A Proposal for a Nuclear Weapons-Free Zone in Northeast Asia



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By Morton H. Halperin

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A version of this essay was originally presented at the East Asia Nuclear Security Workshop in Tokyo, Japan, on Nov. 11, 2011 convened by Nautilus Institute, Mansfield Foundation, and the Asia-Pacific Leadership Network. The workshop addressed the robustness of proposals to establish a nuclear weapons-free zone in the Northeast Asia region.

Specialists from Japan, Korea, China, Australia, and the United States explored in depth the current status of nuclear extended deterrence in East Asia, the plausibility of substituting conventional for

nuclear extended deterrence in US alliance relationships, the cooperative security relationships that are needed to establish a nuclear weapons-free zone, and the thorny issues of North Korea's nuclear weapons and the Taiwan Straits conflict.

This essay was published jointly with Global Asia.

Nautilus invites your contributions to this forum, including any responses to this report.

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I. Introduction

Morton H. Halperin served four US presidents and is currently a Senior Adviser at the Open Society Foundation. Halperin notes that, as the Six-Party talks aimed at eliminating North Korea's nuclear program remain stalled, a fresh approach incorporating the concept of a nuclear weapons-free zone in Northeast Asia should be considered as a way of ensuring peace and security in the region.

The views expressed in this report are those of the author and do not necessarily reflect the official policy or position of the Nautilus Institute. Readers should note that Nautilus seeks a diversity of views and opinions on significant topics in order to identify common ground.

II. Article by Morton H. Halperin

-"A Proposal for a Nuclear Weapons-Free Zone in Northeast Asia"
By Morton H. Halperin

If the international community is seen to accept North Korea as even a *de facto* permanent nuclear power there would be a very serious deterioration of the security situation in East Asia and globally. Notwithstanding the current consensus in both Japan and South Korea against developing nuclear weapons, I believe that a nuclear North Korea would eventually compel South Korea and Japan to acquire nuclear weapons and the danger of an armed conflict in which nuclear weapons might be used would significantly increase. This would pose a serious threat to the global nuclear non-proliferation regime.

Until and unless it becomes absolutely clear that reversing North Korea's nuclear program is not possible, Western security policy in the region must be directed at persuading the North to give up its nuclear weapons and commit to a verifiable regime to insure its permanent compliance.

There is no prospect of that happening unless the United States also pledges not to threaten the North with nuclear weapons. An agreement would be more likely if Japan were included in a treaty creating a nuclear weapons-free zone (NWF zone) for Northeast Asia. The prospects for such an agreement would be increased if it were embodied in a more comprehensive agreement on peace

and security in the region.

Therefore, in order to break the current impasse that has prevented any real negotiations for several years, the parties to the Six-Party talks should seek to negotiate, initially through bilateral channels, the text of a comprehensive treaty that would end the state of belligerency from the Korean War, establish a security organization for the region, commit all parties to normalization of relations with no hostile intent, and establish an NWF zone. Once an agreement on the text was reached, the parties could negotiate the process for bringing it into force.

The Current Impasse

The US and South Korea, on the one hand, and North Korea, on the other, have very different views on why negotiations over the dismantlement of the North's nuclear program collapsed in acrimony and the North retreated from its commitment to a freeze. The North believes that it made and kept an agreement to dismantle its plutonium reactor in return for deliveries of fuel and a nuclear reactor. It believes that the US broke the agreement by cutting off fuel supplies and withdrawing its promise of no hostile intent. The North does not believe that it made a commitment to refrain from pursuing other possible nuclear programs. It also believes that its commitment to the denuclearization of the Korean Peninsula was only an ultimate goal, not a present commitment. It says it is ready to resume negotiations, but only if the other side implements what North Korea believes was already agreed. It remains to be seen if it is still willing to give up all of its nuclear capabilities in the negotiations.

The US and South Korea believe that North Korea did commit itself to stop all of its nuclear weapons programs and to permit verification of that process. They believe that the North reneged on the agreement by proceeding with its clandestine uranium enrichment program. They are ready to negotiate but only if the North agrees to resume dismantlement of the Yongbyon reactor and to end all other nuclear programs without pre-conditions and with effective inspections. They believe that the joint South Korea-North Korea declaration already commits the North to these actions and that the North should proceed to implement the agreement without further discussion or compensation.

Diplomatic efforts focused on reconvening the Six-Party talks will not be able to resolve this impasse.

To reach a settlement, an effort must be made to bypass this dispute. The North is not going to relinquish its nuclear weapons until, at the very least, it is satisfied that it can meet its security needs without nuclear weapons. The lesson the North drew from the past 10 years is that the US is ready to use force to effect regime change in countries whose governments it does not like, and can be deterred only by the credible threat of a nuclear response. It believes, from its experience, that US commitments of no hostile intent, to which it has attached great significance, can easily be withdrawn. North Korea fears an American conventional or nuclear attack and does not understand that it is one of the few countries in the world, and the only small country, that has a credible non-nuclear deterrent in the form of its conventional and chemical forces, which can easily reach the greater Seoul area and cause enormous damage. The US and South Korea, meanwhile, are not ready to restore the commitments they made in the previous agreement, which they consider null and void.

To break this impasse, the US, South Korea and Japan should work together on the terms of a comprehensive agreement covering all of the outstanding issues affecting relations with North Korea. They should then seek the agreement of China and Russia on a comprehensive approach and on the terms of the proposed agreement, making it clear that the formal negotiations would be conducted within the framework of the Six-Party talks. Once the five powers are in general agreement, North Korea should be drawn into the process. Formal negotiations on the proposed

treaty would then begin. Once the final document is agreed upon, the parties would discuss in the Six-Party talks the implementation of the agreement.

Comprehensive agreement on peace and security in Northeast Asia
The proposed comprehensive treaty would be signed and ratified by the parties to the Six-Party talks. Some sections would confer obligations on only some of the signatories; others would confer obligations on all parties. As I discuss below, there should be flexibility about when the treaty and each of its elements enters into force. Other states may be invited to join, including other nuclear weapons states (NWS), as recognized by the NPT, who might be asked to sign a protocol, and other states in the region, including Mongolia. A way of including Taiwan might be explored, although this should not be a deal breaker if China objects.

The elements of the comprehensive Treaty on Peace and Security in Northeast Asia would include:

1. Termination of the state of war This is clearly a major objective of North Korea. This section of the treaty should be adhered to by the armistice nations and by South Korea. It should provide for the normalization of relations while providing support for the eventual unification of the Peninsula. The agreement should provide for opening the border between the North and South and the pulling back of military forces in the demilitarized zone. The territorial disputes between the North and South, including at sea, should either be settled or the two parties should commit to a peaceful resolution of the disputes.

2. Creation of a permanent council on security The treaty should transform the Six-Party talks into a permanent council and support organization to monitor the provisions of the treaty and to provide a forum to deal with future security problems in the region. In addition to the six parties to the treaty, other states from the region could be invited to join as full participants or observers.

3. Mutual declaration of no hostile intent This is a key objective of North Korea, which put great stock in getting such a statement from US President Bill Clinton's administration. It was flummoxed when the administration of President George W. Bush simply withdrew it and when President Barrack Obama's administration continued this policy. To be credible, this commitment must be embodied in the treaty and affect all the parties' relations with each other.

4. Provisions of assistance for nuclear and other energy The right of all parties to the treaty to have access to necessary sources of energy including nuclear power will need to be affirmed. Any limitations on North Korea will need to apply equally to the other non-nuclear parties to the treaty. A new multilateral framework might be appropriate to deal with the fuel cycle. North Korea will also want assurances that its energy needs will be subsidized. Beyond a general commitment this will probably need to be negotiated as a separate agreement.

5. Termination of sanctions/response to violations of the treaty The parties to the treaty will need to commit to refrain from the use of sanctions on any other party to the treaty and to remove them from its list of state sponsors of terrorism. The parties would reserve the right to collectively impose sanctions on any state that violates its commitments under the treaty.

6. A nuclear weapons-free zone Finally, the treaty would contain a chapter that would create a nuclear weapons-free zone in Northeast Asia. The elements of that chapter are discussed in the next section.

Creating an NWF zone
These articles of the treaty would be consistent with UN resolutions concerning the appropriate elements of an NWF zone treaty and with the conditions laid down by the US and China. It would

have specific obligations for non-nuclear states and others for nuclear states. It would refer to the commitments of both the NPT and the obligation of all states to reduce the role of nuclear weapons in international affairs and to work toward their eventual elimination.

South Korea, Japan and North Korea would commit themselves to abstain from the manufacture, testing or deployment of nuclear weapons and to refuse to allow nuclear weapons to be stored on their territory. They might agree to future restrictions on reprocessing and perhaps to a common reprocessing facility inspected by all three states and initially by Japan and South Korea. They would agree to permit inspections on their territory by the security organization created by the treaty so as to insure effective verification of the agreement. The inspection provisions and the obligations to provide information would apply equally to all the non-nuclear parties to the treaty.

In the case of North Korea, there would need to be specific provisions concerning the destruction of its existing stockpile and production facilities under the auspices of the security organization. Both South Korea and North Korea would need to make a commitment that, in the event Korea were unified before the weapons and production facilities were fully dismantled, the unified government would immediately turn over the weapons to a nuclear weapons state for destruction and agree to international supervision of the dismantlement of the facilities. The experience of the three states of the former Soviet Union that had nuclear weapons on their territory when they became independent may provide the most relevant guidance.

The US, China and Russia would agree not to store nuclear weapons in the zone or in any way support violations of the treaty by the non-nuclear states. It would be worth exploring if China would agree to designate the island of Taiwan as within the zone and agree not to store nuclear weapons there and perhaps to reach an understanding with the de-facto authorities on Taiwan to accept this obligation.

The three nuclear states that are party to the treaty would agree not to threaten or use nuclear weapons against any non-nuclear state that was a party to the treaty and that was observing its terms. It is worth noting that a similar offer by the US government is inherent in the “clean negative security assurance” made by the US in the Nuclear Posture Review and is consistent with the past commitments of Russia and China, as well as the US. This agreement would not have an exception for chemical and biological weapons, although an effort should be made to secure adherence to existing chemical and biological weapons treaties by all parties to the treaty.

China might also be asked to agree not to station intermediate range ballistic or cruise missiles that can reach the territory of any non-nuclear state that is party to the treaty.

The parties would agree to confer, and to take appropriate actions, if any non-nuclear state that is party to the treaty and compliant with its terms were threatened with the use of nuclear weapons by another party to the treaty or another nuclear weapon state. The US security treaty commitments to Japan and South Korea would remain in force, but would be understood to be consistent with all the obligations of the proposed treaty. The US would be free to consider offering to use nuclear weapons to defend its allies only if there were a violation of the treaty in the form of a nuclear threat or the use of nuclear weapons against them by a party to the treaty.

The UK and France would be asked to adhere to a protocol that commits them to the provisions of the treaty that apply to nuclear weapons states.

There would need to be provisions spelling out issues of transit of nuclear-armed ships or planes and defining the territorial scope of the treaty in terms of international waters.

Alternative transition period

It goes without saying that any hope of success for the proposed treaty depends on North Korea's willingness, at the end of the day, to give up its nuclear weapons. I believe that there is a chance that with the right incentives and the right pressure, particularly from China, it might ultimately do so. I suggest that the provisions in the treaty concerning implementation and a possible transition period be structured so as to maximize the pressure on North Korea and to give both China and North Korea the greatest incentives to accept the framework. One piece of that is the inclusion of the other objectives that the North has been seeking. Another is to propose a scenario for adherence by Japan and South Korea that contributes to this process.

I am not at all persuaded that having South Korea and Japan sign their own NWF zone treaty is an effective scenario. For one thing, I do not envision either government agreeing by treaty, beyond the NPT, not to acquire nuclear weapons when North Korea has not accepted limits on its nuclear weapons program, let alone made a commitment to denuclearization. Moreover, I believe that the greatest concern of the Chinese government is that Japan will acquire nuclear weapons under a right-wing nationalist government. The Chinese fear that if the North Korean program continues unchecked, the South will eventually develop nuclear weapons (or will obtain them if the North collapses) and that, as a result, Japan will move to acquire nuclear weapons. Thus, we want to underscore China's concerns not alleviate them – and at the same time assure China that if it succeeds in persuading the North to give up nuclear weapons, South Korea and Japan would, by treaty, be committed not to develop nuclear weapons.

One way to achieve this is to have a provision in the treaty that permits South Korea and Japan to sign and ratify the treaty on a conditional basis. The treaty could be structured so that it goes into effect when the three nuclear weapons states (the US, Russia and China) and the two non-nuclear states (Japan and South Korea) ratify it. However, South Korea and Japan would have the right to withdraw from the treaty after three or five years if the provisions were not being enforced effectively throughout the Korean Peninsula. Effective enforcement would occur if either North Korea ratified and implemented the treaty, or if it collapsed and the Peninsula were unified under South Korea.

The obligations of nuclear weapons states that ratify the treaty or the protocol would apply only to those non-nuclear states that also ratify and are in compliance with all the provisions of the treaty. These provisions would accomplish several purposes. First, South Korea would be obliged to surrender any nuclear weapons or weapons grade material it acquires as a result of the collapse of North Korea. Second, China would know that if it persuaded the North to adhere to the treaty, it would have a permanent treaty commitment by Japan and South Korea not to acquire nuclear weapons or permit them to be stored on their territory. North Korea would be aware of this, and would have a negative security assurance from the US if it joined the treaty.

Specific provisions would be included to develop a process by which the North would dismantle its existing stockpile over a fixed period of time and receive compensation, the specifics of which would be subject to agreement. A provision of the treaty might permit the North to accept the basic commitment that it becomes a non-nuclear weapons state while delaying its obligation to begin the dismantling process. Still, it will not be easy to persuade North Korea to give up its existing nuclear capability and it will certainly take some time. One possible approach would be through Mongolia, which has declared itself a nuclear weapons-free zone and which has good relations with the North. In fact, it might make sense to include Mongolia in the proposed treaty.

US nuclear deterrent for Japan and South Korea

One additional consideration is whether the US can and should continue to assure Japan and South Korea that in the event of a nuclear attack on either state by a party to the treaty, it would respond

in the same way as it would to a nuclear attack on the US – in other words, with a nuclear strike on the aggressor state.

I do not think that continuing this commitment is incompatible with the obligations of states that adhere to an NWF zone treaty. I do think, however, that it should be understood in a different way. That is, the US should affirm that it would respond to a nuclear attack on Japan or South Korea in the same way that it would respond to a nuclear attack on the US or its forces in the field. However, it should be clear that the nature of the response would be tailored to the circumstances of the attack and would not necessarily involve the use of nuclear weapons.

I believe that the statements in the US Nuclear Posture Review describing the circumstances under which the United States would use nuclear weapons make it clear that there would not be an automatic or rapid nuclear response to a nuclear attack, and that the response would be in the form most likely to achieve American objectives in light of the nature of the attack. The use of nuclear weapons would be contemplated only in the most dire of situations and only when this was the most effective response. South Korea seems to be moving in the same direction with recognition growing that a nuclear response, even to a nuclear or chemical attack, is neither credible nor in its interest.

Specifically, if North Korea dropped one or several nuclear weapons on South Korea, Japan or American forces or territory, the appropriate response would not be to punish the Korean people (both North and South) by dropping nuclear weapons on North Korea, but rather to launch a conventional attack designed to remove the current leadership from power and permit the unification of Korea as a democratic and non-nuclear country. Moreover, after such an attack there would no longer be any targets in North Korea that could only be destroyed with nuclear weapons nor would there be any targets for which nuclear weapons would be a lawful and proportional response. I am not suggesting that the US in any sense "promise" the North that a nuclear attack by North Korea would not eventually result in a nuclear attack on its territory. Rather the US should indicate that the initial and immediate response would be conventional while reserving the right to take whatever additional steps might be necessary.

De-nuclearizing the Korean Peninsula must remain a high priority of the international community. Failure to dismantle North Korea’s nuclear capabilities will lead to further proliferation and to a more dangerous world. The outline proposed here, with a flexible NWF zone, is a way forward that deserves careful consideration.

III. Nautilus invites your responses

The Northeast Asia Peace and Security Network invites your responses to this report. Please send responses to: bscott@nautilus.org. Responses will be considered for redistribution to the network only if they include the author's name, affiliation, and explicit consent.

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