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# **Paths to Peace on the Peninsula: The Case for a Japan-Korea Nuclear Weapon Free Zone**

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Nuclear proliferation on the Korean Peninsula in the form of North Korean nuclear tests and new uranium enrichment capabilities have made new paths to peace on the Peninsula more necessary than ever if a regional nuclear arms race—and potential nuclear war—is to be averted. One avenue to peace is the establishment of legally binding and internationally verified regional nuclear-weapon-free-zones (NWFZs). These have already been successfully established in such regions as Latin America (1967), the South Pacific (1985), Southeast Asia (1995), Africa (1996) and Central Asia (2006). After reviewing previous proposals for such a zone on the Peninsula and in the region more generally, the authors advance the case for the establishment of a Korea-Japan Nuclear-Weapon-Free-Zone that would build on the current nuclear-weapon-free status of Japan and South Korea, and facilitate phased and verified North Korean accession to the zone using similar “later-entry-into-force” mechanisms as those of the Latin American NWFZ (Tlatelolco Treaty). The political preconditions for this already exist, given North Korea’s endorsement in principle of NWFZ arrangements; and new approaches among several major actors, including Japan, the US Obama Administration, and China, on multilateral initiatives to address Northeast Asian regional issues.

North Korea’s 2006 and 2009 nuclear tests, its withdrawal from the Non Proliferation Treaty (2003), and its recently confirmed uranium enrichment facilities and construction of a small light water reactor, have prompted renewed international concerns about nuclear proliferation on the Korean Peninsula and the whole Northeast Asia region. These concerns have been heightened by recent North Korean military actions, most notably the March 2010 torpedoing of the South Korean naval vessel, Cheonan, and the November 2010 shelling of South Korea’s Yeonpyeong Island.

Following the advent of the US Obama Administration, there were hopes and expectations in the international community that there would be a return to cooperative diplomacy as a way of addressing global nuclear threats, especially following President Obama’s Prague Speech calling for a commitment to the elimination of nuclear weapons, and the positive outcome of the 2010 Non Proliferation Treaty (NPT) Review Conference.

Yet in Northeast Asia, there has been an on-again off-again pattern in pursuing cooperative approaches to engaging with North Korea on nuclear issues. Occasional periods of cooperative engagement, such as the 1992 signing of the Joint Declaration on the Denuclearization of the Korean

Peninsula, the 1994 US-DPRK (Democratic People's Republic of Korea) Agreed Framework, and the 2007 Six Party Talks agreement, have been supplanted, on the US and South Korean side, by periods of coercive diplomacy and threat projection military exercises designed to "send a message to North Korea"; and, on the North Korean side, by provocative military actions, and acquisition of nuclear weapons as perceived insurance against attack and/or a bargaining tool for leveraging economic, technical and energy aid and assistance.

The stakes of not seeking a resolution to the proliferation threat on the Peninsula and in the broader Northeast Asia region are high indeed. North Korea, while only believed to possess seven or eight crude nuclear weapon devices, is actively engaged on expanding its fissile material production capabilities. As revealed in late 2010, North Korea has now developed a major uranium enrichment facility at its Yongbyon Nuclear Complex. An inspection by three US experts, Siegfried Hecker, John Lewis and Robert Carlin in November 2010, assessed the facility as both highly sophisticated and on an industrial scale (2000 centrifuges).<sup>1</sup> While the facility appears to be designed to meet civilian nuclear power needs, Hecker et al. note that it could be "readily converted to produce highly-enriched uranium bomb fuel". With such fuel, North Korea could potentially acquire the capacity to produce over 100 nuclear bombs. Even if such fuel were not used by North Korea itself to produce bombs, it could potentially be exported to other countries for such use, posing an international proliferation risk.

North Korea nuclear weapon acquisition is likely to increase the possibility that both South Korea and Japan will themselves move to acquire nuclear weapons. If North Korea were to develop significant nuclear weapon stockpiles, this could strengthen conservative and nationalist pro-nuclear lobby groups within Japan and South Korea arguing for nuclear weapon development as "insurance" against North Korean threats despite the respective South Korean and Japanese bilateral security agreements with the United States. South Korea, has, in the past, conducted nuclear-weapons-related research, while Japan has both the expertise and fissile material stockpiles to develop nuclear weapons within a matter of months. A regional three way nuclear arms race might then ensue, with potentially catastrophic consequences in the context of regional tensions conceivably escalating into nuclear exchanges, not only between North and South Korea, but also between either one of the Koreas and Japan. In this densely populated region, where major centres are relatively close to each other, millions would be killed or injured, and there would be regional and global environmental and economic damage on an unimaginable scale. Even

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<sup>1</sup> S. S. Hecker, *A Return Trip to North Korea's Yongbyon Nuclear Complex*, Centre for International Security and Cooperation, Stanford University, 20 November 2010, <[http://graphics8.nytimes.com/packages/pdf/world/2010/North\\_Korea\\_Report.pdf](http://graphics8.nytimes.com/packages/pdf/world/2010/North_Korea_Report.pdf)> [Accessed 2 December 2010].

before reaching the stage of outright conflict, proliferation on such a scale would have global consequences in the form of the collapse of the Non-Proliferation Treaty regime.

The advent of the Obama Administration in Washington, and the new leadership in Japan, sharing declaratory policies of pursuing progress towards nuclear disarmament, and placing greater emphasis on diplomatic approaches to regional issues, have created windows of opportunity for addressing Korean and Northeast Asian nuclear and security dilemmas, including consideration of new approaches to denuclearising the Korean Peninsula and the wider Northeast region (Japan, the two Koreas, Taiwan and Mongolia).

In this context, there needs to be renewed consideration of the applicability of nuclear weapon free zones to the Korean Peninsula and Northeast Asia. Such zones represent a form of state-based cooperation that aims to denuclearise a geographic area.<sup>2</sup>

Regional nuclear weapon free zones (NWFZ) have been successfully implemented in many parts of the world, including regions where there have been major nuclear rivalries (such as between Brazil and Argentina) and where nuclear weapons have already been developed or deployed (such as in Africa and Central Asia).<sup>3</sup> More than 120 countries are now party to binding nuclear weapon free zone treaties that cover almost all of the Southern Hemisphere, the continent of Africa, Southeast Asia and Central Asia.

The first NWFZ to be established in a populated region was the 1967 South American Tlatelolco Treaty which bans nuclear weapon acquisition and stationing throughout South American, and now has near universal adherence within the region and security guarantee from all five of the nuclear powers with permanent Security Council seats (P5: United States, Russia, China, United Kingdom and France). This zone was initially prompted by the near unleashing of a nuclear holocaust at the time of the 1962 Cuban Missile Crisis, when the Soviet Union stationed a range of intermediate and tactical nuclear weapons in Cuba.<sup>4</sup> However, it has also

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<sup>2</sup> Of course, many cities and local regions have unilaterally enacted nuclear free zones, but these are not legally binding commitments on states that control nuclear weapons, although these local and sometimes trans-governmental efforts may play a role in mobilising public attitudes that influence national and foreign policy actor orientations in states negotiating NWFZs.

<sup>3</sup> Jozef Goldblat, *Arms Control: The New Guide to Negotiations and Agreements*, second edition (London: SAGE/PRIO/SIPRI, 2002), pp. 190-219.

<sup>4</sup> As Joseph Johnson, President of Carnegie Endowment for International Peace, noted in his preface to an account of the negotiations of the Tlatelolco Treaty by its principal architect, Alfonso Garcia Robles: "The Cuban crisis of October 1962 suddenly and dramatically confronted the states of Latin America with the fact that their area of the world had become involved in the strategic plans and rivalries of the nuclear powers. Men of vision in the area

contributed to defusing the nuclear rivalry between Argentina and Brazil, and been enhanced by bilateral inspection agreements that complement and reinforce the central IAEA (International Atomic Energy Agency) safeguards arrangements.<sup>5</sup>

Further zones were established in 1985 in the South Pacific, in 1995 in Southeast Asia, in 1996 in Africa, and in 2006 in Central Asia. In the case of the South Pacific and African zones, a key initial stimulus for the zones was nuclear weapons testing by nuclear powers, particularly France which first tested in Algeria in the early 1960s and then in Polynesia over thirty years from 1966 to 1996.<sup>6</sup> However, in the case of Africa, the NWFZ also addressed nuclear weapon acquisition by South Africa during the apartheid era, and required the dismantlement of all nuclear weapon facilities. In Central Asia, a major testing and deployment region for the former Soviet Union, the treaty serves to prevent proliferation to regional states, which are still host to much nuclear infrastructure and fissile materials, and have a legacy of radioactive contamination.<sup>7</sup>

The core requirements of a meaningful NWFZ as recognised under 1999 UN Disarmament Commission guidelines, and embodied in established NWFZs in populated regions, include:

- effective prohibition of the development, manufacturing, control, possession, testing, stationing or transporting of any type of nuclear explosive device for any purpose;
- effective verification of compliance;
- clearly defined boundaries;

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turned their thoughts to ways of avoiding any possibility of a recurrence of the Cuban experience in some other country of Latin America. They also wished to preclude even the relatively remote possibility of a nuclear arms race among the countries of their area". Alfonso Garcia Robles, *The Denuclearization of Latin America* (Washington DC: Carnegie Endowment for International Peace, 1967), p. xiii.

<sup>5</sup> For a detailed discussion of the changing stances of Brazil and Argentina, and the role of the Tlatelolco Treaty, see Mitchell Reiss, *Bridled Ambition: Why Countries Constrain Their Nuclear Capabilities* (Washington DC: Woodrow Wilson Centre Press/John Hopkins University Press, 1995), pp. 64-6.

<sup>6</sup> On the South Pacific NWFZ, see Michael Hamel-Green, *The South Pacific Nuclear Free Zone Treaty: A Critical Assessment* (Canberra: Peace Research Centre, Research School of Pacific Studies, Australian National University, 1990), p. 1; on the African NWFZ, see Oluyemi Adeniji, *The Treaty of Pelindaba on the African Nuclear-Weapon-Free Zone* (Geneva: United Nations Institute for Disarmament Research, 2002), pp. 36-7.

<sup>7</sup> Marco Roscini, 'Something Old, Something New: The 2006 Semipalatinsk Treaty on a Nuclear Weapon-Free Zone in Central Asia', *Chinese Journal of International Law*, vol. 7, no. 3 (2008), pp. 593-624.

- legally binding commitments to the zone by the nuclear weapon states not to use or threaten to use nuclear weapons against the zone parties (at present, NWFZs are the only instrument that has secured such legally binding guarantees, and not in the case of all the zones);
- legally binding commitments by nuclear weapon states party not fire nuclear weapons from within the zone against third parties (this was explicitly required in the Southeast NWFZ Treaty);
- the need for a zone to take account of the particular characteristics of the region concerned.

An important advantage of NWFZs compared to the NPT is that they impose obligations on the nuclear weapon states *not* to station nuclear weapons within the zone (although transit is another matter, that is usually left up to individual countries to allow or refuse within their own territorial waters). In a NWFZ context, therefore, where not all members of a regional zone are party to the NPT, they may still serve to prevent proliferation and encourage full regional adherence to the NPT over time (as occurred in South America). Further, zones may be tailored to the specific non-proliferation and disarmament needs of each region and later attach to global legal frameworks for non-proliferation (as occurred with Argentina and Brazil).

In the Northeast Asian region, there is already a lengthy history of denuclearisation proposals, and even actual agreements, such as the 1992 *Joint Declaration on the Denuclearization of the Korean Peninsula*.<sup>8</sup>

One of the earliest proposals was from the Soviet Union: Khrushchev's 1959 proposal for both a Korean denuclearised zone and a wider Asia Pacific NWFZ.<sup>9</sup> This was one of a number of NWFZ proposals advanced by the former Soviet Union and Warsaw Pact countries at that time, including the Polish Rapacki proposal for a Central Europe NWFZ. All these proposals were dismissed by the Western powers at the time on the grounds that Western nuclear weapon deployment in these regions was needed to counter numerically greater Communist conventional forces, whether Warsaw Pact forces in Europe or North Korean forces on the Korean Peninsula. China also proposed a NWFZ in the Asian region in the late 1950s but then went on to acquire its own nuclear forces from 1964.

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<sup>8</sup>The ensuing discussion of denuclearisation proposals and initiatives is a revised version of the authors' earlier discussion of these proposals in P. Hayes and M. Hamel-Green, 'The Path Not Taken, The Way Still Open: Denuclearizing the Korean Peninsula and Northeast Asia', *The Asia-Pacific Journal*, vol. 50, no. 1, paper 9 (14 December 2009).

<sup>9</sup> For a discussion of early proposals for Northeast Asian and Korean NWFZ see: Bon-Hak Koo, 'A Northeast Asian Nuclear-Weapon-Free Zone: A Korean Perspective', in Ramesh Thakur (ed.), *Nuclear Weapons-Free Zones* (London: Macmillan/St Martin's Press, 1998), pp. 129-30.

Surprisingly, however, one of the earliest specifically Korean NWFZ concepts was advanced in 1972 in an internal US study commissioned by the US Arms Control and Disarmament Agency from the Institute for Defense Analyses, released later under the US Freedom of Information Act to the Nautilus Institute. Carried out by Colm, Hayes, Spielman and White (Defence Logistics Agency, 1972), the study put forward the concept of a Korean NWFZ as one part of a wider set of tension-reducing confidence-building measures that the United States might put on the agenda in both inter-Korean and Four Party talks (United States, USSR, China, and Japan).<sup>10</sup> The study noted:

The ROK [Republic of Korea] should also be encouraged to introduce the question of nuclear weapons into the dialogue with the North, as part of the discussion of the US military presence. The question of a possible Korean agreement to ban the introduction of nuclear weapons into Korea has particularly interesting ramifications. There are no nuclear weapons in North Korea, nor does it appear likely that either the Soviet Union or China has plans to introduce such weapons there ... [deletion—classified material] ... Denuclearization might be for Pyongyang a particularly meaningful achievement, short of complete military withdrawal, for which the North might make appropriate concessions in other areas. A denuclearization agreement between the two Koreas in a suitably balanced package could provide a format for great-power endorsement through appropriate protocols.<sup>11</sup>

Elsewhere in the report, the authors noted that China “might be particularly interested in an NFZ agreement pertaining to Korea”, and that the “diplomatic groundwork for the agreement could be laid in bilateral US-Chinese talks, with each country undertaking to persuade its Korean ally”.<sup>12</sup> Citing the 1967 South American Tlatelolco NWFZ Treaty as an important precedent for great power recognition of a Korean denuclearised zone, the study identified as one of an inventory of 73 confidence-building measures “Restrictions on the deployment or utilization of nuclear weapons, i.e. nuclear-free-zone (NFZ) or no-first-use (NFU) agreements”.<sup>13</sup> Unfortunately, the Nixon Administration of the day, despite its 1971-72 diplomatic opening to China, did not pursue the Korean NWFZ negotiating option. No doubt it was assumed that there was little risk that North Korea would acquire at some future time its own nuclear capability, and that such arrangements would incur relatively more military disadvantage to the United States than to its great power adversaries since only the United States had forward deployed nuclear weapons on the Korean Peninsula. It may also have

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<sup>10</sup> Peter W. Colm, Rosemary Hayes, Karl F. Spielmann and Nathan N. White, ‘The Reduction of Tension in Korea’, Institute for Defense Analyses, Technical Report (Secret) prepared for the US Arms Control and Disarmament Agency, distributed by the Defense Logistics Agency, Arlington, Virginia, vols 1 and 2, June 1972 (Declassified 1977).

<sup>11</sup> *Ibid.*, vol. 1, p. 19.

<sup>12</sup> *Ibid.*, p. 23.

<sup>13</sup> *Ibid.*, vol. 2, pp. 114, 127.

collided with US negotiations with the ROK (Republic of Korea) over its nuclear weapons proliferation activity at that time.

Whatever the reason, the opportunity arising from this study was not grasped. This is the all too common story: a path not taken in the past, a regional and global nightmare today. Ironically, in 1991-92 the United States withdrew all its nuclear weapons from South Korea as part of a global withdrawal of tactical and theatre nuclear weapons, and also in response to urging from US diplomats and military leaders in Korea arguing that nuclear weapons were unnecessary and counterproductive in the Peninsula. The eventual withdrawal suggests that for the sake of less than two decades of US deployment of tactical weapons in Korea, a key negotiating opportunity was missed for permanent denuclearisation of the region.

A decade later, there were further government-level Korean denuclearisation proposals. In 1980, the North Korean President, Kim Il Song proposed a Korean NWFZ in which “the testing, stockpiles, and use of nuclear weapons must be prohibited”; and then in 1981, the North Korean Government voiced support for a non-nuclear and peace zone in Northeast Asia as called for in a joint declaration by the Japanese Socialist Party and the Korean Workers’ Party.<sup>14</sup> The declaration, *inter alia*, called for the establishment of a NWFZ covering the Korean Peninsula, Japan and surrounding waters, with bans on the development, testing, production, possession, transport, import or use of nuclear and biochemical weapons within the region”.<sup>15</sup>

In his May 1985 Vladivostock speech, President Gorbachev proposed an “All Asian Conference” to discuss a range of regional Asia Pacific arms control initiatives, including NWFZs on the Korean Peninsula and in Southeast Asia and provision of negative security assurances from the major nuclear powers to the non-nuclear states of the region.<sup>16</sup> As in the case of the earlier proposals, the United States and the Western nuclear powers rejected these proposals on the basis of relatively greater disadvantage for US military deployment, and a more general resistance to NWFZ-establishment as a threat to the US military freedom of movement and deployment, particularly sea-based transit—then already a sensitive issue for the United States due to the New Zealand Government’s move to impose a unilateral NWFZ on US forces at this time and the rise of the Nuclear Freeze movement against new forward-deployed intermediate range missiles in Europe.

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<sup>14</sup> Koo, ‘A Northeast Asian Nuclear-Weapon-Free Zone’, p. 131.

<sup>15</sup> *Ibid.*

<sup>16</sup> Samuel S. Kim, *The Two Koreas and the Great Powers* (Cambridge: Cambridge University Press, 2006), pp. 118-9; Koo, ‘A Northeast Asian Nuclear-Weapon-Free Zone’, p. 130; Jae-Kwon Shim, *A Korean Nuclear Weapon-Free Zone: A Perspective*, Peace Research Centre, Working Paper no. 110 (Canberra: Research School of Pacific Studies, Australian National University, 1991), p. 10.

The first signs of major governmental movement on Korean denuclearisation came at the beginning of the 1990s. Coinciding with US withdrawal of tactical and theatre nuclear weapons from Korea in 1991-February 1992, the process began with North Korea's July 1991 proposal at the Conference on Disarmament in Geneva for a Korean NWFZ seeking joint North and South Korean negotiations on the legal and practical aspects of establishing such a zone, and calling for a joint declaration on this by the end of 1992.<sup>17</sup> In this case, there was a positive response from South Korea, with President Roh Tae Woo declaring in December 1991 that South Korea was free of nuclear weapons and indicating a new willingness to enter into negotiations with the North on the concept.<sup>18</sup> The negotiations took place in the same month, and the outcome was the 31 December 1991 agreement on a draft *Joint Declaration on the Denuclearization of the Korean Peninsula*.<sup>19</sup> The *Joint Declaration* was signed by the parties on 20 January 1992 and came into force on 20 February 1992.

Although it was not called a NWFZ, it was in fact the fourth NWFZ to be negotiated following the earlier 1959 Antarctic, 1967 Latin American and 1985 South Pacific treaties. The *Joint Declaration* emerged at a very propitious time with improved relations and exchanges between North and South from October 1991, a US decision to remove its nuclear weapons deployed in South Korea and to engage more directly with North Korea; a North Korean agreement to sign up to IAEA nuclear safeguards (following an earlier 1985 decision to join the NPT under pressure from Russia but an ensuing failure to sign up to safeguards), and the new international climate following the end of the Cold War.

The *Joint Declaration* included some but not all of the core elements of other NWFZs, including prohibitions on the testing, manufacture, production, receiving, possession, storing, deployment or use of nuclear weapons, and set up a verification mechanism in the form of a South-North joint nuclear control commission that "shall conduct inspections of the objects selected by the other side and agreed upon between the two sides, in accordance with procedures and methods to be determined by [the commission]".<sup>20</sup> In one respect, it went significantly further than any other zones, before or since, in that it also banned the possession of "nuclear reprocessing and uranium enrichment facilities".<sup>21</sup>

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<sup>17</sup> Bon-Hak Koo, *Nuclear-Weapon-Free Zone In Northeast Asia: A South Korean Perspective*, paper prepared for the Northeast Asia Peace and Security Network, Nautilus Institute for Security and Sustainable Development, June 1994, <<http://oldsite.nautilus.org/archives/pub/ftp/napsnet/papers/koo0694.txt>> [Accessed 13 March 2011].

<sup>18</sup> *Ibid.*

<sup>19</sup> Jozef Goldblat, *Arms Control: The New Guide to Negotiations and Agreements* (London: PRIO/SIPRI/Sage, 2003), Part II Agreements and Parties, CD ROM section (1992).

<sup>20</sup> *Ibid.*

<sup>21</sup> *Ibid.*



The significance of the Declaration was that it held the promise of preventing nuclear proliferation in both North and South Korea, while simultaneously preventing further stationing of nuclear weapons anywhere on the Peninsula. The threat of nuclear proliferation was relevant on both sides of the 38<sup>th</sup> Parallel. The South Korean Park Government had instituted a secret nuclear weapons program during the period 1969-75, only terminating it after the United States threatened to withdraw from its bilateral security arrangements;<sup>22</sup> and, since then successive South Korean governments continued to support nuclear-weapon-related research activities until they were terminated decisively in 2005.<sup>23</sup> North Korea, for its part, motivated by its sense of nuclear encirclement, its *Juche* (self-reliance) ideology, and its militarised social system maintained in a high state of war readiness since the end of the 1950-53 Korean War, had even earlier shown signs of moving towards acquiring a nuclear weapon capability, with its establishment of the Yongbyon nuclear research complex in the late 1950s, its delayed signing the NPT (1985), and its initial reluctance to accept IAEA safeguards. These indicators were followed rapidly by continuing evidence that the DPRK's non-nuclear commitments were questionable, even as the *Joint Declaration* was signed.

Unfortunately, the brief moment of inter-Korean denuclearisation consensus evidenced in the 1992 *Joint Declaration* did not last. The Declaration was never successfully implemented. This was because of weaknesses in the Declaration itself, bad faith on the part of both Koreas, and subsequent US attitudes towards it.

One weakness in the *Joint Declaration* was the fact that it did not develop a fully-fledged NWFZ treaty structure under which there would not only be verification provisions but also compliance mechanisms. The ROK with the United States urging it to be more stringent demanded unlimited challenge inspections in the DPRK, and then reverted to a small number of annual inspections with advance warning—an almost meaningless inspection arrangement, while simultaneously telling the DPRK negotiators that the United States would not agree to North Korean inspections of US facilities in the South—which was not in fact true (the United States was entirely open to such inspections provided there were reciprocal inspections). Another weakness was the absence of protocol mechanisms for locking nuclear weapon states into nuclear non-use or threat of use guarantees as part of the zone arrangements. The latter was crucial in terms of reassuring North Korea about its participation in the zone. Even though the United States had taken the very constructive and symbolic step of removing the nuclear weapons it had deployed in South Korea since 1958 and in the region for

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<sup>22</sup> Peter Hayes, 'The Republic of Korea and the Nuclear Issue', in Andrew Mack (ed.), *Asian Flashpoint* (St Leonards, NSW: Allen & Unwin, 1993), p. 52.

<sup>23</sup> Peter Hayes et al., 'South Korea's Nuclear Surprise', *Bulletin of the Atomic Scientists*, vol. 61, no. 1 (January-February 2005).

even longer, it retained strategic and theatre (nuclear-armed sea launched cruise missile) submarine-based weapons for a potential attack on North Korea. A binding protocol, requiring the United States (and other nuclear powers) not to use or threaten to use nuclear weapons against parties to the Declaration would certainly have provided greater incentive for North Korean adherence.

As noted above, the *Joint Declaration's* verification system was also weak, requiring that inspections be agreed by both sides, rather than inspections being an inherent right of the requesting side. Also, while the *Joint Declaration* is stronger than other NWFZs in that it includes a ban on reprocessing and uranium enrichment, there is a loophole in the fact that it does not prevent parties from acquiring enriched uranium or plutonium elsewhere, as Japan does by sending its spent fuel to be reprocessed overseas and the plutonium produced returned, an option for South Korea but probably not North Korea.<sup>24</sup> Even worse, the phrasing is consistent with either Korea obtaining critical reprocessing and enrichment technology and conducting research and development—provided it does not construct “facilities” (of course, both Koreas were required by their respective safeguards agreements with the IAEA to provide notice of such acquisitions, but these should have been reaffirmed in the *Joint Declaration*).

Implementation of the 1992 *Joint Declaration* was also critically affected by disputes between the IAEA and North Korea on safeguards inspections and accounting for all its plutonium holdings. North Korean resistance developed to the point where in 1993 it suspended its membership of the NPT. The Clinton Administration held direct consultations with North Korea, and finally, in October 1994 was able to reach a bilateral *US-DPRK Agreed Framework* under which North Korea would return to the NPT, accept IAEA inspections, and return to implementing the 1992 *Joint Declaration*.<sup>25</sup> This was in return for a package of commitments, including normalisation of relations between the United States and North Korea, US pledges not to use or threaten to use nuclear weapons against North Korea, energy and fuel oil assistance, provision of a light water proliferation-resistant nuclear reactor, and limitations on US/ROK Team Spirit military exercises.

The *Agreed Framework*, while initially promising, fell victim to failures on both sides to meet commitments. The incoming 2001 George W. Bush Administration was less committed (while still paying lip service) to the *Agreed Framework* and did not deliver according to timetable some of the promised assistance under the package. Building of the light water reactor was constantly delayed. At the same time the Bush Administration implicitly

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<sup>24</sup> Andrew Mack, ‘A Northeast Asia Nuclear-Free Zone: Problems and Prospects’, in Andrew Mack (ed.), *Nuclear Policies in Northeast Asia* (Geneva: UNIDIR, 1995), p. 116.

<sup>25</sup> Mike Chinoy, *Meltdown: The Inside Story of the North Korean Nuclear Crisis* (New York: St Martin's Press, 2008), pp. 7-8.

undermined the United States own pledge under the *Agreed Framework* not to threaten the use of nuclear weapons against North Korea when it designated North Korea as part of an “axis of evil” of “rogue states”, and in its 2002 national security strategy statement talked of taking pre-emptive military action against states like North Korea.<sup>26</sup> On the North Korean side, evidence came to light that it was covertly pursuing a uranium enrichment program in potential violation of NPT requirements about the declaration of all nuclear facilities.<sup>27</sup>

After the failure of the *Agreed Framework*, the proliferation crisis worsened, with North Korea expelling IAEA inspectors in 2002, and then in 2003 becoming the first country to withdraw from the NPT.<sup>28</sup> The further response of the Bush Administration was to institute the Six-Party Talks process, involving the two Koreas, Japan, Russia, China and the United States, with China as the Chair.<sup>29</sup> The thinking behind this was that China’s influence was crucial as the North Korea’s closest ally, and that this would achieve the breakthroughs that had not eventuated from the *Agreed Framework*. The first round of Six-Party Talks was held in August 2003. As the talks continued fitfully, North Korea conducted its first underground nuclear test on 9 October 2006 in the form of a half-kiloton plutonium-based bomb, stimulating worldwide alarm and condemnation.

Following efforts by the US negotiating team leader, Christopher Hill, and pressures from the Chinese, an apparent breakthrough was achieved at the Six-Party Talks on 13 February 2007 (following an earlier 19 September 2005 agreement on Principles aimed at “verifiable denuclearization of the Korean Peninsula in a peaceful manner”).<sup>30</sup> The new 2007 agreement committed the parties to an Action Plan for “early denuclearisation of the Korean Peninsula” and a series of concrete actions that would be taken within 60 days, including a shut-down of North Korea’s Yongbyon nuclear facility to be monitored by the IAEA, discussion of a list of all North Korea’s nuclear programs, including plutonium holdings; bilateral US-DPRK talks to resolve bilateral issues, with the United States beginning the process of removing the designation of the DPRK as a state-sponsor of terrorism and termination of its trade sanctions against DPRK; bilateral Japan-DPRK talks

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<sup>26</sup> *Ibid.*, pp. 43-80.

<sup>27</sup> *Ibid.*, pp. 103-26.

<sup>28</sup> Eitel Solingen, *Nuclear Logics: Contrasting Paths in East Asia and the Middle East* (Princeton: Princeton University Press, 2007), p. 123; Chinoy, *Meltdown*, pp. 103-74.

<sup>29</sup> Chinoy, *Meltdown*, pp. 175-365. Chinoy provides a detailed account of the talks based on interviews with US Bush Administration officials and negotiators from their start to early 2008. A revealing comment was that the main US negotiator, Christopher Hill, reportedly complained to friends that “negotiating with the North Koreans was often less fraught than dealing with the hard-liners in Vice President Cheney’s office and elsewhere in the administration” (p. 363).

<sup>30</sup> US Department of State, Office of the Spokesman, ‘Joint Statement of the Fourth Round of the Six-Party Talks’, Washington DC, 19 September 2005, <[www.state.gov/p/eap/regional/c15455.htm](http://www.state.gov/p/eap/regional/c15455.htm)> [Accessed 13 March 2011]; Shannon Kile, ‘Nuclear Arms Control and Non-Proliferation’, *SIPRI Yearbook 2008* (Oxford: Oxford University Press, 2008), pp. 350-6.

aimed at normalising relations and settling unresolved matters from past conflicts; and economic, energy, and humanitarian assistance to the DPRK, including an initial shipment of 50,000 tons of heavy fuel oil.<sup>31</sup> The agreement also involved the setting up of working groups in such areas as: (1) denuclearisation of the Korean Peninsula; (2) normalisation of DPRK-US relations; (3) normalisation of DPRK-Japan relations; (4) economy and energy cooperation; and (5) a Northeast Asia Peace and Security Mechanism.

This agreement, like its predecessor, also began to encounter serious difficulties. This was despite what appeared to be major progress by May 2008. According to a US State Department assessment at this time, North Korea had provided 18,000 pages of documentation relating to its nuclear programs; carried out 8 out of 11 agreed disablement activities at its three core facilities; and was continuing with work on the remaining three, including the shutting down of the Yongbyon nuclear facility in July 2007.<sup>32</sup> But disputes then ensued over delays in unfreezing North Korean assets in the Banco Delta Asia as agreed under the 13 February Six Party Talks Agreement; and US-Japanese-ROK insistence on intrusive verification of North Korea's declaration of its plutonium-related programs prior to moving into a second dismantlement phase—something that North Korea had agreed to as part of this second phase but which it argued had not been agreed to as part of the first phase.<sup>33</sup>

In late 2008 and early 2009, the agreement unravelled further as North Korea reacted to the perceived US renegeing on previous agreements and US-Japanese-South Korea threats to suspend shipments of energy aid. The North Korean response took the forms of reprocessing fuel from the Yongbyon reactor; testing a ballistic Taepodong-2 missile in the guise of a satellite launch; and then conducting a second underground nuclear weapon test on 6 May 2009.<sup>34</sup> Defeat had once again been snatched from the jaws of victory.

The difficulties and problems associated with previous denuclearisation negotiations with North Korea, both bilaterally with the United States, and with the other five states in the Six Party Talks, suggest that what is required is something far more comprehensive and binding than what has so far been officially put on the table. This is the need for a fully-fledged nuclear weapon

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<sup>31</sup> Chinese Ministry of Foreign Affairs, 'Initial Actions for the Implementation of the Joint Statement', 13 February 2007, <[www.fmprc.gov.cn/eng/zxxx/t297463.htm](http://www.fmprc.gov.cn/eng/zxxx/t297463.htm)> [Accessed 20 February 2010]; Kile, 'Nuclear Arms Control and Non-Proliferation'.

<sup>32</sup> US Department of State, 'Update on the Six-Party Talks', Fact Sheet, 10 May 2008, <<http://2001-2009.state.gov/r/pa/prs/ps/2008/may/104558.htm>> [Accessed 20 February 2010].

<sup>33</sup> Shannon Kile, 'Nuclear Arms Control and Non-Proliferation', *SIPRI Yearbook 2009* (Oxford: Oxford University Press, 2009), pp. 397-402.

<sup>34</sup> Scott Snyder, 'What's Driving Pyongyang?', Nautilus Institute Policy Forum Online, 09-055A, 7 July 2009.

free zone agreement that not only includes core non-nuclear commitments and dismantling of existing nuclear weapon programs and facilities but also involves binding non-use and non-threat US guarantees to regional states, and establishes a framework for economic, energy, and cultural cooperation and assistance, and a final post-armistice peace settlement. Unless the basic security, economic and survival issues of the besieged North Korean state are addressed, there will only be increased incentives for it to rely on nuclear weapons and export income from selling nuclear technology and missiles as the ultimate guarantee of its own security.

While previous Northeast Asian denuclearisation proposals have focused either on the Korean Peninsula itself, or on the creation of a NWFZ covering the whole Northeast Asian region,<sup>35</sup> on a “limited” nuclear weapon free zone that would initially cover tactical nuclear weapons (potentially including not only Northeast Asian countries but also adjacent nuclear weapon state territories) as a confidence-building approach that could then progress to more extensive denuclearisation,<sup>36</sup> an alternative way forward would be the initial establishment of a nuclear weapon free zone between Japan and South Korea, with North Korea encouraged to join at a later date. This is the proposal advanced by the Nautilus Institute in its recent concept paper, *Korea-Japan Nuclear Weapon Free Zone (KJNWFZ) Concept Paper*.<sup>37</sup>

The Nautilus paper argues for building on the significant expansion and experience of other regions in the establishment of NWFZs, with zones now in force in Latin America and the Caribbean, South Pacific, Southeast Asia, Africa, Central Asia and Antarctica, and a total of 112 states now party to such zones. In Northeast Asia, the Nautilus paper notes that a KJNWFZ, in addition to meeting such core aspects of NWFZ arrangements as prohibiting possession, stationing or transporting of nuclear weapons, effective verification and compliance, clear boundaries, negative security guarantees, or use of the zone for firing against third parties, would need to address a number of issues specific to the Northeast Asia region. The latter would include: current arrangements and understandings on nuclear transit and nuclear extended deterrence; potential inclusion of a denuclearised North

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<sup>35</sup> See, for example, Hiromichi Umebayashi, ‘Proposal of a Model Northeast Asia Nuclear-Weapon-Free Zone Treaty’, paper presented at Workshop on Nuclear-Weapon-Free Zone and Missile Control in Northeast Asia, Fudan University, Shanghai, China, 16-18 July 2004; Hiromichi Umebayashi, ‘Towards a Northeast Asia Nuclear Weapon-Free Zone’, Japan Focus, 11 August 2005, <[http://old.japanfocus.org/\\_Umebayashi\\_Hiromichi-Toward\\_A\\_Northeast\\_Asia\\_Nuclear\\_Weapon\\_Free\\_Zone](http://old.japanfocus.org/_Umebayashi_Hiromichi-Toward_A_Northeast_Asia_Nuclear_Weapon_Free_Zone)> [Accessed 13 March 2011].

<sup>35</sup> Peace Depot, *A Model Treaty on the Northeast Asia Nuclear-Weapon-Free Zone*, Working Paper no. 1 E, Peace Depot, Yokohama, November 2005.

<sup>36</sup> John Endicott, ‘Limited Nuclear-Weapon-Free Zones: the time has come’, *Korean Journal of Defense Analysis*, vol. 20, no. 1 (March 2008), pp. 13-26; John Endicott and Alan Gorowitz, ‘Track-II Cooperative Regional Security Efforts: Lessons from the Limited Nuclear-Weapons-Free Zone for Northeast Asia’, *Pacifica Review*, vol. 11, no. 3 (October 1999), pp. 293-323.

<sup>37</sup> Nautilus Institute, *Korea-Japan Nuclear Weapon Free Zone (KJNWFZ) Concept Paper*, 15 February 2010.

Korea at a later stage; and alliance relationships in the region, particular China's relationships to regional states, and the US bilateral relationships with South Korea, Japan and Taiwan; missile delivery systems and associated difficulties in distinguishing military from space-launch missiles; and issues associated with the nuclear fuel cycle, particularly enrichment and reprocessing.

While the KJNWFZ proposal might at first sight seem not to directly address what is patently the main threat currently preoccupying the region and the international community—North Korean acquisition of nuclear weapon capabilities—it does in fact, on closer examination, serve to: (a) build on the experience of previous NWFZs in other regions in achieving longer term denuclearisation outcomes; (b) offer immediate confidence-building benefits in achieving ways through the present impasse with North Korea; and (c) provide longer term security benefits in reducing or even preventing potential nuclear rivalry between Japan and the two Koreas.

The neighbouring region of Southeast Asia has already provided an important precedent in the form of the 1995 Bangkok Treaty, a NWFZ treaty negotiated by the Association of Southeast Asian Nations (ASEAN). This treaty built on the earlier 1971 Declaration of a Southeast Asian Zone of Peace, Freedom and Neutrality (ZOPFAN), and was motivated by the region's dual concerns to prevent further nuclear power rivalry in the region (as occurred during the second Vietnam War when both the Soviet Union and the United States had bases in the region) and to constrain nuclear proliferation within the region. Northeast Asia currently lacks a negotiation forum comparable to ASEAN, but, as former US diplomats, James Goodby and Donald Gross, noted, the United States should be pursuing a “two-track approach” that simultaneously addresses regional security as well as North Korean issues.<sup>38</sup> More specifically, Goodby and Gross argue that a “multilateral security mechanism for Northeast Asia” could be a “much needed agent for change” and “could help lead the region to a stable peace”.

However, the most important of the precedents from existing NWFZs is that provided by the Tlatelolco Treaty which established a NWFZ throughout Latin America and the Caribbean.<sup>39</sup> This Treaty, now commanding universal adherence from all countries in the region, and securing binding guarantees not to use or threaten to use nuclear weapons against zonal states from all

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<sup>38</sup> James E. Goodby and Donald Gross, *Strategic Patience Has Become Strategic Passivity*, Nautilus Institute, 22 December 2010, <<http://www.nautilus.org/publications/essays/napsnet/forum/strategic-patience-has-become-strategic-passivity>> [Accessed 20 February 2010].

<sup>39</sup> For a fuller discussion of the precedents, legal forms, governance, scope, domain, and verification aspects of the proposed Japanese-Korean Nuclear Weapon Free Zone, see M. Hamel-Green, 'Implementing a Japanese-Korean Nuclear Weapon Free Zone: Precedents, legal forms, governance, scope and domain, verification and compliance, and regional benefits', Nautilus Foundation/Royal Melbourne Institute of Technology University, Austral Special Report 10-02A, 28 September 2010, <[www.nautilus.org/publications/essays/apsnet/reports/2010/hamel-green.pdf](http://www.nautilus.org/publications/essays/apsnet/reports/2010/hamel-green.pdf)> [Accessed 13 March 2011].

five of the Permanent Five nuclear weapon states (the only such binding guarantees so far extended by these states), did not achieve such adherence overnight. It was negotiated over four years from 1963 to 1967 following the 1962 Cuban Missile Crisis. The crisis, which brought the whole world to within days or even minutes of catastrophic nuclear conflagration, concentrated the minds of regional leaders on the need to prevent further stationing of nuclear weapons by the nuclear powers in their region as well as preventing horizontal proliferation within the region by states with nuclear capabilities. The result was a treaty that built on the earlier but unsuccessful Rapacki Central Europe NWFZ proposal to include provisions banning acquisition and stationing of nuclear weapon and protocols binding nuclear powers to give negative security guarantees to the zone. Unfortunately, the advent of military regimes in the major regional states of Argentina and Brazil raised the spectre of nuclear rivalry between the two states: both regimes declined to bring the treaty into force for their countries. However, the treaty framework helped move these two states towards peaceful nuclear cooperation rather than weaponised nuclear rivalry, even while military leaderships were still in control; later, and in part due to this framework, civilian leaderships in the early 1990s brought the Tlatelolco Treaty fully into force for their countries, as well as developing highly effective bilateral mechanisms for verification, cooperation and compliance.

The experience in Latin America was that the two main regional states, Brazil and Argentina, both with nuclear capabilities and military regimes and—at the time—entertaining nuclear weapon options, did not immediately agree to bringing the 1967 Latin American Nuclear Weapon Free Zone Treaty into force for their countries. In fact, it was not until twenty-seven years later, in 1993-94, that civilian governments in the two countries ratified the provisions that brought the Treaty into force for them. Despite the long delay in ratification, the Tlatelolco Treaty was an important regional influence for nuclear cooperation and confidence-building, serving to bring these two major Latin American powers under the non-nuclear umbrella even while they were still under military-led governments; and providing the framework and principles for the cooperative steps taken in the mid to late 1980s that culminated in the 1991 ABACC bilateral agreement and the 1994 final NWFZ ratification.<sup>40</sup>

The Tlatelolco Treaty established an ingenious and innovative legal mechanism by which reluctant states can be encouraged to join the zone at a later date. First proposed by Chilean diplomats, the mechanism was drafted by the Nobel Peace Prize winning Mexican diplomat, Alfonso Garcia Robles. It consists of a provision in Article 28 (3) that allows a signatory

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<sup>40</sup> For a detailed account and analysis of the negotiations that led up to the ABACC agreement and Brazil and Argentine decision to bring the Tlatelolco Treaty into force for their countries, see John R. Redick, *Nuclear Illusions: Argentina and Brazil*, The Henry L. Stimson Centre, Occasional Paper No. 25, December 1995.

state to “waive, wholly or in part” the requirements that have the effect of bringing the treaty into force for that state at a particular time.<sup>41</sup> As Robles noted in his commentary on Article 28:

An eclectic system was adopted, which, while respecting the viewpoints of all signatory States, prevented nonetheless any particular State from precluding the enactment of the treaty for those which would voluntarily wish to accept the statute of military denuclearization defined therein. The Treaty of Tlatelolco has thus contributed effectively to dispel the myth that for the establishment of a nuclear-weapon-free-zone it would be an essential requirement that all States of the region concerned should become, from the very outset, parties to the treaty establishing the zone.<sup>42</sup>

In this way, the normative framework for a non-nuclear region can be established before all states are ready to actually implement the framework.

The parallel with Northeast Asia lies in the nature of the process involved in establishing NWFZS and in the potential long-term benefits for averting nuclear proliferation. Political conditions in a region may mean that not all countries are ready to join a zone at the same time, even as they might accept in principle the concept of such a zone. North Korea evidently regards nuclear weapons as one of its principal means of ensuring regime survival in the face of nuclear and conventional encirclement, and, as a result, would probably be reluctant to relinquish its nuclear weapons immediately in order to be part of such a zone. However, the establishment of a KJNWFZ on the part of its regional neighbours, in a comparable way to the establishment of a NWFZ on the part of Brazil's and Argentina's regional neighbours, would be an important inducement to North Korea to reconsider its security calculus.

The possible incentive for later North Korean accession to a KJNWFZ would include: (a) the framework it offers (and with which in the past North Korea has expressed in principle agreement); (b) the concrete security benefits of potential security guarantees from the United States; (c) an inspection regime that would extend to US bases in South Korea and Japan; and (d) the prohibition of nuclear acquisition on the part of its two very nuclear capable regional neighbours.

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<sup>41</sup> The text of this provision is as follows: “Article 28 (2). All signatory States shall have the imprescriptable right to waive, wholly or in part, the requirements laid down in the preceding paragraph. They may do so by means of a declaration which shall be annexed to their respective instrument of ratification and which may be formulated at the time of deposit of the instrument or subsequently. For those States which exercise this right, this Treaty shall enter into force upon deposit of the declaration, or as soon as those requirements have been met which have not been expressly waived.” (Alfonso Garcia Robles, *The Latin American Nuclear-Weapon-Free Zone*, Occasional Paper 19 (Muscatine, Iowa: The Stanley Foundation, May 1979, p. 29). Since the treaty under Article 28 (1) required the treaty to come into force for all countries in the zone, almost all countries except Brazil and Argentina chose to waive the Article 28(1) requirement, thereby bringing the treaty into force for their countries.

<sup>42</sup> Robles, *The Latin American Nuclear-Weapon-Free Zone*, p. 12.



We are at a new impasse in the difficult relations between North Korea, its neighbors, and the international community. There have been repeated wrong turns, reverses, statements made in bad faith, commitments that were not kept.

The paths to war are many: accident, miscalculation, internal domestic pressures on both sides to be “tough” and teach the other side a “lesson”, escalation from border skirmishes, military incentives to stage preemptive attacks (“use them or lose them”), misreading of intelligence and intentions by and of either side.

Yet there are also paths to peace, frequently overlooked or undermined in the haste to pursue traditional security approaches aimed at “detering” the opposing side. One path is to seek to re-engage North Korea in negotiations to provide the kind of economic aid and security environment that would allow, and provide incentives for, the North Korean leadership to turn back from its present nuclear course. Another, complementary approach, is to move towards establishing a Japan-Korea NWFZ that would become an important element in creating the conditions for future peace in the region and providing the kind of security arrangements that would help defuse the current nuclear threat.

Such a solution will need the courage and cooperation of political leaders in and beyond the region to go beyond traditional Cold War assumptions about nuclear weapons and deterrence, and commit themselves to the global elimination of nuclear weapons and region-by-region denuclearisation, not least in Northeast Asia.

A war path or a peace path? Continued confrontation and military containment strategies that have not only been spectacularly unsuccessful in “detering” North Korea but served to provoke and confirm North Korea in its own nuclear and military belligerence? Or diplomatic initiatives based on comprehensive and multidimensional approaches that can provide cooperative solutions to the nuclear, military, economic, energy, and human security, dilemmas facing the region?

There is still time and opportunity for Korean and Japanese leaders, their security allies, and the international community, to pursue more cooperative diplomatic approaches to addressing nuclear threats and proliferation in Northeast Asia rather than unleashing an escalating cycle of military action and reaction that can only end in catastrophe.

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