

A NUCLEAR-WEAPON-FREE NORTH

Jayantha Dhanapala emphasises the dire need for a new security architecture in the

In 2015, it will be 70 years since the horrible bombing of Hiroshima and Nagasaki, by the US – the only time nuclear weapons have ever been used. The urgent need to seek solutions over nuclear weapons in North-East Asia was highlighted in the Asia-Pacific Leadership Network’s (APLN’s) Jakarta Declaration of September 2014.

It reads as follows: “Acutely conscious that the world’s more than 16,000 remaining nuclear weapons are strongly concentrated in the Asia-Pacific region, with the US and Russia having over 90 percent of the world’s stockpile and major strategic footprints here, China, India and Pakistan all having significant arsenals, and the breakout state of North Korea continuing to build its capability...”

It also notes that “most of the projected world growth in civil nuclear energy – with all the proliferation, safety and security risks associated with such energy production, unless it is closely and effectively regulated – will occur in the Asia-Pacific.”

The Six-Party talks over North Korea’s nuclear programme have made little progress, even as China’s patience wears thin. Tensions among China, Japan and South Korea continue over the bitter legacy of World War II, and disputes over the ownership of islands in the East China and South China Seas exacerbate them, while the US hovers in



COSTLY END TO WWII This file photo, dated 1948, shows the devastated city of Hiroshima three years after the atomic bomb was dropped by an US Air Force B-29, on 6 August 1945. Around 140,000 people – more than half of Hiroshima’s population, at the time – died in the first atomic bombing on this day. Another 70,000 people perished as a result of the bomb dropped over Nagasaki, three days later. Following the bombings, Japan surrendered on 2 September 1945, to Allied forces, officially ending World War II. And that brought the curtain down on the costliest conflict in history.

the background. Five Nuclear-Weapon-Free Zones (NWFZs), one single-state NWFZ (Mongolia) and an unpopulated nuclear-weapon-free continent (Antarctica) – apart from the denuclearisation of the extremities of the seabed, ocean floor and outer space – have been legally established and exist in the

world today. While they do not conform to a replicable model, the UN Disarmament Commission has established guidelines which future proposals for NWFZ may wish to follow.

The proposal for a North-East Asian NWFZ (NEANWFZ) has intrinsic merits, but the first steps

towards it in this tension-fraught region are still a long way off. The proposal has acquired a fresh relevance, both as a solution to North Korea’s nuclear-weapon programme, and as a safeguard against a possible nuclear-weapon option being exercised by Japan and South Korea.

It could also assuage fears

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-EAST ASIA?

North-East Asian region



AP PHOTO/INP

of a Chinese nuclear threat in East Asia, with China accepting the protocols to a future NWFZ. The NEANWFZ is being seriously discussed among academics and legislators – perhaps, as a prelude to a negotiation at the policymaking level.

Conceptually, NWFZs represent ‘affirmative action’ on the part of Non-Nuclear-Weapon States (NNWS) within the Treaty for the

Non-Proliferation of Nuclear Weapons (NPT), in accordance with its Article VII. There is strong opposition to nuclear weapons among NNWS members actually predating the NPT and leading to the creation of NWFZs as building blocks for a nuclear-weapon-free world.

Indeed, NWFZs refer to global nuclear disarmament in unambiguous terms, in their preambles. As quarantine

zones protecting countries and regions from the contagion of nuclear weapons, NWFZs are not all consistent in the set of prohibitions they have adopted. The Treaty of Rarotonga for the South Pacific NWFZ and the Treaty of Semipalatinsk for the Central Asian Nuclear-Weapon-Free Zone (CANWFZ), for example, include countries that have defence agreements with NWS

and, therefore, enjoy extended nuclear deterrence.

In the case of Rarotonga, the treaty permits the passage of nuclear armed vessels through the NWFZ and the harbours of its member states. These compromises on the principles of the prohibitions enshrined in the NWFZ treaties through adroit drafting were not seen to be in such fundamental conflict with the prohibitions as to vitiate the central thrust of the treaty.

The 1999 UN Disarmament Commission guidelines for establishing NWFZs states, *inter alia*: “States parties to a nuclear-weapon-free zone exercising their sovereign rights, and without prejudice to the purposes and objectives of such a zone remain free to decide for themselves, whether to allow visits by foreign ships and aircraft to their ports and airfields, transit of their airspace by foreign aircraft and navigation by foreign ships in or over their territorial sea, archipelagic waters or straits that are used for international navigation, while fully honouring the rights of innocent passage, archipelagic sea lane passage or transit passage in straits that are used for international navigation.”

All NWFZ treaties allow, at the sovereign discretion of each member state, for overflight and transit of nuclear armed vessels through international waters. The provisions of the Treaty of Bangkok also cover Exclusive Economic Zones (EEZs) and continental shelves. However, it is disputed whether this is in accordance with the United Nations Convention on the Law of the Sea.

Jozef Goldblat has noted, in respect of the CANWFZ, that “this means that transit of nuclear weapons may be allowed or refused, but the decisions ‘should not be

prejudicial' to the purposes and objectives of the treaty. Since neither the frequency nor the duration of transit is limited by the treaty, it is not clear to what extent transit differs from stationing."

"With the proviso mentioned above, total absence of nuclear weapons in the CANWFZ, as envisaged in Article VII of the NPT (dealing with the right of states to conclude regional denuclearisation treaties), cannot be guaranteed..."

Introduction of nuclear weapons into the zone, even for a short time, would defeat the sought goal of regional denuclearisation. Moreover, transit of nuclear weapons allowed by one zonal state might affect the security of another," he adds.

With regard to another aspect of a NWFZ treaty, more recently the agreed Australian decision to export uranium to India – despite the latter not being within the NPT – is widely seen as a violation of the Treaty of Rarotonga. Thus, accepted NWFZ guidelines have been shown to be flexible.

In the case of all NWFZs, however, the provisions of the NPT apply, since they are all parties of this treaty. Thus, the application of extended deterrence or sheltering under



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the nuclear umbrella offered by any one of the NWS must be seen as a violation of Article 1 – one of the core articles of the NPT.

Firstly, the transfer of nuclear weapons, or control of such weapons "directly or indirectly," is prohibited. This has been violated by the geographical location of US nuclear weapons in five NATO countries in Europe, but has been justified by the Americans because the weapons are under their control – a justification frequently rejected by NNWS, at NPT Review Conferences and other forums.

No NWFZ would make the actual stationing of nuclear weapons, whether they're under the control of a NWS or not, legal. Secondly, the prohibition

"not in any way to assist, encourage or induce" any NNWS to acquire or control nuclear weapons stands obviously violated when the protection of a nuclear weapon defence is agreed upon by a bilateral treaty with a NWS – as in the case of Australia, Japan or South Korea.

The International Court of Justice (ICJ), in its Advisory Opinion of 8 July 1996, ruled unambiguously against nuclear deterrence and extended nuclear deterrence, both of which contain a threat of the use of nuclear weapons. The case brought before the ICJ by the Marshall Islands against nine nuclear-weapon-armed states may very well clarify and expand on the 1996 ICJ Advisory Opinion, when it is taken up next year.

Thus, a NWFZ in North-East Asia has many reasons to commend itself as a solution to the complex issues in the region that threatens its security. However, compromising on fundamental NWFZ principles will only exacerbate matters. Exceptions and ambiguities have been introduced in the negotiation of past NWFZs, but they cannot and should not be cited as precedents for future NWFZs.

Extended deterrence

and a NWFZ are mutually exclusive, and as the North Korean nuclear programme is dismantled, the US nuclear umbrella – under which South Korea and Japan have long been sheltered – must be folded in the interests of regional and global security.

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Cold War warriors George Shultz, Henry Kissinger, Sam Nunn and William Perry said in their famous Wall Street Journal op-ed of 2007: "The end of the Cold War made the doctrine of mutual Soviet-American deterrence obsolete. Deterrence continues to be a relevant consideration for many states with regard to threats from other states. But reliance on nuclear weapons for this purpose is becoming increasingly hazardous and decreasingly effective."

The time to bury nuclear deterrence and extended nuclear deterrence is now. A NWFZ for North-East Asia that is guaranteed by the five nuclear-weapon states in the NPT is the new security architecture needed for the region.



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