is highly questionable if it is healthy for an alliance that prides itself of being democratic that a couple of governments are pressured to act against the preferences of their publics. That Germany is among these states, NATO’s most important member state on the continent concerning the conventional aspect of Article V, is a reason not to be complacent with the status quo. “Old” and “new” NATO members would be well advised to preserve respect for the different positions and to seek a way out of the underlying controversy that is satisfactory to either side and that removes the alienation of the citizenship of several states from the current NATO posture.

#### 6.4 *Intra-EU repercussions*

The zone project does not introduce controversy on nuclear policies in the EU out of the blue. The dispute on nuclear weapons and nuclear disarmament has existed for long. Difficult compromises between the three principal groups, the two NWS, NATO NNWS, and neutral members were always visible during NPT Review Conferences, UNGA First Committee sessions, UNGA meetings and the Conference on Disarmament. Where these differences have not prevented common positions, they have confined those that were achieved to a low common denominator.

This was visible on a “zone discussion in disguise” during the 2010 NPT Review when a group of European countries, including eight EU members, proposed the inclusion of sub-strategic nuclear weapons in the disarmament process. None of the EU NWS supported this motion, and only Poland among the new members did so from the floor.<sup>132</sup> EU consultations on nuclear weapons issues have been acerbic not infrequently. The zone debate would add another layer of dispute, but by no means establish it.

Again, much depends on management. Timely and frequent consultations, and respect for the seriousness of the partners’ interests and positions is a condition to continue living with the controversy once the project is in the public domain. Nothing the zone promoters can do will force the opponents into agreement, and nothing the opponents may undertake will divert the promoters from their convictions and, consequently, from their project. As the EU is currently confronted with such a divisive issue such as the humanitarian impact of nuclear weapons and since Brussels has lived with this sort of disagree-

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132 Harald Müller, “Flexible Responses: NATO Reactions to the US Nuclear Posture Review”, *The Nonproliferation Review*, Vol. 18, No. 1 (2011), pp. 103–124.

ment not only in the nuclear field but beyond, there is nothing inherent in the zone project that would impose a need to become more antagonistic against each other than in the past.

### 6.5 *NPT members outside the region*

The overall-reaction of most NNWS-NPT-members outside the zone would most likely be positive. The project of a zone that had been for half a century the potential hotbed for nuclear conflict and the site of the densest deployment of nuclear weapons worldwide would be seen as great encouragement for the cause of nuclear disarmament. Countries in the non-Western world would also see – and welcome – the impact of the project on intra-NATO discussions (the very reason why some other players would be less enthusiastic). At the same time the project would reinforce existing debates within the non-proliferation regime such as the creation of a NWFZ in the Middle East, on the legitimacy of the threat and use of nuclear weapons and the principle of nuclear sharing, and about (negative) security assurances. The idea to establish a NWFZ in Europe would, thus, develop and strengthen already existing dynamics within the regime and possibly widen differences of positions among groups of actors.

**The Non-Aligned Movement (NAM).** First of all, any initiative to create a NWFZ in Europe would be grist to the mill of the NAM: the impression that European states dissociate from their fellow Western, EU (and, maybe, even NATO) partners might look like an opportunity to exert more pressure on the nuclear powers. The NAM would grasp the chance to lead a campaign on the NWS to accede to all zonal protocols from which they are still abstaining. As for those states in Europe which would not be able or willing to become party to the zone, the NAM would probably embark upon strong criticism, notably in those cases where this abstention might be due to nuclear sharing, which the NAM always considered as a breach of Articles I and II of the NPT. Moreover, the movement would use the momentum to stronger address the issue of sub-strategic nuclear weapons on NNWS territory in the disarmament discourse and attack the nuclear character of the NATO, pointing out that doctrines entailing first nuclear use contradict the legitimate claim of all members to the NPT to be freed from the threat of use of nuclear weapons. Not surprisingly, the NAM's aims in many aspects coincide with those of an initiative to establish a NWFZ in Europe, and the NAM will represent a strong supporter of the initiative.

While such NAM activities will, on the one hand, help the momentum of the zone project, it might as well force undecided or sympathetic NATO members to close the ranks with their alliance partners and distance themselves from the zone idea. Being put on the spot too much is not always helpful for good causes in international diplomacy, and this might be a case in point.

A second problem is the bouncing-back effect of disappointed expectations. While the promoters of the campaign will be rewarded with a wave of appreciation from the NAM, this reaction might turn into biting criticism if high expectations will be disappointed by a loss of momentum soon thereafter. In this case, the European zone might be perceived as another arms control failure. For this reason, it would be important to keep expectations within reasonable limits, to express higher hopes with an audible emphasis on the distant future, and to shape entry-into-force conditions – on the basis of pre-negotiations and reliable commitments among like-minded supporters – in a way as to ensure that the zone comes into being in a relatively short time span in order to keep momentum, though naturally with a very limited geographical scope..

The zone promoters should take influence on the intra-NAM discussion by conducting outreach activity towards the existing NWFZ and their 118 member states the very moment they go public with their project. This group would most likely take a positive attitude towards the project. Representatives or even member states of these zones should be invited to the deliberations and negotiations of the NWFZiE initiators, and later to review conferences to stimulate and solidify support.

**The League of Arab States (LAS).** Another critical factor will probably be the LAS, which shares most NAM-positions but adds a strong regional focus to the agenda. The Arab reaction to the European zone project could be ambivalent. On the one hand, some Arab countries might view the NWFZiE as a diversion of international attention to their core concern, the zone in the Middle East. On the other hand, others might welcome this step as it signals the possibility to overcome stalemate in nuclear policy in another difficult region. A positive attitude could be helped by early contacts between the initiators and regional actors in which the European initiators frame their project as supportive to the idea of zones anywhere and emphasize the importance of the specific circumstances in all regions; in that regard, Europe and the Middle East are different in several aspects. In Europe, the project aims at a NWFZ, in the Middle East at a zone free of weapons of mass destruction. In Europe there are several “official” NWS whose prompt accession to the zone is not expected. All European states are parties to the NPT (plus the Biological Weapons Convention and the Chemical Weapons Convention) in good standing.

For the same reasons, copying the European initiative in the Middle East is most probably out of reach, as most Arab states would – presumably rightly – fear that Israel would object to any agreement in whose creation it was not involved, and would also feel that a zone in which Israel is not included from the beginning is not worth the candle. The step-by-step approach envisaged for the European zone is thus no blueprint for the Middle East. Thus, it is rather likely that the Arab League might use a campaign for the creation of a NWFZ in Europe for a shaming and blaming campaign against Israel – at least if there would be no progress towards the “Middle East Conference” (originally scheduled for 2012 but postponed indefinitely) or other steps towards a zone in the Middle East. This might add to turning United States against the European zone initiative because of its timing.

The initiators of the zone in Europe should seek contact with the Arab League and central Arab actors on the WMDFZ in the Middle East early on and establish regular talks. Quite apart from the current chances of realization, the two regions are neighbouring each other, and the activities, achievements, and failures in one part are bound to have effects on the other. Promoters of each zone should agree to support each other’s efforts, as appropriate. This would frame the two projects not as competitors, but as partners; this would probably help prevent any negative reactions from the Southern Mediterranean neighbours.

**The New Agenda Coalition (NAC).** As for moderate middle powers within the NPT, the NAC will be a “natural supporter” of efforts to create a NWFZ in Europe. With Brazil, Mexico and New Zealand being states parties to three NWFZs, and Egypt having signed the treaty of Pelindaba and struggling for the creation of a WMDFZ in the Middle East, the New Agenda Coalition could offer an amount of expertise concerning the creation of such zones which could make it interesting to include it into the efforts to create a NWFZ in Europe. NAC members Sweden and Ireland are candidates for a zone in Europe and could be early members (which would require, in the Swedish case, most probably a change in government). Egypt might then feel encouraged, or forced, to renew its efforts in the Middle East, thereby reinforcing the Arab League effect just discussed.

**The Non-Proliferation and Disarmament Initiative (NPDI).** The reaction of NPDI members would be ambivalent. Mexico would strongly sympathize with the zone project, as would Chile, and probably Nigeria and the Philippines. But the group of US allies – Australia, Japan, Netherlands, Germany, and Turkey would feel pressures from two sides. The three NATO members are not likely early signers of the zone Treaty, and Japan might fear a negative impact on US nuclear security guarantees beyond the region concerned.

## 6.6 Perspectives

The summary of this chapter is just stating the obvious: The initiators of the NWFZ in Europe are up for the long haul, and for a battle against powerful interests. They can count on considerable media interest, on the sympathies of a majority of the people in the region not the least their own, and on enthusiastic support by a significant number of non-governmental organizations engaged in the issue. There will also quiet sympathy by a couple of governments who will not dare, at least not initially, to confess by “coming out”. At the same time, there will be objections by some governments believing that the survival of their countries depends on a continued, physically underlined nuclear guarantee, and there will be indignation by all, and outright hostility by some, NWS. Initiators thus need courage, stamina, and perseverance. An all-partisan domestic consensus would be greatly helpful. With these attributes, they have a chance of winning, if only in the long term. And they have a powerful defence for their initiative: the clear mandate for NNWS to take initiatives for nuclear disarmament enshrined in Art. VI of the NPT and specified for NWFZ in Action 9 of the 2010 NPT Review Conference’s final document.

## 7. CONCLUSIONS

### 7.1 Summary of findings

- The current international situation is no reason to drop all efforts to move forward nuclear disarmament. To the contrary, enhanced efforts are needed to prevent things from getting worse and to stabilise international peace and security. Nuclear disarmament which is, after all, a recognized ingredient of a process for enhancing international security cooperation and thereby promoting peace, needs new momentum. Beyond established concepts like bilateral strategic nuclear arms control or a fissile material cut-off treaty, thinking out of the box might open new roads that are worth considering. This study is an effort to contribute to such “thinking out of the box”.
- The project of a NWFZ in Europe is justified by the realistic expectation that it will reawaken the dormant debate about the nuclear weapons problematique in Europe and carry this debate in the European NWS themselves. This effect would be most important to maintain the momentum of the disarmament discourse after the powerful pushes of the 2007 Wall Street Article and the 2009 Obama speech in Prague.
- NWFZs are time-honoured ways to create regional confidence and solidarity, to strengthen the non-proliferation regime, foster nuclear disarmament and delegitimate nuclear weapons. The pivotal function of this project, however, is its chance to stimulate civil society and create a momentum that is not easily controlled by the powers that be.
- Procedurally, a combination of „closed shop“ negotiations among a small group of likeminded countries, and the more open Ottawa process model appears most conducive to fostering the project. This combination leaves the momentum in the hands of the initiators and prevents any veto position while offering inclusiveness.
- An approach in which a few countries take the initiative and enhance the chances for future accessions through stimulating a national debate in potential parties to the zone necessitates waiving a clear geographic delimitation of the zone from the beginning and renouncing a conditioning of entry into force by all states principally eligible for membership. It would be wiser to make the scope of the zone conditional on the territory of the countries which are parties at any given moment (as temporarily discussed in the negotiations for the Tlatelolco Treaty).



- In order to create and maintain momentum, the unilateral self-declaration of a single country as a NWFZ is not advisable. It makes more sense to make entry into force contingent on the ratification by a very small number of countries after careful preliminary consultations that make it as well as certain that this quorum will be reached.
- Concerning the treaty undertakings, it is obvious that they can be minimalist or more far-reaching. A minimalist treaty would make it easier for disarmament-minded NATO members to accede at an early date. Zone members that would like to go further might do so by way of national legislation. A compromise between the two approaches would be to put some of the more far-reaching clauses under an opt-out-option. Again, this might facilitate accession by some NATO members.
- Verification will be more complex than in other regional zones, but only in the long run. The reason is the various types of states that are potential candidates for the zone (NWS, NATO NNWS with nuclear weapons on their territory, NATO NNWS which had formerly nuclear weapons on their territory). For the core that is to be expected to constitute the membership at entry into force, these complications will probably not exist. There remains still the reconciliation between the zonal verification system and that of the NPT in which already two organizations, the IAEA and EURATOM participate. Things may become difficult at this level if and when the participation of EURATOM in zonal verification is contested within the EU.
- The treaty could contain, as a major innovative and mobilizing element, a way for non-state actors to associate themselves with the zone project in a (semi-)official, visible way. This could be done directly in the context of the zone treaty (protocol for sub-national political entities, signature list on the treaty organization's website) or more indirectly (by tasking a NGO to collect and document the support, and to have this NGO report at member state conferences or review conferences).
- The zone initiators will face a wide spectrum of reactions. Besides enthusiastic report (probably from civil society and members of other zones) there will be strong opposition (from certain NWS and supposedly also from some non-nuclear NATO members). Governments wishing to promote the project must be aware of this situation and be determined to pursue the project for the long haul. Of course, in the perspective of the project's major objective – rejuvenating and maintaining the debate on nuclear disarmament, controversial reactions are desirable as this is most likely to foster debate.

## 7.2 *First steps*

Initiators must bring together a small, but determined group of supporters of the zone project. This group might consist of like-minded governments, on the one hand, and committed civil society organizations, on the other hand. Supporters should agree on the objectives of the initiative, on the core content of a future zonal treaty, and on the next steps to pursue.

Initiators must also work on domestic support in their countries. As repeatedly stated, they need courage and perseverance. This is hard to achieve if the home front is split. Support should be broad and supra-partisan, and the project should attract the sympathy of the public and the active support of civil society organizations. All the while initiators must be careful to mitigate internal differences that might come more to the fore as the project progresses (as experiences in other zones have shown). To keep coherence and solidarity in the group is key to the project's success.

The difficulties with the UNGA have been discussed above. A possibility to procure some legitimacy for the project would be to join forces with members of other zones and nonaligned leaders and to co-sponsor a UNGA draft resolution praising existing zones, calling on those who have not ratified the

respective protocols to do so, and to urge states in regions not yet covered by a zone to take appropriate steps in the light of the specific conditions in the respective region to work towards the establishment of a NWFZ. It is likely that this will attract broad support, and it would create a fresh reference text on which the initiators can draw for justifying their project.

If initiators are sufficiently satisfied that some momentum has been created, they may invite states that would be eligible for zone membership given the wider “aspiration” for a general consideration of the project. After this, a second meeting might discuss a draft text, and a third and last one a revised version (this procedure is modelled after the Ottawa and Oslo Conventions). Working groups could be tasked in the intersessional periods to iron out differences. At and after the last conference, governments which are core supporters would sign and ratify, bringing the zone into force.

### 7.3 *Final thoughts*

Whether governments decide to pursue the road laid out in this study will be influenced by many factors some of which go clearly beyond the subject matter discussed here. Within the realm of nuclear disarmament, the key issue is whether promoters are willing to invest the political capital to make the project fly. They will have to compare the risks and benefits of this approach with other disarmament initiatives under way, calculate in the reactions of the NWS, and whether the initiative will make the latter ones more or less inclined to walk further down the disarmament road. They should not be shy of the possible indignation that NNWS take initiatives without asking first the NWS whether this is permissible. Article VI of the NPT is crystal clear on that point: nuclear disarmament is not only a matter of interest for those not having nuclear weapons, but it is their solemn undertaking to participate in the process. Taking initiative is a particularly bold mode of participation.

It is unlikely that the initiative will weaken efforts by NWS to pursue their own disarmament agenda, if they have one. The disarmament record since the NPT entered into force is not a consistent story of an unambiguous NWS commitment to this cause. Even at present, no dispassionate observer would discover a determined rush towards a nuclear weapon free world. To the contrary, fears that the process be stalled are not without justification. Under these circumstances, it is not imperative for disarmament-minded NNWS to sit idle lest their activities could hamper the progress of the disarmament train.

The project of a NWFZ bears the risk to evoke resistance on a continent where an alliance that calls itself a nuclear one is part of the identity of many of its members and seen as indispensable for national security by most. At the same time, and partially for the same reasons, the project has the advantage of high political saliency and the ensuing potential to stimulate debate and create movement. For those concerned about the slowing down of the disarmament train, this might be reason enough to engage.

## LIST OF ABBRIVIATIONS

ANZUS	Australia, New Zealand, United States Security Treaty
CEE	Central and Eastern European states
COPREDAL	Preparatory Commission for the Denuclearization of Latin America
CPPNM	Convention on the Physical Protection of Nuclear Material
CTBT	Comprehensive Nuclear Test-Ban Treaty
DDPR	Deterrence and Defence Posture Review
EURATOM	European Atomic Energy Community
IAEA	International Atomic Energy Agency
ICBM	Intercontinental Ballistic Missiles
INF	Intermediate-Range Nuclear Forces Treaty
IS	Integrated Safeguards
NAC	New Agenda Coalition
NATO	North Atlantic Treaty Organization
NCND	Neither Confirm Nor Deny
NNWS	Non-Nuclear Weapon States
NPDI	Non-Proliferation and Disarmament Initiative
NPT	Nuclear Non-Proliferation Treaty
NSA	Negative Security Assurances
NWFSH	Nuclear-Weapon-Free Southern Hemisphere and Adjacent Areas
NWFZ(s)	Nuclear-Weapon-Free Zone(s)
NWS	Nuclear Weapon States
OAU	Organization for African Unity
OSCE	Organization for Security and Co-operation in Europe
SSAC	State System of Accounting for and Control of nuclear materials
TNW	Tactical Nuclear Weapons
UNGA	United Nations General Assembly
UNSC	United Nations Security Council

ANNEX: TABLE COMPARING NWFZ PRESCRIPTIONS AND STATUS OF RATIFICATIONS

	TLATELOLCO 1967 Latin America and Caribbean	RAROTONGA 1985 South Pacific	BANGKOK 1995 Southeast Asia	PELINDABA 1996 Africa	SEMIPALATINSK 2006 Central Asia
<i>Negotiations</i>	1964-1967	1984-1985	1986-1995	1991-1995	1997-2006
<i>Opened for signature</i>	14 February 1967	06 August 1985	16 December 1995	11 April 1996	08 September 2006
<i>Entered into Force</i>	25 April 1969	11 December 1986	28 March 1997	15 July 2009	21 March 2009
<i>State Parties</i>	33/33 regional states	13/16 regional states	10/10 regional states	38/53 regional states	5/5 regional states

**Definitions**

<i>“Territory”</i>	“Territorial sea, air space and any other space over which the State exercises sovereignty in accordance with its own legislation”.	“Internal waters, territorial sea and archipelagic waters, the seabed and subsoil beneath, the land territory and the airspace above”.	“Land territory, internal waters, territorial sea, archipelagic waters, the sea-bed and the subsoil thereof and the airspace above”.	“Land territory, internal waters, territorial seas and archipelagic waters and the airspace above them as well as the sea bed and subsoil beneath”.	[no introductory definition for territory] “The <b>scope</b> 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 (harbours, lakes, rivers and streams) and the air space above them, which belong to the Republic of Kazakhstan, the Kyrgyz Republic, the Republic of Tajikistan, Turkmenistan and the Republic of Uzbekistan”.
<i>“Nuclear weapon”</i> [ = <i>NW</i> ] / <i>“Nuclear Explosive Device”</i> [= <i>NED</i> ]	“A <b>nuclear weapon</b> is any device which is capable of releasing nuclear energy in an uncontrolled manner and which has a group of characteristics that are appropriate for use for warlike purposes”; Excludes instrument for transport / propulsion of device if separable.	“ <b>Nuclear explosive device</b> means any nuclear weapon or other explosive device capable of releasing nuclear energy, irrespective of the purpose for which it could be used”, in unassembled and partly assembled forms; Excludes means of transport or delivery if separable.	“ <b>Nuclear weapon</b> means any explosive device capable of releasing nuclear energy in an uncontrolled manner”. Excludes means of transport or delivery of such device if separable.	“ <b>Nuclear explosive device</b> means any nuclear weapon or other explosive device capable of releasing nuclear energy, irrespective of the purpose for which it could be used”, in unassembled and partly assembled forms; Excludes means of transport or delivery if separable.	“ <b>Nuclear weapon or other nuclear explosive device</b> means any weapon or other explosive device capable of releasing nuclear energy, irrespective of the military or civilian purpose for which the weapon or device could be used”, in unassembled or partly assembled forms; Excludes means of transport or delivery if separable.
<i>“Stationing”</i>		“Implantation, emplacement, transportation on land or inland waters, stockpiling, storage, installation and deployment”.	“Deploy, emplace, implant, install, stockpile or store”.	“Implantation, emplacement, transport on land or inland waters, stockpiling, storage, installation and deployment”.	“Implantation, emplacement stockpiling, storage, installation and deployment”.

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<i>Additional definitions</i>			Radioactive material; radioactive waste; dumping.	Nuclear installation, nuclear material.	Nuclear material; radioactive waste; facility.

**Basic  
Obligations**

<i>Prohibitions / undertakings</i>	Parties undertake “to prohibit and prevent in their respective territories: (a) The <b>testing</b> , use, manufacture, production or acquisition by any means whatsoever of any NW, by the Parties themselves, directly or indirectly, on behalf of anyone else or in any other way, and (b) The receipt, storage, installation, <b>deployment</b> and any form of possession of any NW, directly or indirectly, by the Parties themselves, by anyone on their behalf or in any other way”; Also, “refrain from engaging in, encouraging or authorizing, directly or indirectly, or in any way participating in the testing, use, manufacture, production, possession or control of any NW”.	Parties undertake “(a) not to manufacture or otherwise acquire, possess or have control over any NED by any means anywhere <b>inside or outside</b> the South Pacific Nuclear Free Zone; (b) not to seek or receive any assistance in the manufacture or acquisition of any NED; (c) not to take any action to assist or encourage the manufacture or acquisition of any NED by any State”.	Parties undertake “not to, anywhere <b>inside or outside</b> the Zone: (a) develop, manufacture or otherwise acquire, possess or have control over NW; (b) <b>station</b> or <b>transport</b> NW by any means; (c) <b>test</b> or use NW”; Also, “not to allow, in its territory, any other State to: (a) develop, manufacture or otherwise acquire, possess or have control over NW; (b) <b>station</b> NW; (c) <b>test</b> or use NW”.	Parties undertake “(a) Not to conduct <b>research</b> on, develop, manufacture, stockpile or otherwise acquire, possess or have control over any NED by any means anywhere; (b) Not to seek or receive any assistance in the research on, development, manufacture, stockpiling or acquisition, or possession of any NED; (c) Not to take any action to assist or encourage the research on, development, manufacture, stockpiling or acquisition, or possession of any nuclear explosive device”.	Parties undertake “(a) Not to conduct <b>research</b> on, develop, manufacture, stockpile or otherwise acquire, possess or have control over any NW or other NED by any means anywhere; (b) Not to seek or receive any assistance in research on, development, manufacture, stockpiling, acquisition, possession or obtaining control over any NW or other NED; (c) Not to take any action to assist or encourage the conduct of research on, development, manufacture, stockpiling, acquisition or possession of any NW or other NED; (d) Not to allow in its territory: (i) The production, acquisition, <b>stationing</b> , storage or use, of any NW or other NED; (ii) The receipt, storage, stockpiling, installation or other form of possession of or control over any NW or other NED; (iii) Any actions, by anyone, to assist or encourage the development, production, stockpiling, acquisition, possession of or control over any NW or other NED”.
<i>Peaceful uses</i>	“Nothing in the provisions of this Treaty shall prejudice the rights of the Contracting Parties, in conformity with this Treaty, to use nuclear energy for peaceful purposes, in particular for their economic development and social progress”.	[no specific article; references throughout to parties’ “peaceful nuclear activities”]	“Nothing in this Treaty shall prejudice the right of the States Parties to use nuclear energy, in particular for their economic development and social progress”.	“Nothing in this Treaty shall be interpreted as to prevent the use of nuclear science and technology for peaceful purposes”.	“No provision of this Treaty shall prejudice the rights of the Parties to use nuclear energy for peaceful purposes”.

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<i>Testing/ nuclear explosions</i>	[under Basic Undertakings] Parties undertake to prohibit and prevent testing.  <b>Peaceful nuclear explosions:</b> “Parties may carry out explosions of <i>nuclear devices</i> for peaceful purposes — including explosions which involve devices similar to those used in nuclear weapons — or collaborate with third parties for the same purpose”.	Parties undertake to prevent testing of NED in their territory; and not to assist and encourage testing by any state.	[under Basic Undertakings] Parties undertake not to test or use NW; and not to allow this in their territory.	Parties undertake not to test NED, to prohibit testing in their territory; not to assist or encourage testing by any state anywhere.	Parties undertake, in accordance with the Comprehensive Nuclear Test-Ban Treaty, not to carry out any nuclear test explosion or any other nuclear explosion; to prohibit such explosion anywhere under their jurisdiction or control; to refrain from encouraging or participating in carrying out such explosion. .
<i>Stationing</i>	[under Basic Undertakings] Parties undertake to prohibit and prevent deployment.	Parties undertake to prevent stationing of NED in their territory.	Parties undertake not to station or <b>transport</b> NW, and not to allow stationing in their territory.	Parties undertake to prohibit stationing of NED in their territory.	[under Basic Undertakings] Parties undertake not to allow stationing.

**Other  
Features**

<i>Dumping/ disposing</i>		Parties undertake not to dump radioactive waste and other radioactive matter at sea; Prevent dumping by anyone; No to assist or encourage dumping.	Parties undertake not to dump or discharge into the atmosphere anywhere in the zone any radioactive materials or waste, and not to allow this in their territory. Disposal: dispose radioactive wastes and other radioactive material in accordance with IAEA standards and procedures.	Parties undertake to implement the ban of import of hazardous waste into Africa, regarding radioactive waste; not to assist or encourage dumping radioactive waste in the zone.	Parties undertake not to allow disposal of radioactive waste by other states in their territory.
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<i>Transit</i>		<p>Decision on transit rights is explicitly left to the discretion of each state party.</p> <p>“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” [under “Prevention of stationing of nuclear explosive devices” clause]</p> <p>“Nothing in this Treaty shall prejudice or in any way affect the rights, or the exercise of the rights, of any State under international law with regard to freedom of the seas” [under “Application of the treaty” clause]</p>	<p>Decision on transit rights is explicitly left to the discretion of each state party.</p> <p>“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” [under “Foreign ships and aircraft” clause]</p> <p>“Nothing in this Treaty shall prejudice the rights or the exercise of these rights by any State under the provisions of the United Nations Convention on the Law of the Sea of 1982, in particular with regard to freedom of the high seas, rights of innocent passage, archipelagic sea lanes passage or transit passage of ships and aircraft, and consistent with the Charter of the United Nations” [under “Application of the treaty” clause]</p>	<p>Decision on transit rights is explicitly left to the discretion of each state party.</p> <p>“Without prejudice to the purposes and objectives of the treaty, 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 air-space 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” [under “Prevention of stationing of nuclear explosive devices” clause]</p> <p>“Nothing in this Treaty shall prejudice or in any way affect the rights, or the exercise of the rights, of any State under international law with regards to freedom of the seas” [under “Application of the treaty” clause]</p>	<p>Decision on transit rights is explicitly left to the discretion of each state party.</p> <p>“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” [under “Foreign ships, aircraft, and ground transportation” clause]</p>
<i>Providing nuclear material</i>		<p>“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 NNWS unless subject to Safeguards according to NPT; and to NWS unless subject to IAEA Safeguards, in order to ensure exclusively peaceful non-explosive use.</p>	<p>“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 NNWS except under Safeguards as required by NPT, and to NWS except in conformity with applicable Safeguards.</p>	<p>“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 NNWS unless subject to a comprehensive safeguards agreement concluded with IAEA”.</p>	<p>Not provide: “(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 NNWS, unless that State has concluded with the IAEA a comprehensive safeguards agreement and its Additional Protocol”.</p>

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<i>Nuclear safety / physical protection</i>			Peaceful nuclear energy programs subjected to rigorous nuclear safety assessment conforming to IAEA guidelines and standards.	Physical protection of nuclear materials and facilities according to Convention on Physical Protection of Nuclear Material.	Physical protection of nuclear materials and facilities according to Convention on Physical Protection of Nuclear Material.
<i>Withdrawal clause</i>	Denunciation: state can notify general secretary if in its opinion circumstances connected with the content of treaty and protocols have arisen that affect its supreme interests or the peace and security of contacting parties. Denunciation will take effect 3 months after notification.	Withdrawal: parties have the right to withdraw in the event of a violation by a party of a provision essential to achieving treaty's goals. Withdrawal takes effect 12 months after notice.	Withdrawal: parties have the right to withdraw in the event of a violation by a party of a provision essential to achieving treaty's goals. Withdrawal takes effect 12 months after notice.	Withdrawal: each party, in exercising its national sovereignty, has the right to withdraw if it decided that extraordinary events have jeopardized its supreme interests. Withdrawal takes effect 12 months after notice.	Withdrawal: each party has the right to withdraw if it decided that extraordinary events have jeopardized its supreme interests. Withdrawal takes effect 12 months after notice.
<i>Additional features</i>			*The zone includes the territories of relevant regional states, as well as their respective <i>continental shelves</i> and <i>exclusive economic zones</i> . *Requires accession to Convention on Early Notification of a Nuclear Accident. *Remedial measures – see below under “Control System”.	*Reversal of nuclear weapons programs offered by the Treaty for state signatories ('come clean' clause): parties undertake to declare capability for manufacture of NED; dismantle and destroy devices manufactured before entry into force; destroy facilities for manufacture or convert to peaceful uses; permit IAEA and the Commission to verify. *Acquisition of components for NED in unassembled or partly assembled form prohibited. *Armed attack against nuclear installations prohibited.	Parties undertake to assist in efforts toward environmental rehabilitation of territories contaminated by past nuclear activities.

**Control system**

<i>Bodies Established</i>	Agency for the Prohibition of Nuclear Weapons in Latin America and the Caribbean (OPANAL)		Commission for the Southeast Asia NWFZ	African Commission on Nuclear Energy (AFCONE)	
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<i>Control system for verifying compliance</i>	*IAEA Safeguards. *Reports (to OPANAL and IAEA), as well as special reports with additional information on matters related to compliance, if requested by OPANAL's General Secretary.	*Reports and exchange of information (through the Director of the South Pacific Bureau for Economic Co-operation); *Consultations; *Application of IAEA Safeguards to peaceful nuclear activities; *Complaints procedure.	*IAEA Safeguards. *Reports and exchange of information. *Request for clarification on ambiguous matters which may give rise to doubts regarding a party's compliance.	*IAEA Safeguards. *Reports and exchange of information (to AFCONE). *Consultation. *Complaint procedure.	*IAEA Safeguards and Additional Protocol. *Annual and extraordinary consultative meetings, to review compliance.
<i>Special inspection</i>	At the request of a state party, OPANAL's Council shall arrange a <b>special inspection</b> (to be carried out by OPANAL; 1992 revised – by IAEA).	A party can complain before the Director of the South Pacific Bureau for Economic co-operation against another party that it is in breach of its treaty commitments. The Director shall convene the Consultative Committee (incorporating representatives of all parties), which can decide on a <b>special inspection</b> , comprised of three qualified inspectors, to be appointed by the Committee.	If a <b>fact finding mission</b> is requested by a state party and found necessary by the Commission's Executive Committee, the latter shall set up the mission, to be manned by three IAEA inspectors.	If a complaint on a possible breach cannot be settled, the Commission may request the IAEA to conduct an <b>inspection</b> in the territory of the party suspected of violation (this includes regional parties, as well as parties to Protocol III – extra-regional states with responsibility to territories within the zone).	
<i>Procedures in case of non-compliance</i>	Report of special inspection shall be transferred to all parties, to UN Secretary General for transmission to UN General Assembly and Security Council. A special session of OPANAL's General Conference may be convened to consider reports of special inspections, at which the General Conference may produce recommendations to contracting parties and a report to UN Secretary General for transmission to UN General Assembly and Security Council.	Inspectors' report is submitted with conclusions to the Consultative Committee, which informs the South Pacific Forum of its decision as to whether the party complained against is in breach. In case a breach has been decided, all parties shall convene promptly at a South Pacific Forum meeting.	In case Executive Committee concludes there is a breach of compliance by a party, and that party refuses to address the concerns accordingly, the Committee shall request the Commission to convene a meeting, at which appropriate measures for dealing with the situation shall be decided upon. Such measures may include referral to IAEA, UN Security Council or General Assembly. The Committee can also call a special meeting of the Commission in the event of a Protocol breach (by NWS), in which appropriate measures shall be decided.	IAEA's conclusion of the inspection shall be transferred to the Commission, which shall report to all parties its decision on whether there is a breach of commitments. In case a breach has been decided, all parties shall convene promptly in an extraordinary session to discuss the matter, and may make recommendations to the breaching party or the Organization of African Unity. The latter can refer the matter to the UN Security Council.	

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**Protocols**

	<b>T LATELOLCO 1967</b> <b>Latin America and Caribbean</b>	<b>RAROTONGA 1985</b> <b>South Pacific</b>	<b>BANGKOK 1995</b> <b>Southeast Asia</b>	<b>PELINDABA 1996</b> <b>Africa</b>	<b>SEMIPALATINSK 2006</b> <b>Central Asia</b>
<i>Protocol for extra-regional states</i>	<b>Protocol I</b> –extra-regional states with territories in the region: undertake to apply Treaty provisions “in territories for which, de jure or de facto, they are internationally responsible and which lie within the limits of the geographical zone established in that Treaty.”	<b>Protocol I</b> – extra-regional states with territories in the region: undertake to apply Treaty provisions to their territories in the region.		<b>Protocol III</b> – extra-regional states with territories in the region: undertake to apply Treaty provisions to their territories in the region.	
<i>Extra-regional states ratification status</i>	France, Netherlands, UK, US – all ratified.	France, UK – ratified; US – signed (submitted to Senate 2011).		France – ratified; Spain – not yet signed.	
<i>NWS Protocols</i>	<b>Protocol II</b> – NWS undertake not to threaten or use nuclear weapons against state parties to the Treaty.	<b>Protocol II</b> – NWS undertake not to threaten or use NED against state parties to the Treaty. <b>Protocol III</b> – NWS undertake not to test NED in the region.	<b>Protocol</b> – NWS undertake not to threaten or use nuclear weapons against state parties to the Treaty, or anywhere in the zone.	<b>Protocol I</b> – NWS undertake not to threaten or use nuclear explosive device against state parties to the Treaty. <b>Protocol II</b> –NWS commit not to test nuclear explosive devices in the zone established by the Treaty.	<b>Protocol</b> – NWS undertake not to threaten or use nuclear weapons against state parties to the Treaty.
<i>NWS Ratification Status</i>	All five NWS ratified.	Protocol I: ratified by France and the UK; US signed (submitted to Senate 2011) Protocols II and III: except the US, all NWS ratified; US signed (submitted to Senate 2011).	None signed/ratified Protocol.	Protocols I and II: China, France, UK and Russia ratified; US signed (submitted to Senate 2011).	All five signed, China, France and the UK ratified. US submitted to Senate 2015.

Treaty texts and status of ratifications (including lists of member states) are available at <http://cns.miis.edu/inventory/treaties.htm>

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