

Peace Depot Working Paper No.1 E

**A Model Treaty
on the Northeast Asia
Nuclear-Weapon-Free Zone**

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November, 2005

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Model Treaty on the Northeast Asia Nuclear-Weapon-Free Zone

(Draft 4, as of July 3, 2004)

(This draft of the Treaty has been prepared in hopes of and with the view toward its serving as a provisional and tentative basis for future discussions and deliberations to be conducted by and among a large number of experts and specialists as well as citizens who are interested in the issues hereof. Hiromichi Umebayashi).

Preamble

The States Parties to this Treaty,

1. Recalling that Northeast Asia is the only region of the entire world where nuclear weapons have been used in reality,
2. Acknowledging the hardship, both human and social, beyond all description, that has been brought about by the atomic bombings, with the damage to hundreds of thousand citizens and the destruction of two cities, and that still continues to the present date after about sixty (60) years,
3. Considering that there are a great number of atomic-bomb survivors even today who are living their lives in fear of anxiety and uncertainty in Japan as well as in the Korean Peninsula,
4. Recognizing that the nuclear weapons of today have the massive destructive power much greater than those used at the time of the aforementioned nuclear bombing, and are the only weapons that are able to destroy the human civilization created to date,
5. Concerned about the new military threat emerging today, implying the actual use of nuclear weapons, including preemptive strikes,
6. Recalling the "Joint Declaration of South and North Korea on the Denuclearization of the Korean Peninsula," which entered into force in February 1992, and Japan's three non-nuclear principles that were established in 1967 and have been declared to be a National Principle of Japan,
7. Sharing, a common recognition that it constitutes a natural aspiration, which arises in the course of regional history, to seek to establish a Nuclear-Weapon-Free Zone in this region, on the basis of arrangements freely arrived at among the States concerned,
8. Recalling, on the other hand, many hardships caused by the wars of aggression and the colonial ruling in this region during certain periods in the past,
9. Recalling, at the same time, the sustained and strenuous efforts, having been exerted

by the successive governments of the States in the region, in order to overcome such hardships for the better future,

10. Bearing in mind the importance of developing friendship and pursuing peaceful cooperation by and among the States in the region, on the basis of such past efforts, while inheriting only the greatest legacies of such efforts.

11. Convinced that the establishment of a Nuclear-Weapon-Free Zone is the first step to be taken in preference to all other measures, in order to develop cooperative security in the region,

12. Desiring, by its establishment, to promote, in this region, the accession to and compliance with the already existent international treaties related to disarmament and arms control, such as the "Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction," which entered into effect in 1997, as well as the "Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction," which took effect in 1972,

13. Convinced, by its establishment, of its contribution to promoting implementation of the nuclear disarmament obligation, set forth in Article 6 of the "Treaty on the Non-Proliferation of Nuclear Weapons," which entered into force in 1970, and duly reaffirmed by the advisory opinion of the International Court of Justice on the "Legality of the Threat or Use of Nuclear Weapons," issued on July 8, 1996,

14. Convinced also, by its establishment, of its additional contribution to the earliest possible realization of the world people's aspiration for the total prohibition and complete elimination of nuclear weapons that has already been incarnated in a large number of international conventions and resolutions made by international organizations,

Have agreed as follows:

Article 1 Definition of Terms

For the purpose of this Treaty and its Protocol:

(a) "Northeast Asia Nuclear-Weapon-Free Zone" means the area comprising the region consisting of the national territories of Japan, the Republic of Korea and the Democratic People's Republic of Korea.

(b) "Territory" means the land territory, internal waters and territorial seas, the seabed and the subsoil thereof, as well as the airspace above them.

(c) "Intrazonal States" mean Japan, the Republic of Korea and the Democratic People's Republic of Korea.

(d) "Neighboring Nuclear Weapon States" mean the People's Republic of China, the United States of America and the Russian Federation among the nuclear weapon states as defined in the Treaty on the Non-Proliferation of Nuclear Weapons.

(e) "Contracting State Party" means a State that has deposited the instrument of ratification according to the provisions set forth in this Treaty, from among the six (6) States of the "Intrazonal States" and "Neighboring Nuclear Weapon States" altogether

(f) "Nuclear explosive device" means any nuclear weapon or any other explosive device capable of releasing nuclear energy, irrespective of the purpose for which it could be used. The term includes such weapon or device in unassembled and partly assembled forms, but does not include the means of transport or delivery of such weapon or device if separable from and not an indivisible part of it.

(g) "Radioactive material" means any material containing radionuclide exceeding the clearance or exemption level recommended by the International Atomic Energy Agency (IAEA).

(h) "Radioactive waste" means any material that contains or is contaminated with radionuclide at concentrations or activities greater than the clearance level recommended by the IAEA and which no use is foreseen.

(i) "Nuclear material" means any source material or special fissionable material as defined in Article 20 of the Statute of the IAEA and as amended from time to time by the IAEA.

(j) "Nuclear installation" means a nuclear-power reactor, a nuclear research reactor, a critical facility, a reprocessing plant, a nuclear fuel fabrication plant, a spent fuel storage installation, a nuclear waste storage installation and any other installation or location in or at which significant quantities of nuclear materials, irradiated nuclear materials, radioactive materials or radioactive wastes are present.

Article 2 Application of the Treaty

1. Except where otherwise specified, this Treaty and its Protocol shall apply to the "Northeast Asia Nuclear-Weapon-Free Zone."

2. Should there be any dispute in relation with territory, nothing in this Treaty shall influence the status quo of the construction of dominium.

3. Nothing in this Treaty shall prejudice or in any way affect the rights, or the exercise of the rights, of any State under international law with regards to freedom of the seas.

4. Military facilities under the control of a Neighboring Nuclear Weapon State that are located within the territory of an Intrazonal State are considered to be a part of the

Northeast Asia Nuclear-Weapon-Free Zone, and this Treaty and its Protocol shall apply to them.

Article 3 Fundamental Undertakings with regard to Nuclear Explosive Devices

1. Undertakings by Intrazonal States

Each Intrazonal State shall undertake:

(a) Not to conduct research on, develop, test, manufacture, produce, acquire, possess, stockpile, deploy or use any nuclear explosive device by any means, anywhere inside or outside the Northeast Asia Nuclear-Weapon-Free Zone.

(b) Not to allow, inside any of the territories of the Intrazonal States, any other State, group or person to perform any act set forth in Article 1 (a) hereof.

(c) To eliminate all dependence whatsoever on any nuclear weapon or any other nuclear explosive device in all aspects of its security policy.

(d) To exert effort for the diffusion of education worldwide with regard to the urgency of nuclear disarmament, including the transmission to the present and future generations of the facts on the damage inflicted on the citizens and cities by the atomic bombs dropped in 1945.

2. Undertakings by Neighboring Nuclear Weapon States

Each Neighboring Nuclear Weapon State shall undertake:

(a) Not to use or threaten to use any nuclear explosive device in the Northeast Asia Nuclear-Weapon-Free Zone.

(b) Not to contribute, in any way, to any act of hindrance against the execution by each Intrazonal State of the undertakings set forth in Article 1 hereof, while paying due respect to said undertakings.

(c) To notify in advance and to have a prior consultation for approval with the concerned Intrazonal States when a Neighboring Nuclear Weapon State wants its ships or aircraft carrying any nuclear explosive devices to visit any ports or airfields located inside Intrazonal States, to transit their territorial airspace, or to navigate territorial seas in a manner not covered by the rights of innocent passage or transit passage of straits. Each Intrazonal State, in the exercise of its sovereign rights, shall remain free to decide to give approval or not after consultation.

Article 4 Non-Military Use of Nuclear Energy

1. Nothing in this Treaty shall prejudice the right of the Contracting States Parties to

use nuclear energy for non-military purposes.

2. The Intrazonal States shall use nuclear energy for the non-military purposes in strict conformity with the safeguards agreement stipulated in Article 3 of the NPT.

3. Each Intrazonal State which has not done so shall conclude such full-scope safeguards agreement and its additional protocols with IAEA not later than eighteen (18) months after the entry into force of this Treaty.

4. The Intrazonal States shall pursue and develop cooperation among themselves in good faith to secure stable and sustainable energy for each of the Intrazonal States.

Article 5 Sea Disposal and Air Release of Radioactive Materials

Each Intrazonal State shall undertake:

(a) Not to dump at the sea or release into the air any radioactive materials or radioactive wastes anywhere inside the Northeast Asia Nuclear-Weapon-Free Zone.

(b) Not to allow any other State, group or person to dump at the sea or release into the air any radioactive materials or radioactive wastes anywhere inside the Northeast Asia Nuclear-Weapon-Free Zone.

Article 6 Prohibition of Armed Attack on Nuclear Installations

Each Contracting State Party hereto shall undertake not to take, assist or encourage, in any way, any action aimed at an armed attack by any means against nuclear installations within the Northeast Asia Nuclear-Weapon-Free Zone.

Article 7 Establishment of the Commission for the Northeast Asia Nuclear-Weapon-Free Zone

For the purpose of ensuring the implementation of the provisions set forth in this Treaty, the Contracting States Parties agree to establish the Commission for the Northeast Asia Nuclear-Weapon-Free Zone (hereinafter referred to as the "Commission").

(a) All Contracting States Parties are ipso facto members of the Commission. Each Contracting State Party shall be represented by its minister of Foreign Affairs or his/her representative, accompanied by alternates and advisers.

(b) The function of the Commission shall be to oversee the implementation of this Treaty and ensure compliance with its provisions. In relation thereto, the Commission shall have deliberation with regard to the text set forth in the Preamble hereof in case of need.

(c) The Commission shall meet as and when necessary in response to the request of any Contracting State Party as well as the request of the Executive Committee, which is deemed to be established in conformity with the provisions set forth in Article 8 hereof.

(d) All of the Contracting States Parties shall be present in order to constitute a quorum for the Commission. Decisions of the Commission shall be taken by consensus, or failing consensus, by consensus of all but one (1) Contracting States Parties.

(e) The Commission shall elect, at the beginning of each meeting, its Chairperson and such other officers as may be required. The Chairperson shall be elected from among the three (3) Intrazonal States among the Contracting State Parties. Their tenure of office shall last until an election of a new Chairperson, and other officers at the next meeting.

(f) The Commission shall decide the location of its headquarters, the financial matters of the Commission as well as its subsidiary organs, and the rules and procedures related to any other matters needed for their operations.

Article 8 Establishment of the Executive Committee

1. There is hereby established, as a subsidiary organ of the Commission, the Executive Committee.

(a) The Executive Committee shall be composed of all of the Contracting States Parties to this Treaty. Each Contracting State Party shall be represented by one senior official as its representative, who may be accompanied by alternates and advisors.

(b) The Executive Committee shall meet as and when necessary for the efficient exercise of its functions.

(c) A constituent member of the Executive Committee that represents the Chairperson of the Commission shall assume the chairpersonship of the Executive Committee. All submission or communication made by a Contracting State Party to the Chairperson of the Executive Committee shall be disseminated to the other members of the Executive Committee.

(d) All of the Contracting States Parties shall be present in order to constitute a quorum for the Executive Committee. Decisions of the Executive Committee shall be taken by consensus, or failing consensus, by consensus of all but one (1) Contracting States Parties.

2. The functions of the Executive Committee shall be:

(a) To secure appropriate application of the Control System as stipulated in Article 9 hereof for the verification of full compliances with the provisions of this Treaty;

- (b) To consider and decide on the "Request for Clarification" or the "Request for a Fact-Finding Mission" stipulated in Article 9, Item 2 (b), in the event of such requests;
- (c) To set up a Fact-Finding Mission in accordance with the "Annex for the Control System" to this Treaty;
- (d) To consider and decide on the findings of a Fact-Finding Mission and report to the Commission;
- (e) To request the Commission to convene a meeting when appropriate and necessary;
- (f) To conclude agreements with IAEA or any other international organizations on behalf of the Commission after being duly authorized to do so by the Commission;
- (g) To carry out such other tasks as may, from time to time, be assigned by the Commission.

Article 9 Establishment of the Control System

1. There is hereby established a Control System for the purpose of verifying compliance with the obliged undertakings of the Contracting States Parties under this Treaty.
2. The Control System shall comprise:
 - (a) The IAEA safeguards system as provided for in Article 4, Item 3 hereof.
 - (b) A number of systems as provided for in the "Annex for the Control System" to this Treaty. The Annex shall include provisions for such systems as the "report and exchange of information" with regard to the information deemed to affect the implementation of this Treaty, the "request for clarification" with regard to a situation which may be considered ambiguous or which may give rise to doubts about the compliances with the provisions set forth in this Treaty, the "request for a fact-finding mission" in order to clarify and resolve a situation which may be considered ambiguous or which may give rise to doubts about the compliance with the provisions provided for in this Treaty, and the remedial measures to be taken in the event of the Executive Committee's identifying a breach of this Treaty, as well as any other necessary provisions.

Article 10 Signature, Ratification, Deposit and Entry into Force

1. This Treaty shall be open for signature by the People's Republic of China, the United States of America, the Russian Federation, Japan, the Republic of Korea and the Democratic People's Republic of Korea.
2. This Treaty shall be subject to ratification in accordance with the constitutional procedure of the signatory States. The instruments of ratification shall be deposited with XXX which is hereby designated as the Depositary State.

3. This Treaty shall enter into force on the date when the deposit of the instruments of ratification by all of the Intrazonal States Parties and by at least two (2) of the Neighboring Nuclear Weapon States are completed.

Article 11 Prohibition of Reservation

This Treaty shall not be subject to reservations.

Article 12 Amendments to the Treaty

1. Any Contracting State Party may propose amendments to this Treaty and its Protocol, including the "Annex for the Control System." An amendment proposal shall be submitted to the Executive Committee, which, upon receipt of such proposal, shall immediately request the Commission to convene a meeting in order to examine such proposal. All of the Contracting States Parties shall be present in order to constitute a quorum for the Commission for amendment, and decisions of the Commission for amendment shall be taken by consensus.

2. The amendments once adopted shall enter into force thirty (30) days after the receipt by the Depository State of the fifth instrument of acceptance from the Contracting States Parties.

Article 13 Meeting for Review

Ten (10) years after the entry into force of this Treaty, a meeting of the Commission shall be convened for the purpose of reviewing the operation of this Treaty. A meeting for review of the Commission for the same purpose may also be convened at any time thereafter if there is consensus among all of the Contracting States Parties that comprise the Commission.

Article 14 Settlement of Disputes

Any dispute arising from the interpretation of the provision set forth in this Treaty shall be settled by peaceful means as may be agreed upon by the Contracting States Parties to the dispute. If within one (1) month the parties to the dispute are unable to achieve a peaceful settlement of the dispute by negotiation, mediation, enquiry or conciliation, any of the parties concerned shall, with the prior consent of the other parties concerned, refer the dispute to arbitration or to the International Court of Justice.

Article 15 Duration

This Treaty shall remain in force indefinitely.

**Model Protocol to
The Treaty on the Northeast Asia Nuclear-Weapon-Free Zone**

The Contracting States Parties to this Protocol,

Desiring to contribute to efforts towards achieving total prohibition and complete elimination of nuclear weapons, and thereby ensuring the international peace and security, including the Northeast Asia;

Noting the Northeast Asia Nuclear Weapon Free Zone Treaty, signed at XX on the YY day of ZZ, 2---

Have agreed as follows:

Article 1 Respect for the Treaty on the Northeast Asia Nuclear-Weapon-Free Zone

Each Contracting State Party to the Protocol shall undertake to respect the Northeast Asia Nuclear-Weapon-Free Zone Treaty (hereinafter referred to as the "Treaty"), and not to contribute to any act which constitutes a violation of the Treaty by the Contracting States Parties thereto or its Protocol by the Contracting State Parties thereto.

Article 2 Nonuse of Nuclear Weapons

Each Contracting State Party to the Protocol shall undertake not to use or threaten to use nuclear weapons, or any other nuclear explosive devices within the Northeast Asia Nuclear-Weapon-Free Zone.

Article 3 Visit and Transit

Each Contracting State Party to the Protocol shall undertake to notify in advance and to have a prior consultation for approval with the concerned Intrazonal States when a Contracting State Party to the Protocol wants its ships or aircraft carrying any nuclear explosive devices to visit any ports or airfields located inside Intrazonal States, to transit their territorial airspace, or to navigate territorial seas in a manner not covered by the rights of innocent passage or transit passage of straits. Each Intrazonal State, in the exercise of its sovereign rights, shall remain free to decide to give approval or not after consultation.

Article 4 Signature, Ratification and Entry into Force

1. This Protocol shall be open for signature by the French Republic, the United Kingdom of Great Britain and Northern Ireland.

2. This Protocol shall be subject to ratification. The instruments of ratification shall be

deposited with the Depositary State.

3. This Protocol shall enter into force for each Contracting State Party on the date of its deposit of its instrument of ratification with the Depositary State.

Notes to

"Model Treaty on the Northeast Asia Nuclear-Weapon-Free Zone" (Draft 4)

1. Preamble

There are several unique points in the Preamble of the Model Treaty. It recalls that Northeast Asia is the only region in the world where nuclear weapons have been used in the actuality of war, and that even today there are a great number of atomic-bomb survivors in Japan and on the Korean Peninsula who are living their lives in fear, anxiety and uncertainty. It also recalls the many hardships caused by the wars of aggression and the colonial rule of Imperial Japan and acknowledges that the resulting pain is yet to be remedied.

2. Article 1 & 3:

The Model Treaty is a six party treaty with a three plus three structure. That is, in the Model Treaty there are two categories of state parties; Intrazonal States (ROK, DPRK and Japan) and Neighboring Nuclear Weapon States (China, Russia and the U.S.). The NEA-NWFZ is composed of the territory of the former category of States. The two have different fundamental obligations, as stipulated in Article 3.

3. Article 1, (b)

In other nuclear-weapon-free zones treaties, the term "archipelagic waters" is generally included in addition to "territorial seas." The term, however, has been deleted in this Treaty as there are no archipelagic waters existent within the Northeast Asia Nuclear-Weapon-Free Zone.

4. Article 1, (c)

For the purpose of enumerating the names of States herein, they are enumerated in the descending order of larger population if there is no other inevitable or necessary reason to enumerate them otherwise.

5. Article 1, (c), (d), (e)

One of the features of this Model Treaty is that the "Contracting State Parties," defined in (e), are classified into two categories, "Intrazonal States," defined in (c), and "Neighboring Nuclear Weapon State," defined in (d). In the Draft 3, we include three states, namely South and North Korea and Japan in the Intrazonal States. However, it is very much worth considering that we include Mongolia as well into this category. It will be important to deliberate carefully, based upon information and analysis, over possible merits and demerits, resulting from inclusion of Mongolia.

6. Article 1, (f)

The definition of "nuclear explosive device" is derived fundamentally from the Rarotonga Treaty.

7. Article 1, (g), (h)

The definitions of "radioactive material" and "radioactive waste" are both derived from

the Bangkok Treaty.

8. Article 1, (i), (j)

The definitions of "nuclear material" and "nuclear installation" are both derived from the Pelindaba Treaty.

9. Article 2, Item 3

The portion of "freedom of the seas" is derived from the Pelindaba Treaty.

10. Article 2, Item 4: Application to the U.S. Military Bases

There are major U.S. military bases in Japan and the ROK. Naturally they are not exempted from obligations imposed upon the Intrazonal States (Article 2, 4). This will result in a unique verification challenge, which is yet to be addressed in this Model Treaty.

11. Article 3, Item 1, (a)

The undertakings enumerated herein are the same as those set forth in the "Joint Declaration of South and North Korea on the Denuclearization of the Korean Peninsula" complemented by "research" and "development."

12. Article 3, Item 1, (c)

This provision is not included in any other nuclear-weapon-free zone treaty. It has been included in this Treaty in consideration that the States Parties to the NPT agreed to a "diminishing role for nuclear weapons in security policies" in the final document adopted at the NPT Review Conference in 2000. This provision means that the Intrazonal States shall discard their dependence upon so-called "nuclear umbrella." Prohibiting the dependence on nuclear deterrence of nuclear weapon states may lead to a further relaxation of tension in the region.

13. Article 3, Item 1, (d)

This is a unique provision for Intrazonal States that stipulates that they exert efforts to disseminate education worldwide regarding the urgency of nuclear disarmament, including transmission to present and future generation of knowledge about the damage inflicted on humans and cities by the atomic bombs dropped in 1945.

14. Article 3, Item 2, (a)

In other nuclear-weapon-free zone treaties, this provision is generally included in their Protocols as a negative security assurance provision. Taking due account, however, of the profound depth of involvement of the three nuclear weapon states in this region in terms of security, it has been decided to include this provision in the actual body of the Treaty.

The inclusion of the security assurance provision in the body of the Treaty is deemed advantageous as it may enhance the incentive to negotiate the Treaty by North Korea and Japan in that their feeling of security would be increased by the provision's inclusion. In contrast, its inclusion may be deemed disadvantageous from the

perspective of the USA, thereby increasing its caution towards the Treaty.

15. Article 3, Item 2, (c)

This provision is an embodiment of the actual procedure currently taken by the government of Japan. It should be deemed possible that such procedure be applied to all other Intrazonal States. There is allegation claiming the existence of secret accords, not requiring prior consultations, between the USA and Japan, which the government of Japan has been officially denying in a repetitious manner.

It is to be noted that the waters having contact with the Northeast Asia Nuclear-Weapon-Free Zone, i.e. Yellow Sea (Huang Hai), East China Sea, Sea of Japan (Tong Hai), Pacific Ocean, are all accessible without inconvenience via open seas. For Korea Strait (Tsushima Straits West Waterway) both South Korea and Japan adopt the three-nautical-mile system for territorial waters, and for Tsushima Straits East Waterway, Tsugaru Straits, Osumi Straits as well as Souya Straits (La Perouse Straits), Japan adopts the three-nautical-mile system for territorial waters, therefore, there exist open seas in all of the aforementioned straits.

This provision may be removed from Article 3, Item 2 hereof, and then be put, as follows, under Article 3, Item 1 (e), in a more conservative manner, as generally seen in other nuclear-weapon-free zone treaties:

Article 3, 1(e)

Each Intrazonal State in the exercise of its sovereign rights remains free to decide for itself whether to allow visits by foreign ships and aircraft to its ports and airfields, transit of its airspace by foreign aircraft, and navigation by foreign ships in its territorial sea in a manner not covered by the rights of innocent passage or transit passage of straits.

To the contrary, stricter provisions may be adopted in place of the current provision of Article 3, Item 2, (c), including (i) to ban both portcall and transit, or (ii) to ban portcall and to obligate prior consultation for transit. In either case, such option would make some Neighboring Nuclear Weapon States much more difficult to sign the treaty.

Naturally, any change of this item (c) must be accordingly reflected in Article 3 of the Protocol of the Treaty.

16. Article 4, Item 4

This provision is related to the significant problem of how a Northeast Asia NWFZ Treaty will solve inequality in terms of energy supply that is derived from the fact that the 1992 South and North Joint Declaration on Denuclearization of Korean Peninsula takes an advanced position for both states not to possess nuclear reprocessing and uranium enrichment facilities, while Japan has already deeply involved in energy activities using such facilities. A concrete agreement on this issue will need vast amount of deliberations and negotiations among concerned states, probably far beyond the reach of this Model Treaty. In this Model Treaty, the obligation for future cooperation to solve this problem is stipulated.

17. Article 7, Article 8 and Article 9

For the "Commission for the Northeast Asia Nuclear-Weapon-Free Zone" and "Executive Committee," the relevant provisions in the Bangkok Treaty have been used as reference.

18. Article 7, (b)

It is to be noted that, as one of the functions of the "Commission for the Northeast Asia Nuclear-Weapon-Free Zone," this provision includes, in the Commission's deliberations on the Treaty compliance, concerns with Northeast Asian regional peace and security and with global nuclear disarmament, as are described in the Preamble of the Treaty. In the Preamble, are stated concerns with Chemical and Biological weapons.

19. Article 7, (e)

Electing a Chairperson for the "Commission for the Northeast Asia Nuclear-Weapon-Free Zone" from among the Intrazonal States among the Contracting States Parties is deemed to indicate the principal role to be played by the Intrazonal States in the operation with regard to this Treaty.

20. Article 8, Item 2, (c) and Article 9, Item 2, (b)

The provision with regard to the "Annex for the Control System" has yet to be finished.

21. In Article 7, (b) and Article 9, Item 2, (b)

As the text in Preamble has once been an object for deliberation by the Commission in Article 7, (b), the "report and exchange of information" set forth under this Article shall also include the issues related to the text described in Preamble hereof.

22. Article 10, Item 3

As a requisite for the entry-into-force of this Treaty, the participation by three Intrazonal States is duly included in this Treaty. This is due to the fact that these Intrazonal States are the most responsible parties to this Treaty. It may be envisioned that the Treaty will enter into force without the participation of the United States because of a delay in its ratification. Even in such an event, a normative effect may be achieved by the very fact that the United States would have already inked the Treaty. It is deemed advantageous to have the Treaty enter into force in order that the international community may apply pressure on the United States to ratify the Treaty as promptly as possible.

23. Article 11, Article 12, Article 13, Article 14 and Article 15

For the "Prohibition of Reservation," "Amendments to the Treaty," "Meeting for Review," "Settlement of Disputes" and "Duration," the relevant provisions in the Bangkok Treaty have been used as reference. Any provision with regard to withdrawal has not been included in this draft of the Model Treaty as we need more deliberation.

24. Protocol

The Bangkok Treaty has been used as reference, and is modified into a simplified form.

Proposal of A Model Northeast Asia Nuclear-Weapon-Free Zone Treaty

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(This paper was presented at the “Workshop: Nuclear-Weapon-Free Zone and Missile Control in Northeast Asia,” which was held at the Fudan University, Shanghai, PRC, in July 16 – 18, 2004.)

1. Introduction

China detonated its first nuclear bomb in October 1964. But three years later, Eisaku Sato, Prime Minister of Japan, introduced its three non-nuclear principles, principles not to manufacture, not to possess, nor to allow bringing-in nuclear weapons, for the first time in December 1967. Why did Japan close its nuclear option in the face of Chinese nuclear weapons?

The answer is evident if we know what Mr. Sato introduced was not simply three non-nuclear principles, but was four pillars of nuclear policies with broader perspectives. The three non-nuclear principles was just one pillar of the four. The third pillar was the Japan’s dependence upon the US nuclear deterrence assured by the Japan-US Security Treaty. This is the way how Japan responded to regional threat at that time. In fact, Mr. Sato met US President Johnson in 1965 and asked him if the Japan-US Security Treaty could protect Japan against the nuclear attack upon Japan. Then Mr. Johnson responded that obviously he would protect Japan against any kind of attack.¹

Exactly same thing happened recently. When the first six party talk on North Korea was approaching in two weeks, Masashi Nishihara, President, National Defense Academy of Japan, contributed an op-ed to the Washington Post in August 2003,² and wrote “Washington should not sign a pact stating that it has no intention of launching a nuclear attack on North Korea,” because it might eventually create circumstances that “Tokyo could no longer rely on its alliance with Washington and thus might decide to develop its own retaliatory nuclear weapons.” According to a Kyodo News report from Washington DC,³ by the time of that six party talk, the GOJ had requested the U.S. to preserve its nuclear deterrence against North Korea. Accordingly at a three party high level consultation at the end of September 2003, involving the U.S., Japan, and South Korea, the U.S. accepted Japan’s request and assured Japan that it would maintain its nuclear umbrella against North Korea even after the U.S. provided some sort of security assurance to North Korea.⁴

¹ Diet Minutes, 57th, Standing Committee on Budget, House of Representatives, Dec. 11, 1967

² Masashi Nishihara: “North Korea’s Trojan Horse,” The Washington Post, Aug. 14, 2003

³ The Kanagawa Shimbun, Oct. 31, 2003

⁴ The Asahi Shimbun, Nov. 20, 2003

This framework of regional security that has been maintained in Japan for more than forty years destines Japan only to two options both nuclear, to depend US nuclear deterrence or to arm itself with nuclear weapons. At the time of Chinese first nuclear test, Japanese anti-nuclear sentiment was much stronger than now, and the first option was a politically safer option for most conservative nationalists. But at the time of a hypothetical DPRK nuclear test, it might be too weak to resist against the movement of conservative nationalists who argue for independence of the US nuclear umbrella and for Japan's own nuclear deterrent.

It is true that Northeast Asian regional security should be maintained primarily by players of the region. What is vitally needed is a third option for the North East Asian regional security arrangement that can address the security concerns of the region without relying upon the U.S. nuclear deterrence, while inducing any incentives for additional nuclear armament in the region. Obviously, the establishment of a Northeast Asia Nuclear Weapon-Free Zone (NWFZ) with appropriate negative security assurances is considered to be a thoughtful approach to such option.

2. Three plus Three Nations Arrangement

A number of substantial arguments about the configuration of a potential NWFZ in the Northeast Asia have appeared in the post-Cold War era. I have recounted the history of such developments in other publications⁵ and I will just give the chronology of proposals on the arrangement of the NEA-NWFZ in the below.

Proposals for a Northeast Asia Nuclear Weapon-Free Zone

CHRONOLGY

March 1995	Endicott, et al., Circular and Elliptic Limited Nuclear Weapon-Free Zone (LNWFZ) ⁶
1995	Andrew Mack, NWFZ involving the ROK, DPRK, Japan and Taiwan ⁷
March 1996	Kumao Kaneko, Circular NWFZ ⁸
May 1996	Hikomichi Umebayashi, Three plus Three Nations Arrangement involving the ROK, DPRK and Japan
October 1997	Endicott, et al., NEA League of Non-Nuclear States, involving the ROK, Japan and Mongolia as a Phase I formation of the NEA-LNWFZ ⁹

⁵ Hiromichi Umebayashi, "A Northeast Asia Nuclear Weapon-Free Zone," Peace Depot & Pacific Campaign for Disarmament and Security Briefing Paper, April 2004

⁶ John E. Endicott & Alan G. Gorowitz, "Track II Cooperative Regional Security Efforts: Lessons from the Limited Nuclear-Weapon-Free Zone for Northeast Asia," *Pacifica Review*, Volume 11 #3, October 1999

⁷ Andrew Mack, "A Northeast Asia Nuclear-Free Zone: Problems and Prospects," Chapter 11 of *Nuclear Policies in Northeast Asia*, UMDIRI95I16, United Nations, 1995

⁸ Kumao Kaneko, "Japan Needs No Umbrella," *Bulletin of Atomic Scientists*, March/April 1996

⁹ "The Moscow Memorandum," Moscow, Russia, 11 October 1997. The text in its

The “Three plus Three Nations Arrangement” is considered to be a most realistic and fundamental arrangement for a NEA-NWFZ because it involves key three non-nuclear states of the region, namely the ROK, the DPRK and Japan, as the central players and three neighboring nuclear weapon states, namely the United States, China, and Russia, as supportive players of the arrangement. It is not an accidental coincidence that these six nations are the same with participants in the recent Six Party Talks on the nuclear issues of Korean Peninsula.

This approach could be pursued by taking advantage of the existing policies declared by the three non-nuclear states. Specifically, the ROK and the DPRK signed the “Joint Declaration on the Denuclearization of the Korean Peninsula” in 1992, in which they agreed that they “shall refrain from the testing, manufacture, production, acceptance, possession, stockpiling, deployment and use of nuclear weapons,” and that they “shall use nuclear energy only for peaceful purposes.” In addition, Japan has the “three non-nuclear principles,” which state that Japan will not manufacture, possess, nor allow the bringing-in of nuclear weapons. Also, the 1995 Atomic Energy Basic Law prohibits the use of nuclear energy for military purposes.

As for recent developments regarding the DPRK’s nuclear claims, it is to be noted that notwithstanding its withdrawal statement from the NPT, the DPRK has officially committed to remaining a non-nuclear weapon state, at least “at this stage.” Despite charges and countercharges, the official policy of the DPRK remains, at this time, that it is not a nuclear weapons state. In the DPRK’s statement regarding its withdrawal from the NPT, it reaffirms, “Though we pull out of the NPT, we have no intention to produce nuclear weapons and our nuclear activities at this stage will be confined only to peaceful purposes.”

3. Nuclear-Weapon-Free Korean Peninsula

Before we propose a Model NEA-NWFZ Treaty with Three plus Three Nations Arrangement, it will be meaningful to discuss about a Nuclear Weapon Free Korean Peninsula (NWFKP). In relation to the current nuclear crisis on the Korean Peninsula, there is an international consensus to make the Korean Peninsula nuclear weapon free. Of course this is a very desirable goal. However, I would like to emphasize there are critical differences between a NWFKP and a NEA-NWFZ from the viewpoint of the cooperative security framework of the region.

Firstly, a NWFKP cannot address a major source of tension in this region, namely tension between the People’s Republic of China (PRC) and Japan. The Government of Japan’s (GOJ) concerns about the nuclear threat posed by the PRC have long history and are very serious as I wrote in Section1. Although the PRC has repeatedly declared unconditional negative security assurances to non-nuclear weapon states and no-first-use policy, the GOJ considers such pledges unreliable. In a NEA-NWFZ,

entirety can be found in the document cited in note 6.

Japan's concerns would be resolved by means of a legally binding NSA provided by the PRC. This will relieve Japan of a major threat and thereby ease the tension between Japan and China, which, in turn, will contribute to lessen U.S. military presence in the region.

Secondly, the general public in the ROK and the DPRK remain very cautious about Japanese behavior. According to opinion polls of the Korean Joong-Ang Ilbo, 82.3 % (in February 1999) and 81.9 % (in September 1996) of South Koreans think the ROK should keep the nuclear option open. Also in the poll in September 1996, when asked whether a reunified Korea should possess nuclear weapons as a means of precaution against major powers in Asia, 82.6% of Koreans replied "yes." It may be safe to assume that in this context, Japan is interpreted as a "major power in Asia." Considering that both Koreas are prohibited from possessing nuclear reprocessing and uranium enrichment facilities under a NWFKP agreement, as stipulated in the 1992 Joint Declaration, while Japan is allowed to possess such facilities even though they are under safeguard of the IAEA, such a situation could not be stable. It is very probable that tension between Japan and Korean Peninsula would remain and even grow in the mean time. In this respect, it is important that the ROK, the DPRK and Japan are integrated into a single arrangement for mutual inspection, which is ensured in a NEA-NWFZ.

Thirdly, a NWFKP will not automatically provide an opportunity in which the ROK, the DPRK and Japan, key players of the cooperative security framework in the Northeast Asia, would meet and discuss security issues. Such meetings could lead to a further improvement of the security situation in the region. On the contrary, in the current international context leading to a NWFKP, the influence of the U.S. will remain significant in regional security issues and most probably, the region will not be immune to U.S. unilateralism. In a NEA-NWFZ, the treaty organization established to ensure treaty compliance would endow three non-nuclear states with status of central player in the regional security.

4. Features of the Model NEA-NWFZ Treaty

A Model NEA-NWFZ Treaty ("Model Treaty" in the below) and a Note for it are annexed to this paper. It has been prepared in hopes that it will serve as a provisional and tentative basis for future discussions and deliberations to be conducted by and among a large number of experts and concerned citizens. The following describe some of the characteristic aspects and unique feature of the Model Treaty.

(1) Preamble

There are several unique points in the Preamble of the Model Treaty. It recalls that Northeast Asia is the only region of the entire world where nuclear weapons have been used in reality in war, and that there are a great number of atomic-bomb survivors even today who are living their lives in fear of anxiety and uncertainty in Japan as well as in the Korean Peninsula. Also it recalls many hardships caused by the wars of aggression and the colonial ruling by Imperial Japan and acknowledges that the pains are yet to be cured.

(2) A Six-Party Treaty with Three plus Three Structure

The Model Treaty is a six party treaty with a three plus three structure. Namely in the Model Treaty there are two categories of state parties; Intrazonal States (ROK, DPRK and Japan) and Neighboring Nuclear Weapon States (China, Russia and the U.S.). The NEA-NWFZ is composed of the territory of the former category of States. The two have different fundamental obligations, as stipulated in Article 3.

It is very much worth considering that we include Mongolia as an Intrazonal State. It would be important to deliberate carefully, based upon information and analysis, over possible merits and demerits, resulting from inclusion of Mongolia.

(3) Obligation of Non-Dependence upon Nuclear Weapons for Intrazonal States

The Article 3, 1(c) is a provision not included in any other nuclear-weapon-free zone treaty. It means the Intrazonal States shall discard their dependence upon so-called “nuclear umbrella” in their security policies. Such provision has been included in this Treaty, considering that the States Parties to the NPT agreed to “diminishing role for nuclear weapons in security policies” in the final document adopted at the NPT Review Conference in 2000. Prohibiting the dependence on nuclear deterrence of nuclear weapon states may lead to a further relaxation of tension in the region.

(4) Negative Security Assurance in the body of the Model Treaty

A provision of negative security assurance (NSA) by nuclear weapon states, in other nuclear-weapon-free zones treaties, is generally included in their protocol to the treaties. Taking due account, however, of the profound depth of involvement of the three nuclear weapon states in this region in terms of security, it has been decided to be included in the body of the Treaty in this model. (Article 3, 2(a))

The inclusion of the NSA provision in the body of the Treaty is deemed advantageous as it may enhance the incentive to negotiate this Treaty on the part of North Korea and Japan as their feeling of security is to be increased due to the inclusion. However, on the other hand, it is deemed disadvantageous in that the U.S. may become more cautious to the conclusion of the Treaty.

(5) Port-call and Territorial Transit of Vessels and Aircraft Carrying Nuclear Weapons

The Article 3, 2(c) stipulates the obligation for the Neighboring Nuclear Weapon States in relation to the portcall and transit of vessels and aircraft carrying nuclear weapons. It is a prior consultation system: an embodiment of the actual procedure currently taken by the government of Japan. It should be deemed possible that such procedure be applied to all other Intrazonal States. There is allegation claiming the existence of secret accords, not requiring prior consultations, between the U.S. and Japan, which the government of Japan has been officially denying in a repetitious manner.

This provision may be removed from Article 3, 2, and then be put, as follows, under Article 3, 1(e), in a more conservative manner, as generally seen in other nuclear-weapon-free zone treaties:

Article 3, 1(e)

Each Intrazonal State in the exercise of its sovereign rights remains free to decide for itself whether to allow visits by foreign ships and aircraft to its ports and airfields, transit of its airspace by foreign aircraft, and navigation by foreign ships in its territorial sea in a manner not covered by the rights of innocent passage or transit passage of straits.

To the contrary, stricter provisions may be adopted in place of the current provision of Article 3, 2(c), including (i) to ban both portcall and transit, or (ii) to ban portcall and to obligate prior consultation for transit. In either case, such option would make some Neighboring Nuclear Weapon States much more difficult to sign the treaty.

(6) Energy Disparity

The Article 4, 4 aims to address a significant problem how a Northeast Asia NWFZ Treaty will solve the disparity, in terms of energy supply, that is derived from the fact that the 1992 South and North Joint Declaration on Denuclearization of Korean Peninsula takes an advanced position for both states not to possess nuclear reprocessing and uranium enrichment facilities, while Japan has already deeply involved in energy activities using such facilities. A concrete agreement on this issue will need vast amount of deliberations and negotiations among concerned states, probably far beyond the reach of this Model Treaty. In this Model Treaty, the obligation for future cooperation to solve this problem is stipulated.

(7) Application to the U.S. Military Bases

There are major U.S. military bases in Japan and the ROK. Naturally they are not exempted from obligations posed upon the Intrazonal States (Article 2, 4). It will bring about unique verification challenge, which is yet to be studied in this Model Treaty.

(8) Obligation of Education

The Article 3, 1(d) is a unique provision for Intrazonal States to be stipulated to exert effort for the diffusion of education worldwide for nuclear disarmament, including the transmission to the present and future generations of the knowledge about the damage inflicted on the humanity and cities by the atomic bombs dropped in 1945.

[Comments]

A Chinese Perspective on Model Northeast Asia NWFZ Treaty

Dingli Shen¹
Fudan University

July 18, 2004

Northeast Asia is an area where a number of nuclear weapons states and nuclear weapons aspiring states are situated. In terms of nuclear weapons states, Russia and China are the two nuclear powers in the region. The United States, despite the fact that it is not geographically a part of it, has military alliances with two states in the region and cannot be excluded when nuclear arms control and disarmament in Northeast Asia is addressed. Japan and South Korea have substantial civilian nuclear program and both depend on the US extended nuclear deterrence. South Korea has once thought to develop its own military nuclear program. Although Japan has three non-nuclear principles, Japanese government has decided, since late 1960s, to acquire near-nuclear-weapons capability and apparently has achieved this purpose. Furthermore, North Korea has embarked on a course of nuclear weapons development that is both a response to the threat it has perceived and a threat that other regional states would feel. It is also noted that Taiwan, a part of China, used to develop nuclear arms when it felt the US would reduce security commitment to it and to the region about thirty years ago.

Given this backdrop, a regional nuclear weapons free zone for Northeast Asia has been conceived for Northeast Asia. The concept of "Limited Nuclear Weapon-Free Zone", proposed by John Endicott of Georgia Institute of Technology, among others, has gained particular attention for the past decade. However, these types of proposals, no matter for a circular or an elliptic-shaped zone area, have not received acceptance among nuclear weapons states in the region, as the proposed zone would include part of these nuclear weapons states, and require the nuclear weapons states possibly redeploy their nuclear forces on their territories. Technically, it is not impossible for nuclear weapons states to do so. Militarily, however, such redeployment, by allowing making part of the nuclear weapons states nuclear weapons free, is not very meaningful, as the nuclear capability can still be delivered from other parts of these countries. Politically, such proposals seem not possible for nuclear weapons states to accept, as they tend not to accept restriction on the sovereign freedom of their weapons deployment.

This Model Northeast Asia Nuclear Weapons Free Zone Treaty, proposed by Hiromichi Umebayashi, has four features that distinguish itself from other Northeast Asian nuclear weapons free zone proposal. Basically, the Model Treaty is a good combination of idealism and pragmatism, based on the current reality of Northeast Asia.

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First, the Model Treaty has noticed the issue of political acceptability by neighboring nuclear weapons states. By applying this proposed Zone only to Japan and the two Koreas, this scheme has avoided the difficulty of geographic scope involving nuclear weapons states in the region, and can thus help promote this proposal to be embraced by Russia and China, and the United States.

Second, the Model Treaty, like all other regional nuclear weapons free zone treaties, has required member states “not to conduct research on, develop, test, manufacture, produce, acquire, possess, stockpile, deploy or use any nuclear explosive devices by any means, anywhere inside or outside the zone” (Article 3.1(a)). It merits particular attention that this Model Treaty has further proposed to relinquish dependence on nuclear weapons. Importantly, Article 3.1(c) of the Model Treaty stipulates that member states should “eliminate all dependence whatsoever on any nuclear weapons or any other nuclear explosive device in all aspects of its security policy”. This has special relevance to this “zone”, as Japan and South Korea have military alliance with the US and depend on American nuclear protection. This Treaty has not only mandated all intrazonal states not to engage in any efforts related to acquiring nuclear weapons, it also has asked them not to seek or to accept nuclear umbrella from nuclear weapons states. Such requirement, nevertheless, has not been demanded by NPT treaty.

If the three intrazonal states can accept this proposed Treaty, the nuclear umbrella between Washington and Tokyo as well as Seoul has to be closed (though not for the conventional umbrella part). This shall be a major progress of nuclear nonproliferation in Northeast Asia, though I am not very optimistic of the current Japanese government’s attitude of accepting it. In addition, when the DPRK’s nuclear issue is going on, this proposal of a Model Treaty may be difficult to be accepted by South Korean government alone. Seoul may contemplate a nuclear weapons free Peninsula instead. In fact, ROK and DPRK signed in January 1992 a Joint Declaration on the Denuclearization of the Korean Peninsula.

Third, comparing with this Model Treaty with other existing treaties of regional nuclear weapons free zones, its current shape of making this zone possibly accessible by nuclear-weapons carrying vehicles seems not restrictive enough. Article 3.2(c) states that each neighboring nuclear weapons state shall “notify in advance and to have a prior consultation for approval with the concerned Intrazonal States when a Neighboring Nuclear Weapon State wants its ships or aircraft carrying any nuclear explosive devices to visit any ports or airfields located inside Intrazonal States, to transit their territorial airspace, or to navigate territorial seas in a manner not covered by the rights of innocent passage or transit passage of straits. Each Intrazonal State, in the exercise of its sovereign rights, shall remain free to decide to give approval or not after consultation.”

This statement perhaps has considered the acceptability of the Model Treaty by Japanese and American governments. It actually, however, leaves a loophole that would allow port calls of nuclear weapons carrying vessels, though a true regional nuclear

weapons free zone shall ban the existence of any type of nuclear weapons. Therefore, it is desirable to strengthen the clause though it will then raise the level of difficulty for Model Treaty to be accepted by Tokyo and Washington. But even without strengthening the clause, the US will still feel difficult to declare the status of its naval vessels and aircraft concerning if they carry nuclear weapons – the US carries a neither-confirm-nor-deny policy for its navy fleets – the reason that breaks US-New Zealand alliance relationship.

Fourth, regarding the decision making of the Commission and Executive Committee of the Northeast Asia Nuclear Weapons Free Zone, the Model Treaty proposed “consensus, or failing consensus, by consensus of all but one Contracting States Parties”. Since Contracting States Parties are those states that have deposited the instrument of ratification, such decision making would allow and demand all neighboring nuclear weapons states to be involved, differing all other regional nuclear weapons states free zone treaties. For others, nuclear weapons states are expected to respect the existence of the zone, but not expect to play a role in assuring the status of the zone. In so drafting, neighboring nuclear weapons states are to play their respective role in facilitating the purpose of the Treaty, while giving them certain rights to block an action should more than one neighboring nuclear weapons state would disagree (but not allow any single member to veto).

In sum, this Model Treaty tries to strike a delicate balance of political acceptability of the Treaty by both “Intrazonal States”, and “Neighboring Nuclear Weapon States”. While insisting on the concept of nuclear weapons free zone for Northeast Asia, the Model Treaty tries best to win the support of states of both categories. By demanding the abandoning of dependence on nuclear weapons, it actually demands the closing of nuclear deterrence part of US-Japan and US-ROK military alliance. By defining the zone to within Japan and two Koreas proper, the Model Treaty tries to simply the question. And by leaving the possibility of port calls of nuclear weapons carrying platforms open, the Treaty tries not to disallow access of whatsoever US military platforms to this zone (though this author feels it too weak to make a zone). With various measures, this Model Treaty is a breakthrough of advancing an idealistic while pragmatic nuclear weapons free zone of Northeast Asia.

[Comments]

Comments on the Model NEA-NWFZ Treaty

Ambassador J. Enkhsaikhan¹

26 September, 2004

Dear Hiromichi Umebayashi,

As promised, I am writing this letter to share my views on the set of documents that you were kind enough to send me last week. Since I do not know the drafting history of the draft model NEA-NWFZ treaty, please bear with my ignorance on some of the issues. Since I did not participate nor receive material of the Shanghai meeting I do not know the reaction of others nor their position.

I believe that this is a new generation of NWFZ treaties, it has some substantial innovations compared with previous 4 treaties. That is a good sign, because the world is changing and we all must move forward. You were able to explain the novelty of the draft in the part on “features of the Model NEA-NWFZ treaty”. Thus reference on “nuclear umbrella” in the treaty; putting the negative security assurances in the main body of the treaty, making reference to foreign military bases and obligation of education are really innovative and very helpful. Being a representative of a land-locked country, I believe that prohibition of dumping of nuclear waste should not be limited to seas and oceans, but also to land, and that such dumping should not affect environmental interests of neighboring countries.

Though you mention in Article 9 the annex for the Control System, I wasn't able to find it in the annex. I am sure that the partners in negotiations would be keen to know the content of the Control System. Your notes to the Model treaty is very helpful to explain some of the provisions of the draft treaty.

I totally agree with you reasoning that your three plus three arrangement is a most realistic and fundamental arrangement for a NEA-NWFZ, since it is based on the commitments already made by the two Koreas and by Japan. Therefore I believe that for tactical and logical reasons you and other supporters of 3+3 formula should support turning the Korean peninsula into a nuclear-weapon-free peninsula. I would underline the importance of this for the success of the 3+3 arrangement. As I can see it, 3+3 arrangement and NWFKP are two sides of the same coin, or should I say a part of the chicken and egg issue. One cannot be resolved without the second one. In your paper I detect (I may be wrong and stand to be corrected) that the drafters of 3+3 arrangement are trying to put the arrangement before NWFKP. I believe that time wise, NWFKP should a bit precede the NEA-NWFZ.

¹ Ambassador J. Enkhsaikhan is the former Permanent Representative of Mongolia to the United Nations at the time of the UN Resolution to support the Nuclear-Weapons Free Status of Mongolia. This is a preliminary comments in the form of a private letter, which he has kindly permitted to publicize.

Unlike the previous NWFZ treaties, your draft tries to contain two layers of commitments: legal and political. I mean that your legal commitments are also supported by political commitments, as reflected in draft Articles 2.4, 3.1 d, and 6. When legal commitments are reinforced by politically important commitments and vice versa, it strengthens the provisions of the treaty. What I would venture to suggest is also a third layer of commitment – commitment to cooperate closely with other NWFZs. When all NWFZs cooperate it makes all of them legally and politically stronger. Therefore I would suggest that you think of adding in the preambular and the main part of the treaty specific provisions on cooperation with other NWFZs, both traditional and single-State zones. This will allow NEA-NWFZ to link up with all other zones and make the zone legally and politically stronger.

As to Mongolia's case, we would be interested in the success of 3+3 arrangement and will be more than happy to help it to realize. We would be interested in working together with you on this issue and on promoting nuclear non-proliferation in general. When reading your papers I came to a conclusion that a meeting of potential NWFZ representatives might be politically and practically useful to exchange views, to coordinate their activities and to send a strong message to the nuclear-weapon States that denuclearization process is far from over. That could bring together the relevant representatives of the Middle East, Central and North Europe and of NEA. Single States as Mongolia, New Zealand and Austria could also be invited and they could send a good and clear message to NPT Review Conference in 2005. Representatives of the 4 NWFZs could be invited as observers. This is just an idea. Of course it would need financing and other arrangements. The venue could be either at UN headquarters, in Japan or even in my Mongolia. On this somewhat positive note I end my comments. Since I do not know the entire history of the 3+3 arrangement, I apologize for any issue that you would consider irrelevant.

[Comments]

The Collision between Nuclear Sovereignty and Nonproliferation

Wooksik Cheong¹⁰

9 August, 2004

Even though there is certainly a tendency of identifying the nuclear issue on the Korean Peninsula as the one inherent to North Korea, the nuclear issue on the Korean Peninsula is largely raised on three levels. Above all, originating in the cold-war and post-cold war era, nuclear weapon supremacy and unilateralism of the U.S., which is becoming more strengthened after inauguration of the Bush Administration, are now achieved on the Korean Peninsula. Several important factors in the arms race on the Korean peninsula have significantly escalated the possibility of a nuclear war on the Korean Peninsula. First of all, the U.S. already made plans for the use of a nuclear weapon during the Korean war period. In South Korea various weapons, of which their reach and nature are unclear, have been stationed according to the massive retaliation strategy by which team exercises for the use of nuclear weapons against North Korea in a crisis were carried out. Other significant issues are the Bush doctrine in which North Korea was mentioned as one of the targets nuclear first use and the invention of the small-sized nuclear warhead targeting at the North Korean underground bases. The reality of the nuclear threat involves the fact that these issues are not cleared out yet, although they exist as the main concerns. Therefore, we must pay attention to these essential issues.

As mentioned above, Korean society is insensitive to the nuclear threat brought by the U.S., and the reason is that basically, the U.S.-led 'nuclearism' has been also reflected in South Korea. It is also represented by the fact that raising US nuclear issues was prohibited under the security pledge, which was expressed as the nuclear umbrella policy, and the U.S.-Korea Alliance. The product of the anti-communist cold war era, which assumed that criticizing the U.S. nuclear policy endangers the security, and benefits North Korea, is still not dissolved. In the twenty-first century, while international society is criticizing the U.S. nuclear policy as strongly as the North Korean nuclear issue, those who criticize the U.S. policy in the Korean society still remain a minority.

Second one is the North Korean nuclear issue, which has been raised as the most significant point in the dispute on the Korean peninsula since 1990s. Confrontations and conflicts between the U.S. and the North concerning the North Korean nuclear threat have been the nature of the crisis, as well as the North Korean

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attempt to develop nuclear weapons, the threat itself. Why North Korea started to realize its potential to develop nuclear armaments, is closely related to the destruction of the cold war structure and the isolation of North Korea itself. As shown by the fact that the North signed the NPT because of Soviet pressure in 1980, North Korea didn't have strong need to possess nuclear weapons then, especially considering the conditions of the time when the Soviet as well as China existed as supports. Similar to South Korea, which is under the U.S. nuclear umbrella, the North also had its solid allies such as Soviet Union. It prevented the North from possessing nuclear weapons, as the U.S. similarly prevented South Korea to develop nuclear weapons.

However, Security environment was radically changed by the series of events: establishment of diplomatic ties between the Soviet Union and South Korea, followed by the dissolution of the Soviet Union, and diplomatic ties between China and South Korea. Confronted with the fundamental changes of the security environment, the North made efforts for regime survival by consolidating the regime inside; pursuing the status quo or partial normalization of the relations with the South; and improving its relationship with the international society such as the U.S., Japan, and EU. In that process, the nuclear card played by the North began to play a big role in the improvement of the relations with the U.S. as well as in the guarantee of its survival in military sense. It can be compared to the regime of Park Jeonghee who, faced with the plan of the U.S. military withdrawal in South Korea by Nixon and Carter Administrations in 1970s, tried to develop nuclear weapons and missiles. This nuclear card also brought forth the Agreed Framework, which mainly concerns about the abandonment of the North nuclear program, the normalization of the relations between the North and the U.S., and the provision of alternative energies.

Despite its strategy for survival, the North was put between a rock and a hard place with the inauguration of the Bush administration. The Agreed Framework, which was expected to be the 'window of the opportunity' for its survival, fell to the 'swamp of betrayal', and the Bush administration is specifying its strategy of the pre-emptive strike including the use of nuclear weapons, adhering to the principle of non-comprise against the North and regarding it as the 'axis of evil'. The U.S. also continues with the invasive war on Iraq without any clear evidence about weapons of mass destruction. Given those circumstances and realities, it is at least a rather logical and natural process that the North is tempting to get nuclear armament to deter a possible US attack. In particular, the North regards the six party talks as the place to save time or for the justification of the U.S. for an attack against the North. Considering this, the reaction of the North to prepare for the 'failure of diplomacy' is a more realistic one. To the North it is naturally to assume that the failure of the talks would be the condition for the U.S. to use forces.

The third one is the collusion between the temptation of "nuclear sovereignty" that occurs due to the geographical location of the Korean Peninsula, surrounded by super powers, and the international nonproliferation system that does not tolerate nuclear armaments for South, North, or a unified Korea. This issue is one of the most structural problems of the nuclear issues on the Korean Peninsula. Among the four

neighboring powers, three countries, USA, China and Russia are included in the 5 strongest nuclear powers in the world; Japan is a 'potential' nuclear power, able to produce hundreds of nuclear weapons within just a few years. For these reasons, the idea of possessing nuclear weapons may probably be a natural one for South, North, or a unified Korea. However, because of the geopolitical environment around the Korean Peninsula, possession of nuclear weapons would be impossible or bring more loss than gain to South, North, or a Unified Korea. The fateful dilemma, evolved between the temptation of nuclear sovereignty and the strong restraint of the nonproliferation system, was, is, and will remain a tough problem to solve.

This case of the collision of nuclear sovereignty and nonproliferation on the Korean Peninsula is in fact very suggestive for the problems that might come up in the future. A series of American policies since 1960s such as the Nixon doctrine, which said "Asian countries would be largely responsible for their own defense", the partial withdrawal of the US Army in South Korea, and the inauguration of the Carter Administration which promised the complete withdrawal of the US Army in Korea, were important factors that caused the Park Jeong hee regime to propel "Yulkog Enterprise" and to attempt to secretly develop nuclear weapons and missiles as means of 'self-defense'. South Korea's independent nuclear armament project failed because of the strong restraint of the US and also because the Jeon Doo Hwan regime, who came to power through a military coup, received guarantee for security pledge and approval of his regime from the Reagan Administration. This is a significant case. Without the end of the Cold War on the Korean Peninsula the argument of the "nuclear sovereignty" could evolve further in the North if the threat of the U.S. increases. On the other hand, if the security pledge weakens, the same argument may be aroused in South Korea as "self-defense".

It is very likely that the argument of "nuclear sovereignty" will rise in the future in South, North, or a Unified Korea. As long as the threat from US continues, the temptation of the nuclear armament for North Korea will keep increasing. If the North's temptation becomes reality, South Korea may not be an exception of the nuclear domino effect in the middle or long term. As the Park Junghee regime has shown, the argument of "nuclear sovereignty" may possibly gain more power in South Korea if the US security pledge greatly lessens, for example by withdrawal of the US Army without improvement on the security environment on the Korean Peninsula and in Northeast Asia. If the US-led trilateral Missile Defense (MD) among South Korea, Japan, and the U.S. is realized, China will increase nuclear capability at great scale and Japan might precede a nuclear armament project as a countermeasure to China. These conditions can stir Korean nationalism and act as an important factor provoking South Korea to insist on "nuclear sovereignty". In short, the collision between nuclear sovereignty and nonproliferation is not only a problem of the past and present, but also a problem for the future. For this reason, a lot of controversy about South Korea's nuclear test, aroused in September 2004, is one that shows there is an acute tension between nuclear sovereignty and nonproliferation.

The need for a creative alternative

Now South Korea is faced with a fateful dilemma resulted by the collusion between nuclear sovereignty and nonproliferation. Can it be an option for South Korea to remain, as it has been thus far, under the US nuclear umbrella? Or should it also have the nuclear card to play on its own, as some argue? These conflicting two arguments can be practically dubbed as "bandwagon" and "sovereignty" respectively, given the idea that both are, in effect, based on 'nuclearism', which intend to use nuclear weapons as a security measure.

During the Cold War, with North Korea allying with the former Soviet Union, a nuclear power, as well as China, it was rather inevitable for South Korea to be put under the US nuclear umbrella. It is also a stark reality that even now, when the Cold War is over worldwide and the socialist alliance between the Soviet Union, North Korea and China perished long ago, the US nuclear umbrella is still over South Korea to operate as deterrence against North Korea. Given that South Korea normalized diplomatic ties with China and Russia in the early 1990s and that the peace system where the South no longer needs to worry about the North's attack has been established, does South Korea still need nuclear umbrella from the US? Isn't the 'uncertainty of the future' becoming even more uncertain as people are still obsessed with the US nuclear umbrella, an 'archaic custom from the Cold War period', in this post-Cold War era?

It is true that, with the Cold War being finished and the renewed diplomatic ties with Russia and China, South Korea is now free from the fear of being attacked with nuclear weapons by these former enemies. If the endeavors to cooperate and to build a peace system with North Korea were to be succeeded, there would be no justification for the US nuclear umbrella, which has been there since the 1950s for a massive retaliation for a possible attack on the South from the North. In this sense, once the peace system in the Korean peninsula is established, the US's security pledge including its nuclear umbrella over South Korea will be subjected to criticism. "Against whose nuclear attack do we need the nuclear umbrella and Missile Defense (MD)?" will be one of the fundamental questions to be raised.

But that does not mean for South Korea that arming itself with nuclear weapons can be an alternative. As was seen in the North Korea's case, withdrawing from the Nuclear nonproliferation treaty (NPT) and striving to become a nuclear power itself will surely leave South Korea with enormous economic, political and security burden. In addition, whether it is North Korea or the South, or even a unified Korea, it is for sure that the neighboring 4 countries, which regard nuclear-free Korean peninsula as a matter of life and death of their own, will instantly and strongly oppose to nuclear armament of the Korean peninsula. A nuclear arms race with neighboring powers is not an option, either. It will only worsen the security dilemma it is facing now. No way can nuclear weapons guarantee South Korea's security.

To get out of the fateful dilemma between nuclear sovereignty and nonproliferation, South Korea needs to seek a creative and active alternative. It should try to find the third way on which it can rely for its security by a nuclear power while at

the same time neither depending on nuclear umbrella of a powerful country nor arming itself with nuclear weapons. The answer should be in accordance with NPT, which calls on all its member countries to concentrate on diplomatic efforts for the ultimate disarmament of all nuclear weapons while seeking a nuclear-free Northeast Asia as a transitional stage.

In a way, the so-called 'second North Korean nuclear crisis' that came out in the early 21st century can be an opportunity for South Korea to understand the nuclear issue on a more essential basis and as starting point for debate. It needs to ask the international community including its neighboring countries again how a denuclearized Korean peninsula can secure itself from nuclear powers. This is not a limited question within the specialty of the Korean peninsula instead it is directly related to the realization of the universal values to liberate Northeast Asia and even the world from the nuclear threat. Therefore, the six-party talks with the six Northeast Asian countries as its members also serve as a significant venue to raise such substantial questions.

Denuclearizing Northeast Asia may sound not realistic but more than half of the planet has already obtained a position as nuclear-free zone; Latin America and the Caribbean region by the Tlateloco Treaty signed in 1967, South Pacific region by the Lalotonga Treaty in 1985, Southeast Asia by the Bangkok Treaty in 1995, and Africa by the Pelindaba Treaty in 1996. Though a simple comparison of these regions with Northeast Asia would not be fair, it is still a problem that no attempt has been made to lay the cornerstone to resolve the nuclear dilemma the Korean peninsula faces and to improve mutual security in Northeast Asia. From the beginning of the 21st century, nuclear nonproliferation has been an important issue worldwide and in the center of the issue lies the Korean peninsula. Therefore it is possible for South Korea to win international support and cooperation for the peace in the Korean peninsula, but only by positively proposing a nuclear-free Northeast Asia.

There is also a chance to draw up a realistic plan for the nuclear-free Northeast Asia. Currently, of the six member countries of the six-party talks, Japan and both South and North Korea are officially nuclear-free. A meaningful first step can be taken if the three nuclear-free countries sign a denuclearization treaty and get the other three countries-the US, China and Russia- guarantee not to use or threaten to use their nuclear weapons against the non-nuclear states. The six-party talks, which was primarily arranged to resolve the US-North Korean conflict, could serve as a good opportunity to make the idea of a nuclear-free Northeast Asia public.