

## **Remarks<sup>1</sup> to the Conference on Disarmament by Tomisha Bino, Researcher, UNIDIR**

31 Jan 2023

### **Excellencies, distinguished delegates, ladies and gentlemen – good afternoon.**

It is a privilege to be invited again to brief this body, and I thank the Presidency for this opportunity.

I've been asked to give a short overview of nuclear-weapon-free zones (NWFZs) while also giving special attention to the negative security assurances (NSAs) in the treaties that create these zones.

This presentation builds on one I gave last year on this topic, so you might find some parts familiar.

Today, I'll be giving a quick overview of existing NWFZ treaties and their objectives, and then focus more on the role of NSAs in these treaties, related reservations, the importance of engagement with NWS, and some possible considerations on NSAs for the proposed zone in the Middle East that have emerged through the research done by UNIDIR's ME WMDFZ Project.

### **Overview of existing NWFZs**

NWFZs aim is ensuring that the regions are free from nuclear weapons. According to the UN Disarmament Commission 1999 Report, the principles and guidelines for the establishment of a nuclear-weapon-free zone include:

- That NWFZ should be established on the basis of arrangements freely arrived at;
- They should emanate exclusively from States within the region concerned;
- They should be pursued by all states of that region;
- The NWS should be consulted during the negotiations to facilitate their signature and ratification of the relevant protocol(s);

UNGA Resolution 3472 (XXX) B, from 1975 also states that NWFZs should include an international system of verification and control to guarantee compliance with the obligations deriving from the agreement.

These zones constitute an important disarmament measure and reflect a commitment on the part of their signatory states to nuclear non-proliferation and more broadly, to working toward a world without nuclear weapons.

Five regional NWFZ treaties establishing NWFZs have been concluded so far:

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<sup>1</sup> Delivered in Arabic. Translation by Tomisha Bino

1. The 1967 Treaty of Tlatelolco for the Prohibition of Nuclear Weapons in Latin America and the Caribbean
2. The 1985 Treaty of Rarotonga on the South Pacific NWFZ
3. The 1995 Bangkok Treaty on the Southeast Asia NWFZ
4. The 1996 Pelindaba Treaty on the African NWFZ,
5. and the 2006 Semipalatinsk Treaty on a NWFZ in Central Asia.

Broadly speaking, NWFZs have quite similar provisions, such as ones prohibiting to research, development, manufacture, production, testing, acquisition, possession, station<sup>2</sup>, and transfer of nuclear weapons or other nuclear explosive devices. They also could include obligations for their members not to allow these activities in their territories or territories under their jurisdiction or control, as well as not to seek, receive the assistance of induce or encourage others to undertake these activities.

They might also include definitions of key terms that are essential for the implantation of the treaty, such as “territory”, “nuclear device” or “stationing”.

Finally, they also include Protocols, which are open for signature to specific extra-regional states. Generally speaking, zones were traditionally established to shield a certain region from external nuclear interventions, such as preventing a nuclear confrontation between NWS in the region or preventing environmental damage resulting from the testing of nuclear weapons or nuclear installation. Through these protocols, the extra-regional states commit to respecting the denuclearized status of the zone, provide NSAs, and, in the case of Rarotonga and Pelindaba, not to test in the zone.

However, “[e]ach nuclear-weapon-free zone is [also] the product of the specific circumstances of the region concerned and highlights the diversity of situations in the different region,”<sup>3</sup> and these specific circumstances and concerns are reflected in its provisions and protocols.

For example, the emphasis on the ban on testing for the Rarotonga and Pelindaba is a reflection of the key drivers for the establishment of those zones, mainly to prevent further testing within their territories.

Another example is, in addition to the NWS, who else the protocols are open for signature to? In the case of Tlatelolco’s Protocol I, which was also open for signature to the Netherlands, as a state that has overseas territories within the zone of application, and in the case of Pelindaba Protocol II, the inclusion of Spain.

### NSAs in NWFZs treaties

In terms of the scope of NSAs, there are differences among the treaties in terms of what the NSAs cover. In their narrowest iteration (Tlatelolco, Semipalatinsk), they extend to the

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<sup>2</sup> The treaties of Rarotonga, Bangkok, and Semipalatinsk define “stationing” as implantation, emplacement, transportation on land or internal water, stockpiling, storage, installation, and deployment.

<sup>3</sup> 1999 UNDC

“contracting parties of the Treaty” and in their broadest, extend to the entire zone of application of a treaty (Bangkok). In between, you have NSAs that extend to the States as well as territories in the zone (Rarotonga, Pelindaba).

### Status of protocols

Most protocols have been signed and ratified by the NWS, but nearly always with reservations, with the notable exception of the protocol of the Treaty of Bangkok that has not been signed by any of the NWS.

NWS reservations on the protocols regards respecting the denuclearized status of the zone in the territories that extra-regional states are internationally responsible for within the zone of application generally fall into one of the following themes:

1. Concerns that the protocol could be interpreted in a manner that would limit freedom of maritime navigation in the high seas, and/or;
2. Reaffirming the right of innocent passage and transit of sea vessels through territorial waters.

As for protocols on NSAs, reservations usually relate to reasons where the NWS reserve the right not apply them. include:

1. Self-defence in accordance with Art 51 of the UN Charter
2. Violations of the zone treaty, or the NPT
3. An act of aggression by a zonal state, supported by an NWS.
4. Particularly to the protocol of the Treaty of Bangkok, there have been concerns that the scope of NSAs would de facto extend these NSAs to non-members of the zone since its protocol specifies that the signatories would “not to use or threaten to use nuclear weapons within the Southeast Asia Nuclear Weapon-Free Zone.”

### Importance of engagement of NWS in negotiations of NWFZs

It has been argued by many that the effectiveness of these NSAs in NWFZs is undermined by these reservations, as they set out conditions that limit the scope of their application. The language in these reservations can also be ambiguous and open to interpretation casting further doubt on how and when they might be applied or relied on, and members of NWFZs continually call for the withdrawal of these reservations.

The view has been expressed that the establishment of NWFZ is a step towards a nuclear-free world and a means for States to receive legally binding NSAs. If this potential of NWFZ is to be fully realized, states of NWFZ and NWS will need to continue discussion with a view of how to achieve withdrawal of the reservations on the protocols ratified.

### Considerations for future NWFZs

This brings me back to the rationale behind the 1999 UNDC report “principles and guidelines” on the establishment of NWFZs, which emphasize the importance of consulting with the

nuclear-weapon States “during the negotiations...in order to facilitate their signature to and ratification of the relevant protocol(s).”

There is one such Zone that is under consideration, the ME WMDFZ. The UNDC guideline is reflected in the 2018 UNGA Decision on “Convening a Conference on the Establishment of a Middle East Zone Free of Nuclear Weapons and all other Weapons of Mass Destruction”, which invites the NWS to participate in the Conference as observers.

The Conference deliberations are still at an early stage and the matter of protocol has not been discussed yet. Yet, all of the NWS, aside the US, have attended the 3 annual sessions of the Conference and could be readily available to such a discussion with regional states when the negotiators are ready.

To conclude, I would like to share a few considerations for these protocols that have emerged through the research conducted by UNDIR’s ME WMDFZ Project.

1. First, as previously mentioned, NWS have expressed concerns about rights of freedom of maritime navigation governed by UNCLOS being limited by provisions of zone treaties. The delineation of the zone of application will also play a role in how pronounced these concerns would be. For example, the definition of territory in the Treaty of Bangkok to include EEZs has been a prime reason for the reluctance of NWS to sign its protocol. The Middle East includes some of the world’s most important waterways, so maritime navigation issues will certainly feature prominently in discussions.
2. Second, the Middle East is home to strategic military and naval bases, so the matter of port visits will also be a key topic for considerations. It has been argued in the context of other zones that not having time limits on port visits might result in de facto stationing. This is further complicated by the policy of some NWS of not disclosing if their vessels are carrying nuclear weapons.
3. Finally, NWS could consider reaffirming their commitments to UNSCR 984 and their 1995 statements and state their willingness to engage with regional states on the topic of NSAs as part of the Zone negotiations.

This brings me to the end of my brief remarks. I hope that they have provided you with some food for thought for your work, and I wish you fruitful and constructive deliberations.

**Thank you for your attention and thank you, Mr President, for the invitation to brief this body.**