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# NUCLEAR-WEAPON-FREE ZONES IN AFRICA AND ASIA

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The year 1995 should be considered as an important milestone on the difficult path of denuclearization of the Continents of Africa and Asia. In fact, during the course of that year, two nuclear-weapon-free zones were established: the first one, within the framework of the Treaty of Pelindaba, which, was negotiated under the auspices of the Organization of African Unity and adopted on 21-23 June, 1995, covers the entire African continent including islands and archipelagoes that are geographically dependent on it.<sup>1</sup> The second nuclear-weapon-free zone was established by the Treaty of Bangkok, 15th December 1995, formulated within the framework of the Association of South-East Asian Nations (ASEAN), and embracing the territories of Member States<sup>2</sup>. Two drafts of nuclear-weapon-free zones in respect of Asia remain always in abeyance because of conflicts that continue to oppose the concerned States: one concerning the establishment of a nuclear-weapon-free zone in the Middle East and another one in South Asia.

## I. CHARACTERISTICS OF NUCLEAR-WEAPON-FREE ZONES OF AFRICA AND ASIA

The nuclear-weapon-free zones which have been established in Africa and Asia have characteristics akin to their predecessors, namely, the one instituted within the framework of the Treaty of Tlatelolco of 14th December 1967 for the southern part of the American continent; and the other established by the Treaty of Rarotonga of 6th August 1985 for the South Pacific. The

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Treaties of Pelindaba and Bangkok take into consideration the recommendations of the United Nations General Assembly appearing in the Resolution 3472 of 11 December 1975. In its effort to conceptualize the idea of nuclear-weapon free zones, the General Assembly indeed exerted itself to establish, within the framework of that Resolution, certain fundamental principles on which would rest the obligations of States Parties to the Treaties establishing these zones as well the commitments of nuclear States in respect of these zones.

#### **A. Obligations of States Parties to the Treaties of Pelindaba and Bangkok**

The States Parties to the Treaties of Pelindaba and Bangkok undertake not to manufacture, possess, or control, by any means whatsoever, any nuclear explosive device. They also commit themselves not to seek or to receive any help for the manufacture or acquisition of such devices. Moreover, the States Parties have the onus to prohibit stationing as well as test or trial of any such devices on their territories.<sup>3</sup> According to these two Instruments, the territory of the States Parties extends to their internal waters, the territorial sea and the archipelagic waters, the deep seabed and the subsoil thereof, the terrestrial outspreads, and the air space superjacent to all concerned areas.<sup>4</sup> In both the cases, it is expressly envisaged that these provisions will not impair or affect the rights or exercise of rights of any State recognized by International Law or by the United Nations Convention on the Law of the Sea<sup>5</sup>, as far as the freedom of the seas is concerned.

In the areas covered by these two Treaties, the use of nuclear energy for peaceful purposes, more particularly, with a view to guarantee economic development and social advancement of the States Parties, remains untouched.<sup>6</sup> In the case of Africa, the States Parties, to the Treaty of Pelindaba undertake to promote individually and collectively the aforesaid use within the framework of co-operation machinery, and to turn to account the aid programmes of the International Atomic Energy Agency as well as the existing regional Agreement on co-operation, research, training and development.<sup>7</sup> In the grip of serious economic difficulties, these States in order to guarantee their development, stake obviously on nuclear energy the mirages/fighter bomber of which continue to haunt them.

Although none of the provisions of the Treaties of Pelindaba and Bangkok prohibit expressly nuclear tests for peaceful purposes, it is difficult to draw conclusion from the same that such tests are permitted in areas covered by these instruments. One such interpretation is strengthened by the position taken together by the States signatories to these Treaties, with the exception of Libya, in the course of negotiations preceding the adoption by the General Assembly of the United Nations, on 11 September 1996, of the Treaty announcing complete prohibition of nuclear tests.<sup>8</sup>

In compliance with the recommendation of the General Assembly, the Treaties establishing nuclear-weapon-free zones should include a system of verification and control in the discharge of contracted obligations by the concerned States. The Treaties of Pelindaba and Bangkok entrust this task to Commissions, permanent organs composed of representatives of States Parties thereto.<sup>9</sup> In both the cases, the Parties stake on the transparency of nuclear activities in order to ensure proper discharge of the contracted obligations. And the States Parties are thus expected to present an annual report to the Commission on any important event that could have taken place on their territory and affect the application of the Treaty.<sup>10</sup>

The system of control established by the Treaty of Bangkok is more constrained than the one stipulated by the Treaty of Pelindaba. It distinguishes itself in fact by the possibility that it offers to States Parties to ask any other State Party for explanations and clarifications on any situation which would seem ambiguous and would create doubts in respect of the interpretation or application of the provisions of the Treaty, this request can be made either directly or through the Commission.<sup>11</sup> And to this end, any State Party can even ask for the meeting of the fact-finding Commission in order to clarify the situation in question. The investigation will be conducted by the said Commission in compliance with the procedure envisaged in the Annex to the Treaty.<sup>12</sup> If it is confirmed that a State Party has violated the provisions of the Treaty and refuses to abide by it, the question can be submitted for examination by the Commission, which could take the necessary measures to face the situation, including seisin by the International Atomic Energy Agency or organs of the United Nations, namely, the Security Council and the General Assembly if there is threat to peace and international security.<sup>13</sup> This latter provision is broadly related to measures of verification concerning the respect of the regulation stipulated in the Convention on Chemical Weapons of 13 January 1993. A less elaborate system of inspection being carried out in I (on site) is envisaged in Annex IV of the Treaty of Pelindaba.

Putting aside this system of control exercised by the States Parties and the appropriate organs of the areas concerned, the Treaties also lay stress on the system of guarantee of the International Atomic Energy Agency. The States Parties who have not already done so, are therefore advised to conclude Agreements of guarantee, with the IAEA, as in accordance with Article III of the Treaty on Non-Proliferation of Nuclear Weapons, 1 July 1968, the IAEA has been entrusted with the task of inspecting that nuclear materials are not diverted from peaceful nuclear activities towards manufacturing of nuclear explosive devices.

## **B. Obligations of Nuclear Powers in Respect of the Treaties of Pelindaba and Bangkok**

The nuclear Powers have here and now, within the framework of the Treaty on Non-Proliferation of Nuclear Weapons, 1 July 1968, given their agreement

in principle to the establishment of nuclear-weapon-free zones. Article VII of this Treaty, to which the existing nuclear powers are Parties, in fact declares clearly that it "does not affect the right of any group of States to conclude regional Treaties in such manner as to ensure complete absence of nuclear weapons on their territories". The question of establishing such zones was raised later on at several Review Conferences of this Treaty and put in exergue more particularly in the final declaration of the third Conference. More recently, within the framework of the Review Conference and prolongation of the Treaty, which met from 17th April to 13th May 1995 in New York, it was recalled that nuclear-weapon-free zones could only reach their maximum efficiency if all the States endowed with nuclear weapons would cooperate.

The question of such co-operation is raised in all its acuteness in the case of zones wherein extra-continental powers, whether or not they are endowed with nuclear weapons, still possess territories on which they continue to exercise their sovereignty. So is the case of France and of Spain in Africa. Protocol III to the Treaty of Pelindaba alludes precisely to such situations. While being bound by this Protocol, these States take upon themselves the onus to abide by the provisions of the Treaty on territories which they continue to administer, and abstain themselves, in the area that it covers, from acts which go against the obligations assumed by the States Parties.

The problem arises under another aspect for nuclear powers outside the zone. In reality, what disturbs these powers most are the risks that the establishment of such zones entail in respect of their strategic interests, and, more particularly, their nuclear dissuasion policy across the world. The question arises with more acuteness still in respect of three Western nuclear powers, connected within the framework of a network of security and alliance agreements with certain States Parties to the Treaties establishing nuclear-weapon-free zones.<sup>15</sup> France, in this respect has been very explicit and has declared itself in favour of these zones "there where the balance of forces does not rest upon the nuclear forces of dissuasion".<sup>16</sup> It is likewise for the United States.

In order to dispel these anxieties and guarantee the principle of free access for ships and aircraft carriers of nuclear weapons, instruments par excellence of dissuasion, the Treaties of Pelindaba and Bangkok give freedom to the States Parties to decide granting eventually, in the exercise of their sovereign right, to the nuclear powers the right to visit and to overflight.<sup>17</sup> Such a power giving a free hand to the concerned States does not go without raising problems of interpretation. It is at times indeed difficult to make distinction between a simple anchorage of ships and landing of aircrafts and their stationing prohibited by the provisions of these Treaties.

On the legal side, the undertaking of nuclear powers is concretized by their adherence to the Additional Protocols to the Treaties establishing nuclear-weapon-free zones. By doing so, they accept to be bound by the provisions of the Treaty and to abstain themselves, in their enforcement area, from acts which go against the obligations assumed by the Parties to the Treaty. The Treaties of Pelindaba and Bangkok have recourse to this legal technicality.<sup>18</sup>

## **II. DISPUTED PROJECTS OF NUCLEAR-WEAPON-FREE ZONES IN AFRICA AND ASIA**

The regions where nuclear-weapon-free zones have been established are generally characterized by realizing a certain number of criterion : existence of a common legal and political tradition, basis of co-operation between States, and, above all, absence of important stocks of nuclear weapons which constitute the proof of non-existence of serious conflicts between States of the region in question.<sup>19</sup> For these reasons, in both the cases known to be areas of conflicts in Asia, namely, Middle East and South Asia, the proposals concerning the establishment of such zones have not till this date been launched.

### **A. System for Mass Destruction Weapon Free Zone in the Middle East**

The first Resolution of the General Assembly on the denuclearization of Middle East goes back to 1974. Adopted at the joint initiative of Egypt and Iran, it was aimed at preventing Israel, the day after the 3rd Israel-Arab conflict, from developing or using nuclear weapons. The question remains inscribed in the agenda of various sessions of the General Assembly, the annual Resolutions of which are adopted by consensus since 1980. Two events of major importance and of the nature to remove the latter existing obstacles have essentially changed the given facts of the problem: Peace Agreements between Israel and Egypt, which prepared the ground for the launching of peace process in the region of Middle East, and the detection of the clandestine programme of Iraq to be endowed with weapons of mass destruction.

And thus in 1988, a Resolution, adopted once again at the initiative of Egypt, requested the Secretary General to undertake a study on the effective measures to be taken likely to facilitate the establishment of a nuclear-weapon-free zone in the Middle East. The report presented to the General Assembly and adopted by consensus, suggests that all States of the region ratify the Treaty on non-proliferation and that the transparency of their activities assured. The nuclear-weapon-free zone, in accordance with the report of the Secretary General, should embrace the entire territory of Member States of the Arab League, those of Israel and Iran, Turkey, member of NATO, being excluded therefrom.<sup>20</sup>

In 1990, President Mubarak of Egypt suggested that prohibition may also be extended to chemical and biological weapons, proposal discussed at the Geneva Conference on Disarmament<sup>21</sup> and welcomed favourably by the General Assembly. The second war in the Persian Gulf induced the Security Council to take interest in this question. In the course of discussions which preceded the adoption of Resolution 687 of the Security Council, of 3rd April 1991, several members of the Council expressed their desire to see atomic, biological and chemical weapons positively abolished from the region.<sup>22</sup> The Security Council, having taken note of this decision, imposed on Iraq, by the aforementioned Resolution 687, severe constraints and demanded that it accept "unconditionally that all chemical and biological weapons and percursory stocks... be destroyed, removed, or neutralized, under international supervision, and give up forever the acquisition of nuclear weapons". Paragraph 14 of that Resolution expresses the desire that these measures "represent stages leading to the path of establishment in the Middle East of a mass destruction weapon free zone".

The Review Conference and the prolongation of the Treaty on non-proliferation recognizes on its part that the process of peace in the Middle East would contribute to the establishment of such a zone, and calls upon all States of that region to take effective measures in this direction.<sup>23</sup> It is true that ratification of the Treaty on non-proliferation by Israel, as well adherence by all States of the region to the Conventions on disarmament of biological and chemical weapons would result in conditions favourable to sincere negotiations for the establishment of such a zone in the Middle East.

## **B. Draft for the Establishment of a Nuclear-Weapon-Free Zone in South Asia.**

The question of establishing a nuclear-weapon-free zone in South Asia was examined for the first time by the United Nations General Assembly in 1972. Pakistan, dreading that India might get involved and manufacture nuclear weapons had to launch this idea,<sup>25</sup> to which, very recently, also joined Bangladesh. In return, India, which, of course, opposes it, has always voted against the Resolutions adopted in this direction.<sup>26</sup> The study of the draft on complete prohibition of nuclear tests by the Conference on disarmament, in June 1996, offered once again to this State the opportunity to denounce the pursuit of military programmes by its neighbours, in particular Pakistan. India does not accept this draft as it will give monopoly of holding nuclear weapons only to the nuclear powers while recalling that it is different from its draft of complete prohibition of nuclear tests submitted in 1954, which suggested at the same time total and definite abolition of nuclear weapons.<sup>27</sup> It seems that India refuses for the time being to give up the nuclear option, which is obviously not consistent with the idea of nuclear-weapon-free zone in South Asia.

## Conclusion

In his message which he sent to the Heads of States of Africa on the occasion of the adoption of Pelindaba Treaty, the then Secretary General of the United Nations, Mr. Boutros Boutros-Ghali, qualified the event as great contribution in the coming of a nuclear-weapon-free world and encouraged the establishment of other zones. Since then, the adoption of the Treaty of Bangkok has come to strengthen the will of Asian States to contribute in their turn to the movement in favour of consolidating the regime of non-proliferation. We hope that States situated in conflict areas of Asia, namely, the Middle East and South Asia, will undertake, like the two Koreas,<sup>28</sup> to denuclearize their respective territories.

## NOTES

1. For the text of the Treaty see *International Legal Materials*, Vol. XXXV No. 3, May 1996 p. 702 and the sequel.
2. For the text of the Treaty of Bangkok *Ibid.* p. 635 and the sequel.
3. Article 3 of the Treaty of Bangkok and Articles 3 and 4 of the Treaty of Pelindaba.
4. Article 1(b) of the Treaty of Bangkok and Article 1(b) of the Treaty of Pelindaba.
5. Article 2, paragraph 2 of the Treaty of Bangkok.
6. Article 4 of the Treaty of Bangkok and Article 8 of the Treaty of Pelindaba.
7. African Regional Cooperation Agreement for Research Training and Development Related to Nuclear Science and Technology, known under the initial letter. AFRA.
8. Treaty adopted by the General Assembly of the United Nations by 158 votes in favour and 3 against, namely, those of India, Bhutan and Libya Doc. U.N. A/50/1027 of 26th August 1996.
9. Commission for the Southeast Asia Nuclear Weapon Free Zone and African Commission on Nuclear Energy.
10. Article 10 of the Treaty of Bangkok and Article 13 of the Treaty of Pelindaba.
11. Article 11 of the Treaty of Bangkok.
12. Article 12 of the Treaty of Bangkok.
13. Article 13 of the Treaty of Bangkok.
14. Article 5 of the Treaty of Bangkok and Article 9, paragraph (b) of the Treaty of Pelindaba.
15. *Georges Fischer* "The denuclearized zone of South Pacific" *French Year-book of International Law* 1986 p. 26.
16. Cf. Official commentary by the United States on the Draft Treaty of Tlatelolco in 1966: "The proposed Treaty would impose no prohibition that would restrict the freedom of transit within the western hemisphere. The US policy of freedom of transit is based on our national security needs and the vital security interest of the hemisphere and we do not believe a nuclear free zone need or should compromise the freedom". Cf. *Hizakazu Fujita* "Changing Role of International Law in the Nuclear Age : From Freedom of the High Seas to the Nuclear Free Zone" in *Humanitarian Law of Armed Conflict*, edited by Astrid J.M. Delissen and Gerard J. Tanja, (Martinus Nijhoff Publishers 1991) p. 227.
17. Article 4 of the Treaty of Pelindaba and Article 7 of the Treaty of Bangkok.
18. Cf. Composite protocol to the Treaty of Bangkok and Protocol I to the Treaty of Pelindaba.
19. *Angelo Miatello* "Nuclear weapon in International Law" Ed. Peter Lang, Bern p. 305-321.



20. *Jan Prawitz and James F. Leonard* "A Zone Free of Weapons of Mass Destruction in the Middle East", UNIDIR Publication, New York and Geneva, 1996, p. 60.
21. Doc. CD/989 of 20th April 1990.
22. *Serge Sur* "Resolution 687 of 3rd April 1991 of the Security Council in the Gulf case : Problems related to restoration and guarantee of peace", UNIDIR Publication, United Nations, New York 1992 p. 26.
23. Doc. U.N. NPT/Conf 1995/32/Res I.
24. Cf. In this direction, the Draft Resolution proposed by the Non-Aligned States at the 51st Session of the General Assembly in 1996 A/C1/51/L.4/Rev/I.
25. Cf. Draft Resolution presented jointly by Pakistan and Bangladesh on 28th October 1996, at the 51st Session of the General Assembly Doc. A/C.1/51/L/6.
26. Resolution 39/55 of 12th December 1984.
27. Doc. DC/96/29 of 20th June 1996.
28. Joint Declaration of the Denuclearization of the Korean Peninsula signed on 31 December 1991 and in force since 19th February 1992.