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Nuclear-Weapon-Free Zones

Commander Mark E. Rosen, JAGC, U.S. Navy

NUCLEAR-WEAPON-FREE ZONES DID not receive much attention in mainstream international law and security circles until the furor in the fall of 1995 over French nuclear testing in the South Pacific. Since then there has been a flurry of attempts, both public and diplomatic, to negotiate, sign, and ratify regional nuclear-free-zone treaties for the South Pacific and Africa. One proposal—the Southeast Asian Nuclear-Weapon-Free Zone, now being analyzed in Beijing, Moscow, Paris, London, and Washington—is the subject of careful and quiet diplomacy.

United States policy is to support nuclear-weapon-free zones that conform to certain established criteria. Though essentially regional, these legal arrangements will be pursued as long as there is less than universal adherence to the Non-Proliferation of Nuclear Weapons Treaty (NPT);¹ as long as there is no comprehensive test ban treaty (now under negotiation); and as long as there is incomplete adherence to marine environmental-protection instruments like the 1972 London Convention on the Prevention of Dumping of Wastes and the International Convention for the Prevention of Pollution from Ships (MARPOL).²

The general supportiveness of American policy toward nuclear-free-zone proposals is evidenced by the fact that the United States is now a full party to the treaties or protocols for regimes banning nuclear weapons in the Antarctic, in space, on the seabed of the world's oceans, in Latin America, and now in the South Pacific (as of 22 March 1996) and in Africa (11 April 1996). Notwithstanding, the U.S. government reviews each NWFZ proposal for conformance with

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long-standing criteria:³ all important regional states must be participating; there must be adequate provision for verification; existing security arrangements must be respected; the proposal must prohibit the development of nuclear explosive devices; the states in the region must have originated the concept; freedom of navigation and overflight must be assured; and finally, visits by ships and aircraft that are capable of carrying nuclear weapons must be permitted.

This article will examine the zone proposals that are currently in the public eye, with particular emphasis on those that are receiving the most attention in the media and in political-military circles, or may in time do so. Given the sensitive nature of the review process, no authoritative critique of the proposals can be offered here. However, because certain problems in the proposals have been made public or are apparent from the text, we can assess whether nuclear-free zones are useful arms control initiatives or are destabilizing. This paper attempts in effect to offer a preview of the critical analyses that will be undertaken when the Senate considers the recently concluded African and South Pacific treaties, and as the executive branch continues its work with foreign governments on the Southeast Asian and other emerging zone proposals.*

Historical Context

The antecedent for the efforts of the 1960s and 1970s to prevent the spread of nuclear weapons to the "global commons" (the seabed and outer space) is the Antarctic Treaty of 1959.⁴ The United States became a party to this treaty in 1960. Among other things, it prohibits the militarization of Antarctica, including bases or maneuvers, and activities that result in a nuclear explosion or the creation of nuclear waste.

In 1962, in the shadow of the Cuban missile crisis, the Organization of American States undertook the painstaking process of establishing a nuclear-weapon-free zone for South and Central America (see Map 1). The first of its kind, the Treaty of Tlatelolco (a suburb of Mexico City) was signed in 1967. The United States, which has military bases at Guantanamo Bay (Cuba), in Panama, and in Puerto Rico, signed the protocols to which it, as a nuclear-weapon state with possessions in the zone, was eligible: Protocol II in 1968 and Protocol I in 1977.⁵ As a protocol party it actively participates in the Treaty's executive body.

Two further important developments were the Treaty on Principles Concerning Exploration of Outer Space of 1967 and the Seabed Arms Control Treaty of 1971.⁶ They were intended to help limit the scope of any superpower conflict in

* For nonspecialists: Only regional states can be treaty parties; non-regional nuclear-weapon states are eligible only to be "protocol parties." As of when this article went to press, the United States is a protocol party to the Latin American NWFZ; it has signed the African and South Pacific protocols but is not yet a party to either, the Senate having not given its advice and consent (though the treaties themselves are in force); and it has not signed protocols to the Southeast Asian NWFZ (which, not having been ratified by the treaty signatories, is not yet in force).



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Central Europe or Southeast and Northern Asia. The Outer Space Convention arose from Soviet efforts during the height of the “space race” to forestall the possibility of orbital nuclear weapons. Article IV, in part, prohibits the orbiting or installation of any weapon of mass destruction in outer space or on the Moon or other celestial bodies. It also limits the use of celestial bodies exclusively to peaceful purposes. Similarly, Article 1 of the Seabed Arms Control Treaty of 1971 prohibits states from “implanting or emplacing” nuclear weapons or “other weapons of mass destruction as well as structures, launching installations, or other facilities” on the “seabed and the ocean floor.” For purposes of the Seabed Arms Control Treaty, the non-nuclear zone extends seaward from the twelve-nautical-mile territorial sea of its parties.⁷ Over ninety countries are members of the Seabed Treaty.

The Usual Terms

The following (drawn from the South Pacific NFZ Treaty) are representative of the obligations that states assume when joining a nuclear-weapon-free regime.

- Parties may not acquire nuclear weapons or assist any nation to obtain them;

- Parties must apply and submit to International Atomic Energy Agency (IAEA) safeguards and export-control restrictions;
- Parties may not permit stationing of nuclear weapons on their territory;
- Parties may not permit testing of nuclear weapons on their territory; and,
- Parties may not dump radioactive wastes or matter at sea within the zone.

To be acceptable to the United States, such terms must be captured in a treaty document that does not upset other important international rights or obligations. Also, the treaty zone must be carefully bounded geographically so that it does not interfere with the high-seas freedoms and transit rights of ships and aircraft. Specifically, it must be sufficiently flexible to permit visits of nuclear-weapon-capable ships and aircraft. In addition to these absolutes, the first two points above, which also appear in the Nuclear Non-Proliferation Treaty, are particularly essential to favorable American consideration.

All nuclear-weapon-free-zone treaties to date contain one or more protocols for signature by the declared nuclear-weapon states. The South Pacific and the recently adopted African nuclear-weapon-free zone treaties have three such protocols; they commit signatories not to test nuclear weapons inside the zone, not to use or threaten to use nuclear weapons against any treaty or protocol party inside its territory or territorial sea, and not to station, develop, or manufacture nuclear weapons inside the zone. The recently concluded Southeast Asian Nuclear-Weapon-Free Zone treaty has a single protocol prohibiting nuclear-weapon states from using or threatening to use nuclear weapons against treaty or protocol parties anywhere inside the zone (see below). The Treaty of Tlatelolco, as noted, has two such protocols. In a nutshell, protocol parties cannot test, use, threaten to use, station, or manufacture nuclear weapons inside the respective zone. They are also bound in every case not to "contribute to any act which would constitute a violation of the treaty by a treaty party." This latter clause is designed to prevent the use of proxy states or other indirect means to subvert the basic object and purpose of the treaty.

The "Hot Zones"

The regimes of greatest current interest are the Southeast Asian Nuclear-Weapon-Free Zone Treaty, the Treaty of Rarotonga (which established the South Pacific Nuclear-Free Zone), the African Nuclear-Weapon-Free Zone Treaty, the special cases represented by the so-called "Zone of Peace" proposals, and possible future zones in the Middle East and Northeast Asia.

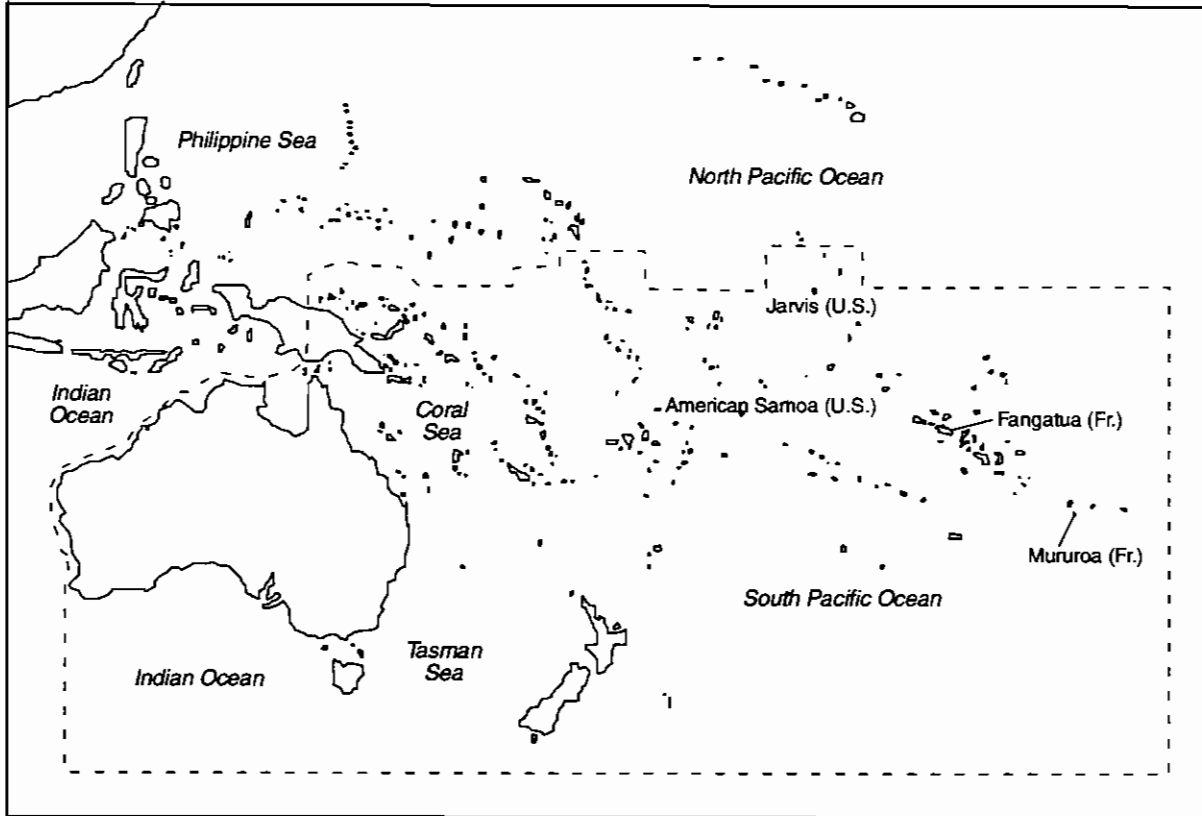
The South Pacific Nuclear-Free Zone. This treaty (whose terms were listed above) was negotiated and signed in the mid-1980s under the auspices of the

South Pacific Forum, a regional coordinating body; it entered into force for its parties in 1986.⁸ Though the Treaty area includes two U.S. possessions, Jarvis Island and American Samoa, the United States has no military facilities there. Unlike the Treaty of Tlatelolco and the Southeast Asian NWFZ, the zone largely encompasses only the land territory and internal and archipelagic waters of individual states. In 1986 the Soviet Union and China signed Protocols II (no actual or threatened use of nuclear weapons) and III (no testing of nuclear weapons).⁹ The South Pacific NFZ treaty places a heavy emphasis on environmental protection, leading to the conclusion of two additional treaties dealing with the management of natural resources within the exclusive economic zones (EEZs) of the parties and the dumping of wastes.¹⁰

The 5 September 1995 French nuclear test in the Mururoa Atoll (see Map 2) solidified public and political support for rapid accession of the nuclear-weapon states to the South Pacific NFZ protocols. Because the French testing facilities, on Mururoa Atoll and Fangatau in French Polynesia, are both inside the South Pacific zone, had the Treaty been universally in force among the nuclear-weapon states, the tests could not have been legally conducted. In fall 1995 Washington decided that it would accede to the three protocols, and on 20 October the United States, France, and the United Kingdom jointly announced their intention to sign.¹¹ This announcement, coupled with the declaration by France in August 1995 that it would accept a zero-yield comprehensive test-ban treaty once it had completed its six nuclear tests, enabled the remaining nuclear-weapon states to become members of the South Pacific NFZ, on 22 March 1996.¹²

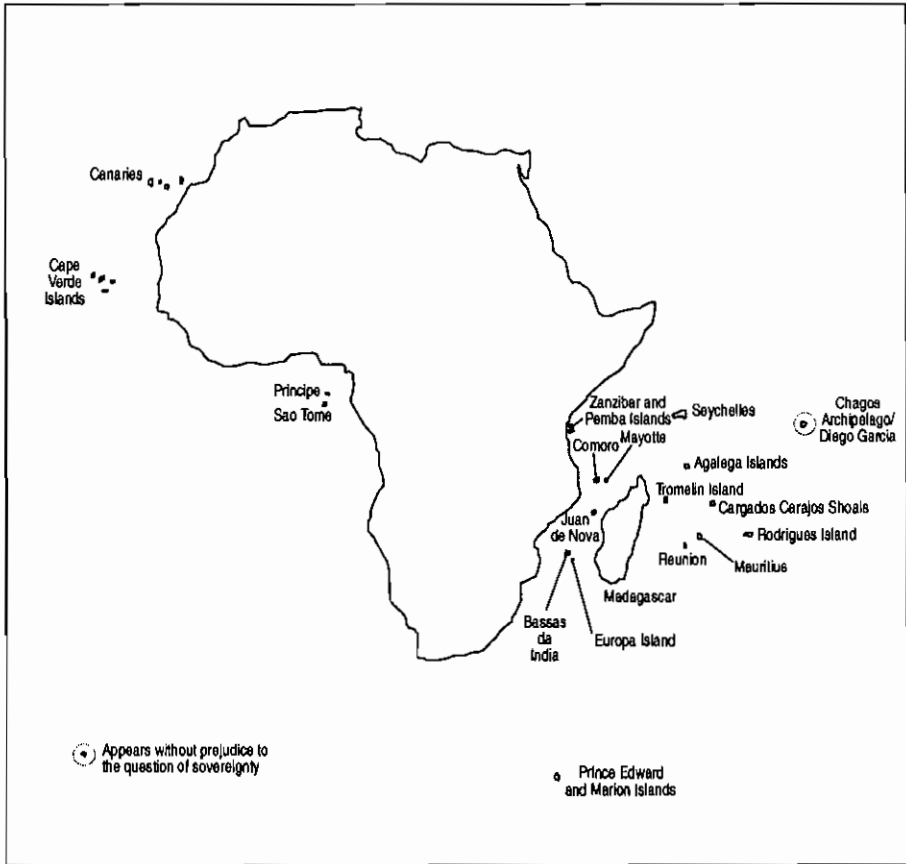
The African Nuclear-Weapon-Free Zone. African states have sought since the early 1960s to establish a nuclear-free zone for the continent. On 11 April 1996, over fifty African states and the United States, the United Kingdom, France, and China sent representatives to Cairo and signed the Treaty of Pelindaba, named for the site of South Africa's former nuclear weapons complex.¹³ The Treaty created the African Nuclear-Weapon-Free Zone, embracing not only the African continent but also all islands which have been declared by the Organization of African Unity (OAU) to be part of Africa.¹⁴ Because the OAU has declared Mauritius to be part of Africa, and the government of Mauritius has in turn asserted a claim to the Chagos Archipelago, the treaty zone includes, for some purposes, the island of Diego Garcia. Diego Garcia, upon which the United States operates an important military facility, is, of course, a British Indian Ocean Territory; accordingly, the official treaty map of the African NWFZ contains a footnote that the island is shown within the Zone "without prejudice to the question of sovereignty" (see Map 3). The Arms Control and Disarmament Agency considers that this notation "adequately protect[s] U.S. interests because

Map 2 - South Pacific Nuclear-Free Zone



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Map 3 - African Nuclear-Weapon-Free Zone



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any resolution of the issue will have to occur outside of the framework of the treaty.”¹⁴

The African NWFZ Treaty is quite similar to that for the South Pacific in that it repeats the core commitments for treaty parties to renounce nuclear weapons, not to seek nuclear weapons technology, not to possess or permit the stationing of nuclear weapons on their territory, not to use or permit the use of nuclear weapons on their territory, and to submit peaceful nuclear activities to comprehensive IAEA safeguards. Unlike other nuclear-weapon-free-zone treaties, however, Article 10 of the Treaty of Pelindaba commits states to maintain “effective physical protection” of nuclear materials, and Article 11 prohibits them from making, assisting in, or encouraging attack, by whatever means, on nuclear installations inside the zone. In context, “nuclear installation” is quite broad; it includes nuclear power and research reactors, conversion and fabrication plants,

and reprocessing and isotope-separation facilities. Article 11 was probably added as a "confidence-building measure" to provide against attacks like that launched by Israel in 1981 against Iraq's Osirak reactor.¹⁶

Again as in the South Pacific case, the African treaty has three protocols open to signature by nuclear-weapon states; of these, Protocols I and II are the most important. Protocol I commits the nuclear-armed states neither to use nor threaten to use such weapons against a party or any territory within the zone for which a party is internationally responsible (having in mind French and Spanish possessions).¹⁷ Protocol II binds nuclear-weapon states not to test nuclear weapons anywhere within the zone. Protocols I and II each contain provisions against actions by a nuclear-weapon signatory that would "contribute to violation of the Treaty." States may withdraw from one or more of the protocols, for reasons involving "supreme national interests," but only after giving a year's notice. In contrast, the South Pacific NFZ protocols and the Treaty of Tlatelolco permit withdrawal on three months' notice to the depository.

The Southeast Asian Nuclear-Weapon-Free Zone. In the mid-1980s some members of the Association of Southeast Asian Nations (ASEAN) formulated the concept of a Southeast Asian nuclear-weapon-free zone. Because the United States maintained a large military presence in the Philippines, and because the Soviet Navy was perceived to be a regional threat, consensus could not then be achieved.¹⁸ In early 1995, however, seemingly without warning, press reports emerged that ASEAN had renewed efforts to conclude a nuclear-weapon-free-zone treaty and that its diplomatic chairman (and Indonesia's foreign minister), Ali Alatas, was determined to complete work on such a regime before Indonesia relinquished the ASEAN chair in the summer of 1996. In a display of diplomatic prowess, Foreign Minister Alatas was able to establish consensus on a treaty, consult with at least some of the nuclear-weapon states, and see the instrument—known as the Southeast Asian NWFZ Treaty—formally adopted by the ASEAN heads of state on 15 December 1995, in Bangkok.¹⁹

ASEAN's commendable effort to solidify rapidly the non-proliferation achievements of the May 1995 NPT extension was not, however, without cost. The seriousness of ASEAN's resolve to conclude the Southeast Asian treaty was not made apparent to certain of the nuclear-weapon nations, including the United States. Indeed, no draft was provided to Washington until spring 1995. At that point the United States offered its views of the draft and, inasmuch as it would assume legal obligations were it to sign the intended protocol, requested an opportunity to review the text as it evolved. In October and November 1995, it became apparent that ASEAN was moving briskly to closure. To ensure that the nuclear-weapon states would have a chance to review the treaty while still in draft, they arranged consultations with ASEAN for 16 November 1995, in Jakarta.

While a number of important issues were rectified by those discussions, issues remain with the treaty ultimately adopted at Bangkok. Among them are: the inclusion of EEZs and continental shelves in the zone of application; “negative security assurances” (i.e., commitments by a nuclear-weapon state that it would not use nuclear weapons) to nations that might ultimately fail to join the treaty; and ambiguous language regarding visits of nuclear-capable ships and aircraft. ASEAN also took no action on a U.S. request to consider broadening the scope of the treaty to encompass other weapons of mass destruction.²⁰

It seems unfortunate that the haste to conclude a treaty allowed insufficient time to discuss and analyze fully the complex legal and policy issues involved. ASEAN is now meeting with nuclear-weapon states to find a way to address their concerns while leaving undisturbed the formally adopted text—though some issues may ultimately require its amendment. However, it would be unfair to lose sight of the fact that the Southeast Asian NWFZ treaty contains a number of standard and unobjectionable provisions, such as the usual NPT provisions prohibiting parties from acquiring, possessing, or manufacturing nuclear explosive devices or from stationing or testing them inside the zone. Like other nuclear-weapon-free-zone agreements, the treaty signed in Bangkok requires parties with peaceful nuclear programs to submit to IAEA inspections, establishes an executive board and oversight mechanisms, permits nations to decide for themselves whether to allow visits by nuclear-weapon-capable ships and aircraft, and prohibits dumping of nuclear materials anywhere in the zone.

As mentioned above, the single protocol obligates parties not to use or threaten the use of nuclear weapons inside the zone, against anyone. Its text, however, neither specifies upon whom this obligation lies nor geographically restricts its scope. As written, this legally binding negative security assurance now extends to any state (and its military forces) present in the territorial seas or EEZs, and over the continental shelves, of all the treaty parties. The assurance encompasses the much-disputed areas of the South China Sea.

“Zones of Peace” and Future Weapon-Free Zones. It would not be accurate to regard “ZOPs” as matters now on Washington’s “front burner,” but efforts to establish these special areas persist and are of interest. In general, “zones of peace” are waters (high seas, EEZs, or archipelagic zones) that regional non-aligned states have designated as “off limits” to any type of confrontation or conflict. For instance, the “Zone of Peace, Freedom, and Neutrality” declared by ASEAN in 1971 is given as the legal precedent for the Southeast Asian NWFZ treaty, although one of the most apparent reasons for the persistence of the zone—which encompasses areas of the Indian Ocean—is that it establishes a high-seas legal buffer

between Southeast Asia and Pakistan and India.²¹ Ironically, ASEAN's discussions followed almost two decades of attempts in the United Nations to create an Indian Ocean Zone of Peace. That concept, now probably dead, was born of a unanimous 1971 General Assembly resolution, sponsored by India and supported by Pakistan, to rid the Indian Ocean of superpower rivalry.²² As a third example, South Africa and Brazil have introduced non-binding resolutions for adoption by the UN General Assembly to create a South Atlantic Zone of Peace;²³ the United States has consistently voted against it.

The United States has said little for the record about "zones of peace." Indeed, resolutions to establish ZOPs typically only commend states to respect them and do not contain the strict legal obligations found in nuclear-weapon-free treaties. Furthermore, comparing these ZOP proposals with the stricter criteria that the Nuclear Non-Proliferation Treaty imposes, it seems unlikely that the United States will support them: in essence, they are attempts to convert sectors of the high seas into special security areas and in so doing to constrain the United States and other nations in the exercise of their high-seas freedoms.

As for future nuclear-weapon-free regimes, there are at least two pending proposals. In 1980, Israel introduced a resolution in the UN General Assembly calling for a Middle Eastern Nuclear-Weapon-Free Zone; since then, various groups have sponsored attempts—such as the recently concluded NPT Review Conference—to realize this goal.²⁴ So long as Israel remains outside the NPT due to its undeclared nuclear weapons program, however, it is difficult to imagine a Middle Eastern zone along traditional lines taking root. Nonetheless, former Prime Minister Shimon Peres has been quoted as saying, "Give me peace and we will give up the nuclear capability."²⁵ It is noteworthy that the idea's sponsors have been pushing for a Middle East free of weapons of mass destruction generally, not only nuclear weapons, in order to address the widest possible array of proliferation problems in that volatile region.

Secondly, a "limited nuclear-free zone" for Northeast Asia has been the subject of a series of meetings between retired South Korean diplomats and American military representatives conducted at the Georgia Institute of Technology Center for International Strategy, Technology, and Policy. The proposal, which primarily targets the Korean peninsula, seeks to create a "cooperative security organization and infrastructure" stressing cooperative versus confrontational relationships among states.²⁶ In the limited NFZ would be a multilateral verification force, with a common headquarters; nuclear weapons would be phased out over time, with the common headquarters serving as a forum for building confidence and reducing tensions. There are presently no indications, however, that this idea has moved off the drawing board and into the mainstream of international security and diplomatic activity.

American Commitment to Nuclear-Free Zones

Some have questioned the sincerity of the commitment of nuclear-armed nations to nuclear-weapon-free zones. The former prime minister of Australia, Paul Keating, for example, remarked that while the October 1995 announcement that the United States, France, and Great Britain would accede to the South Pacific NFZ was welcome, it came too late to assuage the regional concerns over French nuclear testing. Prime Minister James Bolger of New Zealand was only slightly more favorable.²⁷ Nonetheless, and with respect not only to non-proliferation but also environmental protection and the creation of a comprehensive testing ban, it is important to keep in mind that the United States is active in worldwide support of the basic norms embodied in the South Pacific NFZ and other such treaties. It should be enough to say that the United States has long been a party to the Treaty of Tlatelolco (establishing the Latin American Nuclear-Weapon-Free Zone), the Antarctic Treaty, and the Seabed and Outer Space Arms Control treaties. There is much additional evidence.

In May 1995 the United States joined the international community in realizing an important goal: indefinite extension of the Nuclear Non-Proliferation Treaty. Arguably the single most important non-proliferation agreement in existence and nearly global in its membership, the NPT not only obliges nuclear-weapon states not to transfer nuclear weapons technology but also commits non-nuclear-weapon nations to forgo the development or acquisition of such systems.²⁸ Of course, an essential external component of the overall package is the "negative security assurance," first announced on 12 June 1978 and reaffirmed in April 1995, that the United States would neither threaten nor use nuclear weapons against any state complying with the NPT.²⁹

Further, on 11 August 1995 the United States unilaterally announced that it would accede to a zero-yield comprehensive test ban treaty (CTBT).³⁰ This and similar declarations by the United Kingdom and France were made notwithstanding technical concerns that tests are required to assure the safety and reliability of existing stockpiles. The conclusion of a CTBT in the late summer of 1996 remains a high-priority foreign policy objective of the United States, and it is an effort for which the United States deserves credit. As to whether the CTBT goal will be realized, the testing policies of China remain, of course, a question mark.³¹

In the environmental realm, the United States is a party to the London Dumping Convention and the MARPOL Convention, and it is an active participant in a variety of international efforts, most sponsored by the International Maritime Organization, to increase the safety of maritime operations and the cleanliness of the world's oceans. Regarding dumping, the United States joined the London Convention's recent amendment prohibiting the deposit of low-level

liquid radioactive waste in the oceans, and it is working vigorously, both unilaterally and multilaterally, to see marine environmental norms upheld.³² Also noteworthy is the fact that the United States (with the Department of Defense taking the lead) is now working vigorously, both domestically and internationally, to obtain universal accession to the 1982 UN Law of the Sea Convention—in the opinion of many, the most comprehensive environmental protection convention in existence.

Security and Policy Concerns

Article VII of the NPT expressly permits the creation of regional measures to implement the ideal of nuclear non-proliferation. The United States supports the basic norms of the Non-Proliferation Treaty and, for this reason, supports them as they are embodied in nuclear-weapon-free zones—provided that such schemes conform to certain criteria. The United States has made quite clear that it examines each zone proposal individually. Even if a particular arrangement seems generally acceptable, to receive American endorsement it must contribute to overall principles of nuclear non-proliferation and not have adverse impacts. Given this background, we may examine certain of these criteria and the treaties which have been discussed, drawing out the specific operational and international security issues that arise.

“Ad hoc” zone arrangements may upset alliances and be destabilizing. American policy on nuclear-weapon-free zones is quite clear that, if they are to receive American endorsement, they must enjoy regional standing and include all important states in the region. For this reason, the United States has not supported attempts by individual nations or districts within nations to establish themselves as nuclear-free enclaves, or moves by states to create zones (like ASEAN's Zone of Peace, Freedom, and Neutrality) encompassing areas of the high seas that restrict American high-seas freedoms. Ad hoc zones may be represented as matters of self-determination, but from an international security perspective they may undermine the free movement of military and nonmilitary traffic and cargo; they may even—the many declared zones in northern Italy are examples—undermine a nation's compliance with major defense agreements, e.g., the North Atlantic Treaty. In any case, unless state participation is nearly universal the self-enforcing verification mechanism essential to any nuclear arms control agreement will be absent.

The ad hoc ZOP proposals for the Indian Ocean and South Atlantic present added problems. While even the remote and theoretical possibility of a nuclear exchange between Pakistan and India (neither of which is a party to the NPT) may understandably concern states in Southeast Asia, these proposals do little more than establish buffer areas of open ocean. American oceans policy opposes

any exercise of sovereignty over the high seas. The right of all nations to operate ships and aircraft—which may or may not have nuclear weapons aboard—is a high-seas freedom protected under the UN Law of the Sea Convention and must not be diluted. From the standpoint of international peace and security, the ability of U.S. warships to move freely on the high seas has had in the past a stabilizing and deterrent effect on states that were considering aggression. To cut off or sharply restrict the passage of American warships in, say, the South China Sea or the Strait of Taiwan would probably not be universally supported by regional states—least of all those with whom the United States has a mutual defense treaty.

A second American criterion is that weapon-free zones *must advance non-proliferation goals*. A case in point here is the African Nuclear-Weapon-Free Zone treaty, which the United States, France, the United Kingdom, and China signed in Cairo.³³ South Africa, having unilaterally dismantled its own nuclear weapons program and having played a pivotal role in the indefinite extension of the NPT, was a major sponsor of the treaty and played a key role in inducing the nuclear-weapon states ultimately to sign the treaty.³⁴ Some commentators are urging quick U.S. signature (and presumably ratification) of the protocols to reaffirm American support of nuclear non-proliferation.³⁵ Notwithstanding the political imperative, however, one may question whether the African NWFZ truly meets nuclear non-proliferation goals, in light of reports that no eligible Arab state (not even Egypt, the host for the signing of the Treaty of Pelindaba) will ratify until Israel—which is not eligible to join the African NWFZ—renounces its nuclear weapons program.³⁶

South Africa having been the only significant nuclear proliferation threat (at least for the short term) on that continent, it is now unclear what the leadership of nuclear-weapon states can achieve in terms of promoting African nuclear non-proliferation if the Arab states do not ratify. This situation is exacerbated by media and Defense Department reports that Libya is ignoring its NPT commitments and aggressively seeking nuclear weapons technology.³⁷ While there was considerable pressure on the United States to make good on its promise to sign the treaty, it remains to be seen whether U.S. ratification will best serve the goal of non-proliferation if African states fail to ratify the treaty (and thereby assume its legal responsibilities)—and also if indications persist of proliferation risks in the northern part of the continent, Libya in particular.³⁸

A third U.S. expectation is that zones should *not interfere with standing visitation policies*. All four regimes now in existence (African, South Pacific, Southeast Asian, and Latin American) allow states to decide for themselves whether to permit visits by nuclear-capable ships and aircraft. These provisions would seem to protect the United States Navy's port visit programs; however, internal inconsistencies in some of these treaties—for instance, their broad definition of "stationing nuclear weapons"—make it uncertain whether the instruments are

truly neutral on the question. Moreover, in three of the four treaties, the use, in the context of "stationing," of terms (like "inland waters") that have no commonly accepted meaning in international law adds to that uncertainty.³⁹

In fact, and despite the efforts of American negotiators to ensure that these treaties are completely evenhanded on the question of such visits, there is evidence of a subtle political undercurrent tending to exclude nuclear-weapon-capable units. In its 1986 accession to the South Pacific NFZ, the USSR expressed an understanding that "the permission of transit of nuclear weapons . . . in any form and the calls at the ports and airfields within the limits of the nuclear-free zone of foreign ships . . . is incompatible with the nuclear-free status of the zone."⁴⁰ There was a certain visceral appeal in the Soviet proposal; nonetheless, it is troubling that none of the South Pacific NFZ regional states denounced the Soviet assertion, nor has it been withdrawn subsequently. Furthermore, Russia's refusal to join the African Nuclear-Weapon-Free Zone in April 1995 because of the presence of bases (such as Diego Garcia) of other nuclear-weapon states reinforces the possibility that stormy waters may lie ahead.⁴¹ If history is any guide, states that continue to permit visits of nuclear-weapon-capable units are likely to come under pressure.⁴²

Article 7 of the Southeast Asian NWFZ Treaty contains the standard provision that each state party, "on being notified, may decide for itself whether to allow visits by foreign ships and aircraft." Article 3(2)(A), however, requires each party to prevent any other state from "possessing or having control over nuclear weapons" in its territory or from "stationing" nuclear weapons there. Taken as a whole, this is an awkward formulation at best, creating doubt as to whether these port and airfield visits are permissible. If the sense of the treaty is in fact that they are not, then it stands in marked contrast to American support for the international norm of free and open access to seaports, and also to the substantial relaxation by the United States of restrictions on visits by commercial ships to its ports.⁴³

Finally, treaties should *not upset important international norms*. A difficulty arises for the Southeast Asian NWFZ Treaty, which prohibits actual or threatened nuclear weapons exchanges not only in the territorial seas and archipelagic waters of the parties but also in their two-hundred-nautical-mile exclusive economic zones and over their continental shelves as well. The inclusion of EEZs and continental shelves is problematic, for reasons that will be discussed below. The desires of smaller states not to be caught in a nuclear cross fire are entirely understandable: the effects of a nuclear exchange would be felt over a very large area. But to include the continental shelf and exclusive economic zones in the Southeast Asian NWFZ regime, or any other, is likely to cause problems for the United States and the nuclear-weapon states generally.⁴⁴ A number of ramifications come to mind.⁴⁵ First, the United States, Russia, the United Kingdom, and

most potential nuclear-weapon states are already parties to the Seabed Arms Control Treaty, which prohibits nuclear weapons on the seabed seaward of the twelve-nautical-mile limit. In fact, in view of how long that treaty has remained in force and unchallenged, a good argument can be made that fixed emplacement or stationing of nuclear weapons on the seabed beyond twelve nautical miles from a coastline is now banned by customary international law.

Even if not, and more fundamentally, should it ever become established that EEZs and continental shelves can be used in defining security arrangements (as in fact “zones of peace” also tend to do), the 1982 Law of the Sea Convention will be seriously undermined. It was one of the main purposes of the Convention to make EEZs and shelves (as well as territorial seas, straits, etc.) no longer points of international contention—which is a particular reason why the United States and other maritime states (such as Indonesia and the Philippines) have worked to ensure that it is universally accepted and followed. Under the Convention, EEZs and continental shelves are essentially *resource zones*; indeed, the negotiating history of the Convention makes clear that the idea of extending security rights two hundred nautical miles to seaward was expressly rejected. To accept the premise underlying the Southeast Asian NWFZ formula could at least invite increased excessive maritime claims.

It could have other destabilizing effects as well—specifically, unilateral action to expand coastal rights outside the Law of the Sea Convention. The dangers of such attempts are amply evidenced by the flare-ups in January-February 1996 between Greece and Turkey over the Imia Islet (Kardak Rock) in the Aegean; between Japan and Korea in February over Tok Po (Takashima Island) in the Sea of Japan; by the continuing confrontations between Canada and Spain over the former’s “aggressive” new fishing jurisdiction on the North Atlantic’s Grand Bank; and by the conflicting claims of several nations to the Paracel and Spratly island groups.

Finally, inclusion of EEZ and continental shelf areas would extend security sensitivities so far to seaward as potentially to restrict the right of U.S. nuclear-weapon-capable vessels to conduct patrols, as opposed to transits, in areas of the open ocean. Nuclear-weapon-free treaties typically recognize rights of passage *through* an area within their zone of applicability, but they are much less clear on naval operations at a single location. The effect would be to shift strategic and political advantage away from U.S. deterrent forces in favor of states having large conventional forces, or perhaps land-based nuclear forces outside the zone but within striking distance of it.

Nuclear-weapon-free zones are here to stay. The real question is whether the treaties implementing them will firmly establish themselves as serious

non-proliferation endeavors rather than “designer” initiatives, going in and out of style depending on the trend of the day. The United States and the rest of the Free World took more than four decades to win the Cold War. The world community has taken some slow, hesitant steps toward containing nuclear-weapon proliferation and inhibiting the use of such weapons. To be impatient with, or dismissive of, such steps would play into the hands of the critics who assert that these zone proposals are without value—that they merely restrict the military operations of superpowers, solidify opposition to the presence of nuclear-capable forces in a region, weaken deterrence, stimulate conventional arms buildups, and undercut the stability that permits the economic prosperity we enjoy today. To the contrary, nuclear-weapon-free zones are not only inevitable but can contribute substantially to the control of nuclear proliferation, a goal to which the United States is firmly committed. Nonetheless, it would be unwise and perhaps destabilizing to endorse such proposals until the text and the timing are both right. The American policy of carefully examining each one on a case-by-case basis and not signing treaties “before their time” will serve the nation well as it completes its ratification of the African Nuclear-Weapon-Free Zone Treaty, works out its differences with ASEAN concerning the Southeast Asian Nuclear-Weapon-Free Zone, and prepares itself for the new proposals sure to come.

Notes

1. *United States Treaties and Other International Agreements* [hereafter *UST*], vol. 21, p. 483; and *Treaties and Other International Acts Series* [hereafter *TIAS*] p. 6839. The NPT originally entered into force for the United States on 5 March 1970 for a period of twenty-five years. In May 1995, in New York, the NPT's Conference of Parties decided to extend the NPT indefinitely.

2. 26 *UST* 2403; and *TIAS* 8165. The convention on dumping of wastes was signed in December 1972 and entered into force for the United States on 30 August 1975. MARPOL was signed in London on 2 November 1973 but did not enter into force until incorporated into and modified by a 1978 protocol (signed on 17 February 1978 and entered into force on 2 October 1983).

3. U.S. Arms Control and Disarmament Agency, *Arms Control and Disarmament Agreements*, 6th ed. (Washington, D.C.: 1990), p. 64.

4. 12 *UST* 7984; and *TIAS* 4780. The Antarctic Treaty was signed on 1 December 1959 and entered into force on 23 June 1961.

5. Protocol II prohibits the use or threatened use of nuclear weapons against a Treaty party. A lengthy ratification process followed in which the United States asserted supplemental understandings regarding the treaty's area of application and also the nature of its security assurances, i.e., that an attack on the United States by a party assisted by a nuclear-weapon state was inconsistent with basic Treaty obligations. The United States deposited its instruments of ratification in 1971 (22 *UST* 754; and *TIAS* 7137). Protocol I requires that states with territories in the zone neither possess, test, manufacture, produce, nor station nuclear weapons therein. Since the United States has possessions in the area, among them the Virgin Islands, Puerto Rico, and the Canal Zone, it was eligible to sign Protocol I, ratifying in 1981.

6. The Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies was signed, ratified, and entered into force in October 1967 (18 *UST* 2410; and *TIAS* 6347). The Treaty on the Prohibition of the Emplacement of Nuclear Weapons and Other Weapons of Mass Destruction on the Seabed and the Ocean Floor and in the Subsoil Thereof was signed by the United States in February 1971 and was ratified the following year (23 *UST* 701; and *TIAS* 7337).

7. It is ironic that the 1971 Seabed Arms Control Treaty recognized a twelve-nautical-mile territorial-sea limit, well before its ultimate adoption (with considerable controversy) in the 1982 Convention on the Law of the Sea.

8. For the South Pacific NFZ, *International Legal Materials* [hereafter *ILM*], vol. 42, 1985, p. 1442. Rarotonga is the main island, and seat of government, of the Cook Islands group, in the South Pacific. The South Pacific Forum comprises a total of sixteen states, with Australia, New Zealand, and Fiji being the major actors. It serves as a regional coordinating body for common security, fisheries, and environmental matters (Michael Field, "Treaty Turns the Page on Pacific's Horrific Nuclear Chapter," *Agence France Presse*, 25 March 1996 [LEXIS/NEXIS]).

9. The Soviet Union, in a written understanding issued at the treaty's signing, noted that in its view states would not be complying with the prohibition against stationing nuclear weapons in the zone if they permitted visits of nuclear-weapon-capable ships or aircraft. However, Article V expressly provides that states may "decide for themselves whether to permit. . ." The USSR made no mention of this understanding at ratification.

10. Convention for the Protection of the Natural Resources and Environment of the South Pacific Region, Noumea, 1986, entered into force 22 August 1990 (Senate Treaty Document 101-21, 101st Cong., 2nd Sess. [Washington, D.C.: U.S. Govt. Print. Off., 1990]).

11. Reuters North American Wire, 20 October 1995 (LEXIS/NEXIS).

12. David S. Yost, "France's Nuclear Dilemma," *Foreign Affairs*, January/February 1996, pp. 108-9; and briefing by Michael McCurry, White House Press Secretary, Federal Document Clearing House (hereafter FDCH) Political Transcripts, 11 April 1996 (LEXIS/NEXIS).

13. Briefing by Michael McCurry, White House Press Secretary, and Robert Bell, Senior Director, Defense Policy and Arms Control (National Security Council), FDCH Political Transcript, 11 April 1996 (LEXIS/NEXIS).

14. For a discussion of South Africa's nuclear weapons program and the Treaty's negotiation history, see D. Fisher, "The Pelindaba Treaty: Africa Joins the Nuclear-Free World," *Arms Control Today*, December 1995, p. 10.

15. Fisher, p. 10.

16. *Ibid.*, p. 12. The Osirak raid is discussed in John Norton Moore et al., *National Security Law* (Durham, N.C.: Carolina Academic Press, 1990), pp. 154-5.

17. Because France and Spain possess islands in the African NWFZ, Protocol III is open to their signatures. Protocol III obligates them, as protecting powers, to adhere to the basic Treaty provisions prohibiting the stationing, acquisition, manufacture, or testing of nuclear weapons and the dumping of radioactive waste, and it requires them to protect nuclear materials and submit to IAEA inspection of all nuclear programs.

18. *Agence France Presse*, 16 December 1995 (LEXIS/NEXIS); and *International Herald Tribune* (Hong Kong), 1 August 1995, p. 1.

19. Evan S. Medeiros, "Southeast Asian Countries Agree to Create Nuclear-Weapons-Free Zone," *Arms Control Today*, December 1995/January 1996, p. 23; *The Straits Times* (Singapore), 31 July 1995, p. 12.

20. *The Straits Times* (Singapore), quoting Assistant Secretary of State Winston Lord; Daily Department of State Briefing, quoting spokesman Nicholas Burns, FDCH, 8 December 1995 (LEXIS/NEXIS); and *The Straits Times* (Singapore), 12 December 1995.

21. For the Zone of Peace, Freedom, and Neutrality, see Lee G. Cordner, "Regional Resilience: The Imperative for Maritime Security Cooperation in Southeast Asia," *Naval War College Review*, Spring 1994, esp. p. 50. India has already exploded a nuclear device, but a "peaceful" one—for which reason it considers itself a non-nuclear-weapon state. Pakistan, on the other hand, is described as a "one screwdriver turn" away from possession of a useable weapon (*Washington Times*, 20 February 1995, p. A2).

22. National Press Service, 13 February 1995 (LEXIS/NEXIS); Xinhua News Agency, 11 July 1994 and 22 May 1990 (LEXIS/NEXIS).

23. United Nations Document 49/84, Resolution of 20 October 1994.

24. In addition, Secretary General Boutros Boutros-Ghali, at the NPT extension conference in spring 1995, called on the Middle Eastern states to establish a zone excluding weapons of mass destruction by the year 2000 (Federal News Service, 18 April 1995 [LEXIS/NEXIS]).

25. *Toronto Star*, 23 January 1996, p. 1 (LEXIS/NEXIS).

26. *Atlanta Constitution*, 2 May 1995, p. A9, and 29 June 1994, p. A9.

27. Reuters North American Wire, 19 October 1995 (LEXIS/NEXIS).

28. As of summer 1996, nine nations have not yet acceded to the NPT: India, Pakistan, Israel, Angola, Brazil, Djibouti, Andorra, Oman, and Cuba. Though Brazil is not a member, many NPT norms are applicable to it through the Treaty of Tlatelolco.

29. The 1978 policy statement reads: "The United States will not use nuclear weapons against any non-nuclear weapons state party to the NPT or any comparable internationally binding commitment not to acquire nuclear explosive devices, except in the case of an attack on the United States, its territories, or armed forces, or its allies, by such a state allied to a nuclear weapons state, or associated with a nuclear weapons state in carrying out or sustaining the attack" (reprinted in *Arms Control and Disarmament Agency*, p. 94).

30. Briefing by Robert Bell, Special Assistant to the President for Defense Policy, FDCH Political Transcripts, 14 August 1995 (LEXIS/NEXIS). The United Kingdom announced on 14 September 1995 its own intention to support a zero-yield comprehensive test ban treaty (Reuters News Service, 14 September 1995 [LEXIS/NEXIS]).

31. Reuters North American Wire, 1 February 1996 (LEXIS/NEXIS).

32. With respect to unilateral action, during fiscal years 1993-1995 the U.S. Navy's Office of Naval Research implemented the Arctic Nuclear Waste Monitoring Program (mandated by Public Law 103-139, and funded at \$10 million annually) to study the effects of radioactive contamination of the Arctic as a result of the dumping by Russian military and civilian entities of radioactive materials into known waste sites and certain river systems. The effort is part of the Nunn-Lugar cooperative threat reduction program. Funding, however, was discontinued for fiscal 1996. Bilaterally, the U.S. Secretary of Defense and the Russian defense minister signed a memorandum of agreement in June 1995 to cooperate militarily in the field of environmental protection and security. One outgrowth was the Arctic Military Environmental Cooperation program, which is a trilateral effort (involving the United States, Russia, and Norway) to study the effect of past dumping of radioactive materials and heavy metals in the Arctic and to devise plans for sound environmental management.

33. McCurry and Bell, 11 April 1996.

34. Tom Zamora Collina, "South Africa Bridges the Gap," *Bulletin of Atomic Scientists*, July-August 1995, p. 30; and South African Press Agency, "White Right Wing Could Have Material for a Nuclear Device," 6 November 1995 (LEXIS/NEXIS).

35. Fisher, p. 13.

36. *Ibid.* Also, following a statement by a right-wing Israeli legislator that Israel would never renounce its nuclear weapons program, Libya's official JANA news agency called on all Arab states to "use every means to acquire nuclear weapons" (Agence France Presse, "Libya Urges Arabs to Get Nuclear Arms," 27 January 1996 [LEXIS/NEXIS]). See also Reuters World Service, "Arabs Must Get Nuclear Bomb to Match Israel, Libya," 27 January 1996 (LEXIS/NEXIS).

37. Office of the Secretary of Defense, "Proliferation Threat and Response," April 1996, p. 25; *Times* (London), 26 February 1996; and Douglas Waller, "Target Gaddafi, Again," *Time*, 1 April 1996, p. 46.

38. J.D. Crouch II, Prepared Testimony before the Senate Foreign Relations Committee Concerning the Chemical Weapons Convention, 13 March 1996, Federal News Service. See also Robert Burns, "US Said to Have No Non-nuclear Way to Destroy Suspect Libyan Plant," Associated Press, 23 April 1996; and "Perry: U.S. Determined to Stop Libyan Chemical Weapons Plant Construction," Xinhua News Agency, 4 April 1996 (all LEXIS/NEXIS).

39. Article I(d) of the South Pacific Nuclear-Free Zone Treaty provides that "stationing means implantation, emplacement, transportation on land or inland waters, stockpiling, storage, installation and deployment."

40. Statement of the Soviet Government on the Rarotonga Treaty of 15 December 1986 (document on file with author).

41. Miriam Sami, Associated Press Worldstream, 11 April 1996 (LEXIS/NEXIS).

42. During the 1991 Persian Gulf War, U.S. military transport aircraft made stops for fuel in Colombo, Sri Lanka, and Bombay, India. Critics cited these brief visits as violations of the Indian Ocean Zone of Peace; see Xinhua News Agency, 9 February 1991 (on criticism of the Sri Lankan government by an opposition party) and Associated Press Newswire, 30 January 1991 (concerning the Indian episode).

43. The United States in 1995 unilaterally relaxed the entrance requirements previously required for visits to commercial ports by ships flying the Vietnamese, Cambodian, or Russian flags (Commandant, U.S. Coast Guard, "Shipping Agent Guidelines," Instruction 1-M166158.5).

44. *The Straits Times* (Singapore), 25 January 1996, p. 29; interview with U.S. Assistant Secretary of State Winston Lord. Lord observed that the United States, with all other nuclear powers, continued to have problems with the Southeast Asian NWFZ treaty; Washington's "single major concern is that the exclusive economic zone and continental shelves are included in the terms of coverage . . . and it is of major concern to us."

45. Briefing by Glyn Davies, Department of State Regular Press Briefing, FDCH Political Transcripts, 15 December 1995 (LEXIS/NEXIS); and briefing by Nicholas Burns, Department of State Regular Press Briefing, FDCH Political Transcripts, 8 December 1995 (LEXIS/NEXIS).