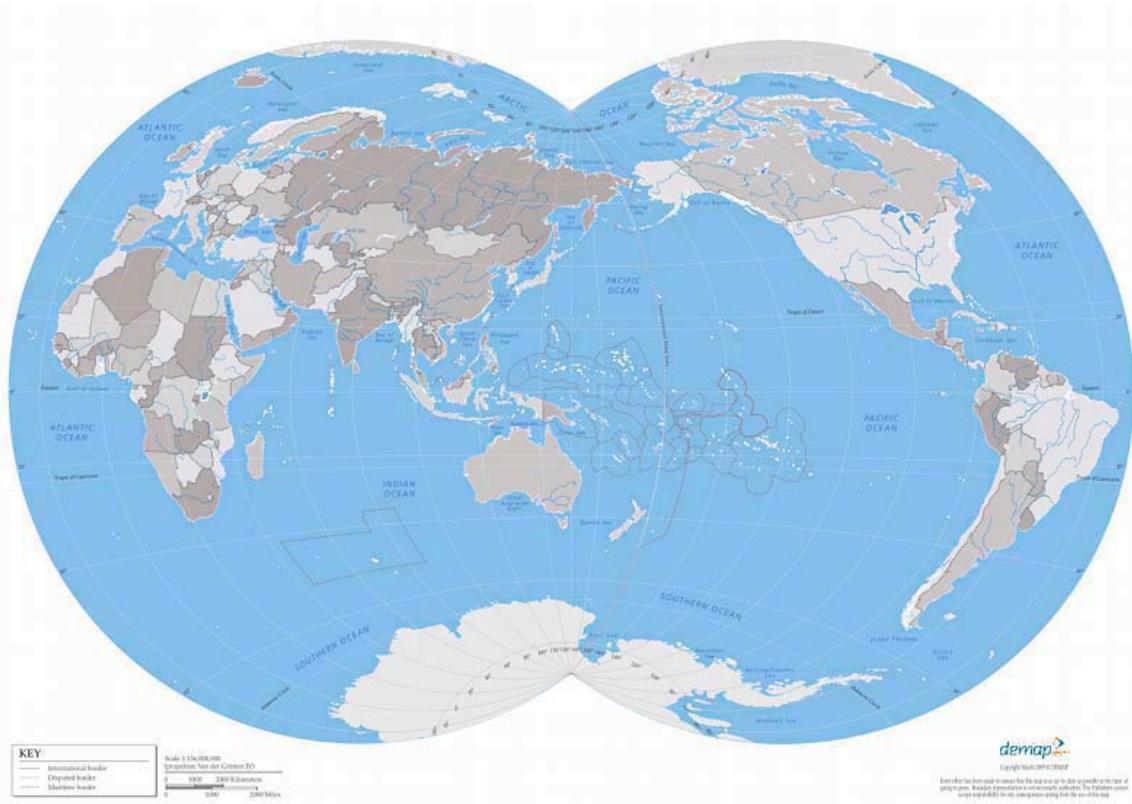


Assessing the idea of South Korea being a virtual NWFZ since the 1992 Joint Declaration for the denuclearization of the Korean peninsula

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Is the South Korea already a de facto NWFZ because of the 1992 Joint Declaration?

On 18 December 1991, South Korean president Roh Tae Woo declared that South Korea had no nuclear weapon on its territory.’ Subsequently, the Joint Declaration on the Denuclearization of the Korean peninsula was signed in 1991 and implemented on the following year. According to the declaration, South Korea shall not test, manufacture, produce, receive, possess, store, deploy or use nuclear weapons.

However, can South Korea be considered an actual Nuclear-Weapon-Free Zone (NWFZ) because of the declarations? The main aim of this short paper is to assess the idea that the South Korea is a virtual NWFZ because of the 1992 joint declaration. To attain the goal of the paper, I would like to review how the 1992 Joint Declaration has core requirements recognizing South Korea as a NWFZ and to evaluate how the 1992 Joint Declaration honors its provisions.

Conditions for a Nuclear-Weapon-Free Zone

A Nuclear-Weapon-Free Zone (NWFZ) is defined as “a specific zone of total absence of nuclear weapons.”¹ Currently, there are five NWFZ treaties that have been internationally recognized², and like the Antarctica Treaty, certain regions where are geographically significant have become to NWFZs.³

Other than concluding a treaty, a NWFZ can also be established by a declaration. In 1992, Mongolia declared its nuclear-weapon-free status, which included prohibition, inter alia, acquisition, possession, placement, testing and use of nuclear weapons on its territory. The status has been recognized internationally through the adoption of UN General Assembly resolution 55/33S on “MONGOLIA’S INTERNATIONAL SECURITY AND NUCLEAR-WEAPON-FREE STATUS.”⁴ There is an important distinction here that Mongolia declared itself as a

¹ <http://www.un.org/disarmament/WMD/Nuclear/NWFZ.shtml>

² **Treaty of Tlatelolco** (1967) Treaty for the Prohibition of Nuclear Weapons in Latin America and the Caribbean ; **Treaty of Rarotonga** (1985) South Pacific Nuclear Free Zone Treaty; **Treaty of Bangkok** (1995) Treaty on the Southeast Asia Nuclear Weapon-Free Zone; **Treaty of Pelindaba** (1996) African Nuclear-Weapon-Free Zone Treaty; **Treaty of Semipalatinsk (2006)** Treaty on a Nuclear-Weapon-Free Zone in Central Asia

³ The 1967 Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space; The 1971 Treaty on the Prohibition of the Emplacement of Nuclear Weapons and Other Weapons of Mass Destruction on the Sea-Bed and the Ocean Floor and in the Subsoil Thereof.

⁴ http://www.opanal.org/NWFZ/Mongolia/mongolia_en.htm

NWFZ unilaterally, whereas a NWFZ involving more than one country would by definition require a treaty.⁵

To establish a meaningful NWFZ, its core requirements must recognize the principles and guidelines recommended by the UN Disarmament Commission in its report on 30 April 1999. These outlines embodied in established NWFZs include⁶:

- Total absence of nuclear weapons: any states should not develop, test, manufacture, produce, acquire, possess, store, transport and deploy nuclear weapons within a Nuclear-Weapon-Free Zone;
- Effective verification of compliance;
- Clearly defined boundaries;
- Negative Security Assurance: legally binding commitments to the zone by the nuclear weapon states not to use or threaten to use nuclear weapons against the zone parties⁷

Does the 1992 joint declaration meet the requirements for a NWFZ?

In February 1992, the Joint Declaration for the denuclearization of the Korean peninsula, which entered into force with ‘the Agreement on Reconciliation, Non-aggression and Exchanges and Cooperation between the South and the North’, created a legal basis for a NWFZ. But it was distinct from NWFZ treaties in the light of their relations - not being a relationship between states, but a special interim relationship stemming from the process towards unification as stated in the preamble of the South-North basic agreement and in the recently legislated ‘Act for development of the south-north relationship’ that were signed by each representative and had a provision for entry into force. The 1992 Joint Declaration includes six provisions as below:

- South and North Korea shall not test, manufacture, produce, receive, possess, store, deploy or use nuclear weapons.
- South and North Korea shall use nuclear energy solely for peaceful purposes.
- South and North Korea shall not possess nuclear reprocessing and uranium enrichment

⁵ The Mongolian initiative remains unique and innovative with respect to the theory nuclear-weapon-free zones (NWFZs) in that it is not comprised of a group of countries covering a vast geographic area but rather a single-State declaring its sovereign territory nuclear free. (http://www.opanal.org/NWFZ/Mongolia/mongolia_en.htm)

⁶ Peter Hayes and Michel Hamel-Green, *The Path not taken, the way still open: Denuclearizing the Korean peninsula and Northeast Asia*, , Austral Special Report 09-09S, 14 December 2009, p.8

⁷ <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N99/132/20/PDF/N9913220.pdf?OpenElement>

facilities.

- In order to verify the denuclearization of the Korean peninsula, South and North Korea shall conduct inspections of particular subjects chosen by the other side and agreed upon between the two sides, in accordance with the procedures and methods to be determined by the South-North Joint Nuclear Control Commission.
- In order to implement this joint declaration, South and North Korea shall establish and operate a South-North Joint Nuclear Control Commission within one month of the entry into force of this joint declaration;
- This joint declaration shall enter into force from the date the South and the North exchange the appropriate instruments following the completion of their respective procedures for bringing it into effect.

Comparing with the existing NWFZ treaties or the law of Mongolia on its nuclear-weapon-free status⁸, while the 1992 joint declaration has core elements of a NWFZ including the total absence of nuclear weapons (Article I), the guarantee of use of nuclear energy for peaceful purposes (It went significantly further than any other zones such that it also banned the possession of “nuclear reprocessing and uranium enrichment facilities”⁹) and the mechanism for verification of compliance (Article IV, V), the provisions of the 1992 Joint Declaration are weak due following factors.

First, it did not provide the definition on boundaries of the territory. In the case of other existing NWFZs, though they have different provisions on its boundaries, they indicate the definitions on boundaries of the zones; For example, Tlateloco Treaty covers territorial land and water of all states in the zone with their international waters; Bangkok Treaty covers territorial land and water of the states in the zone with their exclusive economic zones (EEZs); and the Pelindaba Treaty contains only territorial land and water of states in the zone.

Second, there are no guidelines about the transit or transportation of nuclear weapons in or over its territorial waters, strait and international water, or airspace. North Korea has brought up this issue at several negotiations, including the meetings of the South-North Joint Nuclear Control Commission (JNCC) and the six-party talks in respect to the transit of the U.S. ships or aircraft carrying nuclear weapons. However, since South Korea stood by the denuclearization policy

⁸ http://www.opanal.org/NWFZ/Mongolia/mongolia_en.htm

⁹ Peter Hayes and Michel Hamel-Green, *The Path not taken, the way still open: Denuclearizing the Korean peninsula and Northeast Asia*, Austral Special Report 09-09S, 14 December 2009, p.15

without restraining the U.S. military presence, this would remain controversial throughout the process of the denuclearization of the Korean peninsula.¹⁰

Lastly, the agreement did not impose any obligation for the nuclear weapon states not to use or threat to use nuclear weapons against non- nuclear weapon states.¹¹ Russia and the United States only released a joint statement regarding the Korean nuclear non-proliferation applauding the South-North Joint Declaration on the Denuclearization of the Korean peninsula of December 31, 1992 and calling for the full implementation of this agreement on 17 June 1992.¹² But the joint declaration did not have attached protocols binding on the nuclear weapon states.

It thus appears that the 1992 Joint Declaration does not meet all elements of a NWFZ. However, the South government regards the declaration similar that of the Mongolia Nuclear-Weapon-Free Status as establishing a NWFZ in South Korea.¹³ Alternatively, some view the 1992 Joint Declaration as in fact the fourth NWFZ to be negotiated following the previous NWFZ treaties.¹⁴

At this point, we need to consider an aspect of the implementation of provisions of the declaration for clarifying the view that the 1992 Joint Declaration is a virtual NWFZ declaration. In particular, among the six provisions - the status of total absence of nuclear weapons (Article I) and the verification of compliance (Article IV, V) - should further be implemented to fulfill the requirements to become a NWFZ.

The total absence of nuclear weapons in South Korea

The issue involves the U.S. nuclear weapons deployed in its bases. From 1958 to 1991, it is believed that eleven kinds of nuclear weapon systems were deployed in sixteen different areas in South Korea. These weapons were withdrawn to the U.S. territory by the order of President George H.W. bush in 1992. In July 2005, the U.S military base in South Korea officially reaffirmed that it no longer had any nuclear weapons - a response to the North Korean

¹⁰ Kwon Young-Gil, *The Nuclear-Weapon-Free Zone in Northeast Asia : Initiative, Prospect and Issue*, A member of congress, Kwon Young-Gil (2005) pp.21-23.

¹¹ Cheon Seong-Whun , 'Denuclearization in the Korean Peninsula and the Establishment of Japan-South Korea-North Korea Nuclear-Weapon-Free Zone,' *The Korea Institute for National Unification (KINU)*, 1999 pp.28-29

¹² <http://www.fas.org/spp/starwars/offdocs/b920617i.htm>

¹³ <http://www.mofat.go.kr/state/multiplediplomacy/arms/index.jsp>

¹⁴ Peter Hayes and Michel Hamel-Green, *The Path not taken, the way still open: Denuclearizing the Korean peninsula and Northeast Asia*, , Austral Special Report 09-09S, 14 December 2009, p.15

government's consistent accusations towards the U.S and demanding the withdrawal of its tactical nuclear weapons deployed in South Korea.¹⁵

However, South Korea can be a Nuclear-Weapon-Free state only based on the physical or letter definition as the state strongly relies on the U.S nuclear umbrella. Moreover, after the first North Korean nuclear weapon test conducted in 2006, the South Korean government called for more specific guaranteed assurance of a nuclear umbrella before holding the ROK-U.S. Security Consultative Meeting held in July 18 2007. Namely, it asked for the U.S to firmly stipulate the U.S nuclear umbrella which the U.S. has repeatedly affirmed since 1978 (most recently at the 41th SCM¹⁶).¹⁷ In other word, South Korea demanded to extend the concept of deterrence more positively compared to the past. South Korea suggested incorporating a sentence on the Joint Communiqué of the SCM that “the U.S provides the nuclear umbrella in counting a nuclear attack or a threat against South Korea as an attack or a threat against the U.S.,” which the U.S was reluctant to do because it annually placed the ‘provision of a nuclear umbrella’ on the Joint Communiqué of the SCM since the 11th SCM in 1978 and felt that was enough to provide the pledge of defense in accordance with the ROK-U.S. Mutual Defense Agreement.¹⁸

In the context above, to establish a NWFZ, it is necessary to review the policy of reliance on the U.S. nuclear umbrella. Without doing so it would be difficult to determine if in fact South Korea is a Nuclear-Free-Zone due to the 1992 Joint Declaration.

Mechanism for Verification of Compliance

According to the Joint Declaration, the two sides will conduct inspections of sites chosen by the other side and mutually agreed upon by both. The two Koreas also established the South-North Joint Nuclear Control Commission (JNCC) as an implementing mechanism of the 1992 Joint Declaration. There had been several meetings of JNCC to discuss about mutual inspections. But it had been stalled since 1993 when South Korea rejected North Korea's request to inspect

¹⁵ [Leon J. LaPorte](#), United States Armed Forces Commander in Korea, answered to Yonhap News reporter that “there is no nuclear weapon in the U.S military base since 1991” while it does not definitely have any intention to station nuclear weapons.” (The U.S. commander in Korea says, “ no nuclear weapon in ROK. ’, Yonhap News, 2009. 02.02)

¹⁶ In October 22, 2009, at the 41st U.S.-ROK Security Consultative Meeting, Secretary Gates reaffirmed the U.S. commitment to provide extended deterrence for the ROK, using the full range of military capabilities, to include the U.S. nuclear umbrella, conventional strike, and missile defense capabilities. (<http://www.mofat.go.kr/state/areadiplomacy/northamerica/index.jsp>)

¹⁷ Studies for national security policy, vol.24, no. 2 (Summer, 2008), p. 39.

¹⁸ Ibid., p. 47.

the U.S. military bases in the South Korea in order to verify the withdrawal of the U.S. nuclear weapons from South Korea.¹⁹

Although it failed to verify of compliance through the JNCC, South Korea has unilaterally committed to the non-proliferation regime by International Atomic Energy Agency (IAEA). It ratified the Additional Protocol (AP) on 9 April 2004 and made a four-point statement reassuring the international community of its commitment to a nuclear-free policy on the Korean peninsula.²⁰ However, the Park Chung-hee government had pursued a secret nuclear weapon program during the period 1969-75,²¹ and it was revealed in September 2004 that the Korea Atomic Research Institute had conducted experiments of uranium enrichment without reporting them. Besides, there has been a strong complaint among scientists group that the 1992 Joint Declaration limits the right of peaceful uses of nuclear energy through its provision that prohibits possessing nuclear reprocessing and uranium enrichment facilities (Article II). Under its nuclear-energy-centered policy on electricity, South Korean government has shown strong interest for reprocessing spent-fuel, and actually has conducted R&D program. Also, the ‘nuclear sovereignty’ issue has been raised both from the current ruling party and atomic industry and research fields with respect to the upcoming amendment of the U.S-ROK Atomic Agreement.

In this context, more effective mechanism are necessary for South Korea to verify its nuclear-weapon-free status to prevent any diversion of fissile materials into military uses.

Opening the discussion for additional steps for recognizing South Korea a virtual NWFZ

To recognize the ROK as a virtual NWFZ, the 1992 Joint Declaration is not enough in terms of provisions and its implementation as stated above. Then, what do additional conditions be needed?

Before moving forward, I would like to briefly discuss the argument that that the joint declaration lost its effectiveness because of the North Korean nuclear weapon tests in 2006 as well as in 2009. If true, it might be also useless to come up with the additional steps if the

¹⁹ <http://cns.miis.edu/inventory/pdfs/koreanuc.pdf>

²⁰ Kwan-Kyoo Choe, *ROK's Contribution to Global Nuclear Nonproliferation*, Nautilus Institute Special Report, January 2010, p.1

²¹ Peter Hayes and Michel Hamel-Green, *The Path not taken, the way still open: Denuclearizing the Korean peninsula and Northeast Asia*, , Austral Special Report 09-09S, 14 December 2009, p.15

agreement is meaningless or annulled. Despite North Korea's withdrawal from the NPT in 1994 and conducting nuclear weapons tests after the entry into force of the 1992 Joint Declaration, neither the South nor the North has ever addressed its break. Rather, the North officially announced that the joint declaration is still in effect right after its first nuclear weapon test. Recently, it said that the denuclearization of the Korean peninsula is *the dying instruction* from Kim Il Sung and it will commit to the 1992 joint declaration in the 2009 new year's announcement on *Rodong Shinmun*. Also, South Korean President, Lee Myung Bak stated that the 1992 joint declaration should be observed in his keynote speech at the 64th UN General Assembly in September 23rd, 2009.

When we consider this, it is hard to be convinced that the joint declaration is not in effect because of North Korea's nuclear weapons tests. Moreover, the process of denuclearization is still ongoing since we could regard the 1992 Joint Declaration as opening the process for denuclearization in Korea, not finalizing the process.

In this view, it is meaningful to discuss what components needed for promoting the status of the 1992 joint declaration to the NWFZ treaties in the region. In the mean time, the completed denuclearization of South Korea has not been actively addressed because of being occupied with the North Korean nuclear weapon issues. In other words, South Korea has strongly relied on the U.S. nuclear umbrella in aspect of national security while it has increased its dependence on nuclear energy economically, so it would be still suspicious for South Korean to virtually honour its declaration for the denuclearization. Even though South Korean government additionally announced its four-point statement for non-proliferation in 2004, that does not directly mean that South Korea is completely free from nuclear weapons in terms of the total absence of them. Thus, it needs to articulate more clearly the boundaries of its nuclear-free zone and address the transit of U.S. ships or aircraft carrying nuclear weapons. In deed, it is worth noting that a U.S. nuclear-powered attack submarine arrived in Busan, South Korea in November 2007.²²

On the other hand, South Korea could seek regional security cooperation as an alternative to the U.S. nuclear umbrella. To move forward this direction, South Korea could reaffirm its nuclear-free-status with a strengthened declaration and would need a Negative Security Assurance from the nuclear weapon states. In this positive process for the denuclearization, South

²² http://www.koreatimes.co.kr/www/news/nation/2007/11/205_14506.html

Korea could review the cooperation with Japan, which heavily relies on the U.S. nuclear umbrella under its three non-nuclear principles.

In reviewing the idea that South Korea is a virtual NWFZ since the 1992 Joint Declaration, I have learned that it is never easy to take an initiative under the strong U.S military presence in the region and the North Korean ambitions for self-defense with asymmetric nuclear weapons, but it also becomes clear to me that denuclearization is the matter of will or faith of states in the region.