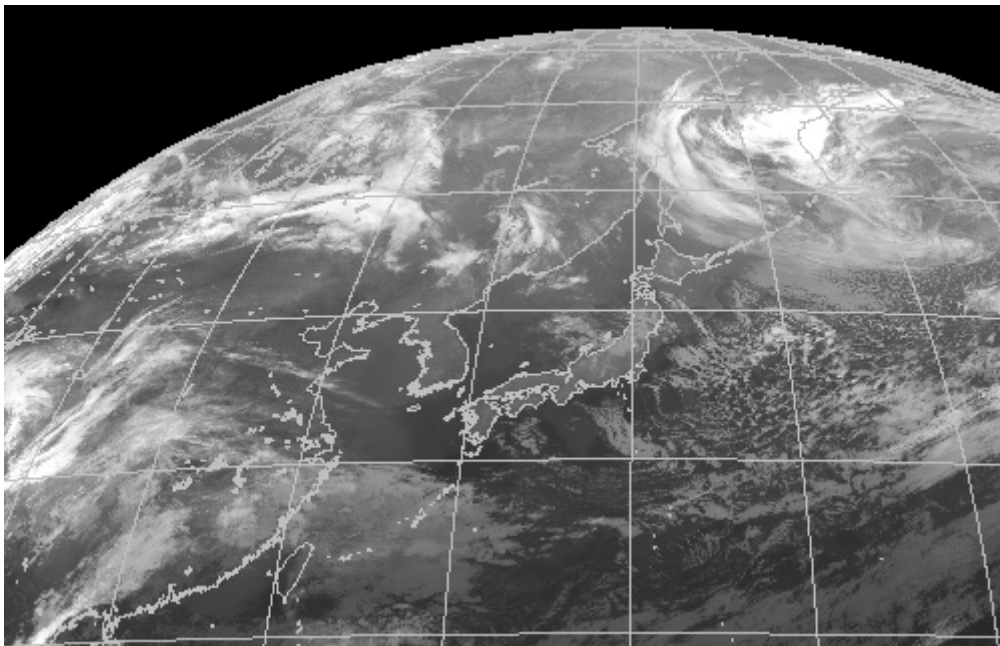


# **REDUCING NUCLEAR DANGERS ON THE KOREAN PENINSULA: BILATERAL VERSUS MULTILATERAL APPROACHES**



## **Recommended Citation**

Thomas Graham, "REDUCING NUCLEAR DANGERS ON THE KOREAN PENINSULA: BILATERAL VERSUS MULTILATERAL APPROACHES", NAPSNet Special Reports, April 08, 2019, <https://nautilus.org/napsnet/napsnet-special-reports/reducing-nuclear-dangers--n-the-korean-peninsula-bilateral-versus-multilateral-approaches/>

---

**THOMAS GRAHAM**

**APRIL 8 2019**

## **I. INTRODUCTION**

In this essay, Thomas Graham concludes: "As the two Koreas and the great powers, especially the United States, consider their options of the best political and legal framework in which to realize a

---

nuclear-free Korean peninsula, it is prudent to note the strengths and weaknesses of the 1992 Joint Declaration, and to ascertain if a new but more comprehensive bilateral agreement might be used today, or whether an alternative, more robust multilateral framework exists such as a nuclear weapons-free zone that might subsume the 1992 Joint Denuclearization commitments, and overcome its evident shortfalls.”

Thomas Graham is former US Ambassador, Executive Chairman, Lightbridge Corporation

The views expressed in this report 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.

This report is published under a 4.0 International Creative Commons License the terms of which are found [here](#). It is published also by the Asia-Pacific Leadership Network for Nuclear Non-Proliferation and Disarmament here *and* the Research Center for the Abolition of Nuclear Weapons, Nagasaki University, [here](#).

Banner image: from Himawari series of geostationary meteorological satellites [here](#).

## **II. NAPSNET SPECIAL REPORT BY THOMAS GRAHAM**

### **REDUCING NUCLEAR DANGERS ON THE KOREAN PENINSULA**

#### **BILATERAL VERSUS MULTILATERAL APPROACHES**

**APRIL 8 2019**

#### **Summary**

This paper addresses the important issue of nuclear weapons on the Korean Peninsula. It reviews alternate solutions: an essentially bilateral solution with the United States as an associated party and a multilateral regime establishing a nuclear weapon free zone in a designated part of Northeast Asia which would include the militarily significant states in the region along with the NPT nuclear weapon states as associated parties. The effectiveness of a non-binding pledge versus a legally binding agreement and the possible availability of a nuclear assurance commitment itself a non-binding declaration or a legally binding obligation is analyzed. The verification requirements of a legally binding arrangement are outlined and associated issues such as transit through the zone established by an agreed arrangement are considered. The political salience of the two types of solutions, bilateral and multilateral is commented upon: for example what has the Democratic People’s Republic of Korea [DPRK] indicated it would accept and the likelihood that the DPRK is now prepared to be, or can be, persuaded to make the hard decision to eliminate weapons and accede to the vast verification requirements of a legally binding regime; and whether the United States would be willing to provide a negative nuclear assurance of any sort in a bilateral non-binding agreement situation as well as the level of verification it might demand in a legally binding agreement.

The Korean Denuclearization Declaration (signed January 20, 1992, into force February 19, 1992) committed the two Koreas to agree not to test, manufacture, produce, receive, possess, store, deploy, or use nuclear weapons; to use nuclear energy solely for peaceful purposes; and not to possess facilities for nuclear reprocessing and uranium enrichment. The two Koreas also committed

to conducting inspections of locations in the other Korea and established the South-North Joint Nuclear Control Commission (JNCC) to implement the inspections. However, since 1993, the JNCC has been unable to reach agreement on reciprocal inspections and none have taken place under its purview. Article 4 commits the two Koreas to verify the nuclear-free status of the Korean Peninsula within about two months from 19 March with inspections to begin in less than a month.<sup>[1]</sup>

However, the two sides were unable to agree on the frequency of inspections, and their demands on what would be inspected were also a-symmetric, with the ROK demanding inspections of any suspect locations in the DPRK; and the DPRK demanding that it also be able to inspect any US military facilities in the ROK. In June, the issue came to a head over the DPRK's demands and the ROK's rejection of North Korean inspections of US military facilities in the ROK, and by October 1992, multiple disagreements surfaced in the JNCC talks, and the implementation of the inspection regime ground to a halt in December 1992 as suspicions increased about North Korean reprocessing, and the US and the ROK began to prepare for the next Team Spirit exercises.

Not only was the agreement not legally binding (because it was struck between the two Koreas on the basis of their 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'),<sup>[2]</sup> but it also lacked a number of the key attributes of a meaningful NWFZ as defined by UN Disarmament Commission in its 1999 report, including:

1. Total absence of nuclear weapons: any states should not develop, test, manufacture, produce, acquire, possess, store, transport and deploy nuclear weapons within a nuclear weapons-free zone;
2. Effective verification of compliance;
3. Clearly defined boundaries;
4. 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 parties

Ironically, the 1992 Joint Declaration went beyond a standard NWFZ in that it not only banned nuclear weapons in Korea (although it did not define the boundaries of the zone) by banning the possession of "nuclear reprocessing and uranium enrichment facilities," it failed to establish an effective mechanism for verification of compliance (Article IV, V). Also, the Joint Declaration did not address the transit or transportation of nuclear weapons in or over its territorial waters, straits and international water, or airspace by a nuclear armed state (although the DPRK raised this issue at several JNCC meetings, it is a generic issue that relates equally to Chinese and Russian nuclear weapons in or around the Korean peninsula).<sup>[3]</sup>

Of great importance, the Joint Declaration imposed no obligation on the nuclear weapon states not to use or threaten to use nuclear weapons against the two Koreas, and lacked any protocols that would have bound the nuclear weapon states to the Joint Declaration in this regard. Political statements by Russia and the United States welcoming the Joint Declaration and calling for the full implementation were no substitute for negative security assurances in a standard NWFZ treaty.

As noted above, the Joint Declaration foundered on the inspection mechanism, and is now moribund. However, moribund is not dead, in spite of the DPRK's nuclear testing and declared armament, and the Denuclearization Declaration is an important common reference point referred to in the 1994 US-DPRK Agreed Framework, and in the September 19, 2005 Six Party Talks Principles

and Joint Statement.

It also contains no provision for termination and therefore is arguably still in force with respect to the two Korea's initial commitments, no matter how much (or little) each of them is in breach of the Joint Declaration.

As the two Koreas and the great powers, especially the United States, consider their options of the best political and legal framework in which to realize a nuclear-free Korean peninsula, it is prudent to note the strengths and weaknesses of the 1992 Joint Declaration, and to ascertain if a new but more comprehensive bilateral agreement might be used today, or whether an alternative, more robust multilateral framework exists such as a nuclear weapons-free zone that might subsume the 1992 Joint Denuclearization commitments, and overcome its evident shortfalls.

### **Need for Robust Legal Framework Today**

As noted above, the bilateral framework has inherent limitations. It is conceivable that a new bilateral declaration might address some of the deficits of the 1992 Joint Declaration. For example, it is possible that the United States might consider issuing a nonbinding executive statement containing a security assurance directly to the DPRK. More than this, however, in the non-binding area does not appear possible. In general, on this and other critically important dimensions, it is necessary to search for a more robust legal framework in which to realize denuclearization of the Korean peninsula.

Following the Singapore Summit another attempt is being made to create such a framework. The DPRK and the ROK may prefer a solution that in its eyes would represent a broader commitment than a bi-lateral treaty. A multilateral treaty is not stronger than a bi-lateral treaty in a technical *legal* sense. But by creating legal obligations to more than one other state, violating such a treaty breaches treaty relations with more than one state thereby creating a somewhat greater penalty for the violating state. In this sense a multi-lateral treaty perhaps can create somewhat broader legal obligations and potentially greater penalties than a bi-lateral treaty. The best-known form to address nuclear disarmament in a broader regional setting is the nuclear weapon free zone treaty. Both sides say that the agreed objective is a denuclearization Agreement which covers the Korean Peninsula. However even though the objective of the two negotiating parties is the same in writing, substantively they are far different. For the United States the term means North Korea relinquishing all of its nuclear weapons. But to the DPRK the term means reducing nuclear weapons in a "balanced and synchronous way" as Kim Jong-un said to China President XI prior to the Singapore Summit. This means to North Korea that weapons are reduced only if certain conditions are met. These likely include ending the United States nuclear umbrella in East Asia and terminating the American presence in South Korea. The DPRK may want commitment to reductions by the U.S. as well. So, the two negotiating parties at this point are not even on the same page as to the desired end result. The DPRK appears unlikely to even consider Washington's demand for "complete, verifiable, and universal" denuclearization—it would challenge the fundamental structure of North Korea's political system.

What North Korea appears to mean by a security guarantee as a prerequisite for a commitment to denuclearization is a regime guarantee—an undertaking to keep the Kim hereditary political system intact and the absolute authority of the leader in place. However, it should be noted that in the 1994 Agreed Framework between the U.S. and the DPRK the North settled for the following in the text. "The U.S. will provide formal assurances to the DPRK, against the threat or use of nuclear weapons by the U.S." This Agreement was not a Treaty but it was an international agreement with legal force.

### **Nuclear Weapons Free Zone (NWFZ) Treaty**

The nuclear weapon free zone treaty form is quite familiar to the world community. There exist five functioning treaty-based nuclear weapon free zones: Latin America (the Treaty of Tlatelolco—1967); South Pacific (the Treaty of Rarotonga—1985); Africa (the Treaty of Pelindaba—1996); South-east Asia (the Treaty of Bangkok—1997); and Central Asia (the Treaty of Semipalatinsk—2006); when the Nuclear Non-Proliferation Treaty (NPT) was negotiated in the late 1960s it explicitly codified—in Article VII—the right of the parties to the NPT to establish nuclear weapons free zones in their regions.

Responding to a proposal submitted by Finland, the United Nations General Assembly (UNGA) commissioned a comprehensive expert study (which was carried out at the Conference of the Committee on Disarmament in Geneva) of NWFZs in 1974. It was completed in 1975. And it established multiple criteria for such a treaty:

“1 - Obligations related to the establishment of a nuclear weapon-free zone may be assumed not only by groups of states, including entire continents or large geographical regions, but also for smaller groups of states and even individual countries.

2 - Zonal arrangements must ensure the complete absence for the present and future nuclear weapons in the region covered by the treaty.

3 - The initiative for the zonal treaty must come from within the region concerned.

4 - If the zone is intended to embrace a region, the participation of all militarily significant states, and preferably all states, would be important.

5 - The zonal treaty must have an effective system of verification (the experts were of the view that the viability of the nuclear weapon free zone will largely depend on this).

6 - The treaty established must be of indefinite duration.”

In 1975 at the 30<sup>th</sup> session of the UNGA the United Nations on the initiative of Mexico defined the concept of a nuclear weapon free zone.

“A nuclear-weapon-free zone shall, as a general rule, be deemed to be any zone recognized as such by the United Nations General Assembly, which any group of states in the free exercise of their sovereignty, has established by virtue of a treaty or convention, whereby: (a) The statute of the total absence of nuclear weapons to which the zone shall be subject, including for the procedure of the delineation of the zone, is defined; (b) An international system of verification and control is established to guarantee compliance with the obligations deriving from that statute.”[\[4\]](#)

At the same time the General Assembly also provided that in every case of a nuclear-weapon-free zone treaty recognized by the UNGA the NPT nuclear weapon states should conclude an internationally legally binding instrument in which they undertake the following obligations:

“(a) To respect in all its parts the statute of total absence of nuclear weapons defined in the treaty or convention, which serves as the constitutive instrument of the zone;

(b) To refrain from contributing in any way to the performance in the territories forming part of the zone of acts which involve a violation of the aforesaid treaty or convention;

(c) To refrain from using or threatening to use nuclear weapons against a state included in the zone.”[\[5\]](#)

All nuclear weapon free zone arrangements are different and the negotiations upon occasion have had to develop novel solutions to different problems. In Latin America while the Treaty of Tlatelolco was being negotiated there were two potential nuclear weapon programs within the zonal limits. The lead negotiator, Ambassador Garcia Robles of Mexico, developed a flexible structure whereby a state would become subject to the obligations of the zonal treaty only when that state had deposited with the nation serving as the depository—Mexico in this case—a certificate of waiver of the Treaty's Article 28 entry into force requirements as well as the instrument of ratification of the Treaty. Thus, Brazil could and did ratify the Treaty in 1968 but was not subject to its obligations until 1994 when it had shut down its program entirely and formally delivered a waiver of the Article 28 requirements. Argentina signed the Treaty in 1968 but deposited its instrument of ratification and as well as the waiver document when it joined the Treaty in 1994.

Some important issues for other NWFZ treaties were:

(a) The dumping of radioactive substances in the high seas by the French (banned by the Rarotonga Treaty, approximately 10 years before France became a protocol party and could make its own commitment to this). Of course, the Rarotonga parties (the Pelindaba Treaty also has this provision) do not have jurisdiction over the high seas, no state does, but the 1975 United Nations London Dumping Convention parties decided in 1993 at the consultative meeting of contracting parties that the disposal of radioactive waste into the high seas was prohibited.<sup>[6]</sup> Thus the unrestricted dumping of radioactive substances into the high seas is internationally prohibited.

(b) The status, under the Treaty establishing the African Nuclear Weapon Free Zone, of islands off shore of Africa claimed by the Organization of African Unity to be part of Africa as well as states outside the Treaty zone placing territories they possess within the zone under the Treaty obligations (the Latin American and South Pacific free zone treaties had variants of this issue as well), for example, Réunion Island possessed by France. The most difficult such problem was the Chagos Archipelago, which includes the Island of Diego Garcia, a major U.S. naval base leased from Britain. The Archipelago comprises the British Indian Ocean Territory, located approximately 1,000 miles south of India, and 2,000 miles east of the African mainland. It is also claimed by Mauritius, an island state near Réunion Island. This claim is supported by the Organization of African Unity;

(c) The continuing security relationship with Russia, a nuclear weapon state, by four of the five parties to the Treaty of Semipalatinsk;

(d) The insistence by the parties to the Treaty of Bangkok that the non-nuclear weapon statute of the Treaty apply to the high seas out to the 200-mile Exclusive Economic Zone (EEZ) limit of each party. This has the effect of blocking China from basing nuclear weapons on islands and other partially submerged reefs claimed by China to be islands in the Southeast Asian high seas area.

The Korean Peninsula likely will present comparable problems for negotiations to establish a NWFZ in Northeast Asia.

### **Treaty of Tlatelolco Phased Implementation**

The Treaty of Tlatelolco was negotiated over the period 1964-67 in Mexico City. The impetus for the Treaty was the then recent Cuban Missile Crisis. Latin America had had enough of nuclear crises. Garcia Robles and his fellow negotiators spent much time and effort developing the provision for the entry into force of the Treaty. As said, at the time of the negotiation there were two potential nuclear weapon programs in Latin America, in Argentina and Brazil. Garcia Robles wanted all Latin American states to have the opportunity to be involved with the Treaty at the beginning, regardless of their situation. There were two groups of states among the negotiating parties. The first group



proposed that the Treaty would come into force among those states that had ratified it once eleven Latin American states—representing a majority of the participants in the Preparatory Commission which managed the negotiations—had ratified the Treaty. The second group took the position that the Treaty would only come into force after the following four things had happened.

1 - The signature and ratification of the Treaty by all states to which it was opened.

2 - The signature and ratification of Protocol I (for outside states—the United States, Britain, France, and the Netherlands—which had jurisdiction over territory in Latin America) by all states to which it was opened.

3 - The signature and ratification of Protocol II (for the five NPT recognized nuclear weapon states) by all states to which it was opened; and

4 - The conclusion of safeguards agreements with the International Atomic Energy Agency (IAEA) by all contracting parties of the Treaty and of its Protocols.

Article 28 of the Treaty provides that the Treaty will come into full force and effect only when the four requirements are met. Article 28 of the Treaty however permits a ratifying state to submit a formal waiver along with its instrument of ratification and the treaty will apply to that party's land area, including its internal waters and territorial seas—but not the adjacent expanded sea areas. This then bridges the views of the two groups.

In practice each party to the Treaty of Tlatelolco has brought the Treaty into force for itself by depositing its instrument of ratification and the formal waiver document with the government of Mexico, the Depository. The fourth condition may never be met—and the broad adjacent sea areas brought under the Treaty which only happens upon full force and effect—as expensive IAEA safeguard arrangements likely will never be in the economic interest of small states, like the Bahamas. Such states probably will never have nuclear facilities for which safeguards would be applied.

For many years after the conclusion of the negotiations in 1967, Argentina while a signatory had not ratified, while Brazil and Chile had signed and ratified but had not waived. Cuba did nothing for a long time. Argentina and Brazil had active national programs, while Chile just followed Brazil and Cuba alone, marched to its own drummer.

By 1994 both Argentina and Brazil no longer wished to keep the nuclear weapon option open. Argentina ratified the Treaty of Tlatelolco and waived the four requirements in 1994. Brazil and Chile deposited their declarations of waiver with the government of Mexico the same year. Argentina and Chile became parties to the NPT in 1995, Brazil in 1998. With the full accession to the Treaty by Cuba in 2002, all Latin American states had signed, ratified and submitted their waiver documents pursuant to Article 28 and thus the Treaty applied to the land area of all Latin American states. Only three of the four requirements have been met. But for all practical terms the Treaty is in full force. The Treaty's de facto zone of application is the land area territory of the parties. If the fourth requirement is ever met, the area of the application of the Treaty will expand to large ocean regions surrounding Central and South America, in the west touching the border of the South Pacific sea area which surrounds the states of the Treaty of Rarotonga.<sup>[7]</sup> Should this ever happen it could negatively affect the navigational rights of nuclear ships including warships.

### **Inclusion of Japan?**

In addressing the specific possibility of a nuclear weapon free zone for the Korean peninsula some variation of the Garcia Robles formula might be workable. But first the following should be noted. United Nations rules provide that in order for a NWFZ treaty to be recognized by the UN, it must include, as mentioned before, “all military significant states in the region”—that may make it desirable to include Japan if the object is a treaty with a broad non-nuclear weapon commitment—and the Protocol must include all five NPT recognized nuclear weapon states as Protocol parties which among other things binds them to a negative security assurance (NSA) for treaty parties. A more detailed treatment is provided in Attachment 1.

### **The NPT Conundrum**

The DPRK cannot rejoin the NPT until the IAEA pronounces it nuclear weapon free, a process likely to require a great many years to complete. Probably it will prove to be the case that a verification system is required that would be more stringent than that of the so-called Iran Agreement, the Joint Comprehensive Plan of Action or JCPOA—IAEA anytime, anywhere inspection rights (some facilities could be exempted by specific agreed provision) 24 hours a day, 365 days a year to last many, many years, then perhaps the U.S. would be comfortable bringing the Treaty into force. And as with South Africa, after the special verification system comes to an end, the DPRK would be subject to ongoing IAEA inspections to verify that it remains in a non-nuclear weapon status. The principal obligation that the DPRK would defer, since the DPRK would not be bound by the Treaty during verification and the U.S. would not ratify the Protocol during this period either would be the requirement to reduce and eliminate nuclear weapons. That would only come when verification is complete and the Treaty is brought into force. And the U.S. would defer its Protocol obligations of no U.S. nuclear weapon facilities in South Korea and a legally binding nuclear negative security assurance (NSA) for the DPRK.

However, during the years that the DPRK was being verified, the international law rule (Article 18 of The Vienna Convention of the Law of Treaties) that a signatory to a Treaty prior to ratification (which in this case would happen after verification) would not take acts that would “defeat the object and purposes of the Treaty” would apply. This presumably would mean no testing, transfer, or fabrication of new weapons or components for the DPRK while entry into force is pending. These constraints would impose serious limitations on the DPRK and it might want reciprocity from the U.S.

Once the DPRK is declared nuclear weapon free and it submits its instrument of ratification it would be bound by the Treaty and no longer by the international law rule. The U.S. would then ratify the Protocol where as indicated the principal obligations the U.S. would implement would be not to have nuclear weapons or related facilities in the Treaty Zone and not to use or threaten to use nuclear weapons against any Treaty party in good standing. There could be additional U.S. obligations in its Protocol. There could be important obligations applicable to the DPRK that the U.S. will want to see included in the Treaty and to happen promptly—likely non-transfer, no weapon testing and no fabrication of weapons or components. As stated above the International law rule could be sufficient but this also could be explicitly agreed in a separate agreement to reinforce the international law rule referred to above.

Again, the DPRK cannot rejoin the NPT until the IAEA formally declares the country to be nuclear weapon free and also that any sensitive nuclear technology or material it possesses are under full scope IAEA safeguards. The DPRK has no relationship to the NPT regime until it returns to the Treaty as a party.



## **Interim Measures**

As indicated specific provisions additional to those in the NPT and the NWFZ Treaty for the interim period while verification is ongoing—arguably covered by the International Law rule—could for additional confidence be established by a separate agreement. For example, a separate protocol designed to come into force immediately signed by the DPRK and the U.S. could provide such interim arrangements. Or it could be signed by all parties—including protocol parties and provide for an interim or anticipatory regime, while the Treaty itself was proceeding towards entry into force. This has been done before—or something somewhat similar—in the Conventional Armed Forces in Europe Treaty. It was called the Provisional Application Protocol, designed to prepare for the treaty regime, pending entry into force. It could mirror the rule of international law mentioned above or it could provide specific interim obligations to preserve the treaty regime until entry into force. As said, to make such a concept palatable to the DPRK there might be a need to have a United States commitment as well, perhaps some easily reversible undertaking such as suspension of military maneuvers in South Korea, or at least those involving nuclear weapon delivery platforms.

Then there is the question of reciprocity. One might assume that, among other things, part of the final settlement would be that all U.S. nuclear weapons and nuclear weapon related facilities and components on the land territory of any of the parties within the Zone, presumably including the Republic of Korea (ROK) and Japan (as explained above Japan's inclusion as a party may be a requirement for this Treaty to be supported by the United Nations) would be prohibited. This obligation would be also verified by the IAEA. There also would be the NSA in the Protocol.

Inspections of any U.S. facilities located in the Treaty Zone (presumably the Korean Peninsula and Japan, but not parts of Russia and China—should they be Protocol parties) would also have to be with the consent of the host party for the facilities, the ROK or Japan. For the United Nations facilities along with the western islands to be inspected it would seem sufficient to include a provision calling for this in the Treaty with an acceptance letter by the Commander of UN Peacekeeping Forces. If the Depository is to be the Secretary General as with many such treaties like this one today the Commander again could make a declaration accepting the inspections. At first glance there does not appear to be any reason for this Treaty to in any way affect the work of the Neutral Nations Supervisory Commission with respect to the Armistice. If part of the agreed package is a Peace Treaty the Commission likely would go away in any case.

The NWFZ Treaty being discussed herein-pursuant to existing U.N. rules would have a permanent duration like the other NWFZ Treaties. It would be a legally binding international agreement forever barring nuclear weapons from the area of applicability of the Treaty. The reintroduction of nuclear weapons would be prohibited by the Treaty absent a material breach.

## **Transit**

Transit has been an important issue in the NWFZ process. It was not addressed in the Tlatelolco treaty but the United States as part of its ratification of Protocol I to the Treaty submitted several understandings, which are formal communications to other parties as to the Treaty's interpretation. If an understanding is not challenged by another party it is included in the legal structure of the Treaty regime. If it is challenged renegotiation would be necessary. None of the U.S. understandings were challenged so they became parts to the Tlatelolco Treaty regime. One of them explicitly stated that the transit of nuclear weapons through the zone by ship or airplane is not affected by the Treaty. This provision was made explicit in all subsequent NWFZ treaties. The Rarotonga Treaty set the form this provision would take. This provision was drafted to be acceptable to Australia which permitted port visit by warships carrying nuclear weapons and New Zealand which did not. The relevant provision states that in the exercise of its national sovereignty "each party is free to decide

for itself” whether to permit port visits and transit through its territorial waters by ships and visits and overflights by aircraft “in a manner not covered by the right of innocent passage”. Territorial waters are under the sovereign control of the littoral state. Innocent passage through such waters is guaranteed to all states but subject to certain rules. Therefore, whether nuclear powered or nuclear weapon capable ships or nuclear capable aircraft can make port calls or traverse the territorial sea and make visits as well as overflights in the case of aircraft depends on the policy of the states whose waters or airspace it is. If that state chooses to prohibit transit by such ships and aircraft then traversing the territorial waters or airspace would not be “innocent”.<sup>[8]</sup>

The Treaty of Pelindaba utilizes the same language as Rarotonga to the same effect that each party in the exercise of its sovereignty can decide whether to allow port visits and transit of territorial waters by ships and overflights by aircraft in a manner not subject to innocent passage. All aircraft in order to overfly or utilize the airport of a state must only do so pursuant to permission of that state which for normal commercial aircraft is part of the world-wide commercial air traffic control system regulated by international agreement. This is of course different from innocent passage through territorial waters but considered under NWFZ treaties in a similar way for certain aircraft. Port visits, transit of territorial waters by nuclear powered and nuclear capable ships and nuclear capable aircraft overflights and landing at airfields are treated together. And the program applies in the NWFZ treaties to ships and planes that are nuclear weapon capable as well as to nuclear powered in the case of ships. Overflights by aircraft of the territorial sea designed to be threatening if carried out without the permission of littoral state—as they wouldn’t be—are a breach of sovereignty and not permitted under international law.<sup>[9]</sup> Such overflights along the land border—such as along the DMZ might not be contrary to international law but they certainly would be contrary to the spirit of the Treaty regime.

## **Verification**

Now turning to verification provisions, it seems likely that these provisions have to be at least as severe—and probably more so than the JCPOA regime, applicable to Iran. The following is an outline of what this regime possibly might look like in general.

A preambular paragraph could contain a similar no nuclear weapons ever pledge that Iran undertakes in the JCPOA making the DPRK the second country in the world to make this pledge: “The Democratic People’s Republic of Korea affirms that in the future under no circumstances will the Democratic People’s Republic of Korea again seek, develop, or acquire nuclear weapons.” (It is good to have this general principle stated.)

Second, the plutonium production reactor at Yongbyon should be verifiably destroyed according to agreed procedures. (The only purpose that this reactor has is to make plutonium for nuclear weapons therefore it should be destroyed.)

Third, the enrichment plant, likely built with the design and components supplied to the DPRK by A.Q. Khan should be dismantled according to agreed procedures. This facility was built with designs and components illegally acquired and there is no reason to permit the DPRK to enrich uranium on the large scale that this plant permits. Almost certainly other enrichment plants exist. Enrichment is permitted to NPT parties in good standing under the Treaty. But under the most positive scenario the DPRK is many years away from such a status. Indeed, it may be that a decision will be taken years from now to readmit the DPRK to the NPT with less than complete certainty that the country is in fact free of nuclear weapons because complete certainty is impossible to achieve. The DPRK may contain too many caves, tunnels, etc., to enable certainty to be achieved no matter how many highly intrusive inspections are carried out. Former U.S. Defense Secretary William Perry, a veteran of years of negotiations with the DPRK, believes this and has said so in print. As a result, enrichment is

simply too dangerous a technology for the Nuclear Supplier's Group to permit to be exported to the DPRK or for it to continue to possess or to develop such technology for the foreseeable future.

Fourth, there must be 24 hours a day, 365 days a year highly intrusive inspections on-site by the IAEA—and, for political reasons, the inspection teams must include some American experts—looking for nuclear weapons and related technology. This process will continue for many years, likely years after the DPRK has returned to the NPT and this Treaty has entered into force. At least ten years beyond the entry into force of this Treaty should be the duration of the enhanced inspection regime. After some agreed point in time perhaps a more normal verification regime could be agreed upon—such as other NPT parties have agreed to work with the IAEA—but this would be many, many years in the future. Verification that the DPRK is nuclear weapon free will be excruciatingly different.

Fifth, DPRK borders should be placed under tight control 24 hours a day, 365 days a year, with respect to any nuclear weapon related technology. The duration of these controls should be the same as for the IAEA inspections.

Sixth, likewise for the same duration, the uranium mines and any thorium production should be closely monitored under an identical regime.

Seventh, research and development with respect to any nuclear weapon related technologies should be closely monitored continuously and for the same duration.

Eighth, as specific identifiable progress is confirmed by the IAEA sanctions could slowly be lifted over a number of years. Specific goals should be set and periodic reports by the DPRK to the IAEA Board of Directors required.

Ninth, any violations of the inspection process reported by the IAEA will result in the return of all sanctions that have been lifted and new ones added.

A nuclear weapon free zone treaty for Northeast Asia certainly should be the longer-range objective for the region. It was Garcia Robles' vision that "We should attempt to achieve a gradual broadening of the zones of the world from which nuclear weapons are prohibited to the point where the Territories of Powers, which possess these terrible tools of mass destruction, will become 'something like contaminated islets subjected to quarantine.'" [\[10\]](#) This is the philosophy we all should follow. But in Northeast Asia we are far away from this now. The DPRK currently has said that all it will accept in terms of a denuclearization agreement is a non-binding Resolution akin to the 1992 Resolution. This could be seen by the world community as worthless but that isn't necessarily so. It depends on what it's linked to and accompanied by. The Helsinki Final Act of 1975 and The Stockholm Document on Confidence Building Measures in Europe, 1986 are examples of non-legally binding agreements which proved very valuable. They led to the Conventional Armed Forces in Europe Treaty in a few years, and other developments in Eastern Europe and the end of the Cold War in 1991.

It would seem that the primary objective should be a Peace Treaty ending the Korean War. Hostilities associated with a state of war on the Korean Peninsula ended 65 years ago. That would appear to be long enough to wait. A Peace Treaty—actually probably two peace treaties one between the two Koreas—but that would involve recognition—so perhaps the inter-Korean Peace Treaty could

be with the United States as an intermediary third party—and there could be a separate Peace Treaty between the DPRK and the U.S. Much would follow from this: U.S. diplomatic recognition of the DPRK, an exchange of Ambassadors and the end of threatening overflights and close border flights. Such flights except arguably flights along the DMZ border, would be breaches of sovereignty, and inconsistent with peaceful relations. And the land border flights would certainly be questionable. There could also be a protocol to the U.S.-DPRK Peace Treaty or it could be an associated standalone agreement. This agreement could put in legally binding obligations the DPRK decision to do no more nuclear weapon or missile tests and no exports of such technology. The U.S. would have to give something for this, as suggested above, an ending of U.S. military exercises in the South, at least those involving strategic platforms.

These would be very positive steps which would add considerably to stability. But into this will be thrust by the media the non-legally binding and unverifiable denuclearization declaration. There would be little confidence anywhere that the DPRK would actually eliminate any of its nuclear weapons. The U.S. would not be able to give the DPRK a legally binding NSA. Almost certainly the U.S. Senate would never consider abandoning the U.S. nuclear deterrent absent complete confidence that the DPRK stockpile had been or was about to be eliminated. A two-thirds vote in the Senate would be required to approve a legally binding NSA and such a vote is tough to get. The U.S. of course could give to the DPRK a non-binding NSA in the form of a national statement, which all of the P-5 gave to all NPT parties in 1995. The DPRK also was the recipient of such assurances while it was an NPT party. It is essential that the denuclearization declaration not be presented as an end in itself but as the key to the Peace Treaty and all of its benefits.

The issue of NSAs for non-nuclear weapon states from the NPT nuclear weapon states goes back to the beginning of the NPT.

In the 1960s, as the number of states possessing nuclear weapons rose to five, there were projections that 20-30 additional states would acquire nuclear weapons over the next two decades, and if such a scenario had occurred, there would have likely been many more in the following decades. As part of an effort to stem the trend toward the widespread proliferation of nuclear weapons, 62 states signed the NPT on July 1, 1968, the first day the Treaty was open for signature. During the NPT negotiations, the Non-Aligned Movement (NAM) states sought negative security assurances from the nuclear-weapon states, arguing that after all, if the non-nuclear-weapon states were to foreswear nuclear weapons, the least the nuclear weapon states could agree to was not to threaten or use nuclear weapons against non-nuclear-weapon states.<sup>[11]</sup> In 1965, the United Arab Republic (UAR) rejected the idea of bilateral security guarantees, claiming that it would result in “a situation where vast areas were divided under a nuclear trusteeship of this or that Power.”<sup>[12]</sup> Several non-nuclear-weapon states requested that assurances or guarantees from the nuclear-weapon states accompany or be included in the emerging non-proliferation treaty. Soviet Premier Kosygin proposed (on February 1, 1966 in the Soviet draft of the Non-Proliferation Treaty) “a clause on the prohibition of the use of nuclear weapons against non-nuclear States parties to the treaty which have no nuclear weapons on their territory.”<sup>[13]</sup> The UAR, Mexico, Nigeria, and India (ultimately not a signatory of the NPT) supported this initiative. UAR Ambassador Khallaf submitted treaty language that incorporated Kosygin’s proposal, specifying that “each nuclear-weapon state undertakes not to use, or threaten to use, nuclear weapons against any non-nuclear-weapon state Party to this Treaty which has no nuclear weapons on its territory.”<sup>[14]</sup> Romania and Switzerland made similar proposals.

US President Lyndon Johnson had assured nations that did not seek nuclear weapons that they would, if the need arose, enjoy strong US support “against nuclear blackmail threat,”<sup>[15]</sup> but the

United States refused to accept the Soviet proposal. Canada also refused such a proposal arguing that reaching a consensus to include it in the Treaty would prove difficult, and attempting to do so would unacceptably prolong negotiations. Canadian representative Burns suggested instead that the nuclear-weapon states make parallel declarations that could include negative security assurances. More specifically he proposed that the nuclear-weapon states pledge in these declarations “not to use nuclear weapons against non-aligned non-nuclear parties.”<sup>[16]</sup>

In the beginning of 1968, the revised draft treaty still did not include any security assurances for non-nuclear-weapon states.<sup>[17]</sup> At the Eighteen Nation Disarmament Commission (ENDC), certain non-nuclear-weapon states voiced their regret regarding the absence of any such assurances and the Federal Republic of Germany stated that the treaty should ban nuclear blackmail against the non-nuclear weapon states. Romanian Ambassador Ecobesco again requested that the nuclear-weapon states include an undertaking not to use or threaten to use nuclear weapons.<sup>[18]</sup> In March 1968, the United States, the Soviet Union, and the United Kingdom agreed to offer some positive security assurances.<sup>[19]</sup> Such assurances generally refer to action that would be taken by the Security Council or by its permanent members to assist an NPT non-nuclear-weapon state if it was attacked or threatened with nuclear weapons. However, US Ambassador de Palma stated that the draft treaty did not include security assurances because the issue proved “too difficult and complicated to be reduced to a treaty provision.”<sup>[20]</sup> Thus, NATO concerns about the conventional superiority of the Warsaw Pact and the credibility of the Western Alliance’s “flexible response” policy, as well as the Soviet Union’s reluctance to give negative security assurances to non-nuclear-weapon states members of NATO, precluded any agreement among the nuclear-weapon states on negative security guarantees at that time.<sup>[21]</sup> Only China (not a NPT party until 1992) unilaterally pledged a no first use policy.

During the Cold War, mutual fear on both sides of the Iron Curtain prevented further progress in this area as the nuclear-weapon states denied repeated requests by non-nuclear-weapon states for the NSAs to be made legally-binding. The primary reason lay in distrust across the East-West divide. It was contended that non-nuclear-weapon states in the Warsaw Pact countries, as an alliance, possessed conventional superiority over NATO, and were closely allied to the Soviet Union. For its part, the Soviet Union argued that NATO stationed nuclear weapons on the national territories of its non-nuclear-weapon state members.

In 1995 at the NPT Review and Extension Conference, the five nuclear-weapon states reaffirmed, and to a degree harmonized, their political commitments not to threaten NPT non-nuclear-weapon states parties with nuclear weapons in the context of the NPT extension in 1995. The NPT nuclear weapon states agreed to legally binding NSAs when signing the relevant protocols to the African, South Pacific, Central Asian, and Latin American Nuclear Weapon Free Zone (NWFZ) Treaties. The Southeast Asian Nuclear Weapon Free Zone Treaty remains unresolved on this point because of the extension of the treaty limits to the high sea areas in Southeast Asia by extension to the EEZ limits. The protocols to these NWFZ Treaties strengthen the NSAs as they require the nuclear weapon states (they have all signed the relevant protocols) not only to refrain from the *use* of nuclear weapons against the states parties to the NWFZ Treaties, but also from the *threat* of use of nuclear weapons. The Latin American Nuclear Weapon Free Zone signed in 1967, a year before the NPT was the first to require a legally binding NSA for the nuclear weapon states—which non-nuclear weapon states not in a NWFZ treaty ask for to this day. All of the other Zonal treaties have followed the Latin American lead on this.

One other comment, the P-5 countries have only given legally binding NSAs to parties to NWFZ treaties. This is recommended by the UN rules and the P-5 members have judged that in general NWFZ treaties arguably one exception to this practice, the NSA given to the DPRK by the United



States in the 1994 Agreed Framework is part of a legally binding international Agreement—not a treaty but an international agreement—as a result of being one of the provisions of the Agreement. This NSA could have been considered legally binding as well.<sup>[22]</sup> However, the language used in the text is not such as to indicate legal obligation: “The U.S. will provide formal assurances to the DPRK, against the threat or use of nuclear weapons by the U.S.”<sup>[23]</sup> Thus, the impact of the provision is not clear. The same issue exists with respect to the relevant provision of the 2005 joint statement of principles developed in the Six Party Talks involving the DPRK, the ROK, the U.S., China, Russia, and Japan. The relevant provision there reads, “The United States affirmed that it has no nuclear weapons on the Korean Peninsula and has no intention to attack or invade the DPRK with nuclear or conventional weapons.”<sup>[24]</sup> Unlike the provision in the Agreed Framework, this language almost implies that it is only present intention that is referred to. However, the joint statement does contain a general provision of assurance in which the two parties agree to respect each other’s sovereignty, co-exist peacefully and take steps to normalize their relations. This did not appear to satisfy the DPRK.

Two treaties signed with the Soviet Union in 1961 provided the basic security assurance for the DPRK for many years, however with the collapse of the Soviet Union the DPRK realized that it would have to look for its security assurances elsewhere. The DPRK therefore undertook a series of negotiations with the United States. In general, the DPRK seemed satisfied or at least found acceptable to the NSA in the 1994 Agreed Framework. With respect to the Six Party Talks neither the security assurance nor the general reassurance clause in the Joint Framework appeared to be sufficient. The only regime assurance undertaking with the United States which has been valued by the DPRK is the 2000 Clinton-Myong-Rok “No Hostile Intent” communiqué signed by the two parties in October, 2000. More precisely it said that neither government would have “hostile intent” against the other and both sides were intent on building a “new relationship free from past enmity.”<sup>[25]</sup> This document was of great importance to the DPRK, it was regarded by North Korea in much the same way that the Chinese regarded the Shanghai communiqué of 1978, as the foundation of a new relationship.

But in all this the DPRK was seeking a better relationship with the United States and the survival of the regime. The 1994 Agreed Framework and the 2000 “no hostile intent” communiqué appeared to be important steps on the road to achieving that, the Joint Statement of Principles of 2005 did not. In the Singapore process the DPRK is seeking an NSA, perhaps a non-legally binding assurance will suffice when associated with a Peace Treaty.

## **Conclusion**

An arrangement between the DPRK and the United States and other countries on the elimination of the DPRK nuclear weapon stockpile and related equipment and technologies could of course take many forms and can be shaped to the desires and requirements of the parties. But if it ever becomes possible there is merit in the NWFZ form. It is well understood around the world. If done according to United Nation rules it would virtually guarantee the full support of the United Nations which could be very valuable. It would also help the DPRK to become a full-fledged member of the world community. The UN played a central role in the negotiation of the African Nuclear Weapon Free Zone Treaty and the Central Asia Nuclear Weapon Free Zone Treaty providing staff, expert and logistical support. This of course would not be lacking in any negotiation involving the United States and the DPRK but the UN would bring a special perspective. The CTBT Verification Center in Vienna with its unrivaled capability in seismic and other technologies of monitoring would be part of the package. There is no reason that such an agreement would have to precisely mirror the five NWFZ treaties that have gone before. They all differ among themselves. But their provisions provide past solutions which can be guides and precedents for this most important project. Let us hope one day



this can be done.

So as a final note what to make of the two approaches.

### ***The bilateral approach:***

#### **Pros:**

It appears to be negotiable, the DPRK has so indicated.

It can unlock the door to the Peace Treaty which can bring a number of good things.

- diplomatic recognition
- exchange of Ambassadors
- commerce and trade
- a possible side agreement halting the weapon and missile testing and export of nuclear weapon related technology permanent on a legally binding basis.
- an end to threatening overflights
- an agreed policy promulgated to eventually eliminate nuclear weapons and stop threatening their use.

#### **Cons:**

The Denuclearization Declaration will be seen by countries around the world and the political class in the U.S. as worthless, non-binding, unverifiable and unreliable. This may poison the Peace Treaty process and the good things that can come from it.

Only a non-binding NSA for the DPRK will be possible, likely nothing for the ROK. The ROK already has a non-binding NSA through the NPT.

This agreement will not significantly bring the DPRK into the world community.

### ***The multilateral approach:***

#### **Pros:**

It would solve the problem of nuclear weapons on the Korean Peninsula. It would have the full support of the world community and all six powers. The six power talks participants all would be centrally involved. DPRK security would be protected.

The DPRK would receive legally binding NSAs from the P-5 as would the ROK and Japan.

It would bring the DPRK into the world community as a full-fledged member. This would be very positive for the DPRK economy. It could even bring a close relationship with the U.S.

The verification process would significantly change DPRK society (likely seen as a con in some quarters).

## **Cons:**

This is not negotiable at this time.

The verification process would be exceedingly long.

In conclusion, the multilateral approach is where we should eventually be. Garcia Robles should remain our guide. In the short term we should make the best of the bilateral approach and keep our focus on the Peace Treaty.

## **ATTACHMENT 1: APPLYING LATIN AMERICAN NWFZ PRECEDENTS TO NORTHEAST ASIA**

This attachment expands on the suggestion on page 7 of this essay that: "In addressing the specific possibility of a nuclear weapon free zone for the Korean Peninsula some variation of the Garcia Robles formula might be workable." It provides more specific explanation of how a variation of the Garcia Robles formula might be applied to the Korean Peninsula.

In developing his concept of a nuclear weapon free zone, Garcia Robles was undoubtedly influenced by the thinking about the subject that existed already at the time of the negotiation of the Treaty of Tlatelolco that established a nuclear weapon free zone for Latin America.[\[26\]](#)

The central thought was that any such negotiated zonal treaty should be based on four basic principles, viz:

1. Participating countries must undertake a legally binding international commitment not to produce or deploy nuclear weapons anywhere in their territories and not to permit other countries to do so. This obligation remains valid in times of war and times of peace.
2. Nuclear weapon states recognized under the NPT must agree to respect such a zone and not to use or threaten to use nuclear weapons on participating states.
3. An international verification system must be established.
4. A zone must be established in such a way that it enhances international peace and security, which suggests that all states in the region affected directly by the zonal treaty should concur with it.

To these four fundamental principles, Garcia Robles made three important innovations.

First, he held that all significant states in the region to which the zonal treaty applies should be parties; second, that the motivation for the zonal treaty should come from countries within the zone; and third, that the right of the parties to use nuclear energy for peaceful purposes must be preserved.

Garcia Robles also established an implementing body for the treaty, OPANAL, with an implementing staff and periodic high-level meetings of the parties to provide oversight. Verification would be by the International Atomic Energy Agency with parties signing Safeguards Agreements with the Agency. Also pursuant to an Understanding submitted by the United States but accepted by all parties, the transit of nuclear weapons through the treaty zone by sea and air is not covered by the constraints of the zonal treaty.

Garcia Robles produced two Protocols for relevant outside states to attach themselves to the Treaty:

One Protocol invites outside states responsible for administrating territory in the zone, such as the United States with Puerto Rico and the Virgin Islands, to place these areas under the zonal treaty's constraints. Another Protocol is open only to the five recognized nuclear weapon states and invites them to assume the obligations never to use or threaten to use nuclear weapons against treaty parties.

All subsequent nuclear weapon free zones are based on the above principles: South Pacific, Africa, Southeast Asia and Central Asia. All of the regional treaty regimes work closely with the United Nations through their implementing bodies. Each of these zones was also custom-tailored to regional circumstances. Northeast Asia is no different.

Applying these principles to the Korean Peninsula would involve the following:

First, it would require that the Republic of Korea, the Democratic People's Republic of Korea, and Japan all become parties to the Treaty and undertake the fully meet all the non-nuclear weapon constraints referred to in the first pillar above.

Second, a verification system would have to be established. Given the diplomatic situation that exists today, it would have to be at least as intrusive as the system established for the Iran Agreement with the Security Council, the JCPOA, which also is administered by the IAEA.

Third, an implementing body should be established by the three parties with a Secretary General and international staff.

Fourth, the recognized nuclear weapon states, the United States, the United Kingdom, France, Russian and China, would sign a Protocol in which they would undertake never to use or threaten to use nuclear weapons against the parties to the "North-East Asian Nuclear Weapon Free Zone Treaty (NEANWFZ)." Pursuant to the diplomatic situation of today, the United States might wish to delay its ratification of this Protocol until the nuclear weapon stockpile of the DPRK has been fully verified by the IAEA and process of reductions has at least begun.

In the course of actually negotiating the Treaty of Tlatelolco, Garcia Robles wove a set of linkages to enable the different parties to commit to the treaty from the outset, thereby keeping all the relevant states "inside the tent" (or in this case, the zone) while coming into compliance and/or ratifying the treaty. In Article 4, he set up four requirements for entry into force, viz:

- 1-signature and entry into force of the Treaty by all eligible parties (all Latin American states).
- 2-signature and ratification of Protocol I by all eligible states( United States, United Kingdom, France, the Netherlands).
- 3-signature and ratification of Protocol II by all eligible states (United States, United Kingdom, France, Russia, China).
- 4-Completion of IAEA Safeguards Agreements with the IAEA by all eligible states (all Latin American states).

Conditions 1-3 are fully met and have been since 2002 (Cuba was the last to join). As noted above, condition 4 will probably never be met as small Latin American states don't want to spend money on Safeguards when they are never going to have safe-guardable nuclear facilities. Thus, it is likely the Treaty will never fully come into force, yet it provides effective constraints on all the parties to the treaty.

Article 28, paragraph 2 permits each individual Latin American state to sign, ratify and then formally

waive the requirements and thereby apply the obligations to its national territory and territorial sea (twelve-mile zone). A party therefore could sign, ratify and waive and apply the treaty to its national territory only and join the treaty individually (no broad ocean areas).

By exploiting this clause, Garcia Robles permitted the two states in the region with potential nuclear weapons programs in 1967 to associate themselves with the Treaty but not have the Treaty obligations apply until they were ready: by signing and ratifying but not waiving. Garcia Robles wanted to involve all Latin American states with the Treaty from the outset if he could. Brazil chose to take advantage of this option (as did Chile which followed Brazil in this area) but Argentina did not.

This is a different situation from the Korean Peninsula but a variant of Garcia Robles' formulae could be pursued in Northeast Asia.

To describe this approach in Northeast Asia in Garcia Robles terms: There would be only three requirements for full Treaty entry into force, the first three of Garcia Robles Tlatelolco requirements cast in Korean Peninsula terms, that is:

1-signature and ratification of the Treaty establishing a Northeast Asia Nuclear Weapon Free Zone.

2-signature and ratification of the Protocol placing territory in the Nuclear Weapon Free Zone controlled by an outside state (probably not required in the case of a Northeast Asia Nuclear Weapon Free Zone Treaty).

3-signature and ratification of the Protocol adhered to by the NPT recognized nuclear weapon states (the P-5).

In the Korean case probably only requirements 1 and 3 apply, so in practice there would be only two requirements.

These requirements are only met when the Treaty and the necessary Protocol or Protocols are signed and ratified by all parties to which the Treaty or Protocol or Protocols are opened for signature-or in other words by all relevant parties.

The relevant states for the NWFZ for NE Asia Treaty would be the ROK, the DPRK and Japan. The relevant states for the Protocol would be the P-5.

Thus, at the outset, in a Robles approach, Japan would sign, ratify and waive; four of the P-5 might do the same with the Protocol; but probably the United States for the Protocol and South Korea and North Korea for the Treaty would sign, ratify but not waive (like Brazil) or do nothing (like Argentina) until the complete DPRK nuclear weapons production program has been satisfactorily verified by the IAEA and DPRK nuclear weapon reduction is at least well underway and perhaps completed.

An additional possibility, suggested by Morton Halperin, is that ROK and Japanese commitment may be contingent upon specified denuclearization of the DPRK over timelines and that if sufficient progress in this regard is not achieved, for example, within three or five years, these states reserve the right to withdraw from the treaty.[\[27\]](#)

A further important precedent was set in the Treaty of Tlatelolco. This was the inclusion of the US territory of Puerto Rico and US Virgin Islands in the territories covered by Protocol 1 of the zone.

Originally, the United States opposed this inclusion, as was noted in the UN 1976 Comprehensive Report.<sup>[28]</sup> Ultimately, however, Protocol I of the Treaty of Tlatelolco was signed by President Carter in 1977, it was approved by the Senate in 1980 pursuant to three Understandings making clear that transit is unaffected-not objected to by other nations- and it was ratified for the US in 1981 by President Reagan. President Nixon dealt with Protocol II.

US adherence to Protocol I provided that all US possessions in the Treaty Zone are placed under the nuclear weapon free zone provisions of the Treaty of Tlatelolco. Thus, nuclear weapons may not ever be stationed, deployed, manufactured or tested in Puerto Rico or the Virgin Islands.

This precedent has obvious application to the possible inclusion of Guam in a regional nuclear weapons free-zone, given the fixation of the DPRK's leadership on this territory as a site from which nuclear attack might be launched against it; which in turn raises the issue of symmetry, and whether areas of Northeast China and the Russian Far East might also be included—noting that every addition introduces complicated asymmetries of interest and negotiation costs.

### III. ENDNOTES

[1] Nuclear Threat Initiative, “Joint Declaration of South and North Korea on the Denuclearization of the Korean Peninsula,” Last Updated: October 26, 2011, at: <https://www.nti.org/learn/treaties-and-regimes/joint-declaration-south-and-north-korea-denuclearization-korean-peninsula/>

[2] Ji Hyun Lee, “Assessing the idea of South Korea being a virtual NWFZ since the 1992 Joint Declaration for the denuclearization of the Korean peninsula,” paper presented to the “Strong connections: Australia-Korea strategic relations – past, present and future” workshop, Nautilus Institute, Seoul, June 15, 2010, pp. 3-4, at: <https://nautilus.org/wp-content/uploads/2011/12/Lee--I-hyun.pdf>

[3] Ji Hyun Lee, op cit, page 5.

[4] Shaker, Nuclear Non-proliferation Treaty, p. 920.

[5] Ibid., pp. 923-924.

[6] Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter (1975); Consultative Meeting of Contracting Parties (1993). It should be noted that the 1975 Convention is still a treaty, therefore, as in the Rarotonga Treaty, the states parties cannot create obligations for non-parties in areas beyond their national jurisdiction.

[7] Garcia Robles, Latin American Nuclear-Weapon-Free Zone, pp. 18-19.

[8] Article 5, Treaty of Rarotonga.

[9] Article 4, Treaty of Pelindaba.

[10] Alfonso Garcia Robles, quoted in UN General Assembly, *First Committee Provisional Verbatim Record*, 13 and 32; Michael Hamel-Green, “Peeling the Orange: Regional Paths to a Nuclear-Weapon-Free World,” accessed February 16, 2015, [http://nwp.ilpi.org/wp-content/uploads/2011/10/Peeling-the-orange\\_-regional-paths-to-to-a-nuclear-weapon-free-world.pdf](http://nwp.ilpi.org/wp-content/uploads/2011/10/Peeling-the-orange_-regional-paths-to-to-a-nuclear-weapon-free-world.pdf).

[11] On March 9, 1967, the Nigerian representative argued before the ENDC that it would be unfair to ask any responsible government to adhere to an NPT without guarantees. The Brazilian delegate

added that non-nuclear-weapon states signatories to the NPT would be surrendering “the most important means they might otherwise have at their disposal to counter possible aggression.” See *International Negotiations of the NPT*, ACDA (US Arms Control and Disarmament Agency), p73.

[12] Statement by the UAR representative in the UN First Committee, see *International Negotiations of the Treaty on Nonproliferation of Nuclear Weapons*, The Arms Control and Disarmament Agency, publication 48, January 1969, p26.

[13] *International Negotiations on the NPT*, ACDA, p42.

[14] *Ibid.*, p89.

[15] *Ibid.*, p73.

[16] *Ibid.*, pp89-90.

[17] *Ibid.*, p112.

[18] *Ibid.*, p112.

[19] For more detail, see Tripartite Proposal on Security Assurances, March 7, 1968, *ibid.*, p112.

[20] *Ibid.*, p112.

[21] George Bunn, “Security Assurances to Non-Nuclear-weapon states,” *The Non-proliferation Review*, The Monterey Institute of International Studies, Fall 1994, Volume 2, Number 1.

[22] Agreed Framework between the United States of America and the Democratic People’s Republic of Korea.

[23] *Ibid.*

[24] Joint Statement of the Fourth Round of the Six Party Talks, September 19, 2005.

[25] US-DPRK Joint Communiqué, Washington, D.C., October 12, 2000.

[26] Garcia Robles, *The Latin American Nuclear Weapon-Free Zone* (1979) is available for download [here](#).

[27] “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.” Morton H. Halperin, “A Proposal for a Nuclear Weapons-Free Zone in Northeast Asia”, NAPSNet Special Reports, January 03, 2012, <https://nautilus.org/napsnet/napsnet-special-reports/a-proposal-for-a-nuclear-weapons-free-zone-in-northeast-asia/>

[28] “In 1965, the United States declared that neither the United States Virgin Islands nor Puerto Rico could be included in the nuclear-weapon-free zone because the Virgin Islands were part of the territory of the United States and Puerto Rico had a special relationship with the United States. The Canal Zone, the United States added, could be included, provided that the rights of transit through the Panama Canal were not affected, as well as the Guantanamo base, if Cuba joined the Treaty. In



1974, the representative of the United States declared at the twenty-ninth session of the General Assembly that the position of his Government with respect to Additional Protocol I remained unchanged (A/C.I/PV.2023, p. 12).” In COMPREHENSIVE STUDY OF THE QUESTION OF NUCLEAR-WEAPON-FREE ZONES IN ALL ITS ASPECTS, SPECIAL REPORT OF THE CONFERENCE OF THE COMMITTEE ON DISARMAMENT, A/10027/Add.1, New York, 1976, page 14.

#### **IV. NAUTILUS INVITES YOUR RESPONSE**

The Nautilus Asia Peace and Security Network invites your responses to this report. Please send responses to: [nautilus@nautilus.org](mailto:nautilus@nautilus.org). Responses will be considered for redistribution to the network only if they include the author’s name, affiliation, and explicit consent

---

View this online at: <https://nautilus.org/napsnet/napsnet-special-reports/reducing-nuclear-dangers-on-the-korean-peninsula-bilateral-versus-multilateral-approaches/>

Nautilus Institute

608 San Miguel Ave., Berkeley, CA 94707-1535 | Phone: (510) 423-0372 | Email:

[nautilus@nautilus.org](mailto:nautilus@nautilus.org)