

# Denuclearization of Central Asia

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The idea of a nuclear-weapon-free zone in Central Asia was put forward by the President of Uzbekistan at the United Nations General Assembly in September 1993.<sup>1</sup> In February 1997 the Presidents of Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan and Uzbekistan, meeting in Almaty, issued a declaration that called upon all interested countries to support the idea of declaring Central Asia a nuclear-weapon-free zone (NWFZ). During the subsequent nine years, experts from the five Central Asian republics were meeting, in and outside the region, to negotiate a treaty establishing such a zone. At the request of the countries concerned, the meetings were chaired by the Director of the UN Regional Centre for Peace and Disarmament in Asia and the Pacific. The United Nations became, for the first time, directly involved in working out a nuclear-weapon-free-zone agreement. A representative of the International Atomic Energy Agency (IAEA) participated as a technical adviser, whereas the author of the present article acted as an independent political and legal adviser. The Treaty on a Nuclear-Weapon-Free Zone in Central Asia, called the Semipalatinsk Treaty after the place of its signing in Kazakhstan, was signed by the foreign ministers of the five states on 8 September 2006.<sup>2</sup>

## *Origins of denuclearization initiatives*

In March 1960 a committee of ten nations—five from the North Atlantic Treaty Organization (NATO) and five from the Warsaw Treaty Organization (WTO)—convened in Geneva. The task of this new international body was to consider Soviet and United States proposals for general and complete disarmament. Three months later, following a dramatic walkout of the delegates of the WTO countries, the committee collapsed. The event was widely noticed by the world press.

Talks on the abolition of all weapons of war were later conducted in the Eighteen-Nation Committee on Disarmament, but they, too, were doomed to fail. In an atmosphere of high political tension no one was able to provide a satisfactory answer to such a fundamental question as what would be the political order governing international relations in a completely disarmed world, or which mechanisms and procedures would be used to settle disputes among states and maintain peace. The more immediate obstacle to any arms control agreement was the fact that negotiators were unable to determine which weapons, and how many of them, could be safely sacrificed in the first stage of the disarmament process. The Soviet Union insisted that one should start with a very

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substantial reduction in military power and eliminate the danger of nuclear war. The Western powers argued that they could not accept radical first-stage measures and give up their nuclear deterrent until confidence was established between East and West, and until an international peace force was created to replace national forces.

After it had ceased to be a Cold War propaganda issue for the Soviet Union and the United States, general and complete disarmament became a mantra "ritually" included in UN resolutions or preambles to multilateral arms control agreements. The attention of the world community turned to specific, partial arms control measures. This is when the prevention of the spread of nuclear weapons among states became the subject of negotiations that led to the conclusion, in 1968, of the Treaty on the Non-proliferation of Nuclear Weapons, or Non-proliferation Treaty (NPT). At the

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same time, there was a revival of proposals for regional approaches to nuclear disarmament, harking back to the 1957 Rapacki Plan for the denuclearization of Central Europe. For it became clear that the incentives to acquire nuclear weapons may emerge from regional

considerations, and that countries confident that their enemies in the region do not possess nuclear weapons may not be inclined to acquire such weapons themselves. Nuclear-weapon-free zones have thus gradually become part and parcel of the nuclear non-proliferation regime. Not only do the treaties that have established the zones unconditionally prohibit the possession of nuclear weapons by non-nuclear-weapon states, but they also, in certain respects, go much further than the Non-proliferation Treaty, for instance, in the field of environmental security.

#### GUIDELINES FOR NUCLEAR-WEAPON-FREE ZONES

In 1999 the United Nations Disarmament Commission formulated a set of principles to guide states in setting up nuclear-weapon-free zones. The main guidelines are summarized here.<sup>3</sup>

- Nuclear-weapon-free zones should be established on the basis of arrangements freely arrived at among the states of the region concerned.
- Assistance should be provided, including through the United Nations, to the states concerned in their efforts to establish a zone.
- The status of a nuclear-weapon-free zone should be respected by all states party to the treaty establishing the zone, as well as by states outside the region.
- The nuclear-weapon states (as defined by the NPT) should be consulted during the negotiation of the treaty and of its relevant protocol or protocols.
- The obligations of the parties should be legally binding.
- States party to a nuclear-weapon-free 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.
- States party to existing nuclear-weapon-free zones should ensure that their adherence to other international agreements does not entail any obligation contrary to their obligations under the NWFZ treaties.
- A nuclear-weapon-free zone should provide for an effective prohibition of the development, manufacturing, control, possession, testing, stationing or transporting by the states party to the treaty of any type of nuclear explosive device for any purpose, and should stipulate that states parties do not permit the stationing of any nuclear explosive devices by any other state within the zone.

- A nuclear-weapon-free zone should provide for effective verification of compliance with the commitments made by the parties to the treaty.
- A nuclear-weapon-free zone should not prevent the use of nuclear science and technology for peaceful purposes

The above guidelines are mere recommendations. It is up to the states in the region to decide how to establish a zone. Given the dissimilar geographical circumstances, as well as different political, cultural, economic and strategic considerations of the states concerned, there can be no uniform pattern of denuclearized zones. The differences may relate to the scope of the obligations assumed by the parties; the responsibilities of extra-zonal states; the geographical area subject to denuclearization; the verification arrangements; and the conditions for the entry into force of the zonal agreement as well as for its denunciation.

During the past 40 years the nuclear-weapon-free area of the world has considerably expanded. By now, four regional denuclearization agreements have entered into force: the 1967 Treaty of Tlatelolco regarding Latin America and the Caribbean, the 1985 Treaty of Rarotonga regarding the South Pacific, the 1992 Joint Declaration on the Denuclearization of the Korean Peninsula (not operational) and the 1995 Bangkok Treaty regarding South-East Asia. The 1996 Treaty of Pelindaba regarding Africa and the 2006 Treaty of Semipalatinsk regarding Central Asia have been signed but are not yet in force. Certain uninhabited areas have also been formally denuclearized. They include Antarctica, outer space, the moon and other celestial bodies, as well as the seabed, the ocean floor and the subsoil thereof.<sup>4</sup>

## *Review of the Central Asian NWFZ*

### OBLIGATIONS

The most important non-proliferation obligation assumed by the parties to the Semipalatinsk Treaty is not to allow the stationing of nuclear weapons on their territories. The term "stationing" is defined—for the purpose of the treaty—as implantation, emplacement, stockpiling, storage, installation and deployment. The conduct of nuclear test explosions by other states at a place under the jurisdiction or control of the parties is not allowed either. Most other obligations are the same as those previously contracted under the NPT, namely, not to acquire and not to seek to acquire or obtain control over nuclear weapons or other nuclear devices.

Following the example of the Pelindaba Treaty, the Semipalatinsk Treaty bans even research related to the manufacture of nuclear weapons. However, the presence in the zone of nuclear-related support facilities, such as communication, surveillance and intelligence-gathering facilities, is not prohibited. These facilities form part of the strategic system to be used in a nuclear attack and, at the same time, constitute primary targets for such an attack.

### AREA OF APPLICATION

The Central Asian NWFZ (CANWFZ) covers the land territory, all waters (harbours, lakes, rivers and streams) and the air space above them that belong to Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan and Uzbekistan.

The Caspian Sea, though lying in the Central Asian region, has not been included in the NWFZ, because only two out of five littoral states (Kazakhstan and Turkmenistan), are covered by the zone. (As a nuclear-weapon state, the Russian Federation is not party to the zone.) Nor can the territorial waters of the parties become part of the CANWFZ—as is the case with other denuclearization treaties—because the Caspian Sea is a landlocked sea not subject to the Law of the Sea regime; there

is no legally recognized division line between territorial and international waters. It therefore proved necessary to leave the Caspian Sea, in its entirety, outside the geographic scope of the CANWFZ.

In the course of negotiations a proposal was made to allow states having common borders with the zonal states to join the CANWFZ. Consulted on this subject, the nuclear-weapon states advised not to open up such a possibility, most probably because an expansion of the zone could amount to the inclusion of war-torn Afghanistan or Iran, which is accused of violating the nuclear non-proliferation rules. The proposal was dropped.

#### TRANSIT

Each party 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. 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 denuclearization treaties), cannot be guaranteed. Introduction of nuclear weapons into the zone, even for a short time, would defeat the sought goal of regional denuclearization. Moreover, transit of nuclear weapons allowed by one zonal state might affect the security of another.

In any event, because the nuclear-weapon states refuse—as a matter of policy—to disclose the whereabouts of their nuclear weapons, they are unlikely to request permission for transit of nuclear-weapon-carrying ships or aircraft. They would rather enter the zone without asking for permission, and this has already happened. The right of zonal states to deny transit of nuclear weapons will remain hypothetical as long as the nuclear-weapon states keep the contents of their transiting ships and aircraft secret.

#### ENVIRONMENTAL SECURITY

As a result of past activities related to the development, production or storage of nuclear explosive devices by the Soviet Union, large territories of Central Asia have been contaminated. Until 1963 nuclear test explosions were conducted in the atmosphere and measures necessary to protect the population were not observed.

The treaty contains an undertaking to rehabilitate the affected territories. The disposal of other states' radioactive waste in the territory of a state party to the treaty is forbidden. This prohibition has been incorporated in the article dealing with the basic non-proliferation undertakings (Article 3). The only other nuclear-weapon-free-zone treaty providing for environmental security measures is the Rarotonga Treaty, which bans the dumping of radioactive matter at sea.

#### PEACEFUL USES, VERIFICATION AND PROTECTION

The Semipalatinsk Treaty confirms the right to use nuclear energy for peaceful purposes. To prevent diversion of this energy from peaceful uses to nuclear weapons or other nuclear explosive devices, the signatories are obliged to accept verification measures in the form of comprehensive nuclear safeguards administered by the IAEA. Such safeguards are applied to the nuclear activities of all non-nuclear-weapon-states party to the NPT, but the states of the CANWFZ have also undertaken to join the Additional Protocol, which strengthens the safeguards, and to do so not later than 18 months after

entry into force of the CANWFZ treaty. Supplying nuclear material or equipment to non-nuclear-weapon states that refuse to sign the Additional Protocol is forbidden, but supplying such material or equipment to nuclear-weapon states is not.

Nuclear facilities and nuclear material in domestic use, transport and storage as well as in international transport must be protected, at least as effectively as under the 1980 Convention on the Physical Protection of Nuclear Material and the recommendations and guidelines developed by the IAEA.

The provisions dealing with peaceful uses, verification of compliance and prevention of unauthorized use, or handling or theft, could have been more elaborate, especially with regard to the enrichment of uranium and reprocessing of plutonium. A clear specification of what is and what is not allowed in this field could help avoid misunderstandings and disputes, such as the one concerning the nuclear programme of Iran.

#### CONSULTATIONS AND SETTLEMENT OF DISPUTES

Annual meetings of the parties' representatives are to be held on a rotating basis, and extraordinary meetings may be convened at the request of any party in order to review compliance or other questions related to the implementation of the treaty. Disputes must be settled through negotiation or through other means (presumably such as mediation or arbitration) deemed necessary by the parties.

Unlike other NWFZ treaties, the Semipalatinsk Treaty does not envisage the establishment of an organization or a secretariat to monitor the implementation of the treaty and deal with administrative matters. It is the depositary state (Kyrgyzstan) that will be responsible for all communications related to consultative meetings. Given the small number of parties, the creation of a special international implementing body did not seem necessary.

#### OTHER AGREEMENTS

The main peculiarity of the CANWFZ is that certain states of the zone are bound by the security arrangements agreed within the framework of the Commonwealth of Independent States (CIS) and included in the 1992 Tashkent Collective Security Treaty. The signatories to the Tashkent Treaty are obliged to render all necessary assistance, including military assistance, in response to an aggression against a party to it. The type of weapon that may or may not be used in providing assistance is not specified.

At the insistence of the Russian Federation—the dominating power of the CIS—reluctant to see its political influence in the post-Soviet countries further diminished, the following proviso was inserted in the draft Article 12 of the Semipalatinsk Treaty: "This Treaty does not prejudice the rights and obligations of the Parties under other international treaties, which they may have concluded prior to the date of the entry into force of this Treaty."

France, the United Kingdom and the United States strongly opposed this proviso. They argued that by allowing for other agreements to take precedence over the provisions of the Semipalatinsk Treaty, Article 12 undermined the effect of the treaty as a whole. To meet this objection, the Central Asian negotiators added a sentence saying that "the Parties shall take all necessary measures for effective implementation of the aims and purposes of this Treaty in accordance with the main principles contained therein". Since this addition was found unsatisfactory to the French, UK and US negotiators, and since the Central Asian negotiators refused to delete Article 12 altogether, the three nuclear-weapon states voted against the 2006 UN General Assembly resolution welcoming the setting up of a nuclear-weapon-free zone in Central Asia.<sup>5</sup> They also threatened not to sign the protocol

intended to accompany the treaty (see the section on security assurances, below) unless Article 12 was appropriately modified. All the same, the refusal to sign cannot make acts contrary to the provisions of the treaty justifiable. (The nuclear-weapon states refused to sign the protocols to some other NWFZ treaties as well, but they did so for other reasons.)

Assuming that the term "military", used in the Tashkent Treaty, covers nuclear forces, the use of such forces in defence will not be rendered impossible by restrictions on their deployment imposed by the Semipalatinsk Treaty. The presence of nuclear weapons on the territory of an aggressed non-nuclear-weapon state is not necessary to defend that state, because nuclear missiles can be launched from an area lying outside the zone. The Tashkent Treaty does not deal with the same subject matter as the Semipalatinsk Treaty. The first contains an obligation to defend an allied country. The second prohibits the stationing of nuclear forces in the denuclearized zone, be it in times of peace or of war. In other words, the two treaties cannot be considered incompatible.

#### FINAL CLAUSES

The treaty will enter into force 30 days after the date of deposit of the fifth instrument of ratification. It is of unlimited duration and is not subject to reservations.

Any party may withdraw from the treaty, if it decides that extraordinary events, related to the subject matter of the treaty, have jeopardized its supreme national interests. Like in the Pelindaba Treaty, the withdrawal will take effect 12 months after notification of withdrawal containing a statement of the extraordinary events has been received by the depositary. This is an improvement over the NPT, under which only three months' advance notice is required. The longer the delay, the higher the probability that the complying states will persuade the state wishing to defect not to do so. On the other hand, the intention to withdraw from the NPT must be notified both to states parties and the United Nations Security Council, whereas only states party to the treaty and to the protocol are to be notified in the case of withdrawal from the Semipalatinsk Treaty. This is a shortcoming, for involving the UN Security Council in the process of withdrawal may deter states from shedding their treaty obligations. To make their obligations irreversible, the parties could give up the right to resort to the withdrawal clause, as they have given up the right to make reservations, or they could have recourse to the withdrawal clause only under restrictive conditions.

Amendments proposed by the parties must be submitted to the consultative meeting of states parties and may be adopted there, but only by consensus. They will enter into force for all parties upon ratification by all.

The treaty is deposited with the Kyrgyz Republic, which will register it pursuant to Article 102 of the UN Charter.

#### MAIN RULES OF PROCEDURE

The first annual consultative meeting of the parties is to take place in Dushanbe, Tajikistan, no later than two months after the entry into force of the treaty. Extraordinary consultative meetings may be convened, at the request of any party, whenever the motion is seconded by two other parties.

The host party, through its representative, will chair annual and extraordinary consultative meetings and will act as chair until the next annual meeting. The decisions of consultative meetings must be taken by consensus.

The five nuclear-weapon states, as recognized under the NPT, as well as representatives of relevant international organizations, may be invited to attend annual as well as extraordinary consultative

meetings as observers. English and Russian will be the working languages of the meetings. The cost of holding the meetings, except transportation and accommodation, will be borne by the host country.

### *Issues to be resolved*

#### APPARENT CONTRADICTIONS

As explained above, Article 12 of the Semipalatinsk Treaty, which deals with the status of "other agreements", remains highly controversial. It is unlikely that the parties to the treaty would yield to the pressure exerted by three nuclear-weapon states and agree to amend it. It is also unlikely that the nuclear-weapon states would drop their objection to the present formulation; their attitude has given rise to a supposition that—for strategic reasons—these states are not all interested to the same degree in seeing a CANWFZ established. However, both sides are willing to continue consultations. An attempt could be made to devise a compromise formula without modifying the text of the treaty. The following possibilities seem to be worth considering.

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In a joint statement, issued in the form of a binding international agreement, some high-level officials (preferably foreign ministers) of the Central Asian states would adopt a common understanding of the contentious provision. They would pledge that in settling disputes related to this provision they would base themselves on, and act in conformity with, Article 30 of the 1969 Vienna Convention on the Law of Treaties.

According to this article of the Vienna Convention, when a treaty specifies that it is not to be considered incompatible with an earlier treaty dealing with the same subject matter, the earlier treaty applies only to the extent that its provisions are compatible with those of the later treaty. Reference to this generally accepted rule of international law (*lex posterior derogat legi priori*) could allay the apprehension that Article 12 degrades the value of the entire treaty.

In a similar but more explicit statement, the five parties would agree that any treaty, which they had concluded earlier, and which dealt with the same subject matter as the Semipalatinsk Treaty, would apply only to the extent that its provisions were compatible with the Semipalatinsk Treaty.

#### SECURITY ASSURANCES

Under UN Security Council resolution 984, adopted in 1995, the five parties to the Semipalatinsk Treaty are beneficiaries of negative security assurances applicable to all non-nuclear-weapon states party to the NPT.<sup>6</sup> These assurances are called "negative" because they amount to a no-use obligation, as distinct from "positive" assurances containing an obligation to assist.

According to this resolution, France, the Russian Federation, the United States and the United Kingdom will not use nuclear weapons against non-nuclear-weapon states party to the NPT, *except* in the case of an invasion or any other attack on them, their territories, their armed forces or other troops, their allies, or on a state to which they have a security commitment, carried out or sustained by such a non-nuclear-weapon state in association or alliance with a nuclear-weapon state. The conditional nature of these assurances has considerably diminished their value. Indeed, the elaborate exceptions to the assumed obligation not to use nuclear weapons can be read as an allowance to use them under the circumstances determined by the user. (Only China's assurances not to use nuclear weapons against non-nuclear-weapon states party to the NPT are unconditional.) Moreover, in the opinion of many jurists, resolution 984 has no binding legal force. It does not call for a specific action. It simply

takes note "with appreciation" of the relevant statements made by each of the powers recognized by the NPT as nuclear-weapon states.

As a quid pro quo for the renunciation of nuclear weapons by the states of the zone, China, France, the Russian Federation, the United Kingdom and the United States are expected to provide legally binding negative security assurances. A protocol offering such assurances to the parties to the Semipalatinsk Treaty remains to be agreed, but it will be of doubtful value if it simply reiterates the assurances spelled out in resolution 984.

## Conclusions

The Semipalatinsk Treaty, the first multilateral nuclear arms control agreement signed since 1996, is also the first to establish a NWFZ located entirely in the northern hemisphere. In spite of the deficiencies described above, its importance cannot be overestimated.

Situated in the heart of the Asian continent, which hosts as many as five (presumably six) states possessing nuclear weapons (two of which border the CANWFZ), the Semipalatinsk Treaty covers a territory that is nearly five times as large as that of France, and which is extraordinarily rich in energy resources. By imposing equal constraints on the movements and deployments of the great powers' nuclear forces, this treaty may help build up geopolitical stability and security in Central Asia. It is, therefore, a valuable asset for the cause of non-proliferation.

Moreover, the envisaged regular meetings of the parties to the treaty may attenuate rivalries among the countries in the region and foster the good neighbourly relations necessary for the planned regional cooperative undertakings in the field of environmental security. A pledge to respect the denuclearized status of the Central Asian zone, formally given by the nuclear-weapon states, would help bring about universal recognition of the zone. It would reinforce the regional denuclearization endeavours begun with Kazakhstan's renunciation of the weapons left on its territory after the dissolution of the Soviet Union and the closure of the Semipalatinsk nuclear test site. The divergent interpretations of certain provisions of the treaty could be straightened out without delaying its ratification.

## Notes

1. Address by Mr Islam A. Karimov, President of the Republic of Uzbekistan, 6th Plenary Meeting of the United Nations General Assembly, 28 September 1993, UN document A/48/PV.6, 5 October 1993.
2. A non-certified copy of the full text of the treaty can be found at <[disarmament.un.org/TreatyStatus.nsf](http://disarmament.un.org/TreatyStatus.nsf)>.
3. For the guidelines in full, see *Establishment of Nuclear-weapon-free Zones on the Basis of Arrangements Freely Arrived at among the States of the Region Concerned: Chairman's Working Paper*, UN document A/CN.10/1999/WG.I/WP.1, Disarmament Commission, 19 March 1999.
4. The treaties concerned are: the Antarctic Treaty of 1959, the Outer Space Treaty of 1967, the Agreement Governing the Activities of States on the Moon and Other Celestial Bodies of 1979, and the Sea-bed Treaty of 1971.
5. UN General Assembly resolution 61/88 of 6 December 2006.
6. UN Security Council resolution 984 (1995), UN document S/RES/984(1995), 11 April 1995.